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*Bill Analysis*  
*Legislative Service Commission*

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**BILL SUMMARY**

**Construction and demolition debris fees**

- Eliminates the current annual license fee for construction and demolition debris facilities, and instead establishes a 22¢ per cubic yard or 66¢ per ton fee on the disposal of construction and demolition debris.
- Requires monthly remittance of disposal fees from owners or operators of construction and demolition debris facilities to local boards of health or the Director of Environmental Protection, and allows quarterly remittance of the fees.
- Authorizes municipal corporations and townships to appropriate a portion of the disposal fees for specified purposes.

**Definition of "construction and demolition debris"**

- Includes in the definition of "construction and demolition debris" certain de minimus items.

**Siting criteria for construction and demolition debris facilities**

- Establishes additional siting criteria for new construction and demolition debris facilities, and applies certain of those criteria to the modification of an existing facility.

**Public meeting requirement**

- Requires a person proposing to open a new construction and demolition debris facility, prior to the submission of an application for an initial license, to hold a public meeting in the township or municipal

corporation where the proposed facility is to be located and to provide notice of the meeting.

**Post-closure care**

- Requires the owner or operator of a licensed construction and demolition debris facility that is required to install ground water monitoring wells and monitor the quality of ground water to maintain the monitoring for five years after closure of the facility.
- Requires the owner or operator of a facility to provide financial assurance for the continued maintenance of ground water monitoring wells and monitoring of the quality of ground water for five years after closure of the facility.
- Requires the Director to adopt rules that establish financial assurance requirements for the post-closure care of facilities and requirements for the post-closure care of facilities, but specifies that those rules do not apply for 24 months after the bill's effective date to a facility for which a license was issued on or before the bill's effective date.

**Background investigations--disclosure statement**

- Requires a background investigation to be conducted of an applicant for a license for a construction and demolition debris facility.
- Requires an applicant for a license or for a change in ownership of a facility to submit a disclosure statement to the Attorney General not later than 180 days prior to submitting an application for the license or change of ownership to the Director of Environmental Protection.
- Requires the Attorney General to prepare an investigative report based on the disclosure statement and send the report to the Director not later than 180 days after receipt of the disclosure statement, and requires the Director or a board of health to review the investigative report before approving or denying the license or change in ownership.
- Requires a person who was required to file a disclosure statement to submit to the Attorney General updates of the information that is required in the disclosure statement.
- Specifies the information to be included in a disclosure statement.

- Authorizes a person who is submitting information in a disclosure statement to submit to the Attorney General a written document to request an exemption from disclosure of specific information that the person believes is confidential.
- Authorizes the Attorney General to charge fees that are to be established in rules and are necessary to pay the costs of administering and enforcing the bill's background investigation provisions, requires the money from the fees to be credited to the Construction and Demolition Debris Background Investigation Fund created by the bill, and requires an applicant or prospective owner of a construction and demolition debris facility to pay an initial disclosure statement fee and an annual update disclosure statement fee that are established by the Attorney General in rules.
- Requires an individual who is required to be listed in a disclosure statement to be fingerprinted in accordance with the procedures established by the Attorney General, and requires the fingerprints to be submitted with the disclosure statement.

**Background investigations--investigative demand**

- Authorizes the Attorney General to serve an investigative demand when there is reasonable cause to believe that an individual or business concern may possess or control documentary material or facts that are relevant to a construction and demolition debris facility background investigation, and establishes the requirements for and the procedures for service of an investigative demand.
- Authorizes an individual or business concern to file a request for an order of a court of common pleas to modify or set aside an investigative demand.
- Authorizes the Attorney General to file a request for an order of a court of common pleas to compel an individual or business concern to comply with an investigative demand, and generally provides that certain privileged information provided or evidence derived from it under a court-compelled investigative demand cannot be used against the individual in the prosecution of a crime or offense.

- Requires the Attorney General to be the custodian of the documentary material that is obtained through an investigative demand, and establishes that information from an investigative demand generally is confidential and not subject to disclosure.
- Prohibits an individual or business concern with the intent to avoid, evade, prevent, or obstruct an investigative demand from removing, concealing, destroying, mutilating, altering, or falsifying any documentary material that is the subject of an investigative demand.
- Authorizes a court to order an individual or business concern to pay the Attorney General the reasonable expenses incurred in defending an investigative demand when the individual or business concern's noncompliance with the demand was in bad faith or for the purpose of delay.

**Waiver of background investigation requirements**

- Authorizes the Attorney General to waive any of the background investigation requirements when an applicant demonstrates that a requirement will create a substantial hardship and will not likely elicit information that is responsive to the requirement, and requires the Attorney General to so notify the Director or a board of health.

**Additional requirements for the issuance or removal of a license**

- Establishes additional requirements for the issuance or renewal of a license based on an applicant's reliability, expertise, competency, and compliance with certain laws.
- Establishes that an applicant cannot be denied issuance or renewal of a license on the basis of conviction of an individual or business concern listed in the disclosure statement when the applicant has affirmatively demonstrated rehabilitation of the individual or business concern by a preponderance of the evidence, and establishes the factors that the Director or a board of health must use to determine if an applicant has demonstrated rehabilitation.

**Revocation of a license**

- Establishes additional causes for the revocation of a construction and demolition debris facility license.

**Issuance or renewal of a license to a disqualified applicant**

- Authorizes the Director or a board of health to issue or renew a license issued under the Construction and Demolition Debris Law if the applicant severs the interest or affiliation with the individual or business concern that would otherwise cause the disqualification and to issue or renew a license on a temporary basis not exceeding six months when the Director or the board determines that such an issuance is necessitated by the public interest.

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## CONTENT AND OPERATION

### Introduction

The Construction and Demolition Debris Law, which was enacted in 1990, requires each construction and demolition debris disposal facility to be licensed annually by either the applicable local board of health or the Director of Environmental Protection. The Director only licenses facilities, and conducts inspections, in areas of the state in which a board of health has not been approved by the Director to administer the construction and demolition debris management program. The program generally is funded through license fees.

The Law establishes siting criteria and licensing procedures and requirements and provides for enforcement of its provisions. It also requires the Director to adopt rules governing facilities, their inspection, and the issuance of licenses. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution. Unlike the Solid, Infectious, and Hazardous Waste Law, the Law does not require a background investigation of an applicant for a license.

The bill makes several changes in the construction and demolition debris management program. It replaces the license fee with a disposal fee, establishes additional siting criteria, and adds requirements for public meetings on license applications and for post-closure care of facilities. It also requires a background investigation of an applicant for a license and establishes detailed requirements governing those investigations.

**Elimination of construction and demolition debris facility license fee; establishment of disposal fee**

Current law establishes a fee of \$3,000 for an annual license for a construction and demolition debris facility. The board of health of a health district may issue licenses and collect the license fee only if the Director of Environmental Protection has approved the district to implement the construction and demolition debris program within its jurisdiction. A board of health issuing licenses is required to retain \$1,500 of each fee collected; the remainder must be forwarded to the Director. In jurisdictions where there is no approved health district to administer the program, the Director must issue licenses and collect all license fees. A board of health is required to use the money from the license fee for the purpose of administering and enforcing the construction and demolition debris program within its jurisdiction if it is approved to do so. Similarly, money received by the Director must be used by the Environmental Protection Agency (EPA) for the administration of the construction and demolition debris program. (Sec. 3714.07, repealed.)

The bill repeals the annual license fee and in its place establishes a 22¢ per cubic yard or 66¢ per ton fee, as applicable, on the disposal of construction and demolition debris at a licensed construction and demolition debris facility. The facility's owner or operator must determine if cubic yard or tons will be used as the unit of measurement. In estimating the fee based on cubic yards, the owner or operator of a construction and demolition debris facility must utilize the maximum cubic yard capacity of the container, or the hauling volume of the vehicle, that transports the construction and demolition debris to the facility. If basing the fee on tonnage, the owner or operator must use certified scales to determine the tonnage of construction and demolition debris that is transported to the facility.

The bill requires the owner or operator of a construction and demolition debris facility to collect the fee as a trustee for the health district having jurisdiction over the facility, if that district is approved to administer the construction and demolition debris program within its jurisdiction, or for the state. The owner or operator must prepare and file with the appropriate board of health or the Director monthly returns indicating the total volume of construction and demolition debris received for disposal at the facility and the total amount of money required to be collected on the construction and demolition debris disposed of during that month. Not later than 30 days after the last day of the month to which the return applies, the owner or operator must mail to the board of health or the Director the return for that month together with the money required to be collected on the construction and demolition debris disposed of during that month. The owner or operator may request, in writing, an extension of not more than 30 days after the last day of the month to which the return applies. A request for

extension may be denied. If the owner or operator submits the money late, the owner or operator must pay a penalty of 25% of the amount of the money due for each month that it is late.

A board of health must transmit 2¢ per cubic yard or 6¢ per ton, as applicable, of the money collected from a construction and demolition debris facility to the Director not later than 45 days after the receipt of the money. The money retained by the board must be paid into a special fund and used solely to administer and enforce the construction and demolition debris program.

The Director is required to transmit all money received from boards of health and all money from the disposal fee collected by the Director to the Treasurer of State to be credited to the Construction and Demolition Debris Facility Oversight Fund, which the bill creates in the state treasury. The Fund is required to be administered by the Director, and money credited to it must be used exclusively for the administration and enforcement of the construction and demolition debris program. (Sec. 3714.07(A).) The bill provides that the Fund is a continuation of the existing Construction and Demolition Debris Facility Oversight Fund, which the bill eliminates, and that money credited to the existing fund must be used for the purposes specified in the bill (Section 3).

#### **Quarterly payment of fees**

The bill authorizes a board of health or the Director to enter into an agreement with the owner or operator of a construction and demolition debris facility for the quarterly payment of the money collected from the disposal fee. The board of health must notify the Director of any such agreement. Not later than 45 days after receipt of the quarterly payment, the board must transmit 10% of the amount of the money received from the payment to the Director. The money retained by the board of health must be deposited in the special fund of the health district discussed above. Money sent to the Director must be credited to the new Construction and Demolition Debris Facility Oversight Fund. (Sec. 3714.07(B).)

#### **Municipal corporation and township share**

If a construction and demolition debris facility is located within the territorial boundaries of a municipal corporation or the unincorporated area of a township, the municipal corporation or township may appropriate up to 5¢ per cubic yard or up to 15¢ per ton of the disposal fee required to be paid by the facility for the same purposes that a municipal corporation or township may levy a

solid waste disposal fee under the Solid, Infectious, and Hazardous Waste Law.<sup>1</sup> The legislative authority of the municipal corporation or township may appropriate the money from the fee by enacting an ordinance or resolution establishing the amount of the fee to be appropriated. Upon doing so, the legislative authority must mail a certified copy of the ordinance or resolution to the board of health of the health district in which the construction and demolition debris facility is located or to the Director if the facility is located in a health district that is not approved to administer the construction and demolition debris program. Upon receipt of the copy of the ordinance or resolution and not later than 45 days after receipt of money collected from the fee, the board or the Director, as applicable, must transmit to the treasurer or other appropriate officer of the municipal corporation or clerk of the township that portion of the money collected from the disposal fee by the owner or operator of the facility required by the ordinance or resolution to be paid to that municipal corporation or township.

Money received by the treasurer or other appropriate officer of a municipal corporation must be paid into the general fund of the municipal corporation. Money received by the clerk of a township must be paid into the general fund of the township. The treasurer or other officer of the municipal corporation or the clerk of the township, as appropriate, must maintain separate records of the money received. The legislative authority of a municipal corporation or township may cease collecting money by repealing the ordinance or resolution establishing the amount to be collected. (Sec. 3714.07(C).)

#### **Rules for documentation related to fees**

The bill requires the Director to adopt rules establishing requirements governing the submission of documentation related to the fee levied under the bill on the disposal of construction and demolition debris (sec. 3714.02(K)).

#### **Definition of "construction and demolition debris"**

Under current law, "construction and demolition debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure ("physical structure built by humans" under the bill), including, without limitation, houses, buildings, industrial or

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<sup>1</sup> That law allows a disposal fee to be levied by a municipal corporation or township for the purposes of defraying the added costs to the municipal corporation or township of maintaining roads and other public facilities and of providing emergency and other public services and compensating the municipal corporation or township for reductions in real property tax revenues due to reductions in real property valuations resulting from the location and operation of a solid waste disposal facility within the municipal corporation or township (sec. 3734.57(C), not in the bill).

commercial facilities, or roadways. The bill expands the definition to include incidental food, beverage containers, food packaging, newspapers, magazines, and nonhazardous construction material packaging that are generated and commingled by individuals who are working at the construction or demolition site where the materials were generated. (Sec. 3714.01(C).)

**Siting criteria for construction and demolition debris facilities**

Current law generally prohibits the Director or a board of health from issuing a license for the establishment of a construction and demolition debris facility within certain flood-prone areas and within the boundaries of sole source aquifers. The bill revises the prohibition by prohibiting the issuance of a license when the limits of construction and demolition debris placement of the facility, rather than any portion of the facility, are proposed to be located in those areas. (Sec. 3714.03(B).) "Limits of construction and demolition debris placement" is defined to mean the areal and vertical limits of debris placement within a construction and demolition debris facility and includes the volume of debris placement (sec. 3714.03(A)(5)). The bill also prohibits the issuance of a license for a construction and demolition debris facility above an unconsolidated aquifer system (see below) that sustains a 100 gallon per minute yield for a 24-hour period to an existing or future water supply well located within 1,000 feet of the limits of construction and demolition debris placement of the facility. The existence of such an aquifer system must be determined through publicly available information or hydrogeologic site investigation. (Sec. 3714.03(B).)

Current law provides that for purposes of determining the location of the 100-year flood plain of a watercourse under the above siting criteria, if no maps have been prepared, the boundaries of the 100-year flood plain must be determined based upon a design storm of seven inches of precipitation in 24 hours and upon standard methodologies set forth in "Urban Hydrology for Small Watersheds" and section 4 of the "National Engineering Hydrology Handbook" of the Soil Conservation Service of the United States Department of Agriculture. The bill revises the requirement by eliminating "of a watercourse" for purposes of determining the 100-year flood plain. In addition, the bill eliminates "a design storm of seven inches of precipitation in 24 hours." Thus, the bill provides that the boundaries of a 100-year flood plain must be determined based upon standard methodologies set forth in the Soil Conservation Service documents specified above. (Secs. 3714.03(B)(1) and 3714.04.)

Except as discussed below, the bill also prohibits the Director or a board from issuing a license to establish a new construction and demolition debris facility or to modify an existing facility when the limits of construction and demolition debris placement at the new facility or at any new portion of the existing facility are proposed to be located in any of the following locations:

(1) Within 250 feet of an upgradient water supply well or within 500 feet of any other water supply well;

(2) Within 100 feet of a stream, lake, or category 3 wetland;

(3) Within 100 feet of the facility's property line;

(4) Within 1,000 feet of a state park established or dedicated under the Division of Parks and Recreation Law, a state park purchase area established under that Law, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the Secretary of the United States Department of the Interior, located in Ohio, or any area located in this state that is recommended for potential inclusion in the national park system in accordance with federal law; or

(5) If a liner and a leachate management system are used at the facility, above the subsurface area of potential subsidence to an underground mine (sec. 3714.03(C)).<sup>2</sup>

Except as discussed below, the bill also prohibits the Director or a board from issuing a license to establish a new construction and demolition debris facility or to modify an existing facility when the limits of construction and demolition debris placement at the new facility or at any new portion of the existing facility are proposed to be located less than five feet above the uppermost aquifer system (sec. 3714.03(D)). The bill defines "aquifer system" as one or more geologic units or formations that are wholly or partly saturated with water and are capable of storing, transmitting, or yielding ground water at a time weighted average rate greater than one-tenth of a gallon per minute over a 24-hour period unless the geologic units or formations yield less than three gallons per minute, but more than one-tenth of a gallon per minute and the ground water yield is less than 50% of the yield of another saturated zone under a construction and demolition debris facility that is the likely source of water used for any purpose within one mile of the facility (sec. 3714.03(A)(1)).

Except as discussed below, the bill prohibits the Director or a board from issuing a license to establish a new construction and demolition debris facility or to modify an existing facility when the limits of construction and demolition debris placement at the new facility or at any new portion of the existing facility

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<sup>2</sup> The bill defines "category 3 wetland" as a category 3 wetland as described in a specified rule adopted under the Water Pollution Control Law as that rule existed on the effective date of the bill (sec. 3714.03(A)(2)).

are proposed to be located in a drinking water source protection area for a community water system using ground water (sec. 3714.03(E)). The bill defines "drinking water source protection area for a community water system using ground water" to mean the surface and subsurface areas surrounding a public water supply well that will provide water from an aquifer to the well within five years as delineated by the Environmental Protection Agency in accordance with the wellhead protection program or the source water assessment protection program established pursuant to the Safe Drinking Water Law (sec. 3714.03(A)(4)). Further, "community water system" has the same meaning as in that Law, that is, a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents (sec. 3714.03(A)(3)).

The bill's new siting criteria, other than the criterion related to an unconsolidated aquifer system, do not apply for 24 months after the bill's effective date to a facility for which a license was issued on or before the bill's effective date (sec. 3714.03(G)).

Finally, the bill prohibits the Director or a board from issuing a license to establish a new construction and demolition debris facility when the limits of construction and demolition debris placement of the new facility are proposed to be located within 1,000 feet of a natural area, any area established by the Department of Natural Resources as a state wildlife area under the Division of Wildlife Law and rules adopted under it, any area that is formally dedicated as a nature preserve under the Division of Natural Areas and Preserves Law, or any area designated by the United States Department of the Interior as a national wildlife refuge (sec. 3714.03(F)). The bill defines "natural area" as any of the following: (1) an area designated by the Director of Natural Resources as a scenic river under the Natural Areas and Preserves Law, (2) an area designated by the United States Department of the Interior as a national scenic river, (3) an area designated by the United States Forest Service as either a special interest area or a research natural area in the Wayne National Forest, (4) an area designated, owned, and managed by the Ohio Historical Society as a nature preserve, or (5) a stream segment designated by the Environmental Protection Agency under the Water Pollution Control Law and rules adopted under it as a state resource water, a coldwater habitat, or an exceptional warmwater habitat (sec. 3714.03(A)(6)).

For the purposes of its new siting criteria, the bill defines "new portion of an existing facility" as any area of an existing facility that has not been designated as an active or inactive licensed disposal area for the facility (sec. 3714.03(G)).

### **Public meeting requirement**

The bill requires each person proposing to open a new construction and demolition debris facility, prior to the submission of an application for an initial license, to hold a public meeting in the township or municipal corporation, whichever is applicable, where the proposed facility is to be located. The Director or the Director's designee or the board of health of the health district in which the facility is to be located or the board's designee may attend the public meeting. At least 30 days prior to the public meeting, the person proposing to open a facility must provide notice of the time, day, and location of the public meeting in a newspaper of general circulation in the locality of the proposed facility and mail a copy of the notice to the Director or board of health, whichever is applicable. (Sec. 3714.051.)

### **Post-closure care**

#### **Ground water monitoring**

Under the bill, if the owner or operator of a construction and demolition debris facility has been issued a license and the facility is required to install ground water monitoring wells and monitor the quality of ground water under the Construction and Demolition Debris Law and rules adopted under it, the owner or operator must maintain the monitoring wells and monitor the quality of ground water for five years after the closure of the facility. In addition, the owner or operator must provide financial assurance for the continued maintenance of ground water monitoring wells and for monitoring the quality of ground water for five years after the closure of the facility in accordance with rules adopted under the bill (see below). (Sec. 3714.101.)

#### **Rules for post-closure financial assurance and post-closure care**

Current law requires the Director to adopt rules governing construction and demolition debris facilities. In addition to the establishment of standards for the design and construction of facilities, standards for control over access to facilities, and other standards, criteria, and procedures, the rules must establish financial assurance requirements for the closure of facilities. The rules must require the owner or operator of a facility, before being issued a license, to submit a surety bond, a letter of credit, or other acceptable financial assurance, as specified by the Director in the rules, in an amount equal to the estimated costs for closure of those portions of the facility that involve the disposal of construction and demolition debris. The bill adds that the rules must establish financial assurance requirements for post-closure care of facilities. However, the rules establishing financial assurance requirements for the post-closure care of facilities do not apply for 24 months after the bill's effective date to a facility for which a license was issued on

or before the bill's effective date. The bill also eliminates a provision in the rule requirements that refers to a closure plan.<sup>3</sup> (Sec. 3714.02(H).)

Current law requires the Director's rules to establish requirements for the closure of facilities. The bill requires the Director also to adopt rules that establish requirements for the post-closure care of facilities that are reasonably related to the continued maintenance of ground water monitoring wells and to the monitoring of ground water at a facility as provided under the bill (see above). (Sec. 3714.02(J).)

### **Elimination of provisions in the Construction and Demolition Debris Law**

Existing law authorizes a person who has received a license, upon sale or disposition of the construction and demolition debris facility and with the consent of the board of health or the Director, as appropriate, to have the license transferred to another person. The bill eliminates this authorization. (Sec. 3714.06(B).)

Current law establishes procedures and requirements governing construction and demolition debris facilities that were in operation or under construction when the Construction and Demolition Debris Law was enacted. The bill eliminates these outdated provisions. (Sec. 3714.06(C).)

### **Background investigations--disclosure statement**

#### **Disclosure statement required prior to the submission of an application for a construction and demolition debris facility license**

Under the bill, not later than 180 days prior to the submission of an application to the Director or a board of health for a license for a construction and demolition debris facility, the applicant must submit a disclosure statement to the Attorney General (see "**Disclosure statement requirements**," below). Upon receipt of a disclosure statement, the Attorney General must prepare an investigative report and send the report to the Director (see "**Investigative report**," below). The Director must review the report and may review the disclosure statement. The Director or a board of health must either approve or deny the license in accordance with the Construction and Demolition Debris Law and rules adopted under it. However, if the Director determines that the report contains information that if submitted with a license application would require denial of the license under the bill (see "**Additional requirements for the issuance or renewal of a license**," below), the Director must deny the license. If a board of health is

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<sup>3</sup> "Closure plan" is not defined or used in any other section of the Construction and Demolition Debris Law.

reviewing the application and the Director determines that the report contains such information, the Director must notify the board, and the board must deny the license. A board of health reviewing an application for a license cannot deny the license because of information contained in an investigative report unless the Director notifies the board that the board must deny the license. The Director's notification to a board of health is not a final action and is not appealable under the Environmental Protection Agency Law. (Sec. 3714.31(A).)

**Disclosure statement required prior to change in ownership**

Not later than 180 days prior to the change in ownership of a licensed construction and demolition debris facility or of a closed construction and demolition debris facility, the prospective owner must submit a disclosure statement to the Attorney General and, in the case of a change in ownership of a licensed facility, must submit to a board of health or the Director, as appropriate, an application for a license (sec. 3714.31(B)(1) and (2)). In the case of a change in ownership of a closed construction and demolition debris facility, the disclosure statement requirement applies to a prospective owner only if the prospective owner intends to submit an application for a license to operate the facility as a construction and demolition debris facility (sec. 3714.31(B)(2)). Under the bill, "change in ownership" includes any change in names, other than those of officers, directors, or key employees, that are contained in the disclosure statement (sec. 3714.31(B)(4)).<sup>4</sup> Upon receipt of the disclosure statement, the Attorney General

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<sup>4</sup> "Key employee" means an individual, other than a public official or employee as defined in the Public Officers Ethics Law who is required to file a statement under that Law, who is employed by an applicant in a supervisory capacity or empowered to make discretionary decisions with respect to the construction and demolition debris operations of the business concern, but does not include any employee who is exclusively engaged in the physical or mechanical collection, transportation, or disposal of construction and demolition debris. If the applicant has entered into a contract with another person to operate the facility that is the subject of the license application, "key employee" includes those employees of the contract or who act in a supervisory capacity or who are empowered to make discretionary decisions with respect to the construction and demolition debris operations of the business concern. An officer or director of a business concern that is required to file a disclosure statement under the bill who meets the definition of "key employee" must be considered a key employee for the purposes of the filing and disclosure requirements of the background checks portions of the bill. (Sec. 3714.30(J).) The bill also defines the following:

(1) "Business concern" means any corporation, association, partnership, sole proprietorship, or other entity organized for profit (sec. 3714.30(C)).

(2) "Employed in a supervisory capacity" means that an individual has been delegated authority in the interest of the individual's employer to perform or effectively

must prepare an investigative report and send the report to the Director. The Director must review the report and may review the disclosure statement. The bill requires the Director to either approve or deny the change in ownership in accordance with the Construction and Demolition Debris Law and rules adopted under it. However, if the Director determines that the report contains information that if submitted with a license application would require a denial of the license under the bill (see **"Additional requirements for the issuance or renewal of a license,"** below), the Director must deny the change in ownership. (Sec. 3714.31(B)(1) and (2).)

If the Director approves the change in ownership, a board of health or the Director must issue a license to the new owner or operator in accordance with the Construction and Demolition Debris Law and rules adopted under it. Upon the issuance of a license to the new owner or operator, the license issued to the former owner or operator is invalid. (Sec. 3714.31(B)(1).)

If the parties to a change in ownership proceed with the change prior to the Director's approval or denial, the parties must include in all contracts or other documents concerning the change language expressly making the change in ownership subject to the Director's approval and expressly negating the change in ownership if the Director denies the change in ownership as discussed above (sec. 3714.31(B)(3)).

### **Required updates**

On the anniversary date of the submission of the initial disclosure statement for a specific facility to the Attorney General, or on another date assigned by the

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*recommend any one or more of the following actions: hiring, firing, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining, directing, or adjusting grievances of employees whose duties include, but are not limited to, the evaluation, identification, labeling, monitoring of the effect of, or disposal of construction and demolition debris (sec. 3714.30(F)).*

*(3) "Empowered to make discretionary decisions" means that an individual has been delegated authority in the interest of the individual's employer to exercise the individual's independent judgment in the management and disposal of construction and demolition debris (sec. 3714.30(G)).*

*(4) "Partner" means a person who holds a position as, or similar to, a general partner as defined in the Limited Partnership Law or a limited partner as defined in that Law or a person who shares profits and liability and has management powers of a partnership, as "partnership" is defined in the Uniform Partnership Law (sec. 3714.30(O)).*

Attorney General, the person that was required to file the disclosure statement annually must submit to the Attorney General all information required to be included in the disclosure statement that has changed or been added in the immediately preceding year (see "Disclosure statement requirements," below). If there have been no changes in or additions to that information, the person must submit to the Attorney General an affidavit to that effect.

In addition to the annual submission of information, the applicant must submit the following information to the Attorney General within the specified periods:

(1) Not later than 90 days after a new addition of a new officer, director, partner, or key employee, all the information that is required to be included in the disclosure statement for an officer, director, partner, or key employee;

(2) Not later than 90 days after the addition of a new business concern, all the information that is required to be included in the disclosure statement for a business concern;

(3) Not later than 90 days after the judgment entry of new criminal conviction, all the information that is required to be included in the disclosure statement regarding a conviction.

The failure to timely provide the above information may constitute the basis for the revocation or denial of a license issued under the Construction and Demolition Debris Law and rules adopted under it. However, prior to the revocation or denial of a license, the Director must notify the applicant of the Director's intention to do so and allow the applicant to explain, not later than 14 days after the date of the notice, why the information was not provided. The Director must consider an explanation received during that period before determining whether to revoke or deny the license.

The bill specifies that nothing in the Construction and Demolition Debris Law affects the authority of the Director or the Attorney General under the bill's background investigation provisions to request information from a person at any other time. (Sec. 3714.31(C).)

### **Investigative report**

The bill requires the Attorney General, not later than 180 days after receipt of a disclosure statement under the bill, to prepare an investigative report and send it to the Director. However, the Attorney General or the Director may extend the deadline for a reasonable period for good cause. In preparing the investigative report, the Attorney General may request and receive criminal history information

from the Federal Bureau of Investigation and any other law enforcement agency or organization. The Attorney General may provide confidentiality regarding the information received from a law enforcement agency that may be imposed by that agency as a condition for providing the information. (Sec. 3714.31(D).)

**Disclosure statement requirements**

The bill requires a disclosure statement to include all of the following:

(1) A general narrative that describes the operations of the applicant in terms of tonnage or cubic yards of construction and demolition debris received, number of facilities operated, and any other aspect that the applicant determines will accurately represent the operations; the applicant may supplement the general narrative with recent photographs, statistics, reports, or other materials (sec. 3714.32(A));

(2) The full name, business address and telephone number, home address and telephone number, date of birth, social security number, driver's license number, and any other names or aliases of the applicant or, if the applicant is a business concern, of all officers, directors, partners, and key employees of it and of all individuals or business concerns holding more than 5% of the equity in or debt liability of that business concern or, if the business concern is a publicly traded corporation, all individuals or business concerns holding more than 5% of the equity in or debt liability of that business concern, except that when the debt liability is held by a chartered lending institution, the applicant need supply only the name and business address of the lending institution (sec. 3714.32(B));

(3) The full name, business address and telephone number, and federal tax identification number of any business concern in which the applicant holds more than 5% of the equity interest and that disposes of construction and demolition debris (sec. 3714.32(C));

(4) A diagram showing the organization of the applicant's business concerns (sec. 3714.32(D));

(5) A list of all officers, directors, partners, and key employees of the applicant, as applicable, containing a summary of their credentials and their responsibilities relevant to the applicant and the applicant's facilities (sec. 3714.32(E));

(6) A description of the experience and credentials possessed by the applicant, including any past or present licenses for the disposal of construction and demolition debris, or, if the applicant is a business concern, by the officers, directors, partners, and key employees of it (sec. 3714.32(F));

(7) For the applicant and each business concern that is required to be listed in the disclosure statement, a summary of the history of environmental compliance for five years prior to the date of submission of the disclosure statement for each facility owned or operated by the applicant and each listed business concern. If the applicant or a business concern listed in the disclosure statement owns or operates one or more construction and demolition debris facilities in Ohio, the applicant or the business concern must submit the environmental compliance history only for each facility located in this state. However, if an applicant or a business concern listed in the disclosure statement does not or has not previously owned or operated a construction and demolition debris facility in Ohio, but has owned or operated a construction and demolition debris facility in another state, the applicant or the business concern must submit an environmental compliance history for each facility located in another state. The environmental compliance summary must include all of the following for each facility:

(a) The name and address of the facility;

(b) A list of all notices of violation issued for the facility during the five years prior to the date of submission of the disclosure statement; and

(c) A listing and explanation of any pending or final civil prosecutions or administrative enforcement actions by government agencies for the enforcement of environmental laws or rules adopted under those laws against the applicant or a business concern listed in the disclosure statement that results in a finding or a settlement of a violation of any law or rule related to the disposal of construction and demolition debris or of any other environmental law or rule adopted under such a law that results in the imposition of sanctions or in revocations or denials of licenses issued by any state or federal authority during the five years prior to the submission of the disclosure statement; the listing must include, for each action, at least the docket number or other means of identifying the action; the agency or tribunal that issued the action; the current status of the action; the commencement date of the action; a description of the alleged violation that includes its location and date; for a resolved action, a summary of any sanctions, fines, penalties, payment that is made or work or service that is performed in lieu of a fine or penalty, corrective measures, cessation or suspension of operations of a facility, revocation of licenses or permits, or similar actions; and any explanation of the action or alleged violation that the applicant may submit (sec. 3714.32(G));

(8) A listing and explanation of any criminal prosecution pending against the applicant or any individuals or business concerns that are required to be listed in the disclosure statement that must include at least the number and date of the indictment, information, or complaint; the name and location of the court in which the prosecution is occurring and its current status; and any explanation of the

prosecution or alleged violations that the applicant, individuals, or business concerns may submit (sec. 3714.32(H));

(9) A listing and explanation of any criminal convictions against the applicant and any individuals or business concerns required to be listed in the disclosure statement that must include at least the number and date of the indictment, information, or complaint; a description of the crimes of which the applicant, individual, or business concern was convicted; the name and location of the court in which the prosecution occurred; a summary of any sentence or fine imposed; and any explanation of the prosecution that the applicant, individuals, or business concerns may submit (sec. 3714.32(I));

(10) Any written evidence or arguments submitted under the bill (see "*Additional requirements for the issuance or renewal of a license*," below) that demonstrates rehabilitation with regard to a conviction of a crime specified under the Solid, Infectious, and Hazardous Waste Law (sec. 3714.32(J)); and

(11) A description of any program that the applicant has instituted at a facility to ensure compliance with the environmental laws of this state or any other state (sec. 3714.32(K)).<sup>5</sup>

#### *Applicant's duty to cooperate*

For purposes of the bill's disclosure statement requirements, an applicant is required to provide any assistance or information that is requested by the Director or the Attorney General and must cooperate in any inquiry or investigation conducted by the Director or the Attorney General and any hearing conducted by the Director. If the Director or Attorney General issues a formal request to answer any inquiry or produce information, evidence, or testimony and an applicant, officer, director, or partner of a business concern or a key employee of the applicant refuses to comply with the request, the Director or a board of health may deny or revoke the applicant's license. (Sec. 3714.33(A).)

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<sup>5</sup> *The bill defines "equity" to mean any ownership in a business concern (sec. 3714.30(H)); "debt liability" to mean bonds, debentures, notes, mortgages, loans of any kind, secured or unsecured, and other debt instruments (sec. 3714.30(D)); and "publicly traded corporation" to mean a corporation in which the shares are listed on a national securities exchange, the shares are regularly quoted by one or more members of a national or affiliated securities association, or the shares are held by 50 or more shareholders (sec. 3714.30(P)).*

### **Consolidation of disclosure statements**

An applicant or prospective owner who is required to submit a disclosure statement for more than one facility located in Ohio may submit all required disclosure statements at one time. If the applicant or prospective owner is required to submit a disclosure statement for two or more facilities, only one disclosure statement need be submitted when the disclosure statement describes the relationship of the individual or business concern to each of the facilities. Submission of a consolidated disclosure statement does not eliminate the requirement to pay a disclosure statement fee or maintenance fee for each facility required under the bill (see "Fees," below). (Sec. 3714.33(B).)

### **Request for an explanation of a requirement of the disclosure statement**

An applicant or prospective owner may submit a written guidance request to the Attorney General for an informal, nonbinding explanation of a requirement regarding the disclosure statement. Upon the receipt of a written guidance request, the Attorney General may provide assistance to the applicant or prospective owner concerning the request. Such assistance is not binding on any person or entity, including, but not limited to, an applicant, a prospective owner, the Attorney General, the Director, or a board of health. The bill specifies that the submission of a written guidance request does not alter any obligation or requirement of the Construction and Demolition Debris Law. (Sec. 3714.33(C).)

### **Request to exempt confidential information from disclosure**

When a person who is submitting information in a disclosure statement believes that certain information contained in the statement is confidential and excepted from disclosure under the Public Records Law, the person must send to the Attorney General a written document that contains all of the following:

- (1) An identification of the specific information in the disclosure statement that the person believes is confidential;
- (2) A request that the identified specific information be treated as confidential and excluded from disclosure;
- (3) An explanation that includes citations to specific statutes, rules, or cases or to similar authority in order to support the request of confidentiality; and
- (4) An amount of evidence necessary to support the request as determined by the Attorney General.

The bill requires the Attorney General to keep confidential any identified specific information submitted in a request for a minimum of seven days after the

date on which the Attorney General determines that the information is not within the exception to disclosure under the Public Records Law. (Sec. 3714.33(D).)

### **Fees**

The Attorney General may charge fees that are necessary to pay the costs of administering and enforcing the background investigation provisions of the bill. The Attorney General must transmit the money collected from fees to the Treasurer of State who must credit the money to the Construction and Demolition Debris Background Investigation Fund, which is created by the bill in the state treasury. Money in the Fund must be used solely to pay the Attorney General's costs of administering and enforcing the bill's background investigation provisions. (Sec. 3714.34(A).)

The bill requires an applicant or prospective owner of a construction and demolition debris facility to pay an initial disclosure statement fee and an annual update disclosure statement fee established by the Attorney General. Each fee must be paid to the Attorney General not later than the date on which the disclosure statement is due. The payment of the fee must be in a form that is acceptable to the Attorney General. (Sec. 3714.34(B), (C), and (D).)

The bill requires the Attorney General to adopt rules in accordance with the Administrative Procedure Act establishing the amount of the fees that the Attorney General charges under the bill (sec. 3714.34(E)).

### **Fingerprint requirements**

An individual who is required to be listed in a disclosure statement must be fingerprinted in accordance with the procedures established by the Attorney General for identification and investigation purposes. Fingerprints must be submitted only on a form prescribed by the Attorney General or on any fingerprint form that is acceptable to the Federal Bureau of Investigation. Complete fingerprint forms must be submitted with the disclosure statement. An applicant or prospective owner must arrange for fingerprints to be taken of all individuals who are required to be fingerprinted. Fingerprints must be taken and certified by an employee of a government entity that is approved by the Attorney General to take fingerprints. (Sec. 3714.35.)

### **Miscellaneous**

For purposes of the disclosure statement portions of the bill, the bill requires the Attorney General to develop and provide the required forms (sec. 3714.31(E)).

Under the bill, the individuals who prepared information or directed that information be provided on behalf of a business concern regarding a disclosure statement must swear or affirm to the truth and accuracy of the information. In addition, any information provided in a disclosure statement may be supplemented with a written explanation. The bill also requires the Attorney General to comply with the federal Privacy Act of 1974 concerning the disclosure of social security numbers. (Sec. 3714.33(E).)

Finally, the bill provides that nothing in its disclosure statement provisions can be construed to restrict or limit the scope of information that the Attorney General may seek pursuant to the procedures established under the bill's background investigation provisions (sec. 3714.33(F)).

### **Background investigations--investigative demand**

When the Attorney General has reasonable cause to believe that an individual or business concern may be in possession, custody, or control of any documentary material or may have knowledge of any fact that is relevant to an investigation of an applicant under the background investigation provisions of the bill, the Attorney General may issue in writing or cause to be served an investigative demand upon the individual or business concern or the representative or agent of the individual or business concern (sec. 3714.36(B)). The bill defines "investigative demand" as the written request of the Attorney General to require an individual or business concern to produce documentary material for inspection, copying, or reproduction, to answer written interrogatories under oath, to appear before the Attorney General and testify under oath, or to do a combination of any of those demands. In addition, "documentary material" means the original or a copy of a writing, drawing, graph, chart, photograph, phonorecord, or other data compilation from which intelligence, relevant to any investigation conducted to determine if a person is or has been engaged in a violation of the Construction and Demolition Debris Law or rules adopted under it, may be perceived with or without the use of detection devices. (Sec. 3714.36(A).)

### **Investigative demand requirements**

An investigative demand must contain all of the following:

- (1) A description of the conduct that is under investigation and a statement of the provisions of law that are applicable to the investigation;
- (2) If the investigative demand is for the production of documentary material, a description of reasonable particularity of the documentary material to be produced, a date on which the documentary material must be assembled and made available for inspection, copying, or reproduction, an identification of the

representative of the Attorney General to whom the documentary material must be made available, and an identification of the location at which the material is to be produced;

(3) If the investigative demand is for answers to written interrogatories, an identification of the representative of the Attorney General to whom the answers must be delivered, and a date on which the answers must be delivered to that representative; and

(4) If the investigative demand is for oral testimony, a date, time, and location for the oral testimony, and an identification of the representative of the attorney who will conduct the oral examination. (Sec. 3714.36(C).)<sup>6</sup>

An investigative demand cannot contain any requirement that would be unreasonable if that requirement was contained in a subpoena or subpoena duces tecum issued by a court in the aid of a grand jury investigation. In addition, except as discussed below (see "*Compelled compliance with an investigative demand*," below), an investigative demand cannot require answers to any written interrogatories, the giving of oral testimony, or the production of any documentary material that would be privileged from disclosure if demanded by a subpoena or subpoena duces tecum issued by a court in the aid of a grand jury investigation. (Sec. 3714.36(D).)

#### *Service of an investigative demand*

Under the bill, service of an investigative demand may be made and is complete by either of the following:

(1) Sending the investigative demand by certified mail to the individual or business concern or to the individual's residence or to the business concern's principal office or principal place of business; or

(2) Delivering the investigative demand to the individual or business concern or to a representative or agent of the individual or business concern (sec. 3714.36(E)).

#### *Request to modify or set aside an investigative demand*

Not later than 20 days after receipt of an investigative demand or at any time before the compliance date specified in the demand, whichever is earlier, the individual or business concern may file in the court of common pleas of the county in which the individual resides or in which the individual or business concern

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<sup>6</sup> Presumably, "Attorney General" is intended in item (4) rather than "attorney."

conducts business and serve the Attorney General a request for an order of the court to modify or set aside the demand. If the individual or business concern conducts business in more than one county, the request must be filed either in the county in which the individual or business concern maintains the principal place of business or in the county that may be agreed on between the individual or business concern and the Attorney General. (Sec. 3714.36(F).)

**Compelled compliance with an investigative demand**

When an individual who is served with an investigative demand refuses to produce documentary material, to provide oral testimony, or to answer written interrogatories on the basis of the individual's privilege against self-incrimination, the Attorney General may file a written request with a court of common pleas to compel compliance with the investigative demand. Unless the court finds that to compel compliance would not further the administration of justice, the court must compel the individual to comply when all of the following apply:

(1) The Attorney General makes a written request to the court of common pleas to compel compliance with the investigative demand in spite of a claim of privilege;

(2) The written request to compel compliance is filed with the court of common pleas of the county in which the individual is found or where the individual conducts business, except that if the individual conducts business in more than one county, the request is filed in the county in which the individual maintains a principal place of business; and

(3) The court of common pleas informs the individual that by complying with the investigative demand the individual will receive immunity as discussed below. (Sec. 3714.36(G)(1).)

If, but for the provisions discussed above, the individual would have been privileged to withhold any documentary material, answers to interrogatories, or oral testimony and the individual complies with a court order compelling the individual to provide documentary material, answer interrogatories, or provide testimony, the documentary material, answers to interrogatories, or oral testimony or any evidence derived from them cannot be used against the individual in the prosecution of a crime or offense concerning them when the documentary material, answers to interrogatories, or oral testimony is responsive to the questions propounded. However, an individual who is granted immunity under the bill may be subject to criminal prosecution for a violation of the perjury statute, the tampering with evidence statute, or the falsification statute or for contempt committed in providing documentary material, answers to

interrogatories, or oral testimony when complying with a court order under the bill. (Sec. 3714.36(G)(2).)

**Attorney General as custodian of documentary material obtained through an investigative demand**

The bill requires the Attorney General to be responsible for the custody, use, and preservation of the documentary material that is obtained pursuant to an investigative demand and for the return of the documentary material. The Attorney General must compile all documentary material, answers to interrogatories, and transcripts of oral testimony that are obtained pursuant to an investigative demand in a reasonable manner.

The documentary material, answers to interrogatories, and transcripts or oral testimony are confidential and not subject to disclosure. Unless otherwise ordered by a court of common pleas, they cannot be available for examination or copying by an individual other than an authorized representative of the Attorney General without the written consent of the individual or business concern that provided them. However, they may be used in a grand jury investigation, a case, or another official proceeding that involves the issuance of a license under the Construction and Demolition Debris Law or that involves an alleged violation of that Law or rules adopted under it. Materials and information compiled in an investigative demand are discoverable only to the extent authorized by the rules of the administrative or judicial tribunal in which a proceeding under the Construction and Demolition Debris Law is proceeding. (Sec. 3714.36(H).)

Not later than 24 months after the date on which the documentary material was made available to the Attorney General pursuant to an investigative demand or when copies of documentary material obtained pursuant to an investigative demand are no longer required for the investigation or pending proceeding for which it was obtained, all copies of documentary material must be returned to the individual or business concern that provided it unless a request to extend the 24-month period has been filed in the court of common pleas in which a request for an order compelling compliance under the bill may be filed. However, these provisions do not apply to documentary materials that are under the control of a court or grand jury. (Sec. 3714.36(I).)

Except as otherwise provided under the bill, no employee of the Office of the Attorney General purposefully can make available documentary material, answers to interrogatories, or transcripts of oral testimony that are obtained under an investigative demand for copying or examination (sec. 3714.36(M)).

### **Persons required to assist the Attorney General**

The bill requires a public employee to provide to the Attorney General all information and assistance that are requested by the Attorney General when the information and assistance are within the employee's possession or power. The Attorney General must provide the same degree of confidentiality for any information so obtained as the public employee from whom the information was received is required to provide by law with respect to the information. (Sec. 3714.36(J).)

No individual or business concern with the intent to avoid, evade, prevent, or obstruct compliance in whole or in part with an investigative demand can remove, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of an investigative demand served on an individual or business concern (sec. 3714.36(K)).

### **Additional powers of the Attorney General**

Nothing in the investigative demand provisions of the bill prohibits the Attorney General from filing a complaint that alleges a violation of the Construction and Demolition Debris Law or rules adopted under it that is not described in an investigative demand or from using any of the evidence obtained pursuant to an investigative demand or otherwise for purposes of the complaint. In addition, nothing in those provisions prohibits the Attorney General from doing any of the following:

(1) Presenting evidence obtained under those provisions or otherwise to a grand jury impaneled for purposes of an alleged violation of the Construction and Demolition Debris Law or rules adopted under it;

(2) Requesting a court to compel the production of evidence to present to a grand jury impaneled for purposes of an alleged violation of that Law or rules adopted under it;

(3) Initiating a proceeding for the enforcement of a court order to compel the production of evidence for purposes of an alleged violation of that Law or rules adopted under it; or

(4) Punishing a person for failure to comply with a court order to compel the production of evidence for purposes of an alleged violation of that Law or rules adopted under it. (Sec. 3714.36(L).)

### **Judicial matters**

The court of common pleas in which the Attorney General files a request to enforce an investigative demand under the bill has jurisdiction to hear the matter presented. If the Attorney General demonstrates to the court in a proceeding initiated under the investigative demand provisions of the bill that the information sought is relevant to an authorized investigation, the court must order the individual or business concern to provide the information requested by the Attorney General. (Sec. 3714.36(N).)

If a court finds that an individual or business concern does not comply with an investigative demand and the noncompliance was in bad faith or for the purpose of delay, the court may order the individual or business concern to pay to the Attorney General the reasonable expenses, including attorney's fees, incurred in defending the investigative demand. In addition, the court may invoke the sanctions provided by Civil Rule 37. (Sec. 3714.36(K).)<sup>7</sup>

If an individual or business concern neither resides nor transacts business in Ohio, a judicial proceeding to challenge or enforce an investigative demand must be initiated in the court of common pleas of Franklin County (sec. 3714.36(O)).

### **Waiver of background investigation requirements**

The bill authorizes the Attorney General to waive any of the requirements established in the bill's background investigation provisions that are conditions for the issuance, renewal, or revocation of a license when the applicant demonstrates, to the satisfaction of the Attorney General, that compliance with a requirement will create a substantial hardship and will not likely elicit information that is responsive to the requirement. If the Attorney General waives a requirement, the Attorney General must send to the Director of Environmental Protection or a board of health, whichever is applicable, a written notification that describes every requirement that is waived and that includes the name and address of the applicant. Additionally, the Attorney General may waive in whole or in part a fee established under the background investigation provisions when the applicant demonstrates that the payment of the fee either would create a substantial hardship to or an unjustifiable burden on the applicant. (Sec. 3714.40.)

### **Additional requirements for the issuance or renewal of a license**

Except as discussed below (see "**Rehabilitation of an individual or business concern**," below), a license cannot be issued or renewed under the Construction and Demolition Debris Law by the Director or a board of health:

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<sup>7</sup> Those sanctions include contempt of court and various court orders.

(1) Unless the Director or a board finds that the applicant, in a prior performance record for the disposal of construction and demolition debris, has exhibited sufficient reliability, expertise, and competency to operate the construction and demolition debris facility given the potential for harm to human health and the environment that could result from the irresponsible operation of the facility or, if no prior record exists, that the applicant is likely to exhibit that reliability, expertise, and competence;

(2) If an individual or business concern that is required to be listed in the disclosure statement or is shown to have a beneficial interest in the business of the applicant, other than an equity interest or debt liability, by the investigation of the business of the applicant has been convicted of a crime specified in the background investigation provisions of the Solid, Infectious, and Hazardous Waste Law or a violation of an equivalent law of another jurisdiction;

(3) Unless the Director or a board finds that the applicant has a history of compliance with environmental laws in this state and other jurisdictions and is currently in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, those environmental laws; and

(4) With respect to the approval of a license, if the Director determines that current prosecutions or pending charges in any jurisdiction for a crime specified in the background investigation provisions of the Solid, Infectious, and Hazardous Waste Law against an individual or business concern required to be listed in the disclosure statement or shown by the investigation to have a beneficial interest in the business of the applicant, other than an equity interest or debt liability, are of such magnitude that they prevent the finding required under item (1), above, provided that at the request of the applicant or the individual or business concern charged, the Director or the board must defer decision on the application during the pendency of the charge (sec. 3714.37(A)).

### **Rehabilitation of an individual or business concern**

The bill provides that no applicant can be denied issuance or renewal of a license on the basis of conviction of an individual or business concern that is required to be listed in the disclosure statement or shown to have a beneficial interest in the business of the applicant, other than an equity interest or debt liability, by the investigation of the business of the applicant for a crime specified in the background investigation provisions of the Solid, Infectious, and Hazardous Waste Law if that applicant has affirmatively demonstrated rehabilitation of the individual or business concern by a preponderance of the evidence. If the individual was convicted of an offense that is a felony, a license must be denied unless five years have elapsed since the individual was fully discharged from

imprisonment and parole for the offense or from a post-release control sanction imposed under the Felony Sentencing Law for the offense.

In determining whether an applicant has affirmatively demonstrated rehabilitation, the Director or a board of health must request a recommendation on the matter from the Attorney General and must consider and base the determination on the nature and responsibilities of the position that a convicted individual would hold, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, the age of the individual when the offense was committed, if the offense was an isolated or repeated incident, any social conditions that may have contributed to the offense, and any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who have or have had the applicant under their supervision (sec. 3714.37(B)).

Additionally, if an applicant is a business concern, rehabilitation must be established when the applicant has implemented formal management controls to minimize and prevent the occurrence of violations and activities that will or may result in license denial or revocation or when the applicant has formalized those controls as a result of denial or revocation of a license. Those controls may include, but are not limited to, instituting environmental auditing programs to help ensure the adequacy of internal systems to achieve, maintain, and monitor compliance with applicable environmental laws and standards or instituting an antitrust compliance auditing program to help ensure full compliance with applicable antitrust laws. The business concern must prove by a preponderance of the evidence that the management controls are effective in preventing the violations that are the subject of concern. (Sec. 3714.37(B).)

### **Revocation of a license**

In addition to other causes for revocation of a license under the Construction and Demolition Debris Law, the Director or a board of health may revoke a license for any of the following causes:

(1) Any cause that would require disqualification under the bill's additional requirements for the issuance or renewal of a license (see above) from receiving a license upon original application;

(2) Fraud, deceit, or misrepresentation in obtaining the license or in the conduct of the licensed activity;

(3) Offering, conferring, or agreeing to confer any benefit to induce another individual or business concern to violate the Construction and Demolition Debris Law, any rule adopted under it, or any other law relating to the disposal of construction and demolition debris;

(4) Coercion of a customer by violence or economic reprisal or the threat of coercion by violence or economic reprisal to utilize the services of the licensee; or

(5) Preventing, without authorization of the Director or a board of health, an individual or business concern from disposing of construction and demolition debris at a licensed facility other than a facility that is owned or operated by the applicant (sec. 3714.38).

**Issuance or renewal of a license to a disqualified applicant**

Notwithstanding the disqualification of an applicant pursuant to the Construction and Demolition Debris Law, the Director or a board of health may issue or renew a license if the applicant severs the interest of or affiliation with the individual or business concern that would otherwise cause that disqualification or may issue or renew a license on a temporary basis for a period not to exceed six months if the Director or the board determines that the issuance or renewal of the license is necessitated by the public interest (sec. 3714.39).

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**HISTORY**

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