



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 294

129th General Assembly  
(As Passed by the Senate)

**Sens.** Schaffer, Balderson, Hite, Jones, Eklund, Bacon, LaRose, Beagle, Coley, Lehner, Manning, Niehaus, Patton, Peterson, Seitz

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## BILL SUMMARY

### Construction and demolition debris disposal fees

- Applies the current construction and demolition debris disposal fees of 30¢ per cubic yard or 60¢ per ton, 12½¢ per cubic yard or 25¢ per ton, and 37½¢ per cubic yard or 75¢ per ton to the disposal of asbestos or asbestos-containing materials or products

at a licensed construction and demolition debris facility or at a licensed solid waste facility (R.C. 3714.07 and 3714.073).

- Revises the provisions in the Construction and Demolition Debris Law concerning the calculation of the amount of money from the levying of the construction and demolition debris fees to reflect the application of the fees to the disposal of asbestos or asbestos-containing materials or products at the above facilities (R.C. 3714.07 and 3714.073).
- Revises the provisions concerning the calculation of the amount of money from the levying of the fees to require the calculation to be based on the construction and demolition debris disposed of rather than the construction and demolition debris transported to a construction and demolition debris facility or to a solid waste facility as in current law (R.C. 3714.07 and 3714.073).
- Makes other clarifying changes to the provisions governing the levying and collection of money from construction and demolition debris disposal fees (R.C. 3714.07 and 3714.073).

### **Infectious wastes**

- Revises the definitions of "treat" or "treatment," "infectious wastes," "infectious agent," and "zoonotic agent" for purposes of the regulation of infectious wastes in the Solid, Hazardous, and Infectious Wastes Law (R.C. 3734.01(A)).
- Eliminates a requirement that one-half of the registration and renewal fees from generators and transporters of infectious wastes that are credited to the Infectious Waste Management Fund be remitted to the board of health of the health district in which the registered premises or the principal place of business of a transporter of infectious waste is located (R.C. 3734.02(B)).
- Applies existing exemptions from infectious waste treatment facility permitting and licensing requirements to generators of infectious wastes that conduct any of several specified activities rather than to infectious waste treatment facilities that conduct any of those activities (R.C. 3734.02(C) and 3734.05(B)(3)).
- Changes one of the specified activities to the treatment of infectious wastes on any of a generator's premises, infectious wastes generated by a generator who has staff privileges at a hospital, or infectious wastes generated in providing care to a patient by an emergency medical services organization (R.C. 3734.02(C) and 3734.05(B)(3)).
- Revises an exemption from the Solid, Hazardous, and Infectious Wastes Law and rules adopted under it for individuals who generated infectious wastes for purposes

of their own care or treatment by eliminating a provision that requires that such wastes be disposed of with solid wastes from the individual's residence (R.C. 3734.02(D)).

- Requires infectious wastes to be in part, managed, rather than packaged, in accordance with rules adopted under the Solid, Hazardous, and Infectious Wastes Law (R.C. 3734.021(A)).
- Eliminates all of the following from the list of rules that must be adopted concerning infectious wastes:
  - The requirement that all generators place sharp wastes in rigid, tightly closed, puncture-resistant containers on the premise where they are generated and associated labeling requirements;
  - The specification of the types of facilities that must be used for the treatment of infectious wastes for purposes of the requirement that all generators of such wastes either treat all specimen cultures and cultures of viable infectious agents to render them noninfectious before being transported off the premises for disposal or ensure that such wastes are treated at an infectious waste treatment facility off the premises prior to their disposal;
  - The specification that, for purposes of infectious wastes rules, wastes consisting of dead animals or parts of them generally cannot be considered when determining the quantity of infectious wastes produced if the animals or parts were not intentionally exposed to infectious agents or the animals or parts were produced by a licensed veterinarian or were treated or disposed of by a person licensed under the Rendering Plants Law; and
  - The specification that, for purposes of infectious wastes rules, blood, blood products, other body fluids, or embalming fluids that are discharged on the site of their generation into a disposal system by a facility licensed under the Embalmers, Funeral Directors, and Crematories Law cannot be considered when determining the quantity of infectious wastes produced by that generator (R.C. 3734.021(B)(1)(a)).
- Revises the definition of "generator" for purposes of the statute rules governing infectious wastes to mean a person who produces infectious wastes at a *specific premises* rather than a person who produces infectious wastes as in current law (R.C. 3734.021(D)).

- Authorizes a generator of fewer than 50 pounds of infectious wastes during any one month that are subject to federal requirements to transport and dispose of them in the same manner as solid wastes (R.C. 3734.021(B)(1)(a)).
- Revises the statute governing the rules that the Director of Environmental Protection must adopt concerning generators of 50 pounds or more of infectious wastes during any one month by doing all of the following:
  - Eliminating the registration of generators with the Environmental Protection Agency and the corresponding \$300 fee for a registration certificate that applies to all the premises owned or operated by a generator in Ohio, and instead requiring each generator to notify the Agency as to the generator's status as a generator and pay a \$50 fee for each premises identified in the notification;
  - Requiring a notification to include all premises owned or operated by the generator in Ohio where infectious wastes are generated or treated;
  - Requiring a generator to update the notification every two years rather than stating that a registration certificate is valid for three years, and requiring a generator to pay a \$50 notification renewal fee for each premises owned or operated in Ohio where infectious wastes are generated or treated;
  - Eliminating the requirements concerning the types of packaging required for purposes of storage, handling, and transportation of infectious waste; and
  - Prohibiting the compaction or grinding of any type of infectious wastes prior to treatment rather than prohibiting the grinding of sharp wastes, the compaction of sharp wastes until after they have been treated, and the compaction and grinding of any other types of infectious wastes until after the wastes have been treated as in current law (R.C. 3734.021(B)(1)(b)).
- Eliminates the regulation of infectious wastes transporters by the Environmental Protection Agency, including rulemaking authority for the establishment of standards for transporters and of a system of shipping papers and requirements for the registration of transporters with the Agency, and makes necessary conforming changes (R.C. 3734.021(B) and (D); R.C. 3734.022, repealed; and other sections).
- Revises the statute governing the rules that the Director must adopt concerning owners and operators of infectious waste treatment facilities by eliminating the requirement that the rules establish methods, techniques, and practices for treatment of sharp wastes that may be used to substantially reduce or eliminate the potential of those wastes to cause lacerations or puncture wounds during handling, transportation, and disposal (R.C. 3734.021(B)(2)).

- Eliminates the prohibition against the issuance of a variance from the infectious wastes rules, instead requires the Director to adopt rules governing the issuance of variances, and establishes requirements and procedures in accordance with which variances may be issued (R.C. 3734.021(F)).
- Revises the fee schedule for an infectious waste treatment facility license by basing the amount of the license fee on the maximum daily waste receipt in tons rather than on the average daily waste receipt in tons (R.C. 3745.06(C)).

### **Notification of variances from solid waste rules**

- Authorizes the Director to provide notice by any type of mail that is accompanied by a receipt, rather than only by certified mail as in current law, for purposes of variances from the Director's rules governing solid wastes (R.C. 3734.02(A)).

### **Commingling of aluminum production wastes**

- Prohibits the disposal of commingled municipal solid wastes and aluminum production wastes at a sanitary landfill (R.C. 3734.02(O)).

### **Low-level radioactive waste**

- Authorizes the owner or operator of a solid waste, infectious waste treatment, or hazardous waste facility to accept low-level radioactive waste if authorized to do so by the Director of Health under the Radiation Control Program Law and rules adopted under it (R.C. 3734.027).

### **Hazardous waste rules**

- Expands the rulemaking authority of the Director regarding hazardous waste and, in certain circumstances, solid waste to include any requirements, standards, or criteria consistent and equivalent to the federal Resource Conservation and Recovery Act that are not specifically addressed in current law (R.C. 3734.12(L)).

### **Biennial list of hazardous waste generators**

- Requires the Environmental Protection Agency's list of hazardous waste generators to be compiled biennially each even-numbered year rather than annually as in current law (R.C. 3734.121).

### **Consent to jurisdiction by out-of-state solid waste transporters**

- Repeals a provision of law that prohibits a person from transporting any solid wastes from outside Ohio to a solid waste facility in Ohio unless that person has first

irrevocably consented in writing to the jurisdiction of Ohio courts and service of process in Ohio (R.C. 3734.131, repealed).

### **Background checks under Solid, Hazardous, and Infectious Wastes Law**

- For purposes of the statutes governing background checks of permit applicants, revises the definition of "permit" to include only permits for *new* off-site solid waste, infectious waste treatment, and hazardous waste treatment, storage, or disposal facilities rather than also subsequent modifications and, with regard to hazardous waste facilities, renewals (R.C. 3734.41(H)).
- Specifies that the requirement to file a disclosure statement for background check purposes when there is a change of ownership applies only with regard to an *operating* off-site solid waste facility, infectious waste treatment facility, or hazardous waste treatment, storage, or disposal facility (R.C. 3734.42(E)).
- Requires the submission of a disclosure statement when there is a change in ownership of an operating on-site solid waste facility, infectious waste facility, or hazardous waste facility and the prospective owner intends to operate the facility as an off-site facility by accepting wastes other than wastes generated by the facility owner (R.C. 3734.42(E)).
- Specifies that such disclosure statements must be filed at least 180 days prior to the change in ownership (R.C. 3734.42(E)).
- Alters the definition of "change of ownership" to include a change of individuals or entities who own a solid waste facility, infectious waste facility, or hazardous waste facility, and specifies that it does not include a legal change in a business concern's name when its ownership otherwise remains the same (R.C. 3734.42(E)).

### **Solid waste disposal and generation fee exemptions**

- Exempts from solid waste management district generation fees coal combustion wastes regardless of whether the disposal facility is located on the premises where the wastes were generated rather than specifying as in current law that the wastes must be disposed of at facilities that exclusively dispose of coal combustion wastes and that are owned by the generator (R.C. 3734.573(H)(2)).
- Regarding the bill's fee exemption for coal combustion waste and an identical exemption in current law from district disposal fees, eliminates a provision in current law that renders the exemption inapplicable to coal combustion wastes that are combined with anything other than scrap tires, but retains the requirement that

the combined wastes be primarily made up of coal combustion wastes (R.C. 3734.57(D)(1) and 3734.573(H)(2)).

- Exempts from solid waste management district disposal and generation fees solid wastes that are asbestos or asbestos-containing materials or products disposed of at a licensed construction and demolition debris facility or a licensed solid waste facility (R.C. 3734.57(D)(1) and 3734.573(H)(3)).

### **Scrap tire enforcement and removal actions**

- Increases from 2,000 to 5,000 the number of tires accumulated at a property for which the owner of the property is not liable for the cost of the removal of the tires and on which no lien can attach to the property, provided that certain current law conditions are satisfied (R.C. 3734.85(E)).

### **Bureau of Underground Storage Tank Regulations Law and Voluntary Action Program**

- Revises the definition of "major repair" in the Bureau of Underground Storage Tank Regulations Law by eliminating the upgrading or the modification of a tank or of an underground storage tank system component and by stating that "major repair" does not include modifications and upgrades for normal operational upkeep to prevent an underground storage tank system from releasing a product (R.C. 3737.87(F)).
- Expands the types of properties that are eligible for a voluntary action under the Voluntary Action Program by authorizing a person who is not a responsible person, as determined by the Fire Marshal, to conduct a voluntary action for any release that is subject to corrective action rules of the Fire Marshal, provided that both of the following apply:
  - (1) The voluntary action also addresses hazardous substances or petroleum that is not subject to those corrective action rules; and
  - (2) The Fire Marshal has not issued an administrative order concerning the release or referred the release to the Attorney General for enforcement (R.C. 3737.88(A)(3) and 3746.02).

### **Compliance and pollution prevention assistance program**

- Authorizes the Director of Environmental Protection to establish within the Environmental Protection Agency a program for providing compliance and pollution prevention assistance to regulated entities (R.C. 3745.017).

- Authorizes services provided under the program to include all of the following:
  - Establishment of a statewide toll-free telephone hotline to respond to questions about environmental requirements and pollution prevention;
  - Development and distribution of educational materials regarding environmental requirements and pollution prevention;
  - Provision of outreach and training on environmental requirements and pollution prevention;
  - Provision of on-site assistance to regulated entities to help them identify applicable requirements and opportunities for pollution prevention and waste reduction;
  - Provision of assistance to regulated entities that are small businesses in completing forms and permit applications;
  - Conducting annual surveys to solicit comments and gauge satisfaction from regulated entities that have sought assistance under the program for the purpose of improving outreach and assistance; and
  - Additional services that the Director determines are necessary to assist regulated entities (R.C. 3745.017(B)(1)).
- Authorizes the Director to assign employees of the Agency to administer the program and assist in providing the above services (R.C. 3745.017(B)(2)).
- Requires information obtained or created by Agency employees who administer the program to be held confidential unless any of the following applies:
  - The information reveals a clear and immediate danger to the environment and to public health, safety, or welfare;
  - The information is obtained independently by the Director or the Director's authorized representatives as a part of a compliance inspection, record review, investigation, or enforcement proceeding by the Agency;
  - The information is emissions data or other information concerning which holding the information as either confidential business information or trade secrets is expressly prohibited pursuant to the Clean Air Act, the Water Pollution Control Act, or another applicable federal law; or

--The information is otherwise required by state or federal law to be disclosed publicly or made available to a government agency (R.C. 3745.017(C)).

- States that information that has been submitted by a regulated entity to a division or office of the Agency as part of a permit application, required report, or notification or to comply with any other regulatory reporting requirement cannot be considered confidential by other divisions or offices of the Agency unless it is determined to be a trade secret (R.C. 3745.017(D)).
- Prohibits information that has been submitted to, acquired by, or exchanged with the employees of the Agency who administer the program and that is confidential from being used in any manner for the purpose of the enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding (R.C. 3745.017(E)).
- States that the above provisions do not confer immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not employees of the Agency who administer or provide services under the program (R.C. 3745.017(F)).

### **Water supply system and wastewater system operator certification fees**

- Establishes a new fee schedule for certification of operators of water supply and wastewater systems by consolidating the current application fee of \$45 with the current fee schedule for examinations administered by the Director for each class of operator of a water supply system or a wastewater system (R.C. 3745.11(O)).
- Establishes all of the following fees:
  - \$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;
  - \$500 for an application to be a water supply system or wastewater system operator examination provider; and
  - 10% annually of the fees assessed and collected by an approved examination provider for providing examinations to persons seeking certification in Ohio as water supply system or wastewater system operators (R.C. 3745.11).

### **Statute of limitations for environmental civil actions**

- Includes the Construction and Demolition Debris Law in the statute that generally establishes a five-year statute of limitations for civil actions for civil or

administrative penalties of any kind brought under specified environmental laws (R.C. 3745.31(A)).

### **Safe Drinking Water Law enforcement**

- Prohibits a person from doing any of the following:
  - Making false material statements or representations in an application, license, record, report, or other document required to be submitted to the Director of Environmental Protection or the Attorney General under the Safe Drinking Water Law, rules adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the Director under it;
  - Altering, substituting, falsifying, concealing, or purposefully omitting a sample that is required to be collected pursuant to any reporting requirement established under the Safe Drinking Water Law or a rule adopted under it; and
  - Tampering with, altering, or interfering with the operation of a public water system without the authorization of the owner or operator of the system or of the Director (R.C. 6109.31).
- Requires the Attorney General, upon the written request of the Director, to bring an action for an injunction or other appropriate civil action or criminal prosecution, rather than just an injunction or other appropriate action as in current law, against any person violating or threatening to violate the Safe Drinking Water Law, including the new prohibitions discussed above, a rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the Director under it (R.C. 6109.31).
- Establishes criminal penalties for violations of the Safe Drinking Water Law, including the new prohibitions discussed above, a rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted under it (R.C. 6109.99).

### **In-lieu fee mitigation for impacts to isolated wetlands**

- Defines "in-lieu fee mitigation" to mean a payment made by an applicant for an isolated wetlands permit to satisfy a wetland mitigation requirement established in the statutes governing isolated wetlands (R.C. 6111.02(U)).

- Allows the payment of a fee under an in-lieu fee mitigation program to compensate for losses of isolated wetlands in place of other mitigation for those wetlands (R.C. 6111.02 to 6111.027).
- With respect to mitigation for impacts to an isolated wetland requiring level one review, specifies that in-lieu fee mitigation is lower in preference than existing allowable forms of mitigation (R.C. 6111.022).
- Alters the preferential order for mitigation with respect to impacts to an isolated wetland requiring level two or level three review by removing certain preferred forms of mitigation, adding additional forms of mitigation, and including in-lieu fee mitigation as one of the preferred forms of mitigation (R.C. 6111.023 and 6111.024).
- Requires an applicant for an isolated wetland permit who intends to use in-lieu fee mitigation to provide documentation to the Director of Environmental Protection that demonstrates that the applicant has evaluated all other mitigation alternatives (R.C. 6111.022, 6111.023, and 6111.024).
- Allows the Director, at the Director's discretion, to allow an applicant for an isolated wetlands permit to deviate from the preferred preferential mitigation order (R.C. 6111.022, 6111.023, and 6111.024).
- Authorizes the Department of Natural Resources, the Division of Wildlife in that Department, or any other division in that Department that is designated by the Director of Natural Resources to establish and operate a wetland mitigation bank (R.C. 6111.025(A)).
- Authorizes the Environmental Protection Agency, the Department of Natural Resources, the Division of Wildlife in that Department, or any other division in that Department that is designated by the Director of Natural Resources to establish and operate an in-lieu fee mitigation program (R.C. 6111.025(B)).
- Specifies that the bill's provisions do not preclude any other private or public entity from developing an in-lieu fee mitigation program, provided that the program is approved by the Director of Environmental Protection (R.C. 6111.025(B)).
- Requires the Director of Environmental Protection in consultation with the Director of Natural Resources, rather than vice versa as in existing law, to approve a list of approved wetland mitigation banks and, under the bill, approved in-lieu fee mitigation programs, and prohibits applicants for isolated wetlands permit from using mitigation from a bank or program that has not been approved (R.C. 6111.025(C)).

- Amends the existing isolated wetland mitigation ratios to allow for the use of mitigation under an in-lieu fee mitigation program (R.C. 6111.027).
- Uses the existing definition of "watershed" to define the term "eight-digit hydrologic unit," defines "watershed" as an eight-digit hydrologic unit, defines "ten-digit hydrologic unit" and "twelve-digit hydrologic unit," and applies all of those terms to statutory mitigation requirements (R.C. 6111.02, 6111.023, and 6111.024).

### **Verification of isolated wetland categories**

- Specifies that any wetland category that is determined through the use of the appropriate Ohio Rapid Assessment Method and verified by the Environmental Protection Agency for purposes of an isolated wetlands permit is valid for a period of five years following verification (R.C. 6111.025(E)).

### **Annual report governing impacts to wetlands**

- Alters the scope of the annual report governing isolated wetlands that the Director of Environmental Protection must submit to the General Assembly by requiring the report to address impacts to all wetlands and streams rather than solely isolated wetlands and to address all mitigation conducted in Ohio rather than solely mitigation of isolated wetlands (R.C. 6111.025(D)).
- Creates in statute the Surface Water Improvement Fund consisting of: (1) payments, contributions, and donations made to the Environmental Protection Agency for water quality restoration and protection projects, (2) payments made under an in-lieu fee mitigation program, (3) funds for supplemental environmental projects for water quality improvements required by orders of the Director of Environmental Protection, settlement agreements, consent decrees, or court orders, and (4) mitigation fees for impacts to waters of the state for mitigation not required by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers (R.C. 6111.0382(A)).
- Requires money in the Fund to be used by the Director to complete water quality protection and restoration projects, and allows the Director to enter into contracts and agreements for purposes of those projects (R.C. 6111.0382(B)).
- Specifies that the Surface Water Improvement Fund is a continuation of the existing Surface Water Improvement Fund created by the Controlling Board on August 18, 2008 (Section 3).

## **Mitigation under federally required 401 water quality certification**

- Specifies that mitigation required by a section 401 water quality certification may be accomplished by: (1) purchasing credits at a mitigation bank approved under federal regulations, (2) participating in an in-lieu fee mitigation program approved under federal regulations, or (3) constructing individual mitigation projects (R.C. 6111.30(I)).
- Generally requires mitigation under a section 401 water quality certification to be conducted in accordance with federal mitigation hierarchy requirements, and requires the Director to adopt rules consistent with those requirements (R.C. 6111.30(I)).

## **Water pollution control permit renewals**

- Alters the requirements related to National Pollutant Discharge Elimination System permit renewals by requiring the Director to consider the compliance history of a permit holder and authorizing the Director to deny a permit if the permit holder has not complied with the terms and conditions of the existing permit rather than specifying that a permit renewal is subject to the Director's making a finding that the permit holder is making satisfactory progress toward the achievement of all applicable standards and has complied with all terms and conditions of the permit as in current law (R.C. 6111.03(J)(7)).

## **Coal mining and reclamation general NPDES permit**

- Requires a person seeking coverage under a National Pollutant Discharge Elimination System general permit for coal mining and reclamation to submit a notice of intent to be covered by the general permit and to be subject to the terms and conditions of the general permit (R.C. 6111.035).
- Requires the notice of intent to be submitted in accordance with the forms and deadlines specified for the applicable general permit for which coverage is sought (R.C. 6111.035).
- Requires the person seeking coverage, if the Director has not granted or denied coverage under the general permit within 45 days after receipt of the notice of intent, to submit written notice to the Director restating the person's request for coverage under the general permit (R.C. 6111.035).
- Requires the Director to grant or deny coverage under the general permit not later than 60 days after receipt of the notice of intent (R.C. 6111.035).

- Provides that if, not later than 15 days after receipt of the person's written notice restating the person's request for coverage, but not earlier than 60 days after receipt of the original notice of intent for coverage under the general permit, the Director fails to act on the notice of intent, the discharge that is the subject of the notice of intent is deemed to be permitted and covered by the coal mining and reclamation general permit (R.C. 6111.035).

### **Obsolete provisions**

- Removes several provisions in current law that are no longer operative because deadlines have passed (R.C. 3734.121(A)(2), 3745.31(F), and 3746.02(A)(5)).

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-09-12
Reported, S. Agriculture, Environment & Natural Resources	04-24-12
Passed Senate (30-1)	04-24-12

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