Ohio Legislative Service Commission

Bill Analysis

Bill Rowland

Sub. S.B. 302

129th General Assembly
(As Passed by the Senate)

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

BILL SUMMARY

- Alters the procedures for updating information concerning background information submitted via a disclosure statement by permit applicants, permittees, and prospective owners under the Solid, Hazardous, and Infectious Wastes Law.

- Requires the Attorney General to enter specified information in the state fingerprint database concerning each officer, director, partner, or key employee of an applicant, permittee, or prospective owner of a facility regulated under that Law.

- Requires an applicant, permittee, or prospective owner to annually provide the Attorney General with an active roster of personnel and a list of the personnel who have left employment in the immediately preceding year, and requires the Attorney General to annually update the fingerprint database to reflect the information so provided.

- Requires the Attorney General, every three years, to request from the Federal Bureau of Investigation any information regarding a criminal conviction with respect to each officer, director, partner, or key employee of an applicant, permittee, or prospective owner.

- Requires an applicant, permittee, or prospective owner, every three years, to submit an affidavit listing information related to administrative, civil, and criminal actions regarding a business concern required to be listed on the disclosure statement.

- Requires the Attorney General to notify the Director of Environmental Protection of any crime ascertained under the bill that would disqualify the applicant, permittee, or prospective owner from licensure or permitting under the Solid, Hazardous, and Infectious Wastes Law.

- Specifies that, whenever there is a change in ownership of any operating on-site solid waste facility, any operating on-site infectious waste facility, or any operating on-site 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, the prospective owner must file a disclosure statement with the Attorney General and the Director of Environmental Protection.

- Clarifies that existing change of ownership provisions apply only to operating facilities.

- Defines "change in ownership" to include a change of the individuals or entities who own a solid waste facility, infectious waste treatment facility, or hazardous waste facility.

- Declares that "change in ownership" does not include a legal change in a business concern's name when its ownership otherwise remains the same or a personal name change of officers, directors, partners, or key employees contained in a disclosure statement.

- Eliminates a provision in the definition of "disclosure statement" that requires the disclosure statement to include any other information that the Attorney General or the Director of Environmental Protection may require that relates to the competency, reliability, or good character of an applicant.

- Expands the definition of "applicant" by specifying that it means any person or business concern operating an off-site facility for an applicant in addition to any person seeking a permit or license for an off-site facility as in current law.

CONTENT AND OPERATION

Updating information for background checks under the Solid, Hazardous, and Infectious Wastes Law

Overview

The bill alters the procedures for updating information concerning background checks conducted under the Solid, Hazardous, and Infectious Wastes Law. Under that Law, every applicant for a permit must file a disclosure statement at the time the applicant files an application for a permit other than a permit modification or renewal. A disclosure statement generally includes information concerning the names and identifying information of the applicant and all officers, directors, partners, or key employees of the applicant. The disclosure statement also must generally include information concerning: (1) entities with equity interests in the applicant, (2) entities

that hold the debt of the applicant, (3) civil and criminal activities of the applicant, and (4) other specified information.[1]

The Attorney General utilizes the information submitted in a disclosure statement to conduct an investigation into the background of the applicant. The Attorney General must produce an investigative report regarding the applicant and submit it to the Director of Environmental Protection or, if applicable, the appropriate board of health.[2] Generally, the Director or a board must not issue or renew a permit to the applicant under the Solid, Hazardous, and Infectious Wastes Law unless the Director or the board of health finds that the applicant is sufficiently reliable and competent. Further, a permit must not be issued or renewed if persons or businesses associated with the applicant have been convicted of certain specified crimes.[3]

Updating background information under the bill

The bill establishes new procedures for updating information for purposes of the background checks discussed above. Under the bill, the Attorney General must enter in the state fingerprint database administered by the Bureau of Criminal Identification and Investigation in the Attorney General's Office the name, the fingerprints, and other relevant information concerning each officer, director, partner, or key employee of an applicant, permittee, or prospective owner of a facility regulated under the Solid, Hazardous, and Infectious Wastes Law. For purposes of the fingerprint database, annually on a date assigned by the Attorney General, an applicant, permittee, or prospective owner must provide the Attorney General with a list of both of the following:

(1) Each officer, director, partner, or key employee of the applicant, permittee, or prospective owner and the person's address and Social Security number; and

(2) Any officer, director, partner, or key employee of the applicant, permittee, or prospective owner who has left a position previously held with the applicant, permittee, or prospective owner during the previous one-year period and the person's Social Security number.[4]

The Attorney General must update the fingerprint database to reflect the information provided by an applicant, permittee, or prospective owner. That update

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[1] R.C. 3734.41(D) and 3734.42(A).

[2] R.C. 3734.42(A)(3).

[3] R.C. 3734.44 (not in the bill).

[4] R.C. 3734.42(E)(1) and (2).

must occur annually. The Attorney General must charge and collect fees from an applicant, permittee, or prospective owner that is required to submit information under the bill in accordance with rules adopted for purposes of the fingerprint database program. The fees cannot exceed fees that are charged to any other person who is charged fees for purposes of the database and who is not an officer, director, partner, or key employee of an applicant, permittee, or prospective owner.[5]

Every three years, the Attorney General must request from the Federal Bureau of Investigation any information regarding a criminal conviction with respect to each officer, director, partner, or key employee of an applicant, permittee, or prospective owner. The Attorney General may take any necessary actions, including, as necessary, requesting the submission of any necessary documents authorizing the release of information. In addition, every three years, an applicant, permittee, or prospective owner must submit an affidavit listing all of the following regarding a business concern required to be listed in the applicant's, permittee's, or prospective owner's disclosure statement:

(1) Any administrative enforcement order issued to the business concern in connection with any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period;

(2) Any civil action in which the business concern was determined to be liable or was the subject of injunctive relief or another type of civil relief in connection with any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period; and

(3) Any criminal conviction for a violation of any federal or state environmental protection laws, rules, or regulations that has been committed knowingly or recklessly by the business concern during the previous three-year period.[6]

With respect to an applicant, permittee, or prospective owner, the Attorney General must notify the Director of Environmental Protection of any crime ascertained under the bill that would disqualify the applicant, permittee, or prospective owner from licensure or permitting under the Solid, Hazardous, and Infectious Wastes Law. The Attorney General must provide the notification not later than 30 days after the crime was ascertained.[7]

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[5] R.C. 3734.42(E)(3) and (4).

[6] R.C. 3734.42(F)(1) and (2).

[7] R.C. 3734.42(G).

The bill retains, in part, provisions of current law that require the submission of certain information regarding changes of persons or businesses associated with an applicant, permittee, or prospective owner to occur within 90 days. Under the bill, an applicant, a permittee, or a prospective owner must submit to the Attorney General the following information within the periods specified:

(1) Information required to be included in the disclosure statement for any new officer, director, partner, or key employee, to be submitted within 90 days from the addition of the officer, director, partner, or key employee; and

(2) Information required to be included in a disclosure statement regarding the addition of any new business concern, to be submitted within 90 days from the addition of the new business concern.[8]

Updating background information under current law

Under current law, annually on the anniversary date of the submission to the Director by the Attorney General of the investigative report for a specific facility, or annually on another date assigned by the Attorney General, an applicant, permittee, or prospective owner must submit to the Attorney General any and all information required to be included in a disclosure statement that has changed or been added in the immediately preceding year. If, in the immediately preceding year, there have been no changes in or additions to the information required to be included in a disclosure statement, the appropriate applicant, permittee, or prospective owner must submit to the Attorney General an affidavit stating that there have been no changes in or additions to that information during that time period.[9]

In addition, the following information must be submitted within the periods specified:

(1) Information required to be included in the disclosure statement for any new officer, director, partner, or key employee, to be submitted within 90 days from the addition of the officer, director, partner, or key employee;

(2) Information required to be included in a disclosure statement for any new business concern, to be submitted within 90 days from the addition of the new business concern; and

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[8] R.C. 3734.42(D).

[9] R.C. 3734.42(D).

(3) Information regarding any new criminal conviction, to be submitted within 90 days from the judgment entry of conviction.[10]

Failure to provide information

The bill specifies that the failure to provide information under the bill may constitute the basis for: (1) the revocation of a permit or license, (2) the denial of a permit or license application, (3) the denial of a renewal of a permit or license, or (4) the disapproval of a change in ownership of a permittee (see "**Change in ownership**," below). Under current law, the failure to provide such information may constitute the basis for the revocation or denial only of renewal of any permit or license.[11]

Change in ownership

Under the bill, whenever there is a change in ownership of any operating on-site solid waste facility, any operating on-site infectious waste facility, or any operating on-site 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, the prospective owner must file a disclosure statement with the Attorney General and the Director of Environmental Protection. The prospective owner must file the disclosure statement at least 180 days prior to the proposed change in ownership.[12]

Under current law, the change in ownership provisions apply to any off-site solid waste facility, including incinerators; any transfer facility; any off-site infectious waste treatment facility; or any off-site hazardous waste treatment, storage, or disposal facility. The bill clarifies that those provisions apply only to the above facilities if they are operating facilities and makes conforming changes to the provisions.[13]

The bill defines "change in ownership" to include a change of the individuals or entities who own a solid waste facility, infectious waste facility, or hazardous waste facility. Under the bill, "change in ownership" does not include a legal change in a business concern's name when its ownership otherwise remains the same or a personal name change of officers, directors, partners, or key employees contained in a disclosure statement. Current law does not define "change in ownership," but does specify that

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[10] R.C. 3734.42(D).

[11] R.C. 3734.42(H).

[12] R.C. 3734.42(I)(1).

[13] R.C. 3734.42(I)(1).

the term includes any change in the names, other than those of officers, directors, partners, or key employees, contained in the disclosure statement.[14]

Definitions

As stated above, a disclosure statement, by definition, includes information pertaining to an applicant for a permit under the Solid, Hazardous, and Infectious Wastes Law. The bill alters the definition of "disclosure statement" by eliminating a provision that requires the disclosure statement to include any other information that the Attorney General or the Director of Environmental Protection may require that relates to the competency, reliability, or good character of the applicant.[15]

In addition, the bill expands the definition of "applicant" to mean any person seeking a permit or license for an off-site facility and any person or business concern operating such a facility for an applicant. Current law specifies that "applicant" means only a person seeking a permit or license for an off-site facility.[16]

HISTORY

ACTION	DATE
Introduced	02-15-12
Reported, S. Agriculture, Environment & Natural Resources	04-24-12
Passed Senate (31-0)	04-24-12

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[14] R.C. 3734.42(I)(3).

[15] R.C. 3734.41(D)(8).

[16] R.C. 3734.41(A).