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BILL ANALYSIS



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Senate Bill 790 (Substitute S-4 as reported)
Sponsor: Senator Cameron S. Brown
Committee: Natural Resources and Environmental Affairs

Date Completed: 7-19-04

RATIONALE

The Michigan Beverage Container and Recycling Task Force was commissioned in January 2003 by Senate Majority Leader Ken Sikkema to review the State's current recycling programs and evaluate the effect of Michigan's beverage container law (or "bottle bill") on statewide recycling and the environment. The Task Force held nine public hearings around the State to determine, in part, whether the bottle bill should be expanded to include deposits on noncarbonated beverage containers, such as water, juice, and sports drink bottles. The hearings also addressed issues related to preventing litter and promoting recycling. In September 2003, the Task Force issued a report concerning these matters and making a number of recommendations.

Regarding the bottle bill, the Task Force found that there is popular support for expanding it to noncarbonated beverage containers. The Task Force concluded, however, "The system must be fixed to provide a more stable foundation before expansion can be advanced." In regard to recycling, the Task Force recommended that the State take certain actions, including establishing a statewide Recycling Advisory Council. The Task Force recommended, among other things, that the Council and the Statewide Recycling Coordinator (a position within the Department of Environmental Quality) establish a method for regular review of the State's local recycling programs; that incentives be implemented for the coordination of local recycling programs in shared regions of the State; and that the State create a set of short- and long-term recycling recovery and waste diversion goals.

CONTENT

The bill would add Part 173 to the Natural Resources and Environmental Protection Act to establish the Recycling Advisory Council within the Department of Environmental Quality (DEQ). In part, the Council would have to do the following:

- **Study and report to the Legislature on the costs associated with, and sources of funding for, new and existing recycling and waste diversion programs.**
- **Establish goals for the diversion of waste from landfills in the State.**
- **Conduct a cost-benefit analysis of expanding the scope of the beverage container deposit law.**
- **Recommend to the Legislature changes to the State's comprehensive recycling plan, tax incentives to encourage recycling, and measures to foster the development of markets for recycled materials, and make other recommendations.**

Council Membership

The Recycling Advisory Council would consist of the DEQ Director, or his or her designee; five members appointed by the Senate Majority Leader; five members appointed by the Speaker of the House; and five members appointed by the Governor.

The Senate Majority Leader would have to appoint one member representing each of the following: a beverage dealers' organization; a statewide business organization; a recycling business; a

statewide bottlers' organization; and a statewide conservation organization.

The Speaker of the House would have to appoint one member representing each of the following: a beverage distributors' organization; a manufacturer that uses raw material consisting primarily of recycled material; an organization of townships; and an organization of cities and villages.

The Governor would have to appoint one member representing each of the following: a statewide environmental organization; county government; an officer or employee of a local unit of government responsible for recycling in that local unit; and two members of the public at large.

The Senate Majority Leader, the Speaker of the House, and the Governor could remove members they appointed for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The members first appointed to the Council would have to be appointed within 30 days after the bill's effective date. Members would serve for two-year terms or until a successor was appointed, whichever was later. A vacancy on the Council would have to be filled for the unexpired term in the same manner as the original appointment.

Council members would have to serve without compensation.

Organization

The DEQ Director would have to call the first Council meeting. At that meeting, the Council would have to elect from among its members a chairperson and other officers it considered necessary or appropriate. The Council then would have to meet at least quarterly, or more frequently at the call of the chairperson, or if requested by three or more members.

A majority of the members would constitute a quorum for the transaction of business at a Council meeting, and a majority of the members present and serving would be required for official Council action. The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

The DEQ would have to provide staff to the Council through the Office of the Statewide Recycling Coordinator. (The position of Statewide Recycling Coordinator currently exists in the DEQ, and Senate Bill 854 would create the Office in statute.) The departments and agencies of State government would have to cooperate with the Council by providing information it requested for the purposes of discharging its responsibilities.

Initial Recommendations

The Council would have to study and, by December 1, 2005, make recommendations to the Legislature on all of the following: estimates of money needed to support new and existing recycling and waste diversion in the State; sources of funding, including fees or surcharges for new and existing recycling and waste diversion; estimates of the amount of money that could be raised from these sources of funding; and an initial formula for expenditure or distribution of money from these or other sources (including distribution to recycling or diversion programs operated by local units of government or private entities).

After making its recommendations to the Legislature, the Council would have to perform, on an ongoing basis, the duties described below.

Waste Diversion & Recycling

The Council would have to establish goals for the diversion of waste from landfills in the State, review all of the State's solid waste management laws and administrative rules, and recommend to the Legislature changes to promote recycling and waste diversion.

In conjunction with the Statewide Recycling Coordinator, the Council would have to establish a method for the regular review of local recycling programs to gather information about processes, markets, and recycling rates. The Council also would have to review with local recycling officials current local recycling funding programs to determine if any changes should be made in these programs.

Based on the Recycling Coordinator's report required by Public Act 171 of 2003 (which appropriated funds to the DEQ), the Council

would have to recommend a strategy for a phased implementation of bans of additional materials from landfills.

The Council also would have to recommend to the Legislature for enactment into law all of the following: short- and long-term recycling recovery and waste diversion goals; criteria for local recycling programs to qualify for funding from sources the Council identified; and measures to develop or foster the development of markets for recycled materials.

In conjunction with the DEQ, the Council would have to develop forms and requirements for reporting expenditures for waste diversion (including expenditure of money received from the DEQ for recycling and waste diversion); and waste diversion and recycling accomplished by counties, solid waste management planning agencies, and entities that received money from the DEQ for recycling and waste diversion. The Council would have to review these data and other data regarding waste diversion and recycling, and use the data to establish criteria for, and make recommendations to, the Department and the Legislature on the use of money from sources of funding the Council had identified.

Markets for Recycled Materials

The Council would have to recommend to the Legislature tax incentives that could be provided under the Single Business Tax Act to encourage the development of markets for recycling materials that face obstacles or challenges to development, including electronic goods, batteries, and colored glass.

In cooperation with the DEQ's Office of Environmental Assistance and the Michigan Economic Development Corporation, the Council would have to encourage firms that specialize in production of products from recycled materials to establish business operations in the State. The Council would have to examine manufacturing processes that incorporate equipment or other technology to use recycled materials, or to allow for the recycling of waste products. Based on this information, the Council could develop a voluntary "best recycling practices" standard for businesses in Michigan.

Bottle Deposit Law

The Council would have to conduct a cost-benefit analysis of expanding the scope of the Initiated Law of 1976 (the beverage container deposit law), compared with alternative ways to increase recycling; report to the Legislature the Council's recommendations on changes to the beverage container deposit law; assess and report on health and safety concerns arising from the storage and handling by dealers and distributors of beverage containers returned under that law; and review the apportionment of the Unclaimed Bottle Deposit Fund and recommend to the Legislature revisions to compensate distributors and dealers more fully for costs incurred under the law.

The Council would have to create a subcommittee to monitor implementation of the pilot program for regional beverage container redemption centers, and to monitor the success of the beverage container deposit law. The subcommittee would have to include dealers, distributors, people representing redemption centers, and representatives of environmental organizations.

MCL 324.17301-324.17303

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would implement several Task Force recommendations, most significantly the establishment of a Recycling Advisory Council. Such a Council would provide a stable, consistent body that could recommend recycling policies. Michigan lacks a consistent approach to recycling and has no statewide recycling goals (except those for State government, which evidently have been neglected.) The Council would represent a fair cross-section of interested parties, including conservation and environmental groups, townships and counties, beverage dealers, and the general public.

Under the bill, the Council would be charged with establishing goals for the diversion of waste from landfills, could recommend

statewide recycling rates that were financially feasible, and would have to establish a method for monitoring local recycling programs. Further, the bill would require the Council to recommend to the Legislature tax incentives to encourage the development of new markets for recycled materials. The Council also would have to encourage firms that use recycled materials to locate in Michigan. Finding markets for recycled materials is a significant, often-overlooked step that must occur before recycling can increase.

In sum, the Recycling Advisory Council could generate creative, long-term solutions to Michigan's solid waste challenges.

Supporting Argument

The bill would require the Council to conduct a cost-benefit analysis of expanding the scope of the bottle deposit law and then provide recommendations on changes to the law. It is vital that a thorough study be conducted before the law is expanded to include juice and water bottles because expansion could be complex and costly, and place an even greater burden on beverage dealers and distributors. The Task Force recommended that the bottle deposit law be amended "to relieve this burden and create market-based incentives to drive a more appropriate method for the collection of beverage containers". Beverage dealers and distributors have long argued that their food stores should not serve as a collection center for dirty containers. The containers are often unsanitary, storing them takes up store space, and collecting bottles and redeeming deposits takes retailers away from their core mission of selling quality food and beverages. Establishing regional redemption centers, another Task Force recommendation, might be a cleaner, more efficient method for collecting containers and redeeming deposits. Under the bill, the Task Force would have to monitor a pilot program for regional redemption centers.

Opposing Argument

The proposed council would serve largely as an advisory body to the Legislature, lacking any real power to advance recycling in Michigan. Rather than actually improving recycling rates, the Recycling Advisory Council would be charged with studying issues that already were studied extensively by the 2003 Beverage Container and Recycling Task Force. The Task Force's nine

hearings around the State generated many solid recommendations that received bipartisan and public support; these recommendations could be implemented right now. It is not necessary to wait for another body to gather more information and then present its findings to Legislature.

Response: Establishing a Recycling Advisory Council was one of the Task Force's key recommendations. The Task Force believed that the Council could facilitate a dialogue between the various interest groups affected by recycling policy, and then build a consensus among them for steps required to develop a comprehensive, statewide recycling plan. Other recommendations from the Task Force may be implemented at a later date, but the Recycling Advisory Council is a necessary first step.

Opposing Argument

The bill would create a financial burden on the DEQ by requiring the Office of the Statewide Recycling Coordinator (a single person) to be staff for the Council, without providing any additional funding for the Department. Coordinating at least four major meetings a year--which most likely would include scheduling meetings, purchasing and disturbing materials, and taking and publishing meeting minutes--would be a significant responsibility for one person with other full-time responsibilities. Currently, the Recycling Coordinator facilitates and implements statewide recycling efforts; functioning as Council staff would detract from that central mission.

Opposing Argument

Requiring the Speaker of the House and the Senate Majority Leader to appoint most of the Council members to an organization within the DEQ could entangle the Legislative and executive branches. The DEQ, like all State departments, is part of the executive branch. Having legislative leaders appoint members to the Council could result in a separation of powers problem.

Response: This type of appointment has already been made on other councils, including the Groundwater Advisory Council. It would not establish a precedent.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill would create the Recycling Advisory Council to review the State comprehensive recycling plan and develop the market for goods made from recycled materials. It also would require the Council to create a subcouncil to monitor a pilot program of regional beverage container redemption centers. The Council members would serve without compensation. The Department of Environmental Quality could incur expenses for providing staff services to the Council. No funding is provided to support these costs. If the recommendations of the Council on sources of funding were enacted, then that revenue could pay for Department expenses.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.