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BILL ANALYSIS

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Senate Bills 1418 through 1424 (as introduced 9-12-06)
Sponsor: Senator Raymond E. Basham (S.B. 1418)
Senator Patricia L. Birkholz (S.B. 1419 & 1422)
Senator Mark H. Schauer (S.B. 1420)
Senator Ron Jelinek (S.B. 1421)
Senator Michelle A. McManus (S.B. 1423 & 1424)
Committee: Natural Resources and Environmental Affairs

Date Completed: 9-19-06

CONTENT

Senate Bills 1418 through 1423 would amend Part 169 (Scrap Tires) of the Natural Resources and Environmental Protection Act to do the following:

- Allow the delivery of scrap tires to a location that had legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site.
- Allow a person to arrange for the removal of scrap tires with a person hauling only a commodity or a retreader hauling only tire casings, in addition to a registered scrap tire hauler or a solid waste hauler.
- Require scrap tires to be stored in a tire storage area identified on a scrap tire collection site registration application map.
- Prohibit scrap tires from being placed in open spaces between tire piles or used to construct on-site roads, but create an exception for scrap tires that were a commodity.
- Exempt commodity storage areas, rather than qualifying tire chip storage areas, from the requirement for a performance bond.
- Delete an exemption from the performance bond requirement for a collection site storage area that contains the highest number of scrap tires accumulated during the previous year plus 10% of the number removed during that year.
- Provide that an on-site access road would be in violation of maintenance requirements, if a local fire department submitted a determination that the road did not ensure access for emergency vehicles.
- Provide that a lien in favor of the State would be placed on property affected by the removal of tires from a collection site where scrap tires had accumulated after January 1, 1991.
- Revise provisions permitting the Scrap Tire Regulatory Fund to be used for grants supporting the development of markets for scrap tires; and allow grants for equipment purchases or research and development.
- Require the Department of Environmental Quality (DEQ), every three years, to report to the Legislature on the effectiveness of Part 169 in encouraging the reuse of scrap tires and ensuring their safe storage.
- Require the DEQ Director to appoint a scrap tire advisory committee to advise the Department on the implementation of Part 169.

Senate Bill 1424 would amend the Michigan Vehicle Code to postpone the sunset on the scrap tire disposal surcharge from December 31, 2007, to December 31, 2012.

All of the bills are tie-barred to each other and to House Bills 6474 through 6477. Those bills would amend Part 169 to do the following:

- Require a person who owned a portable shredding operation to register with the DEQ, and revise registration requirements for collection sites.
- Provide for a lien in favor of the State upon a collection site that had been the subject of cleanup activity by the State for tires accumulated after January 1, 1991, and allow the Attorney General to seek additional liens to cover cleanup costs.
- Establish record-keeping requirements for retreaders.
- Allow the DEQ or a peace officer to enter and inspect a tire retail establishment, a vehicle owned or operated by a scrap tire hauler for transporting scrap tires, or a collection site or other place where scrap tires were present.

The Senate bills are described below.

Senate Bill 1418

Definitions

The bill would add definitions of terms used in the proposed legislation, including the term "commodity", which would mean crumb rubber, tire chips, a ring or slab cut from a tire for use as a weight, or a product die-cut or punched from a tire, or any other product that, as determined by the DEQ based on the product's production cost and value, is not likely to result in an accumulation at the site of production or use, that poses a threat to public health or the environment. A product would not be a commodity unless it met published national standards or specifications that the DEQ determined were relevant to accomplishing the purposes of Part 169.

Additional proposed terms include "automotive recycler", "commodity storage area", "portable shredding operation", and "retreader".

The bill also would revise the definitions of several existing terms, including "collection site", "end-user", "scrap tire hauler", and "scrap tire processor". The bill would delete the definitions of "scrap tire processed material" and "scrap tire recycler".

In addition, the bill provides that a reference in Part 169 to a number of scrap tires would mean either of the following, or an equivalent combination of them:

- That number of whole tires or reusable tire casings.
- A quantity of a commodity or tire shreds equivalent in weight to that number of whole tires.

Criminal Penalties

Currently, a person who violates Part 169 when fewer than 50 tires are involved is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$200 but not more than \$500. Under the bill, this penalty would apply for each violation.

When 50 or more tires are involved, the offense is a misdemeanor punishable by up to 180 days' imprisonment and/or a fine of at least \$500 but not more than \$10,000 for each violation. The bill would refer to "scrap tires", rather than "tires", in both penalty provisions.

These penalties, and the penalty for subsequent violations, do not apply to a person who violates certain provisions that pertain to the owner or operator of a collection site where fewer than 2,500 scrap tires are accumulated, if the person was in compliance with those provisions by September 1, 2002, and maintains compliance. (The provisions include restrictions on the dimensions of piles, their proximity to a property line or building, and the distance between piles, as well as requirements that tire piles be accessible to fire-fighting equipment and be isolated from other stored materials that may create hazardous products if there is a fire.)

The bill would extend this exemption to an owner or operator who complied with a requirement to store scrap tires in the tire storage area identified on the scrap tire collection site registration application map and approved by the DEQ. (This requirement is proposed by Senate Bill 1420.)

Senate Bill 1419

Scrap Tire Delivery

Currently, a person may deliver a scrap tire only to one of the following:

- A collection site registered under Part 169.
- A disposal area licensed under Part 115 (Solid Waste Management).
- An end-user.
- A scrap tire processor.
- A tire retailer.
- A scrap tire recycler.

Under the bill, a person also could deliver to a location that had legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site. The bill would delete reference to a scrap tire recycler.

(Currently, "collection site" means a site, other than a disposal area licensed under Part 115, a racecourse, or a feed storage location, that contains one or more pieces of adjacent real property where any of the following apply:

- 500 or more scrap tires are accumulated and the property is not associated with a retail operation or commercial contractor described below.
- 1,500 or more scrap tires are accumulated if the property is owned or leased by a person who is a retailer and is not associated with an automotive recycler.
- 2,500 or more scrap tires are accumulated if the property is owned or leased by an automotive retailer.
- More than 150 cubic yards of scrap tire processed material is accumulated if the property is owned or leased by a commercial contractor that is authorized to use the material as an aggregate replacement in a manner approved by a designation of inertness for scrap tires or is otherwise authorized for such use by the DEQ under Part 115.

Senate Bill 1418 generally would retain this definition but would refer to "tire chips", rather than "scrap tire processed material". "Tire chips" would mean a portion of a tire that was any of the following:

- Not more than two inches by two inches in size and that met requirements for size, metal content, and cleanliness as specified in an executed contract for delivery of the material by the scrap tire processor.
- Not more than three-eighths inch by three-eighths inch and sufficiently free from steel to be used in the construction and modification of sports surfaces such as golf course turf, athletic field turf, athletic tracks, hiking surfaces, livestock show arena surfaces, and playgrounds.
- To be used in a drain field approved under a district or county sanitary code.
- To be used as ground cover or mulch if, in aggregate, 95% of the material is equal to or less than three-fourths inch in size in any dimension and the material contains less than 1% by weight or volume of steel and fiber.
- Approved by the DEQ for use at a landfill as daily cover or a leachate collection system protective layer or for access road construction within a lined cell.

"End-user" presently means any of the following:

- A person who possesses a permit to burn tires under Part 55 (Air Pollution Control).
- The owner or operator of a landfill that is authorized under its operating license to use scrap tires.
- A person who converts scrap tires into scrap tire processed material used to manufacture other products that are sold in the market, but does not manufacture those products.

Under Senate Bill 1418, "end-user" would mean any of the following:

- A person who possesses a permit to burn tires under Part 55 (Air Pollution Control).
- The owner or operator of a landfill that is authorized under its operating license to use scrap tires.
- A person who uses a commodity to make a product that is sold in the market.
- A person who is authorized by Part 169 to accumulate scrap tires, who acquires scrap tires, and who converts scrap tires into a product that is sold in the market or reused in a manner authorized by the part (which is the present meaning of "scrap tire recycler").

Part 169 defines "scrap tire processed material" as rubber material derived from scrap tires that is marketable and not larger than two inches by two inches. The term includes material that contains larger pieces if it was produced by a scrap tire processor under a contract providing for the quantity and quality of the material and a tire frame in which the volume of material is to be provided, and the contract is made available to the DEQ upon request.)

Arrangement for Tire Removal

Under Part 169, a person who by contract, agreement, or otherwise arranges for the removal of scrap tires must do so with a solid waste hauler or a scrap tire hauler who is registered under Part 169 or who by contract, agreement, or otherwise is obligated to deliver the scrap tires to the identified destination. The bill would prohibit a person from arranging for the removal of scrap tires except with such a scrap tire hauler or with one of the following:

- A person hauling only a commodity.
- A retreader hauling only tire casings.
- A solid waste hauler.

(Under Senate Bill 1418, "retreader" would mean a person who retreads, recases, or recaps tire casings for reuse.)

Currently, this restriction does not prohibit a person who is not operating a commercial business from transporting his or her scrap tires to a site authorized above. Under the bill, this restriction would not prohibit any person from transporting his or her scrap tires to an authorized site.

Senate Bill 1420

Scrap Tire Storage

Under Part 169, a person who owns or operates a collection site where scrap tires have been accumulated and are not stored in a building or covered vehicle must comply with certain on the dimensions of piles, their proximity to a property line or building, and the distance between piles, as well as requirements that tire piles be accessible to fire-fighting equipment and be isolated from other stored materials that may create hazardous products if there is a fire. The bill also would require that the scrap tires be

stored in the tire storage area identified on the scrap tire collection site registration application map and approved by the DEQ. Also, except for scrap tires that were a commodity used to create a storage pad for, or a roadway for access to, other scrap tires that also were a commodity, scrap tires could not be placed in the open spaces between tire piles or used to construct on-site roads.

Access Roads

A person who owns or operates a collection site where at least 2,500 scrap tires are accumulated is subject to additional requirements. These include a requirement that the approach road to the tire storage area and on-site access roads to the tire storage area be all-weather construction and maintained in good condition and free of debris and equipment so that the road is passable at all times for fire-fighting equipment vehicles. Under the bill the road would have to be passable at all times for other emergency vehicles, as well. If the local fire department for the jurisdiction where the collection site was located submitted to the DEQ a written determination that the on-site access roads did not ensure that the site was accessible to emergency vehicles at all times during the year, the DEQ would have to consider the roads to be in violation of this requirement.

Performance Bond

Part 169 requires the owner of a collection site to maintain a performance bond in favor of the DEQ, in an amount specified in the law. A bond is not required for a "qualifying tire chip storage area", which means one or more locations within a collection site where tire chips are stored if all of the following conditions are met:

- The tire chips are marketable and not larger than two inches by two inches.
- The tire chips are stored in accordance with the requirements described above.
- At least 75% of the scrap tires that are stored at the site each year are removed to an approved market during that year, and the site owner or operator certifies compliance with this requirement on a form approved by the DEQ.
- The areas of the site that are used for storing the tire chips are not larger than

a total of one acre and are indicated on a survey by a registered professional engineer submitted to the DEQ as part of the collection site registration.

The bill would retain this exception but would refer to a "commodity storage area", rather than a "qualifying tire chip storage area". A commodity storage area would be subject to the same conditions, except for the requirement that the chips be marketable and not larger than two inches by two inches. Also, at least 75% of the scrap tires would have to be removed each year to a market, rather than an approved market.

Senate Bill 1421

Under Part 169, the owner of a collection site that processes tires is exempt from the requirement to obtain a performance bond if the owner has been in compliance with the site requirements for at least one year. This applies to tire storage areas at the site containing not more than the sum of the highest number of scrap tires accumulated there during the previous one-year period plus 10% of the amount of scrap tires that were removed to an end-user from the site during that period.

The bill, instead, would apply the exception to the owner of a collection site that was a scrap tire processor if at least 75% of the scrap tires, by weight or volume, that were stored at the collection site each calendar year were recycled or used for resource recovery during the year. Each year, the owner would have to certify compliance with these requirements on a form approved by the DEQ.

Senate Bill 1422

Part 169 provides for the Scrap Tire Regulatory Fund and allows it to be used for administrative costs and for the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. The DEQ must give priority to funding activities at sites where the scrap tires were accumulated before January 1, 1991, and to sites that pose an imminent threat to public health, safety, welfare, or the environment. The DEQ also must make every effort to assure that all abandoned scrap tires accumulated at collection sites before 1991 are cleaned up or collected by September 31, 2009.

Under the bill, for collection sites that had accumulated tires after January 1, 1991, a lien in favor of the State, up to the value of the cleanup grant amount and any increase in the value of the property as a result of the cleanup of the property with grant funds, would have to be placed on the property that was affected by the removal of the tires, as provided in Section 16908b. (That section, which is proposed by House Bill 6475, would govern the lien.)

Currently, the Fund money spent for cleanup or collection may be used for both of the following:

- Not more than \$500,000 each year for reimbursement grants to users of scrap tire processed material to support the development of increased markets for scrap tire material other than tire-derived fuel usage. A grant must be used for projects that demonstrate new uses for scrap tire processed material, and may reimburse the user up to 50% of the cost of purchasing scrap tire processed material, not to exceed a reimbursed cost of \$50 per ton. The material must be purchased from Michigan scrap tire processors that produce scrap tire processed material under a grant from the Fund.
- Grants to end-users who receive scrap tires or tire chips, but an end-user must agree to purchase one ton of scrap tires or tire chips for every ton of tires or chips received as a result of the grant.

Under the bill, instead, the Fund money spent for cleanup or collection could be used for either or both of the following:

- Not more than \$500,000 each year for grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires. Only the cost of purchasing scrap tires from scrap tire processors in this State or other generators of scrap tires in Michigan would be eligible for reimbursement.
- For grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use of scrap tires.

Part 169 requires the DEQ annually to report to the legislative standing committees with jurisdiction over natural resources and

environmental subject matter, on the use of Fund revenue. The bill would delete this requirement (although Senate Bill 1423 would re-enact it in a different section).

Senate Bill 1423

In addition to requiring the DEQ to report annually to the Legislature on the use of Scrap Tire Regulatory Fund revenue, the bill would require the DEQ to prepare a report on the effectiveness of Part 169 in encouraging the reuse of scrap tires and ensuring their safe storage. The DEQ would have to prepare this report within three years after the bill's effective date and then every third year.

The report would have to include recommendations for such changes to Part 169, including any further description on the use of the money for cleanup and collection and for grants, as the DEQ found necessary and appropriate. The Department would have to submit the report to the standing committees of the Senate and House of Representatives with primary responsibility for issues pertaining to natural resources and the environment.

The bill also would require the DEQ Director to appoint a scrap tire advisory committee of individuals interested in the management of scrap tires, to advise the Department on the implementation of Part 169. In addition to other issues the DEQ requested the committee to consider, it would have to advise the Department on the report required above and the relevance of a national standard or specification for a "commodity".

Senate Bill 1424

Under the Michigan Vehicle Code, until December 31, 2007, each person applying for a certificate of title, a salvage vehicle certificate of title, or a scrap certificate of title must pay a tire disposal surcharge of \$1.50 for each certificate of title or duplicate certificate of title the person receives. The Secretary of State must deposit the money into the Scrap Tire Regulatory Fund.

The bill would extend the requirement to pay the surcharge until December 31, 2012.

MCL 324.16901 & 324.16909 (S.B. 1418)
324.16902 (S.B. 1419)

324.16903 (S.B. 1420)
324.16903b (S.B. 1421)
324.16908 (S.B. 1422)
Proposed MCL 324.16911 (S.B. 1423)
MCL 257.806 (S.B. 1424)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would make a number of changes to the Scrap Tire Regulatory program for an increase in revenue to the State, primarily from extending the scrap tire disposal surcharge. Senate Bill 1418 would revise and add definitions. One of these would create a new category of scrap tire material called a "commodity", which would be exempt from a number of regulatory requirements that apply to usual scrap tires.

Senate Bill 1422 would revise the purposes for which grants from the Scrap Tire Regulatory Fund may be awarded. The bill would not result in additional grant revenue or awards. Senate Bill 1422 and House Bill 6474 would allow the DEQ to issue a lien upon a collection site for recovery of cleanup costs. Revenue to the State from liens would depend on the amounts recovered.

Senate Bill 1423 would impose a few additional administrative duties on the DEQ for reporting requirements and staff support for a new scrap tire advisory committee. Funding for these activities would come from existing resources.

Senate Bill 1424 would extend the sunset on the \$1.50 scrap tire disposal surcharge from December 31, 2007, to December 31, 2012. The surcharge generates approximately \$4.7 million annually for deposit into the Scrap Tire Regulatory Fund. The bill would not change the surcharge rate.

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.