



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5574 (Substitute H-2 as passed by the House)
House Bill 5575 (Substitute H-2 as passed by the House)
Sponsor: Representative Fred Miller
House Committee: Regulatory Reform
Senate Committee: Health Policy

Date Completed: 6-18-08

CONTENT

House Bill 5574 (H-2) would amend Part 138 (Medical Waste) of the Public Health Code to do the following:

- Require a person to be registered with Department of Environmental Quality (DEQ) in order to operate as a trauma scene waste management practitioner.
- Require an applicant for registration to submit a \$75 registration fee, a trauma scene waste management plan, proof of financial responsibility to third parties, and a fee for a background check.
- Require the DEQ to have a background check conducted.
- Require the DEQ to establish standards concerning trauma scene waste management.
- Regulate the transport and storage of trauma scene waste.
- Allow the DEQ to inspect a trauma scene waste management practitioner.
- Require the DEQ to maintain and post a list of registered trauma scene waste management practitioners.

House Bill 5575 (H-2) would amend Part 138 to do the following:

- Include trauma scene waste as medical waste and pathological waste, and include trauma scene waste management practitioners as producing facilities.

- Require compliance with certain U.S. Department of Transportation regulations, and otherwise revise requirements that apply to producing facilities that do not incinerate (or decontaminate) medical waste on site.
- Revise the methods that producing facilities must use to decontaminate and dispose of specific types of medical waste.
- Require a medical waste treatment technology to be reviewed and approved by the DEQ.
- Revise provisions concerning the registration fee paid by producing facilities.
- Revise requirements for a medical waste management plan, require a plan to include cleanup methods to be used in response to spills, and require a plan to be updated every three years.
- Revise provisions under which medical waste may be disposed of as solid waste.
- Revise provisions concerning the discovery of suspected medical waste and suspected violations of Part 138.
- Eliminate provisions for an interdepartmental medical waste advisory council.
- Allow money in the Medical Waste Emergency Response Fund to be used for programs relating to medical waste reduction, management, and education.

- **Prescribe civil, rather than administrative, fines for violations of Part 138, and allow a court to order the payment of costs to contain or remove medical waste, costs of surveillance and enforcement, and the value of damage to natural resources.**
- **Prescribe a misdemeanor penalty for a violation of Part 138.**

The bills are tie-barred to each other.

House Bill 5574 (H-2)

Registration

The bill would prohibit a person from operating as a trauma scene waste management practitioner unless the person was registered, except as provided below. A person would have to apply for registration on forms and in the manner prescribed by the DEQ.

(House Bill 5575 (H-2) would define "trauma scene waste management practitioner" as a person who undertakes as a commercial activity the cleanup, removal, transport, or disposal of trauma scene waste from a trauma scene. "Trauma scene waste" would mean medical waste generated at a trauma scene. "Trauma scene" would mean premises or a vehicle contaminated with medical waste due to human injury, trauma, or death.)

A person operating as a trauma scene waste management practitioner immediately before the bill's effective date could continue to do so if, within 30 days after that date, the person notified the DEQ that the person was operating and intended to continue to operate as a trauma scene waste management practitioner. By the date and in the manner prescribed by the Department, the person would have to submit an application for registration. Upon receiving the application, the DEQ would have to have a background check conducted. Upon receiving notice that the application had been denied, the person immediately would have to stop operating as a trauma scene waste management practitioner. The person could reapply, and the DEQ would have to proceed as required for other applicants who reapplied.

A person who applied or reapplied for registration, including a person applying for renewal, would have to submit all of the following with the application:

- A \$75 registration fee.
- A written trauma scene waste management plan that met requirements of the bill.
- Proof of financial responsibility for bodily injury, property damage, or environmental damage to third parties caused by accidental occurrences arising from the practitioner's trauma scene waste cleanup and transport activities.
- A fee prescribed by the DEQ to cover the expense of the background check (except as provided for renewal applications).

Upon receiving a complete application and the applicable fee or fees, the DEQ would have to have conducted a background check of all individuals named in the application as being the owners, officers, directors, partners, or key employees of the trauma scene waste management practitioner. The DEQ would have to determine whether any information received as a result of the background check made the practitioner ineligible for registration and, if so, the Department could not register that person. The DEQ would have to notify the person that its application had been denied and include the reasons for the denial. A person who received a notice of denial could reapply and the DEQ would have to proceed in the manner prescribed for a new application.

If the DEQ determined that an applicant was able to engage in the cleanup, handling, and transport of trauma scene waste in a manner that would protect the public health, safety, and welfare, and the environment, the Department would have to issue a certificate of registration to the applicant.

A certificate of registration would be valid for three years from the date of issuance. A trauma scene waste management practitioner would have to comply with any rules promulgated by the DEQ to obtain a renewal registration. The DEQ would have to act on a renewal application in the same manner as required for a new application, but would not have to conduct a background check annually. A background check for a renewal registration would have to be conducted at least once every three years.

Fees collected under the bill would have to be forwarded to the State Treasurer and deposited in the Medical Waste Emergency Response Fund.

Standards

Within 90 days after the bill's effective date and on a continuing basis, the DEQ would have to establish the following standards in consultation with the trauma scene waste management industry and the health care industry:

- Documentation of personal protection required to be provided for and used by employees of trauma scene waste management practitioners.
- Technologies, chemicals, and procedures appropriate for cleaning and disinfecting a trauma scene.
- Procedures and equipment appropriate for removing, storing, transporting, and disposing of trauma scene waste.
- Other standards as necessary.

Waste Management Plan

A trauma scene waste management practitioner would have to develop a trauma scene waste management plan. Consistent with the standards established by the DEQ, the plan would have to describe all of the following:

- The personal protection to be provided to employees of the practitioner to minimize exposure to infectious agents throughout the process of handling and transporting trauma scene waste.
- The technologies, chemicals, and procedures to be used for cleaning and disinfecting the trauma scene.
- Procedures and equipment to be used for removing, storing, transporting, and disposing of trauma scene waste.
- Any other information that the DEQ determined was necessary.

A trauma scene waste management practitioner would have to update its plan every year or within 30 days of a change in a person or site named in the plan, or a change in the types of trauma scene waste handled or the methods of handling it.

A practitioner would have to comply with its plan and transport trauma scene waste to a producing facility that decontaminated or

incinerated medical waste for treatment or disposal. A practitioner could not store trauma scene waste on its premises for more than seven days, and would have to package medical waste in the manner prescribed in Section 13821 (which House Bill 5575 (H-2) would amend) and as otherwise prescribed by the DEQ.

Inspection; Revocation

The DEQ could inspect a trauma scene waste management practitioner in either a routine or an unannounced manner, in order to determine whether the practitioner should be registered or to investigate a complaint. The Department could deny, suspend, or revoke registration if it determined that the practitioner was not able to engage in the cleanup, handling, and transport of trauma scene waste in a manner that would protect the public health, safety, and welfare, and the environment. Before suspending or revoking a registration, the DEQ would have to give notice and an opportunity for a contested case hearing as provided in the Administrative Procedures Act.

Inapplicability of Other Sections

A trauma scene waste management practitioner would not be subject to Section 13813 (which requires the registration of producing facilities) or Section 13817 (which governs medical waste management plans). A practitioner would have to make its trauma scene waste management plan available to the DEQ, however, in the same manner as required for a medical waste management plan.

List of Practitioners

The DEQ would have to post and maintain on its website a current list of registered trauma scene waste management practitioners. Upon request, the DEQ would have to submit a current list of registered practitioners to other public agencies and to the general public.

Producing Facilities

The bill would delete provisions setting registration fees for producing facilities. (These provisions would be replaced by provisions in House Bill 5575 (H-2).)

House Bill 5575 (H-2)

Medical & Pathological Waste

Part 138 defines "medical waste" as any of the following, that are not generated from a household, a farm operation or other agricultural business, a home for the aged, or a home health care agency:

- Cultures and stocks of infectious agents and associated biologicals, including laboratory waste, biological production wastes, discarded live and attenuated vaccines, culture dishes, and related devices.
- Liquid human and animal waste, including blood and blood products and bodily fluids, but not urine or materials stained with blood or bodily fluids.
- Pathological waste.
- Sharps.
- Contaminated wastes from animals that have been exposed to agents infectious to humans, these being primarily research animals.

Under the bill, "medical waste" also would include trauma scene waste. The bill also would revise the reference to contaminated wastes from animals. The bill would include wastes from animals used in research that have been exposed to an infectious agent, including carcasses, body parts, blood, body fluids, or other material contaminated with the infectious agent.

Currently, "pathological waste" means human organs, tissues, body parts other than teeth, products of conception, and fluids removed by trauma or during surgery, autopsy, or other medical procedures, and not fixed in formaldehyde.

The bill would define "pathological waste" as trauma scene waste or human organs, tissues, body parts other than teeth, products of conception, and fluids removed during surgery, autopsy, or other medical procedures, that are not fixed in formaldehyde or other fixative agent. A specific organ, body part, or tissue removed by trauma or during surgery, autopsy, or other medical procedure that is not known to be or is not highly likely to be contaminated with an infectious agent and that is requested by an individual to be returned for religious, ethnic, or personal reasons would not be pathological waste.

"Sharps" currently means needles, syringes, scalpels, and intravenous tubing with needles attached. The bill would define "sharps" as any object generated as waste at a producing facility that is designed for, capable of, or intended to cut or penetrate the skin. This would include a needle, syringe with an attached needle, scalpel, lancet, broken vaccine vial, culture slide or dish, capillary tube, and intravenous tubing with a needle attached.

Medical Waste Containment

Producing Facility. Part 138 requires a producing facility to comply with certain requirements to contain medical waste. "Producing facility" means a facility that generates, stores, decontaminates, or incinerates medical waste. The bill would define "producing facility" as a facility that generates, stores, removes, decontaminates, or transports medical waste, including a transfer station where medical waste is stored, and a trauma scene waste management practitioner.

The term would not include a funeral home that does not practice embalming and does not generate medical waste, a home health care agency, a residence, or a farm operation or other agricultural business. The term also would not include a facility licensed by the Department of Human Services that provides residential care services, such as adult and child foster family and group homes, child day care centers, child care institutions, child or adult foster care camps, and homes for the aged.

Off-Site Decontamination. Under Part 138, a producing facility that does not incinerate medical waste on site must do all of the following to contain medical waste:

- Package, contain, and locate medical waste in a manner that protects and prevents it from release at the producing facility or at any time before ultimate disposal.
- Separate the categories of waste into appropriate containers.
- Label the containers with a biohazard symbol or the words "medical waste" or "pathological waste" in letters at least one inch high.
- Not compact or mix medical waste with other waste materials before

decontamination, incineration, and disposal.

- If decontaminated medical waste is mixed with other solid waste, clearly label the container to indicate that it contains decontaminated medical waste.

Under the bill, instead, a producing facility that did not decontaminate medical waste on site would have to ensure that all of the following requirements were met to contain the waste:

- At the point of origin, medical waste would have to be sorted and separated by type, as listed in the definition of "medical waste", into appropriate containers.
- Containers would have to be labeled or marked before transport in accordance with United States Department of Transportation (USDOT) regulations.
- Medical waste that was being packaged for final decontamination or disposal would have to be segregated from other waste materials.
- Transfer station storage containers could not be stored for more than seven days without the DEQ's approval.
- Medical waste would have to be packaged and transported in accordance with applicable USDOT hazardous material (hazmat) regulations.
- The producing facility would have to retain USDOT medical waste shipping paper records in accordance with applicable USDOT hazmat regulations.

Also, trauma scene waste being transported in a trauma scene vehicle would have to be stored so that it was physically separated by partition or compartments and did not present a cross-contamination hazard to the decontamination equipment and supplies stored and transported in the same vehicle.

Currently, medical waste must be stored in a manner that prevents putrefaction and prevents infectious agents from coming in contact with the air or individuals. If medical waste is stored outside of the producing facility, the waste must be stored in a secured area or locked in a container that weighs more than 500 pounds, and access to the area or container by vermin or unauthorized individuals must be prevented. The bill would retain these requirements.

The bill also would retain a requirement that medical waste not be stored on the premises of the producing facility for more than 90 days. The bill specifies that the storage period would begin when the use of the storage container was initiated. If a producing facility generated only sharps as medical waste, however, and generated one liter or less of sharps waste in a 90-day period, the 90-day storage period would begin when the sharps container became full. A partially full sharps container would have to be disposed of within one year after the sharps were first placed in the container.

On-Site Decontamination. Part 138 requires a producing facility that incinerates medical waste on site to do all of the following to contain medical waste:

- Package, contain, and locate medical waste in a manner that protects and prevents it from release at the producing facility or at any time before ultimate disposal.
- Separate and dispose of sharps as described in Part 138.
- Label the containers with a biohazard symbol or the words "medical waste" or "pathological waste" in letters at least one inch high.
- Not store medical waste on the premises of the producing facility for more than 90 days.

Under the bill, a producing facility that did not decontaminate medical waste on site would have to meet these requirements to contain medical waste. In addition, medical waste would have to be sorted and separated by type as listed in the definition of "medical waste" into appropriate containers.

Decontamination & Disposal

Part 138 describes methods a producing facility must use to store, decontaminate, and dispose of various types of medical waste. The bill would revise these requirements as described below.

Contaminated Cultures & Stocks. Currently, cultures and stocks of material contaminated with an infectious agent must be stored in closed, puncture-resistant containers, decontaminated by autoclaving or incineration, and disposed of in a sanitary landfill. Under the bill, contaminated

cultures and stocks would have to be stored in the same manner, decontaminated by use of an autoclave or incinerator, and disposed of in a landfill or subjected to a decontamination and disposal process approved by the DEQ.

Blood. Blood, blood products, and body fluids must be disposed of by one of the following methods:

- Flushing down a sanitary sewer.
- Decontaminating by autoclaving or incineration.
- Solidifying.
- If not in liquid form, transfer to a sanitary landfill.
- A process approved by the DEQ.

The bill, instead, would require one of the following:

- Flushing down a sanitary sewer.
- Decontamination by use of an autoclave or incinerator, and disposal in a landfill.
- Solidification then decontamination, by use of an autoclave or incinerator, and disposal in a landfill.
- A decontamination and disposal process approved by the DEQ.

Pathological Waste. Currently, pathological waste must be disposed of by one of the following:

- Incineration or cremation.
- Grinding and flushing into a sanitary sewer.
- Burial in a cemetery, if transported in leakproof containers of sufficient integrity to prevent rupture.
- Grinding until unrecognizable, stored in closed, puncture-resistant, properly labeled containers, and, if not in liquid form, disposed of in a sanitary landfill.
- A process approved by the DEQ.

The bill would require pathological waste to be disposed of by one or more of the following methods:

- Incineration and disposal in a landfill.
- Cremation.
- Grinding and flushing into a sanitary sewer.
- Burial in a cemetery if packaged and transported in accordance with USDOT requirements.

- A decontamination and disposal process approved by the DEQ.

Sharps. Sharps must be disposed of in one of the following ways:

- Placement in rigid, puncture-resistant containers that are appropriately labeled and transported to a sanitary landfill in a manner that retains the integrity of the containers.
- Incineration or decontamination and grinding that renders the objects unrecognizable.
- A process approved by the DEQ.

Ground sharps must be placed in a sealed, rupture-resistant container and transported to a sanitary landfill.

Under the bill, sharps would have to be disposed of as follows:

- Disposal in a landfill if packaged and transported in accordance with USDOT requirements.
- Decontamination by use of an autoclave or incinerator, and disposal in a landfill.
- A decontamination and disposal process approved by the DEQ.

Contaminated Animal Waste. Animal waste contaminated with organisms infectious to humans must be disposed of by incineration or by burial in a sanitary landfill in properly labeled, double containers that are leakproof and puncture resistant and are tightly sealed to prevent escape of fluids or material. Contaminated animal waste disposed of separately must be rendered unrecognizable.

Under the bill, animal waste contaminated with an infectious agent would have to be disposed of by one of the following methods:

- Decontamination by use of an autoclave or incineration, and disposal in a landfill.
- Disposal in a landfill if packaged and transported in accordance with USDOT requirements.
- A decontamination and disposal process approved by the DEQ.

Treatment Technology. Under the bill, a medical waste treatment technology used by a producing facility to meet these requirements would have to attain a minimum level of decontamination to protect

the public health, safety, and welfare, and the environment as established by rules promulgated by the DEQ.

Medical Waste Treatment Technology

Under the bill, a medical waste treatment technology could not be installed or used unless it had been reviewed and approved by the DEQ. The Department would have to review the technology for compliance with Part 138 and rules promulgated under it.

The DEQ would have to provide an application form for evaluation and review of the medical waste treatment technology to the manufacturer upon request. The application would have to be completed and submitted to the DEQ with supportive documentation as part of the request for review and approval. The DEQ would have to review the application and documentation, and approve the application if the technology complied with the Act and rules. Otherwise, the DEQ would have to deny the application, and specify the reasons for the denial and what additional information would be needed for approval.

The manufacturer would have to give the DEQ the name and address of each producing facility where installation of the approved medical waste treatment technology was to occur. The equipment could not be used until on-site efficacy and validation testing was successfully completed. The DEQ's approval of a treatment technology would be for the use of the technology as a medical waste treatment method only. The producing facility would be responsible for securing any other permits or required approvals needed for the technology from other agencies or DEQ programs.

Producing Facility Registration

Part 138 requires a producing facility to register with the DEQ and submit a registration fee with the registration form.

For a facility that is a private practice office with fewer than four licensees under Article 15 of the Code (which governs health occupations) who are physicians, dentists, podiatrists, certified nurse practitioners, certified nurse midwives, or veterinarians employed by, under contract to, or working at the facility, the registration fee is \$50.

The bill would retain this fee but delete reference to "private practice office".

For a producing facility that is a private practice office with four or more licensees under Article 15, as listed above, the registration fee is \$20 per licensee, up to a total of \$80. Under the bill, the fee would be \$80.

In both of these categories, the bill would refer to licensees or registrants under Article 15, and would include physician assistants and acupuncturists.

Currently, for a producing facility that is a hospital with 150 or more licensed beds or a clinical laboratory, the registration fee is \$150. The bill would retain this fee.

For producing facility that is a health facility or agency other than a hospital with 150 or more licensed beds, and for a producing facility that is not a health facility or agency, the fee is \$75. The bill would prescribe a \$75 fee for a producing facility that is a health facility or agency.

The bill also would require a \$75 registration fee for a producing facility that is not a health facility or agency, including a body art facility, medical waste treatment facility, medical waste collection and transport company, blood draw station, blood or blood product collection facility, funeral home, animal control shelter, pharmacy, school district, or ambulance operation.

A mobile health care unit, such as a bloodmobile, that is owned and operated by a registered producing facility in a fixed location would be considered to be included under the registration of the registered facility.

A public sharps collection program would have to register as a medical waste producing facility, but would be exempt from payment of any registration fee.

Under Part 138, upon receiving a complete registration form and registration fee, the DEQ must issue a certificate of registration to the producing facility. Under the bill, this would be required unless the DEQ determined that the facility was not in compliance with Part 138 or rules promulgated under it.

Currently, the DEQ must investigate each complaint received and may inspect a registered producing facility pursuant to the receipt of a complaint. The bill would delete these provisions.

Medical Waste Management Plan

Part 138 requires a producing facility, within 90 days of registration, to have on file on the premises a written medical waste management plan. The plan must contain information related to the handling of all medical waste generated, stored, decontaminated, or incinerated at each producing facility or transported from the producing facility for handling by another facility for storage, decontamination, incineration, or disposal in a landfill, cemetery, or other disposal site. The bill would delete these references to incineration.

Part 138 allows a professional corporation to prepare a common medical waste management plan for all producing facilities owned and operated by the corporation. The bill would refer to a "person", rather than a "professional corporation". The bill would require a copy of the common plan to be kept available at each producing facility for inspection by the DEQ.

A medical waste management plan must contain information specified in Part 138, to the extent the information applies to a producing facility. This includes the corporate or other legally recognized business name of solid waste haulers who transport medical waste for the facility. The bill, instead, would require the corporate or other legally recognized business name, address, and telephone number of medical waste disposal service companies that transported or treated medical waste for the producing facility.

A plan also must contain the use of sanitary landfills, cemeteries, and other disposal sites. The bill, instead, would require the name and address of landfills, cemeteries, and other disposal sites to which medical waste was directly taken by the producing facility.

In addition, the bill would require a plan to include cleanup methods and procedures to be used in response to spills of medical waste.

Currently, a producing facility must update its management plan each time there is a change in a person or site named in the plan or a change in the types of medical waste handled or the methods of handling medical waste at the facility. Under the bill, a facility would have to update its plan within 30 days of such a change or every three years.

The DEQ may require a producing facility to modify its medical waste management plan any time the Department determines that it is not adequate to protect the public health or is inconsistent with State or Federal law. The DEQ must give the producing facility written notice of its determination and the specific modifications necessary, and the facility must modify the plan within 10 days after receiving the notice. The DEQ may issue a warning to a producing facility that fails to modify its plan within the 10-day period.

Under the bill, the DEQ also could require a producing facility to modify its medical waste management plan if the plan were not adequate to protect the public safety and welfare and the environment. The facility would have to make a modification within the time period specified in the DEQ's notice, rather than within 10 days after receiving the notice. The bill would delete the provision regarding a warning.

Disposal as Solid Waste

A producing facility that transports medical waste off the premises must package the waste as specified in Part 138. Sharps that are not ground or incinerated must be contained in individual leakproof, rigid, puncture-resistant containers that are secured to preclude loss of the contents. A container used to store or transport a number of individual sharps also must be leakproof. The containers must be conspicuously labeled "sharps". Sharps contained as required may be disposed of as solid waste under Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA). Sharps may not be compacted or handled during transport in a manner that will result in breakage of a sharps container.

Medical waste other than sharps must be contained in bags other than body pouches or other containers that are impervious to moisture and are strong enough to resist

ripping, tearing, breaking, or bursting under normal conditions of use or handling. The bags or containers must be secured so as to prevent leakage during storage, handling, or transport.

The bill would delete all of these provisions.

Under the bill, if medical waste were decontaminated and packaged in accordance with the requirements for producing facilities that decontaminate medical waste on site, or that do not do so, as applicable, and in accordance with the requirements for decontamination and disposal of various types of medical waste, the medical waste could be disposed of as solid waste under Part 115 of NREPA.

Hazardous waste, as defined in Part 111 (Hazardous Waste Management) of NREPA, could not be disposed of as medical waste.

Reporting Medical Waste

Currently, if suspected medical waste is discovered on any land or water in the State and reported to the Department of Natural Resources (DNR), the Department of Community Health (DCH), a local health department, the Department of State Police, or any other State or local governmental agency, the agency or department receiving the report must investigate promptly to confirm the existence of medical waste. If the existence of medical waste is confirmed by an agency or a department other than the DNR, a report must be sent to the DNR, which may take appropriate measures to contain or remove the medical waste, close off the area, and do all things necessary to protect the public health, safety, and welfare, and the environment, and must conduct an investigation to determine the source of the waste. The bill would delete all of these provisions.

Under the bill, a person who discovered suspected medical waste on any land or water in this State would be required to report it to the DEQ. The DEQ could take appropriate measures to contain or remove the medical waste, close off the area, and otherwise protect the public health, safety, and welfare, and the environment, and would have to conduct an investigation to determine the source of the waste.

The bill also would delete provisions allowing the DNR to consult with the DCH, State Police, Attorney General, and local health departments on actions taken, and requiring the DNR to inform the Legislature, the Governor, the public, and the interdepartmental advisory council of the results of an investigation.

Suspected Violations

Currently, if there is a suspected violation of Part 138 on the premises of a health facility or agency or on the premises of an incinerator owned and operated by a health facility or agency, the DCH must promptly conduct an investigation to confirm the violation. If the suspected violation is reported to the DNR, a local health department, the Department of State Police, or any other State or local governmental agency, the report must be transmitted to the DCH. If the investigation confirms the existence of a violation, the DCH may take measures to correct it. The bill would delete these provisions.

Under the bill, if the DEQ suspected that a producing facility had violated Part 138 or rules promulgated under it, the Department would have to conduct a prompt investigation to confirm the violation. If the investigation confirmed a violation, the DEQ could take measures to correct it.

The bill also would delete provisions allowing the DCH to consult with the other departments on actions taken; requiring the DCH to notify the DNR and request its assistance if the violation is at an incinerator owned and operated by a health facility or agency; and requiring the DCH to inform the Legislature, the Governor, the public, and the interdepartmental advisory council of the results of an investigation.

Interdepartmental Advisory Council

The bill would delete provisions creating the interdepartmental medical waste advisory council, and would transfer its responsibilities to the DEQ. These include collecting data pertaining to medical waste reports and investigations, and reporting annually to the Governor and the Senate and House standing committees with jurisdiction over public health matters, on the following:

- The number of medical waste reports received and investigations conducted.
- The implementation and effectiveness of Part 138.
- Changes in the overall regulatory scheme pertaining to medical waste, including the enactment of pertinent Federal law.
- Recommendations, if any, for changes to Part 138 or any other State statute or rule pertaining to medical waste.

Medical Waste Emergency Response Fund

Part 138 creates the Medical Waste Emergency Response Fund and requires the State Treasurer to deposit in it all money received pursuant to the Act and all money received for the Fund as otherwise provided by law.

Under the bill, the State Treasurer would have to deposit in the Fund all money received pursuant to Part 138 except for civil fines, costs, and damages imposed for violations of the part and rules. The State Treasurer also would have to deposit in the Fund all money designated for it as otherwise provided by law.

The DEQ would have to be the administrator of the Fund for auditing purposes.

Currently, not more than 80% of the money in the Fund may be used for administrative expenses, and the balance may be used for response activities necessitated by the release of medical waste. Under the bill, the balance also could be used for programs relating to medical waste reduction, management, and education.

Fines & Other Relief

Currently, a person who fails to register or have a medical waste management plan available for inspection is subject to a \$500 administrative fine. Otherwise, a person who violates Part 138 or a rule promulgated under it is subject to an administrative fine of up to \$2,500 for each violation and an additional fine of up to \$1,000 for each day the violation continues. For a first offense, the levying of a fine may be postponed for up to 45 days or until the violation is corrected, whichever occurs first. Also, a court may enjoin a violator from continuing the violation. The bill would delete all of these provisions.

Under the bill, the DEQ could request that the Attorney General bring an action for any appropriate relief, including injunctive relief, for a violation of Part 138 or rules promulgated under it.

The bill would retain the amount of the current fines but, under the bill, they would be civil fines that a court could impose, rather than administrative fines. In addition, the \$500 fine also would apply to failure to make a trauma scene management plan available to the DEQ. Money collected from civil fines would have to be deposited in the State's General Fund.

In addition to any other relief, the court could order a person who violated Part 138 or rules to pay an amount equal to all of the following:

- Costs to contain or remove medical waste or take action necessary to protect public health, safety, or welfare or the environment incurred by the State or a local unit of government as a result of the violation.
- Costs of surveillance or enforcement incurred by the State or a local unit as a result of the violation.
- The full value of damage done to the natural resources of the State.

Money collected under these provisions would have to be deposited in the Medical Waste Emergency Response Fund. If a local unit of government incurred the costs described above, however, the court could order that the money collected, in an amount not exceeding the costs incurred by the local unit, be forwarded to that local unit.

The DEQ could order a cease and desist order to correct a violation of Part 138 or a rule promulgated under it if the violation were causing an imminent public health hazard or threat to the environment.

Misdemeanor Penalty

A person who violated Part 138, a rule promulgated under it, or a final order pursuant to the part would be guilty of a misdemeanor punishable by imprisonment for up to six months and/or a maximum fine of \$1,000, plus any payment ordered for costs to contain or remove medical waste or take protective action, costs of surveillance

or enforcement, or damage to natural resources. Each day a violation occurred would be a separate offense.

Fiscal Analyst: Jessica Runnels
Lindsay Hollander

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333.13805 et al. (H.B. 5575)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5574 (H-2)

The bill would have an indeterminate fiscal impact on the State. It would establish additional regulatory duties for the Department of Environmental Quality regarding trauma scene waste management practitioners. It would impose a \$75 registration fee every three years on the practitioners to cover the costs of the program and also authorize the DEQ to assess a fee sufficient to pay for background checks on the owners, officers, directors, partners, and other key employees of the business. The revenue from the fees would be deposited into the Medical Waste Emergency Response Fund, which is used for administration of the program and for cleanup of medical waste contaminated sites.

House Bill 5575 (H-2)

The bill would have an indeterminate fiscal impact on the Department. It would eliminate the administrative fines and replace them with court-ordered civil fines and other relief to cover the costs of investigation of the violation, removal of medical waste, and reparations to the environment. The Medical Waste Emergency Response Fund currently receives the revenue from administrative fines and would receive the payments for costs. Civil fines would be deposited into the General Fund.

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of violating Part 138 of the Public Health Code, a rule promulgated under Part 138, or a final order pursuant to Part 138. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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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.