FINAL REPORT OF THE LEGISLATIVE COMMITTEE TO STUDY AM. SUB. H.B. 592 OF THE 117TH GENERAL ASSEMBLY

LIBRARY
OHIO LEGISLATIVE
JUN 18 199
SERVICE COMMISSION

May 26, 1993

Ohio House of Representatives

Columbus

TOM ROBERTS
State Representative
1739 Catalpa Drive
Dayton, Ohio 45406
District Office (513) 275-6244
Columbus Office (614) 466-2960
FAX (614) 644-9494

COMMITTEES:
Energy and Environment–Chairman
Aging and Housing
Agriculture and Natural Resou
Children and Youth
Judiciary and Criminal Justice
Solid Waste Management Adv Council

June 8, 1993

Stanley J. Aronoff, President
State House, Senate Building
Columbus, Ohio 43266-0604

Dear President Aronoff:

In accordance with the charge set forth for the Legislative Committee to Study Am. Sub. HB 592 of the 117th General Assembly, enclosed is the final report of the Committee's recommendations. These address continuation or modification of funding for solid waste management districts and the authority of districts to designate facilities for the transfer, disposal, recycling, and resource recovery of solid wastes.

In light of the difficult issues before the committee and the reality that consensus among members could not be reached on all issues, an "addendum" was incorporated into the report.

On behalf of the committee, we would like to express our appreciation for the opportunity to revisit Ohio's solid waste laws. We appreciate your patience in this process and look forward to working with you along with the 120th General Assembly in implementing the enclosed recommendations.

Respectfully submitted,

Tom Roberts
TOM ROBERTS
State Representative
39th House District

Gary Suhadolnik
GARY SUHADOLNIK
State Senator
24th Senate District

Enclosure

LIBRARY
OHIO LEGISLATIVE
JUN 18 199
SERVICE COMMISSION

I. Introduction

Sub. H.B. 723 of the 119th General Assembly established the Legislative Committee to Study Am. Sub. H.B. 592 of the 117th General Assembly and charged the committee with considering issues dealing with funding of solid waste management districts, flow control, and funding for the Division of Solid and Infectious Waste Management in the Environmental Protection Agency. The legislation required the committee to submit a report to the Speaker of the House of Representatives and the President of the Senate by April 30, 1993.

During the course of nine hearings from March through May, 1993, the committee heard testimony from numerous parties involved in the management of solid wastes, including the Division of Solid and Infectious Waste Management, solid waste management districts, counties and municipal corporations, local boards of health, the solid waste management industry, and generators of solid wastes. The witnesses discussed the issues delineated in Sub. H.B. 723 and brought additional issues before the committee.

On May 10, 1993, the committee issued an interim report that briefly discussed all of those issues and listed the various proposals before the committee concerning them. This final report contains the committee's recommendations regarding the issues on which the committee was able to reach consensus, a brief discussion of the only issue specified in Sub. H.B. 723 on which the committee could not reach consensus, and a description of those issues concerning which the committee did not make recommendations and the reasons why.

II. Issues Delineated in Sub. H.B. 723

A. Funding for solid waste management districts that are net importers of solid wastes

Under existing law, solid waste fees to fund solid waste management districts may be levied on the disposal of solid wastes in accordance with a formula that allows for the lowest fee on in-district wastes (Tier I), a higher fee on out-of-district, but in-state wastes (Tier II), and the highest fee on out-of-state wastes (Tier III). The amounts of fees established by districts around the state vary. Also, districts that are net importers of wastes can realize substantial revenues because of the greater volumes of wastes disposed of in those districts. In addition, a proposed settlement to a challenge of the constitutionality of the Tier III fees provides that fees on out-of-state wastes could not exceed those on in-district wastes.

The committee recommends the following:

1. The existing statutory formula for Tier I and Tier II fees should be replaced with the following schedule:

Waste Imports (tons/year)	In-District Disposal Fee	Out-of-District Disposal Fee
Less than 50,000	$1.00 to $2.00	$2.00 to $4.00
50,000 or more	$0.75 to $1.75	$1.50 to $3.50

2. The technical advisory council in each district should be required to review the fees and make recommendations concerning them to the district's solid waste management policy committee before they are submitted for approval to the political subdivisions in the district (see below).

3. In order to implement the terms of the settlement agreement with regard to the Tier III fee, the statute should be amended not later than June 30, 1993, to provide that not later than 45 days after the effective date of the enabling legislation, a district's fee on the disposal of out-of-state wastes cannot exceed its fee on in-district wastes, that is, its Tier I fee.

4. The current statutory limitation on the use of moneys from the Tier III fee to implementation of an inspection program for out-of-state wastes should be removed, thus allowing districts to spend moneys that currently are in escrow as a result of the court case for any of the statutorily authorized purposes for which district disposal fees may be spent.

5. The statute specifically should authorize districts to establish disposal fees by contract with solid waste disposal facilities.

B. Funding for districts that are net exporters of solid wastes

Districts that have little or no disposal capacity are unable adequately to fund the implementation of their solid waste management plans. Existing law establishes limited funding mechanisms to assist them.

The committee recommends the following:

1. Solid waste management districts should be authorized to levy a fee on wastes generated in the districts. The statute should not establish a cap on such a fee, but it should be amended to require, rather than authorize as in existing law, a district to establish a technical advisory council; specifically

include representatives of industry on the council, including commercial generators, industrial generators, and institutional generators, and include at least one representative of municipal corporations and townships that are not represented on a district's policy committee; and require the council to review the generation fee and make recommendations concerning it to the district's solid waste management policy committee before it is submitted for approval to the political subdivisions in the district.

C. Funding for districts with EPA-prepared plans

Under existing law, districts whose solid waste management plans are prepared by the EPA because of the districts' failure either to prepare or obtain ratification of their plans are precluded from levying disposal fees. They have no revenues with which to implement the plans. They also are precluded from adopting certain rules that districts with their own plans are authorized to adopt.

The committee recommends the following:

1. Those districts should be authorized to levy fees, but be required to reimburse EPA for its expenses in preparing their plans and to submit their proposed expenditures to EPA for approval. Existing law with regard to their rule-making authority should be retained.

D. Flow control

Existing law prohibits anyone, including political subdivisions, from delivering solid wastes generated within a district to any facility not designated in the district's solid

waste management plan. Upon the request of a person or the legislative authority of a municipal corporation or township, the board of county commissioners, directors, or trustees of the district may grant a waiver from the designation. Controversy exists concerning the ability of districts to manage their disposal capacity through this mechanism versus a free market for industry.

After much deliberation, the committee was unable to reach a consensus on any recommendations concerning this issue. However, because the committee believes that the issue will be revisited by the legislature at some point in the future, the committee wishes to include in this report a brief discussion of the various proposals it considered when discussing this issue. They include:

1. Repealing the authority for districts to designate facilities;

2. Retaining existing law with no changes;

3. Retaining existing law, but establishing a procedure for appeal to EPA if a waiver is denied;

4. Clarifying and simplifying the audit procedure;

5. Retaining the authority for districts to designate facilities only with regard to publicly financed facilities in order to retire public debt;

6. Retaining the basic authority for designation, but modifying it to grandfather existing contracts, make future designation a two-step process with a separate vote of a district's board of county commissioners, directors, or trustees

as the second step, and implement designation to any private facility through public bidding;

7. Adding to proposal #6 specified standards with which districts must comply when designating facilities;

8. Requiring that designated facilities be best available technology facilities.

E. Funding for the Division of Solid and Infectious Waste Management

Currently, the Division receives its funding through a GRF appropriation. Because the Division sees a need for increased funding in order to carry out its statutory mandates, EPA proposed in its budget request for the next biennium that in lieu of a GRF appropriation, an additional solid waste disposal fee of 90¢ per ton be levied to fund the Division. The House-passed version of the biennial appropriations bill reduced that fee to 50¢ per ton, delayed its initial collection to January 1, 1994, and sunsetted the fee on June 30, 1996.

The committee recognizes that this issue should continue to be addressed in the biennial appropriations process, which is occurring at the time this report is issued, and thus is not making a separate recommendation concerning it.

III. Additional issues brought before the committee

A. State disposal fee and court settlement

Existing law levies a state disposal fee of 70¢ per ton on the disposal of in-district wastes, $1.20 per ton on the disposal of out-of-district, but in-state wastes, and $1.70 per ton on the disposal of out-of-state wastes. The constitutionality of the out-of-state fee was challenged, and the proposed settlement

agreement discussed above provides for a flat state disposal fee and stipulates that it must be enacted by June 30, 1993.

The EPA informed the committee that it will be seeking the necessary statutory changes in the biennial appropriations bill. The committee agrees that this is the appropriate mechanism for addressing the issue and thus is not making a separate recommendation concerning it.

B. Legislative oversight

The committee recognizes that the implementation of Am. Sub. H.B. 592 of the 117th General Assembly and subsequent legislation is an evolving process with many unanswered questions concerning issues such as funding and disposal capacity. The committee believes that periodic review of solid waste management in this state by the General Assembly is necessary in order to address concerns as they arise during that evolving process.

The committee recommends the following:

1. The standing committees of the General Assembly that deal with environmental matters should be required statutorily to conduct an annual review of solid waste management in this state.

C. Other issues

As stated above and identified in the interim report, numerous other issues were brought before the committee, including funding for and duties of local boards of health, districts' programs with regard to household hazardous waste, and authorization for the EPA to disapprove a permit application for a solid waste facility unless the facility is necessary to meet Ohio's disposal needs. In order to expedite its response to the

specific issues identified in Sub. H.B. 723, the committee has chosen not to include recommendations concerning those other issues in this report. However, it anticipates that those issues will be discussed again during the annual legislative review recommended above.

Respectfully submitted,

Gary C. Suhadolnik

Gary C. Suhadolnik, co-chairman

Tom Roberts

Tom Roberts, co-chairman

M. Ben Gaeth - with * addendum only Include all fees in Budget

M. Ben Gaeth

Dwight Wise *

Dwight Wise

Jan Michael Long

Jan Michael Long

Joan W. Lawrence *

Joan W. Lawrence

* SEE ATTACHED ADDENDUM

ADDENDUM

Those members of the study committee who have signed this addendum support the final report of the committee only if all of the following provisions are proposed for inclusion in Am. Sub. H.B. 152, the biennial appropriations bill currently being considered by the 120th General Assembly:

1. Replacing the existing statutory formula for Tier I and Tier II disposal fees levied by solid waste management districts with the schedule specified in part II.A.1. of the final report;

2. Authorizing districts to establish disposal fees by contract with solid waste disposal facilities;

3. Authorizing districts to levy a fee on wastes generated in the districts;

4. Authorizing districts with EPA-prepared plans to levy fees, but requiring them to reimburse EPA for its expenses in preparing their plans and to submit their proposed expenditures to EPA for approval;

5. Correcting a timeline discrepancy contained in Sub. H.B. 723 of the 119th General Assembly with regard to the one-time opportunity for district reconfiguration.

The members who have signed this addendum are requesting the staff of the Legislative Service Commission to prepare an amendment to Am. Sub. H.B. 152 containing all of the above provisions.

Gary C. Suhadolnik, co-chairman

Tom Roberts, co-chairman

M. Ben Gaeth

Dwight Wise

Jan Michael Long

Joan W. Lawrence