



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



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

Senate Bills 941 and 942 (as introduced 5-15-14)
Sponsor: Senator Mike Kowall (S.B. 941)
Senator Tom Casperson (S.B. 942)
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 9-10-14

CONTENT

Senate Bill 941 would amend Part 169 (Scrap Tires) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require a person to obtain the consent of the owner or operator of a site authorized to receive scrap tires in order to deliver tires to the site.
- Exclude from the definition of "collection site" a community site owned by a local unit of government or nonprofit organization that received a grant for scrap tire cleanup.
- Allow a written agreement between the owner and operator of a scrap tire collection site to require the operator, rather than the owner, to maintain a bond required by the Department of Environmental Quality (DEQ).
- Expand the purposes for which the DEQ may use a collection site bond.
- Exempt a collection site operator from the bond requirement based on the criteria that apply to a site owner.
- Specify that a collection site owner or operator who violated requirements to limit mosquito breeding would be responsible for a State civil infraction, and could be ordered to pay costs in addition to a fine.
- Allow the owner or operator of a collection site that was also a portable shredding operation to submit a single registration application covering both.
- Provide that scrap tires managed in compliance with Part 169 would be exempt from regulation as solid waste under Part 115 (Solid Waste Management) of NREPA.
- Establish a \$200 application fee for a scrap tire hauler's annual registration with the DEQ.
- Require a scrap tire hauler to maintain a \$10,000 bond in favor of the DEQ, unless the hauler were owned and operated by a scrap tire processor.
- Establish provisions regarding the payment of interest on a bond to a scrap tire hauler.
- Prescribe the purposes for which the DEQ could use a bond paid by a scrap tire hauler.
- Require a person who arranged for the removal of scrap tires from his or her property to notify the DEQ of any missing record of information from a scrap tire hauler.
- Prohibit a consumer who purchased replacement tires at a commercial business from retaining the replaced tires unless he or she signed documentation of the retention, upon the retailer's request.
- Increase from 11 to 12 the number of full-time equated positions that may be funded with money from the Scrap Tire Regulatory Fund.

- **Eliminate a \$500,000 annual cap on certain scrap tire cleanup grants.**
- **Prohibit a person from intentionally engaging in the open burning of a scrap tire.**
- **Make it a felony to make a false statement or entry in a registration application, scrap tire transportation record, or grant application, and prescribe penalties.**
- **Provide that the driver of a vehicle used to transport scrap tires in violation of Part 169 would be presumed responsible for the violation.**
- **Authorize the DEQ or a law enforcement officer to search a vehicle without a warrant, if there were probable cause to believe that a person was violating Part 169.**
- **Provide that a vehicle used in a criminal violation of Part 169 would be subject to seizure and forfeit.**
- **Refer to a law enforcement officer rather than a peace officer in a number of provisions.**
- **Authorize the DEQ to promulgate rules to implement Part 169.**

Senate Bill 942 would amend the Code of Criminal Procedure to include in the sentencing guidelines the felony proposed by Senate Bill 941, as well as a violation of Part 201 (Environmental Remediation) involving substantial endangerment to the public.

Senate Bill 942 is tie-barred to Senate Bill 941.

Senate Bill 942

Authorized Scrap Tire Site

A person may deliver a scrap tire only to one of the following that is in compliance with Part 169:

- A registered collection site.
- A location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site.
- A disposal area licensed under Part 115.
- An end-user.
- A scrap tire processor.
- A retailer.

The bill specifies that a person could deliver a scrap tire to an authorized site only with the consent of the site's owner or operator.

("Scrap tire processor" means either of the following:

- A person who is authorized by Part 169 to accumulate scrap tires and who is engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.
- A portable shredding operation (i.e., a person who operates scrap tire shredding equipment that produces a commodity or tire shreds and that can be moved from site to site).

"End-user" 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 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 them and converts them into a product that is sold in the market or reused in an authorized manner.

"Commodity" means 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 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.

"Retailer" means a person who sells or offers for sale new, retreaded, or remanufactured tires to consumers in Michigan.)

Collection Site

Definition. "Collection site" means a site consisting of a parcel or adjacent parcels of real property where any of the following are accumulated:

- At least 500 scrap tires, except as otherwise provided.
- At least 1,500 scrap tires, if the property is owned or leased by and associated with the operations of a retailer that is not also an automotive recycler.
- At least 2,500 scrap tires if the property is owned or leased by and associated with the operations of an automotive recycler.

A licensed disposal area, a racecourse, and a feed storage location are not considered collection sites. The bill also would exclude a community cleanup site. "Community cleanup site" would mean a site owned by a local unit of government or nonprofit organization that received a scrap tire cleanup grant (described below) and used the site for the purpose of collecting scrap tires from residents as part of a community cleanup day or resident drop off.

"Racecourse" means a commercially operated track for go-carts, off-road recreational vehicles, motorcycles, or other vehicles that uses not more than 3,000 scrap tires for bumpers along the track for safety purposes. Under the bill, the track also would have to store the scrap tires at a bonded and registered collection site between races.

Transport of Scrap Tires. Part 169 prohibits a person from arranging for the removal of scrap tires except with one of the following:

- A scrap tire hauler that is registered with the DEQ and that is obliged to deliver the tires to an authorized destination identified in a record maintained by the hauler.
- If the scrap tires are a commodity, a person hauling only a commodity.
- If the scrap tires are tire casings, a retreader hauling only tire casings.
- A solid waste hauler.

The bill provides that the driver of a vehicle used to transport scrap tires would be presumed to be responsible for any scrap tires transported, discarded, or disposed of from the vehicle in violation of these provisions. In a proceeding for a violation committed using a vehicle, it would be presumed that the vehicle's registered owner at the time of the violation or, if the registered owner were not an individual, the register owner's agent, was the driver at the time of the violation. If the vehicle were leased at the time of the violation, it would be presumed that the lessee or, if the lessee were not an individual, the lessee's agent was the driver at that time.

Bond. Subject to certain exceptions, Part 169 requires a person who owns a collection site to maintain a bond in favor of the DEQ. The amount of the bond must be not less than the sum of \$25,000 per quarter acre of outdoor tire storage area, and \$2 per square foot of tire storage area in a building. For collection sites with fewer than 2,500 tires, the bond may not exceed \$2,500.

Under the bill, if a collection site registration application included a written agreement between the owner and the operator of the collection site that required the operator to maintain the bond, and the DEQ approved that requirement, the operator would have to maintain the bond. If the operator were required to maintain the bond but failed to do so, both the owner and the operator would be responsible for the violation.

The DEQ may use a required bond for the costs of any of the following:

- Removing scrap tires from a collection site.
- Cleanup at the collection site.
- Fire suppression or otherwise responding to a fire or an emergency at a collection site.

The bill also would allow the DEQ to use a bond for the costs of bringing the collection site into compliance with Part 169. In addition, the costs of responding to a fire or other emergency would include reimbursement to any local unit of government that incurred those costs.

Part 169 also authorizes the DEQ to use a bond if any of the following apply:

- There is an emergency at the site.
- The site owner becomes insolvent.
- The owner or operator fails to comply with the requirements of Part 169 regarding placement and storage of scrap tires and does not have the tires removed at the direction of a court.

The bill would refer to the direction of the DEQ or a court in the last condition.

The owner of a collection site is exempt from the bond requirement if all of the following conditions are met:

- The owner is a scrap tire processor.
- At least 75% of the scrap tires, by weight or volume, that are stored at the site each year are recycled or used for resource recovery during that year.
- The collection site has been in compliance with the storage requirements for at least one year.
- The owner annually certifies compliance with the exemption conditions.

Under the bill, the operator of a collection site also would be exempt under these conditions.

If the DEQ determines that the collection site owner is not in compliance with the requirements for a bond exemption, the DEQ must give the owner a notice of noncompliance. If the owner does not bring the site into compliance within 60 days after receiving the notice, the owner must obtain the required bond. Once an owner is required to obtain a bond, it must be maintained unless the owner brings the site into compliance with the conditions for the exemption.

Under the bill, these provisions would apply to the owner or the operator of the collection site.

In addition, if a scrap tire processor maintained its collection site in compliance with the bond exemption conditions for five years, the processor could move its operation to a new collection site location and remain exempt from the bond requirement as long as the processor continued to comply.

Mosquito Breeding Prevention. Part 169 requires a collection site owner or operator to ensure that the tires are maintained in a manner that limits the potential of mosquito breeding, by doing one or more of the following:

- Covering the tires with plastic sheets or other impermeable barriers to prevent the accumulation of precipitation.
- Chemically treating the tires to eliminate mosquito breeding.
- Baling, shredding, or chipping the tires into pieces not larger than four inches by six inches and storing them in piles that allow complete water drainage.

A person who violates this requirement is responsible for payment of a maximum civil fine of \$400. Under the bill, the person would be responsible for a State civil infraction and could be ordered to pay the fine, plus costs.

Registration. A collection site or portable shredding operation must submit to the DEQ on an annual basis an application for registration and a \$200 registration fee, which the Department must submit to the State Treasury to be credited to the Scrap Tire Regulatory Fund. Under the bill, if a person who owned or operated a collection site also were a portable shredding operation, the person could submit a single application covering both.

The bill would require the application to include the signature of the applicant and, if the applicant were not the owner of the real property, the signature of the owner.

Solid Waste Regulation

The bill provides that scrap tires managed in compliance with Part 169 would be exempt from regulation as solid waste under Part 115 (Solid Waste Management). Scrap tires that were not managed in compliance with Part 169 would be regulated as solid waste under Part 115, in addition to being regulated under Part 169.

Scrap Tire Hauler

Annual Registration. Part 169 requires a scrap tire hauler to submit to the DEQ an annual application for registration. Under the bill, the application would have to be accompanied by a \$200 fee, which would have to be deposited in the Scrap Tire Regulatory Fund. The application would have to include documentation that the scrap tire hauler was bonded for the registration period (as described below).

When transporting scrap tires, a scrap tire hauler must have in his or her possession a copy of the current unexpired registration and present it upon demand of a peace officer. The bill would refer to the DEQ or a law enforcement officer rather than a peace officer.

The registration number issued by the DEQ must be visibly displayed on a vehicle transporting scrap tires. The bill would require the number to be in block-style numerals at least two inches high and located on the driver's side door, in a contrasting color.

Bond. The bill would require a scrap tire hauler to maintain a \$10,000 bond in favor of the DEQ, unless the hauler were owned and operated by a scrap tire processor in compliance with Part 169.

A person who elected to use a certificate of deposit as a bond would have to receive any accrued interest on it. If cash were posted as a bond, interest would have to accrue on the bond quarterly, at the annual rate of 6%, except that the interest rate payable to the hauler could not exceed the rate of interest accrued on the State Common Cash Fund for the quarter in which accrual was determined. Interest would have to be paid to the scrap tire hauler upon the DEQ's release of the bond. Any interest greater than 6% would have to be deposited into the Fund.

The DEQ could use a scrap tire hauler bond for the costs of any of the following:

- Removing scrap tires accumulated by the hauler.
- Removing scrap tires deposited at an illegal location by the hauler.
- Bringing scrap tires accumulated or deposited by the hauler into compliance with Part 169.
- Cleanup of scrap tires accumulated or deposited by the hauler.
- Fire suppression or other costs associated with responding to a fire or other emergency involving the hauler or an associated site of scrap tire accumulation, including reimbursement to any local unit of government that incurred those costs.

The DEQ also could use a bond if any of the following applied:

- There was an emergency involving the scrap tire hauler or an associated site of scrap tire accumulation.
- The scrap tire hauler became insolvent.
- The owner or operator of the hauler failed to comply with the applicable registration, transportation, and record-keeping requirements and did not have the tires removed at the direction of the DEQ or a court.

Removal of Scrap Tires

Under Part 169, a person, other than a property owner removing a maximum of seven scrap tires from his or her property, who arranges for the removal of scrap tires from property under his or her control, including an end-user, must maintain at the site of removal the record obtained from the scrap tire hauler and the record received from an owner, operator, or authorized agent of the location that accepts the tires (described below).

Under the bill, instead, if a complete record were not obtained from the hauler or from an owner, operator, or authorized agent of the location that accepted the tires, a person who arranged for the removal of scrap tires from property under his or her control promptly would have to notify the DEQ of the missing record or information.

The bill would eliminate the exemption for a property owner removing seven or fewer scrap tires from his or her property.

Receipt of Scrap Tires

A person, other than a solid waste hauler or a scrap tire hauler, who receives scrap tires, including an end-user, must maintain a record of all scrap tires received from a hauler. The bill would eliminate the exemption for a solid waste hauler or scrap tire hauler.

Upon delivery of scrap tires by a scrap tire hauler to an authorized location, the owner, operator, or authorized agent of that location must sign the record, and provide a copy to the person delivering them. Under the bill, this would be required upon acceptance of scrap tires at an authorized location, rather than upon delivery of scrap tires by a scrap tire hauler.

Also, within 30 days, the owner, operator, or authorized agent of the location must forward a copy of the signed record to the person who arranged for the removal of the tires being delivered. Under the bill, instead the owner or operator of the location would have to send a copy within 30 days to the person indicated on the record as the generator of the scrap tires. The bill would require the generator to reconcile any discrepancy in the number of the scrap tires between this copy and the record obtained from the registered scrap tire hauler.

Retention of Scrap Tires

The bill would prohibit a consumer who purchased replacement tires at a commercial business from retaining the tires being replaced unless, upon the retailer's request, the consumer signed an invoice, receipt, or scrap tire transportation record acknowledging retention of the tires.

Scrap Tire Regulatory Fund

The bill specifies that the DEQ would be the administrator of the Scrap Tire Regulatory Fund for auditing purposes.

The purposes for which Fund money may be used, upon appropriation, include the DEQ's administrative costs associated with Part 169, including implementation and enforcement. The maximum number of full-time equated positions that may be funded with the money is 11. The bill would increase this to 12.

Fund money also may be used, upon appropriation, for the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. This money may be spent for either or both of the following:

- Up to \$500,000 each year for grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires.
- For grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use for scrap tires.

The bill would eliminate the \$500,000 annual cap on the first set of grants. The bill also would allow Fund money to be spent on costs associated with enforcement of Part 169, including grants to local law enforcement agencies.

In addition, if a grant were awarded for collecting scrap tires at a community cleanup site, the tires would have to be removed from the site by the time specified in the grant contract.

False Statement or Entry

Under the bill, a person who knowingly made or caused to be made a false statement or entry in a registration application, scrap tire transportation record, or grant application would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of not less than \$2,500 or more than \$10,000.

Search & Seizure

Part 169 authorizes the DEQ to enter at reasonable hours a tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires are or have been present, and to inspect the location for the purposes of enforcement or administration. An investigation or inspection must comply with the U.S. Constitution and the State Constitution.

Also, under the bill, if the DEQ or a law enforcement officer had probable cause to believe that a person was violating Part 169, the Department or officer could search without a warrant a vehicle or other transportation-related equipment that the person possessed, used, or operated.

A vehicle or other transportation-related equipment used in a criminal violation of Part 169 would be subject to seizure by a law enforcement officer and forfeiture as provided in the Revised Judicature Act.

The court could award court costs and other expenses of litigation, including attorney fees, to a party who successfully brought an action for a violation of these provisions.

Senate Bill 942

The bill would include in the sentencing guidelines the felony proposed by Senate Bill 941, knowingly making or causing to be made a false statement or entry in a registration application, scrap tire transportation record, or grant application under Part 169. The offense would be a Class G felony against the public trust with a statutory maximum of two years in prison.

The bill also would include in the sentencing guidelines a specific violation of Part 201 (Environmental Remediation) of NREPA. Part 201 pertains to the cleanup of sites contaminated by the release of hazardous substances. Under that part, a person who does any of the following is guilty of a felony and must be fined at least \$2,500 and not more than \$25,000 for each violation:

- Knowingly releases or causes a release contrary to applicable Federal, State, or local requirements or contrary to any permit or license held by that person, if the person knew or should have known that the release could cause personal injury or property damage.
- Intentionally makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Part 201.
- Intentionally renders inaccurate any monitoring device or record required to be maintained under Part 201.
- Misrepresents his or her qualifications as an environmental consultant or a member of the Response Activity Review Panel under Part 201.

If the court finds that the defendant's action poses or posed a substantial endangerment to public health, safety, or welfare, the court must impose an additional fine of at least \$1.0 million and an additional sentence of five years' imprisonment. Under the bill, substantial endangerment would be included in the sentencing guidelines as a Class E felony against public safety with a statutory maximum of five years in prison.

MCL 324.16901 et al. (S.B. 941)
777.13c (S.B. 942)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have a minor, but positive fiscal impact on the Department of Environmental Quality, an indeterminate, but negative fiscal impact on the Department of Corrections, and a potentially positive fiscal impact on local units of government. Senate Bills 941 would make various changes to the regulations regarding the handling of scrap tires. For the most part, these changes would not have a significant fiscal impact on the operations of the program by the DEQ, with a few exceptions as discussed below.

The bill would create a \$200 fee for applications for registration of scrap tire handlers. Approximately 220 of these applications are currently received, meaning the fee would generate about \$44,000 annually. The bill specifies that revenue from these fees would be deposited in the Scrap Tire Regulatory Fund, from which money may be spent according to statute upon appropriation. The Fund currently collects approximately \$4.0 million from all revenue sources annually.

The bill also would expand the allowable uses of the Scrap Tire Regulatory Fund to include grants to local law enforcement agencies for enforcement of scrap tire regulations, and would increase the number of full-time equated (FTE) positions that may be supported by the Fund from 11 to 12. There are currently 8.5 FTEs supported using this Fund source. These changes would not bind the DEQ to issue new grants or hire additional staff. Under current law, the Fund may be used for the following purposes: administrative costs for both the DEQ and Secretary of State as they relate to enforcement and implementation of scrap tire regulations, cleanup and collection of abandoned scrap tires, and grants for the purchase of scrap tires for the purpose of developing markets for them.

The bill would create a requirement for scrap tire haulers to maintain a \$10,000 bond in favor of the DEQ, which the DEQ would be allowed to use to cover the costs of remedying certain conditions that could result from a violation of scrap tire regulations. To the extent that the DEQ currently has to absorb these costs or seek a remedy in court, this change would have an indeterminate, but positive fiscal impact on the DEQ. A hauler who elected to use cash as a bond would be allowed to collect up to 6% interest on that bond, depending on the interest earned on State common cash in a given year. Interest in excess of 6% would be deposited in the Fund. It is unlikely that this change would generate revenue in the near future, as interest rates are low and returns on common cash have not come close to exceeding 6% in a number of years.

From the standpoint of local units of government, the bill would allow the DEQ to issue grants for community cleanup sites, which would cover local costs related to operating programs for area residents to dispose of scrap tires. To the extent that local units already have this type of program, the bill would have a positive fiscal impact as related costs could be reimbursed through grants. On the other hand, if local units do not currently have community cleanup sites, the bill would have a neutral fiscal impact as the grants would cover new program costs that the local units do not currently incur.

The bills would create a felony offense for making a false statement or entry in regard to a scrap tire transportation record, and include the offense in the sentencing guidelines. For new felony sentences for convictions under the bills, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. The fiscal cost to local government, if any, would be additional resources required by the court and jail systems. Additionally, as Senate Bill 941 would designate a collection site owner's or operator's failure to limit mosquito breeding as a State civil infraction, the fine revenue would be constitutionally dedicated to public libraries.

Fiscal Analyst: John Maxwell
Josh Sefton

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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.