

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 2169 - SB 2228

April 13, 2016

CORRECTED SUMMARY OF BILL: Clarifies that arrangers of recyclable material, which are excluded from liability under the federal Superfund Recycling Equity Act (SREA), are also excluded from the list of liable parties specified under the Hazardous Waste Management Act (HWMA) of 1983.

ESTIMATED FISCAL IMPACT:

On February 15, 2016, a fiscal note was issued estimating a fiscal impact as follows:

Other Fiscal Impact - To the extent any arranger becomes exempt from liability in the future pursuant to the exclusion granted by the bill, there would be an increase in state expenditures from the Hazardous Waste Remedial Action Fund reasonably estimated to exceed \$100,000 per hazardous substance site. Otherwise, the fiscal impact of the bill is considered not significant.

Based on additional information provided by the Department of Environment and Conservation, the summary and assumptions have been modified to more accurately reflect the impact of the proposed legislation. The revised estimated impact is as follows:

(CORRECTED)

Other Fiscal Impact – A decrease in state expenditures associated with enhanced cost recovery and with the reduction of the number of entities investigated to determine liability for hazardous substance sites creation, and cost avoidance associated with increased compliance with federal, state, and local environmental laws and regulations by such entities. Due to multiple unknown factors, the amount and timing of any such decrease in state expenditures from the Hazardous Waste Remedial Action Fund and cost avoidance from the fund cannot be quantified with reasonable certainty. As of June 30, 2015, the fund had a balance of \$3,510,100.

HB 2169 - SB 2228 (CORRECTED)

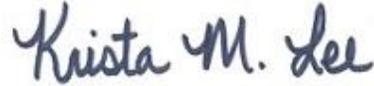
Corrected Assumptions:

- Pursuant to Tenn. Code Ann. § 68-212-207, whenever a hazardous substance site is placed on the list of hazardous substance sites, or whenever the Commissioner of the Department of Environment and Conservation otherwise begins to expend money for the investigation, identification, containment or clean-up of a particular site, the Commissioner may issue an order to any liable party assessing that party's apportioned share of all costs expended or to be expended.
- Currently, the HWMA provides requirements for the generation, storage, treatment, and disposal of hazardous waste. Under the HWMA, a liable party is the owner or operator of an inactive hazardous substance site, any person who at the time of disposal was the owner or operator of an inactive hazardous substance site, any generator of hazardous substance who at the time of disposal caused such substance to be disposed of at an inactive hazardous substance site, or any transporter of hazardous substance which is disposed of at an inactive hazardous substance site who, at the time of disposal, selected the site of disposal of such substance.
- The proposed bill specifies that a liable party under the HWMA does not include a person who is exempt from federal liability for offenses regarding hazardous waste under the federal Superfund Recycling Equity Act (SREA).
- Under SREA, arrangers of recyclable material are exempt from liability if such arrangers can demonstrate by a preponderance of evidence that certain specified criteria has been met at the time of a transaction.
- The Department reports that, under current state law, an arranger that can demonstrate by a preponderance of evidence that such criteria has been met at the time of a transaction would not be held liable for any portion of the investigation, identification, containment or clean-up costs of a hazardous substance site.
- Therefore, the proposed bill will not provide additional exclusions from liability to arrangers of recyclable material compared to what is available to them under current law. Any increase in state expenditures is estimated to be not significant.
- The Department further reports that the proposed legislation will aid the Department in the efforts to recover costs at drum recyclers as the bill would clarify the classification of drums and other shipping containers as Resource Conservation Recovery Act Empty, thus establishing that such designation is not, in itself, a liability defense under the HWMA.
- The proposed legislation will streamline the process for the Department for determining liability for certain potentially responsible parties involved in a hazardous substance site. This is estimated to reduce the number of entities that the Department will investigate, potentially resulting in a recurring decrease in state expenditures related to such investigations.
- Finally, the proposed legislation will also encourage arrangers of recyclable material and by other parties involved in such transactions to comply with substantive provisions of federal, state, and local environmental laws and regulations. As a result of such increased compliance, it is estimated that the number of future hazardous substance sites and the extent of funding required for cleanup of such sites will decrease, thus reducing the expenditures that the state would incur under current law.

- Due to multiple unknown factors, the timing and amount of any such decrease in state expenditures realized by enhanced cost recovery and by streamlining of the investigative process, or any cost avoidance realized as a result of increased business compliance cannot be quantified with reasonable certainty.
- In FY14-15, total revenue in the Hazardous Waste Remedial Action Fund was \$9,703,427 (\$4,906,204 starting balance + \$4,797,223 revenue collected) and expenditures were \$6,193,288. As of June 30, 2015, the ending balance for the fund was \$3,510,139.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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