

**FINAL
FISCAL NOTE**

Drafting Number: LLS 09-0340
Prime Sponsor(s): Rep. McCann
 Sen. Kopp

Date: June 10, 2009
Bill Status: Signed into Law
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TITLE: CONCERNING INCREASED PENALTY AUTHORITY FOR THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR VIOLATIONS OF SOLID WASTE DISPOSAL LAWS.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue General Fund - Penalties	up to \$150,000	up to \$150,000
State Expenditures		
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill was signed by the Governor and became law on May 21, 2009.		
Appropriation Summary for FY 2009-2010: None.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

The bill makes the following changes to enforcement procedures of the Department of Public Health and Environment (DPHE) related to solid waste disposal:

- ▶ specifies that the DPHE is not required to conduct a hearing before issuing a compliance order, but a person who receives a compliance order may request a hearing through the Department of Personnel and Administration, Office of Administrative Courts;
- ▶ authorizes a compliance order to include an administrative or civil penalty;
- ▶ allows an administrative law judge (ALJ) to grant a motion to stay any portion of a compliance order pending the outcome of a hearing, and specifies factors for the ALJ to consider;
- ▶ allows an ALJ to request an interpretive rule from the Solid and Hazardous Waste Commission, and specifies factors to consider and procedures for the commission to follow; and
- ▶ allows the Solid and Hazardous Waste Commission to waive the requirement that oil and gas exploration and production waste facilities install fabricated liners if certain conditions are met.

The bill also increases the maximum penalty for violations from \$2,000 to \$10,000 per day payable to the county or municipality in which the violation occurred. Likewise, maximum penalties for the failure to comply with an order from the DPHE and the maximum misdemeanor fine penalty for violation of solid waste disposal requirements are increased from \$2,000 to \$10,000. Factors to be used in determining the amount of penalties are also included.

State Revenue

Since the bill increases the maximum penalty for failure to comply with an order from the DPHE and allows administrative penalties, General Fund revenue from penalties is expected to increase. The average amount of penalties assessed for solid waste violations over the past 4 years was \$49,500, but one year no penalties were assessed. Thus, the increase in penalties collected due to HB09-1056 is expected to vary significantly from year to year. Based on the amount and number of penalties assessed in other programs administered by the department with similar penalty structures, increased annual penalty revenue of up to \$150,000 is anticipated.

State Expenditures

No additional state funding is required. The bill shifts proceedings for violations of solid waste disposal regulations from the district courts to the administrative courts. The DPHE is expected to have one ALJ hearing every 3 years. Since costs for ALJ hearings are allocated to each department based on historical usage then adjusted mid-year, any change in costs for the DPHE would be addressed through the annual budget process. In addition, due to the small number of cases, the workload of the Judicial Branch is not significantly impacted.

Local Government Impact

Municipalities and counties may have increased revenue from penalties assessed for violations of solid waste disposal. In addition, local government-owned waste facilities would be subject to increased penalties should they violate DPHE compliance orders.

Departments Contacted

Public Health and Environment
Local Affairs
Law

Personnel and Administration
Judicial