

HOUSE JOINT RESOLUTION NO. 585

Establishing a joint subcommittee to examine the financial assurance requirements for solid waste management facilities.

Agreed to by the House of Delegates, February 7, 1999

Agreed to by the Senate, February 23, 1999

WHEREAS, regulations promulgated by the Virginia Waste Management Board require that owners or operators of solid waste management facilities demonstrate financial assurance for the costs of closure and postclosure care and for corrective action for known releases at their facilities; and

WHEREAS, these regulations should help ensure that funds will be made available to the Commonwealth of Virginia to cover the costs of closure and postclosure care and corrective action in the event that owners or operators of solid waste management facilities are unable or unwilling to pay those costs; and

WHEREAS, these regulations allow owners or operators to use a variety of mechanisms to demonstrate required amounts of financial assurance including trust funds, surety bonds, letters of credit, insurance, financial tests, and corporate guarantees; and

WHEREAS, it appears that some owners or operators of solid waste management facilities have submitted to the Department of Environmental Quality certificates of insurance from pure captive insurance companies, wholly owned insurance subsidiaries that are formed to insure the risks of their parent organizations, to demonstrate financial assurance for closure and postclosure care obligations at their facilities; and

WHEREAS, concern has been raised that the use of pure captive insurance companies might not adequately accomplish transfer of risk because they are held within the same corporate families and share common pools of assets with the companies for which they underwrite coverage; and

WHEREAS, eligibility to use financial test and corporate guarantee mechanisms is based on the ability of owners or operators to demonstrate, on an annual basis, adherence to certain financial criteria; and

WHEREAS, those using the financial test or corporate guarantee might not set aside funds in anticipation of closure, postclosure, and corrective action costs and might not arrange for the payment of such costs by a third party in the event that an owner or operator is unable or unwilling to pay those costs; and

WHEREAS, the use of the financial test and corporate guarantee mechanisms may create an inequitable environment for fair competition between large and small solid waste management businesses; and

WHEREAS, the potential for severe or sudden financial distress on the part of owners or operators raises questions regarding the reliability of pure captive insurance companies, financial tests and corporate guarantees to provide the Commonwealth with funds to cover the costs of closure and postclosure care and corrective action; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to examine the financial assurance requirements for solid waste management facilities. The joint subcommittee shall be composed of 11 members, which shall include 7 legislative members and 4 nonlegislative citizen members as follows: four members of the House of Delegates to be appointed by the Speaker of the House according to Rule 16 of the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; two citizens to be appointed by the Speaker of the House; and two citizens to be appointed by the Senate Committee on Privileges and Elections.

In conducting its study, the joint subcommittee shall evaluate the reliability of each of the various mechanisms that owners or operators of solid waste management facilities in Virginia may use to demonstrate financial assurance, with particular attention to the use of "self-assurance" mechanisms, including insurance coverage provided by pure captive insurance companies and financial tests and corporate guarantees. The joint subcommittee shall make recommendations and provide options for regulatory or legislative actions that would improve the reliability of financial assurance mechanisms.

The direct costs of this study shall not exceed \$5,800.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Department of Environmental Quality. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the

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Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.