

CHAPTER 1045

S.B. No. 963

AN ACT

relating to municipal solid waste management.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that:

- (1) the reduction of municipal solid waste by encouraging affordable alternatives to disposal is an important strategy in state-local waste management policy;
- (2) improving all the municipal solid waste management techniques is necessary to achieve the goal of reducing the municipal solid waste stream;
- (3) waste reduction efforts should focus on waste stream components that are highest in volume;
- (4) a municipal solid waste infrastructure that encourages the reduction of waste through environmentally and economically sound waste management incentives and the use of source reduction, reuse, recycling, composting, and resource recovery processes should be developed;
- (5) flexible and effective means of implementing and enforcing municipal solid waste laws should be provided;
- (6) incentives for businesses to use recycled materials should be created; and
- (7) the actual cost of municipal solid waste disposal should be imposed by municipalities on those that place municipal solid waste in the solid waste stream in order to pay for infrastructure development and to encourage waste reduction from landfills.

SECTION 2. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. Revenue received by the *commission* [department] under Section 361.013 shall be deposited in the state treasury to the credit of the *commission* [department]. At least half the revenue is dedicated to the *commission's* [department's] municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

- (1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

- (2) *conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;*

- (3) provision of technical assistance to local governments concerning solid waste management;

- (4) [(3)] establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

- (5) [(4)] provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

- (6) [(5)] conduct of a statewide public awareness program concerning solid waste management;

- (7) [(6)] provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

- (8) [(7)] conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) *provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments;*

(10) ~~[(8)]~~ creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(11) ~~[(9)]~~ provision of funds for other programs that the *commission* ~~[board of health]~~ may consider appropriate to further the purposes of this chapter.

SECTION 3. Subsections (a), (b), (d), (e), and (f), Section 361.020, Health and Safety Code, are amended to read as follows:

(a) The *commission* ~~[department]~~ shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic ~~[state solid waste]~~ plan for *the reduction of solid waste* ~~[under its jurisdiction. The state agencies shall coordinate the solid waste plans developed].~~

(b) A strategic plan shall~~, for the kinds of waste under the jurisdiction of the agency preparing the plan,~~ identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within *stated* ~~[state]~~ times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 ~~[for the kinds of waste under the jurisdiction of the agency preparing the plan].~~ *A strategic plan shall describe the total estimated generation of solid waste in the state over a five-year and a 10-year period and shall list existing and proposed solid waste management facilities to manage that waste.*

(d) *The commission in developing a comprehensive statewide* ~~[Each agency in preparing its]~~ strategic plan shall:

(1) consult with:

(A) ~~[(1)]~~ the agency's waste minimization, recycling, or reduction division;

(B) *the municipal solid waste management and resource recovery advisory council;*

(C) ~~[(2)]~~ the waste reduction advisory committee; ~~[and]~~

(D) ~~[(3)]~~ the interagency coordinating council; *and*

(E) *local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;*

(2) *hold public hearings in different regions of the state; and*

(3) *publish the proposed plan in the Texas Register.*

(e) A strategic plan shall be updated every two years. *The commission* ~~[Each agency]~~ continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the ~~[department or the]~~ commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

SECTION 4. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0201 to read as follows:

Sec. 361.0201. COMPREHENSIVE MUNICIPAL SOLID WASTE MANAGEMENT STRATEGIC PLAN. (a) The comprehensive municipal solid waste management strategic plan developed under Section 361.020 shall identify the components of the municipal solid waste stream that are highest in volume and shall set priorities according to those findings.

(b) *The plan shall:*

(1) *describe the capacity in the state to manage municipal waste through existing treatment or disposal facilities and identify all existing municipal solid waste management facilities in the state, their capacity, and their projected remaining useful life; and*

(2) *analyze the state's capacity requirements over the planning periods specified in Section 361.020(c).*

(c) *The analysis of capacity requirements under Subsection (b) shall:*

(1) *examine the type and amount of each municipal solid waste stream that can reasonably be expected to be generated in the state or accepted from other states, using information on existing and past levels of waste and representative receipts from other states, and shall include information on the sources, characteristics, and current patterns of waste management of those waste streams; and*

(2) *estimate the amount of the total municipal solid waste identified under this subsection that is reasonably expected to be:*

(A) *recycled annually, according to previous rates and projected increases from those rates;*

(B) *transported annually to another state or imported into this state for treatment or other disposition according to previous rates and projected increases from those rates; and*

(C) *disposed of or incinerated annually within the state.*

(d) *The plan shall set a goal for overall reduction in the amount of municipal solid waste consistent with Section 361.422 using 1991 as the base year for computing the reduction. The commission may adjust this goal if it determines that it is not necessary given the state's disposal capacity, is not economically or technologically feasible, or is not feasible given the state's projected population growth.*

(e) *The plan shall ensure that source reduction, reuse, recycling, composting, and resource recovery are all addressed.*

(f) *The plan shall include a program of public education developed under Section 361.0202.*

(g) *The plan may not allow the commission to require a local government to perform any act not specifically required by state law or commission rule.*

SECTION 5. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0202 to read as follows:

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) *The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:*

(1) *a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and*

(2) *a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.*

(b) *As part of the program, the commission may:*

(1) *advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and*

(2) *sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.*

SECTION 6. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0219 to read as follows:

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) *The office of waste exchange is an office of the commission.*

(b) *The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials and may act as broker for exchanges of the materials if private brokers are not available.*

(c) *The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange and shall report to the legislature on the plan and on the state's participation in any regional or national waste exchange program. Annually the office of waste exchange shall report to the legislature on progress in implementing this section, including information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state.*

SECTION 7. Section 361.0234, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) *The assessments and rules adopted under this section and Section 361.0232 may not be applied retroactively to any application that was declared administratively and technically complete and for which public hearings had commenced before June 7, 1991.*

SECTION 8. Section 361.024, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) *Rules shall be adopted as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.*

SECTION 9. Subsection (a), Section 361.034, Health and Safety Code, is amended to read as follows:

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste; [and]

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) *an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);*

(6) *an evaluation of the progress made by local governments under the solid waste management plans;*

(7) *the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;*

(8) *the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;*

(9) *the status of the public education program described in Section 361.0202; and*

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state.

SECTION 10. Section 361.111, Health and Safety Code, is amended to read as follows:

Sec. 361.111. *COMMISSION SHALL [DEPARTMENT MAY] EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES.* (a) *The commission shall [department may] exempt from permit requirements a municipal solid waste management facility that[;*

(4)] is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

- (1) a municipality [service area] with a population of less than 50,000;*
 - (2) a county with a population of less than 85,000;*
 - (3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or*
 - (4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not further than 50 miles from the materials recovery facility.*
- (b) The facility shall comply [5,000 to a solid waste processing or disposal site; and (2) complies] with design and operational requirements established by commission [board of health] rule that are necessary to protect the public's health and the environment.*
- (c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.*

SECTION 11. Section 363.003, Health and Safety Code, is amended to read as follows:

Sec. 363.003. FINDINGS. The legislature finds that:

- (1) the growth of the state's economy and population has resulted in an increase in discarded materials;
- (2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;
- (3) there is increasing public opposition to the location of solid waste land disposal facilities;
- (4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;
- (5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;
- (6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;
- (7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;
- (8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;
- (9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems; [and]

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and

(12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter.

SECTION 12. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0961 to read as follows:

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

SECTION 13. Section 363.062, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the department on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The department may not require a planning region to submit to the department information previously submitted to the department by the planning region in an earlier plan or report.

(e) If the department determines that a regional solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the planning region of each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval.

(f) [(e)] The board by rule shall adopt an approved regional solid waste management plan.

SECTION 14. Section 363.063, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the department on the progress of its municipal solid waste management program and recycling activities implemented under this section. The department may not require a local government to submit to the planning region or to the department information previously submitted to the planning region or department by the local government in an earlier plan or report.

(e) If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After changes are made in the plan as requested by the department, the department shall submit the plan to the board for approval.

(f) ~~(e)~~ The board by rule shall adopt an approved local solid waste management plan.
 SECTION 15. Section 363.064, Health and Safety Code, is amended to read as follows:
 Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments *and private industry* in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; ~~and~~

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;[.]

(8) ~~(7)~~ establish recycling rate goals appropriate to the area covered by the plan; and

(9) ~~(8)~~ recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) *assess the need for new waste disposal capacity;*

(11) *include a public education program; and*

(12) *include waste reduction in accordance with the goal established under Section 361.0201(d), to the extent that funds are available.*

SECTION 16. The office of waste exchange created by Section 361.0219, Health and Safety Code, as added by this Act, shall adopt the plan required by that section not later than September 1, 1994.

SECTION 17. This Act does not affect the transfer of powers, duties, rights, and obligations made by Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 18. The change in law made by Section 361.024, Health and Safety Code, as amended by this Act, applies to rules in effect on or adopted on or after the effective date of this Act.

SECTION 19. This Act takes effect September 1, 1993.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 11, 1993, by a viva-voce vote; May 29, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 29, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote; May 29, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by a non-record vote.

Filed without signature June 20, 1993.

Effective Sept. 1, 1993.