

HEALTH AND SAFETY CODE CHAPTER 363. MUNICIPAL SOLID WASTE

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 363. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 363.001. SHORT TITLE. This chapter may be cited as the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.002. POLICY. It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

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;

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1045, Sec. 11, eff. Sept. 1, 1993.

Sec. 363.004. DEFINITIONS. In this chapter:

(1) "Advisory council" means the Municipal Solid Waste Management and source Recovery Advisory Council.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of containerized or uncontainerized solid waste or hazardous waste into or on land or water so that the solid waste or hazardous waste or any constituent of solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into surface water or groundwater.

(5) "Governing body" means the governing body of a municipality, the commissioners court, the board of directors, the trustees, or a similar body charged by law with governing a public agency.

(6) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(7) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(8) "Local government" means a county, municipality, or other political subdivision of the state exercising the authority granted under Section 361.165 (Solid Waste Disposal Act).

(9) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, and includes garbage,

rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(10) "Planning fund" means the municipal solid waste management planning fund.

(11) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(12) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to:

(A) neutralize hazardous waste;

(B) recover energy or material from hazardous waste; or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(13) "Property" means land, structures, interest in land, air rights, water rights, and rights that accompany interest in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(14) "Public agency" means a municipality, county, or district or authority created and operating under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of those governmental entities acting under an interlocal agreement and having the authority under this chapter or other law to own and operate a solid waste management system.

(15) "Regional or local solid waste management plan" means a plan adopted by a planning region under Section 363.062 or a

local government under Section 363.063.

(16) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body.

(17) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(18) "Resource recovery system" means real property, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste or convert it to energy or useful matter or resources, including electricity, steam, or other forms of energy, metal, fertilizer, glass, or other forms of material and resources. The term includes real property, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) transporting, receiving, storing, transferring, and handling solid waste;

(B) preparing, separating, or processing solid waste for reuse;

(C) handling and transporting recovered matter, resources, or energy; and

(D) handling, transporting, and disposing of nonrecoverable solid waste residue.

(19) "Solid waste" means garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or

man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(20) "Solid waste management" means the systematic control of any of the following activities:

- (A) generation;
- (B) source separation;
- (C) collection;
- (D) handling;
- (E) storage;
- (F) transportation;
- (G) processing;
- (H) treatment;
- (I) resource recovery; or
- (J) disposal of solid waste.

(21) "Solid waste management system" means a plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated to collect, handle, store, process, recover material or energy from, or dispose of solid waste, and includes sites for those works and equipment.

(22) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the Texas Board of Health, including subsequent amendments by the commission.

(23) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund.

(24) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that result from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.032, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.93, eff. Sept. 1, 1995.

Sec. 363.005. APPLICATION OF CHAPTER. This chapter applies only to solid waste and hazardous waste as described by Sections 361.011 and 361.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.033, eff. Aug. 12, 1991.

Sec. 363.006. CONSTRUCTION OF CHAPTER; EXEMPTIONS.

(a) This chapter does not prohibit or limit a person from extracting or using materials that the person generates or legally collects or acquires for recycling or resale.

(b) Materials that are separated or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.007. STATUTES NOT AFFECTED BY CHAPTER. This chapter does not affect:

- (1) Chapter 361 (Solid Waste Disposal Act);
- (2) Chapter 364 (County Solid Waste Control Act); or
- (3) Chapter 362 (Solid Waste Resource Recovery Financing Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 363.021. COMMISSION RULEMAKING AUTHORITY. The commission may adopt rules necessary to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.022. COMMISSION POWERS AND DUTIES. (a) The

commission shall implement and enforce this chapter.

(b) The commission shall:

(1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out this chapter;

(2) promote planning for and implementation of the recovery of materials and energy from solid waste;

(3) establish guidelines for regional and local municipal solid waste management plans;

(4) review and approve or disapprove regional and local municipal solid waste management plans;

(5) assist the advisory council in its duties;

(6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;

(7) provide procedures under which public agencies and planning regions may apply for financial assistance grants;

(8) evaluate applications and award financial assistance grants in accordance with commission rules; and

(9) coordinate programs under this chapter with other state agencies, including the Railroad Commission of Texas and any other state or federal agency having an interest in a program or project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.023. APPLICATION FOR FEDERAL FUNDS; CONTRACTS AND AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.024. DISBURSEMENT OF FEDERAL FUNDS. (a) The commission may accept and disburse funds received from the federal



government for purposes relating to solid waste management and resource recovery in the manner provided by this chapter and by agreement between the federal government and the commission.

(b) State funds provided to public agencies or planning regions under this chapter may be combined with local or regional funds to match federal funds on approved programs for municipal solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

#### SUBCHAPTER C. ADVISORY COUNCIL

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 18 members appointed by the commission:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

(3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;

(4) an elected official from a municipality with a population of less than 25,000;

(5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;

(6) an official from a municipality or county solid waste agency;

(7) a representative from a private environmental conservation organization;

(8) a representative from a public solid waste district or authority;

(9) a representative from a planning region;

(10) a representative of the financial community;

(11) a representative from a solid waste management organization composed primarily of commercial operators;

(12) two persons representing the public who would not otherwise qualify as members under this section;

(13) a registered waste tire processor;

(14) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities;

(15) a solid waste professional with experience managing or operating a commercial solid waste landfill; and

(16) a person who is experienced in the management and operation of a composting or recycling facility or an educator with knowledge of the design and management of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 3.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.95, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 1, eff. Sept. 1, 1997.

Sec. 363.042. TERMS; VACANCIES. (a) Advisory council members serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) The commission shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications as required under Section 363.041 for the person who previously held the vacated position.

(c) A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only while the person continues to qualify for the category from which the person is appointed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.96, eff. Sept. 1, 1995.

Sec. 363.043. PRESIDENT. (a) The commission chairman shall appoint one member as advisory council president.

(b) The advisory council president serves for a term of two years expiring August 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.97, eff. Sept. 1, 1995.

Sec. 363.044. PAYMENT OF AND REIMBURSEMENT FOR EXPENSES.

(a) Each advisory council member is entitled to compensation and

reimbursement of travel expenses incurred by the member while conducting the business of the advisory council, as provided in the General Appropriations Act.

(b) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.98, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 2, eff. Sept. 1, 1997.

Sec. 363.045. MEETINGS. (a) The advisory council shall adopt and may amend procedures for the conduct of advisory council business.

(b) The advisory council shall hold at least one meeting every three months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.046. DUTIES. The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the executive director and the commission on matters relating to municipal solid waste management;

(3) recommend legislation to the commission to encourage the efficient management of municipal solid waste;

(4) recommend policies to the commission for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants; and

(5) recommend to the executive director special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

SUBCHAPTER D. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS

Sec. 363.061. COMMISSION RULES; APPROVAL OF REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The commission shall adopt rules relating to regional and local solid waste management plans, including procedures for review and criteria for approval of those plans.

(b) The commission by rule shall require as criteria for approval of a regional or local solid waste management plan that the plan reflect consideration of the preference of municipal solid waste management methods under Section 361.022 (Solid Waste Disposal Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

Sec. 363.0615. RESPONSIBILITY FOR REGIONAL PLANNING.

(a) A council of governments has primary responsibility for the regional planning process.

(b) A planning region may be divided into subregions as part of the regional planning process. If a planning region is divided into subregions, the council of governments with jurisdiction in the planning region may assist the local governments constituting a subregion to develop a joint local solid waste management plan that provides for solid waste services for solid waste generated within that subregion.

(c) A council of governments may:

(1) employ personnel necessary to carry out the regional planning process, including an administrator for each subregion if subregions are established; and

(2) adopt rules necessary to carry out responsibilities concerning the regional planning process.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(b),

eff. Sept. 6, 1990.

Sec. 363.0616. PREPARATION OF REGIONAL PLAN BY OTHER PUBLIC AGENCY IN CERTAIN REGIONS. (a) In a 10-county region with a population of less than 300,000, a council of governments is not required to prepare a regional solid waste management plan for that region if a public agency other than a municipality or county has received state funds for that purpose and has prepared a plan that has been approved by the state agency that administered the state funds.

(b) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 267, Sec. 1, eff. June 5, 1991.

Sec. 363.062. REGIONAL SOLID WASTE MANAGEMENT PLAN. (a) A planning region shall develop a regional solid waste management plan as provided by Section 363.0635 that must conform to the state solid waste management plan.

(b) A regional solid waste management plan shall be submitted to the commission for review.

(c) If the commission determines that a regional solid waste management plan conforms to the requirements adopted by the commission, the commission shall consider the regional solid waste management plan for approval.

(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 commission on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The commission may not require a planning region to submit to the commission information previously submitted to the commission by the planning region in an earlier plan or report.

(e) If the commission determines that a regional solid waste management plan does not conform to the requirements adopted by the commission, the commission shall give written notice to the planning region of each aspect of the plan that must be changed to

conform to commission requirements. After the changes have been made in the plan as provided by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved regional solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(a), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.09, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.100, eff. Sept. 1, 1995.

Sec. 363.063. LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A local government shall develop a local solid waste management plan as provided by Section 363.0635.

(b) A local solid waste management plan must conform to the adopted regional solid waste management plan that covers the area in the local government's jurisdiction.

(c) A local solid waste management plan shall be submitted to the commission for review. If the commission determines that the plan conforms to the requirements adopted by the commission, the commission shall consider the plan for approval.

(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 commission on the progress of its municipal solid waste management program and recycling activities implemented under this section. The commission may not require a local government to submit to the planning region or to the commission information previously submitted to the planning region or commission by the local government in an earlier plan or report.

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

(f) The commission by rule shall adopt an approved local solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(c), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.101, eff. Sept. 1, 1995.

Sec. 363.0635. SCHEDULE FOR ADOPTION OF PLANS. (a) The commission shall establish a time schedule by which each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in those planning regions shall develop local solid waste management plans as required by this section.

(b) The time schedule shall be based on the availability of funds to provide financial assistance to planning regions and local governments as prescribed by Sections 363.091 through 363.093 for the development of those plans.

(c) Unless otherwise required by federal law or federal regulations, a planning region or local government is not required to develop a solid waste management plan until after the date on which funds are provided to that planning region or local government by the commission as prescribed by Sections 363.091 through 363.093 for the development of plans.

(d) Each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in that planning region shall develop local solid waste management plans in accordance with the time schedule established by the commission and as provided by this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(d), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.102, eff. Sept. 1, 1995.

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) 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 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;

(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) establish recycling rate goals appropriate to the area covered by the plan;

(9) 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) include an inventory of municipal solid waste



landfill units, including:

- (A) landfill units no longer in operation;
  - (B) the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;
  - (C) a map showing the approximate boundaries of each former landfill unit, if the exact boundaries are not known;
  - (D) the current owners of the land on which the former landfill units were located; and
  - (E) the current use of the land;
- (11) assess the need for new waste disposal capacity;
- and
- (12) include a public education program.

(b) If the boundaries of a municipal solid waste unit that is no longer operating are known to be wholly on an identifiable tract, the council of governments for the area in which the former landfill unit is located shall notify the owner of land that overlays the former landfill unit of the former use of the land and shall notify the county clerk of the county or counties in which the former landfill unit is located of the former use. The notice requirements of this subsection do not apply if the exact boundaries of a former landfill unit are not known.

(c) The county clerk shall record on the deed records of land formerly used as a municipal solid waste landfill a description of the exact boundaries of the former landfill unit, or, if the exact boundaries are not known, the best approximation of each unit's boundaries, together with a legal description of the parcel or parcels of land in which the former landfill unit is located, notice of its former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The county clerk shall make the records available for public inspection.

(d) The municipalities and counties within each council of governments shall cooperate fully in compiling the inventory of landfill units.

(e) Each council of governments shall provide a copy of the inventory of municipal solid waste landfill units to the commission

and to the chief planning official of each municipality and county in which a unit is located. The commission and the officials shall make the inventory available for public inspection.

(f) The commission may grant money from fees collected under Section 361.013 to a municipality or association of municipalities for the purpose of conducting the inventory required by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(e), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 238, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 770, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.103, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.01, eff. Jan. 11, 2004.

Sec. 363.065. PLANNING PROCESS; PLANNING AREA. (a) A regional or local solid waste management plan must result from a planning process that:

(1) is related to proper management of solid waste in the planning area under consideration; and

(2) identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives.

(b) A regional solid waste management plan must consider the entire area in an identified planning region.

(c) A local solid waste management plan must consider all the area in the jurisdiction of one or more local governments but may not include an entire planning region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.066. CONFORMITY WITH REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) On the adoption of a regional or local solid waste management plan by commission rule, public and private solid

waste management activities and state regulatory activities must conform to that plan.

(b) The commission may grant a variance from the adopted plan under procedures and criteria adopted by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(f), eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.104, eff. Sept. 1, 1995.

Sec. 363.067. STUDY REQUIRED FOR RESOURCE RECOVERY OR OTHER SOLID WASTE MANAGEMENT SYSTEMS. (a) To develop programs to implement regional or local solid waste management plans or other solid waste management alternatives that include resource recovery, a study must be made to determine feasibility and acceptance of the programs.

(b) The study shall be conducted in three phases:

- (1) a screening study;
- (2) a feasibility study; and
- (3) an implementation study.

(c) Public agencies that conduct all or part of one or more phases may qualify for assistance to accomplish other phases or parts of phases.

(d) After each phase, the governing body shall determine whether to proceed to the next phase.

(e) A study may not include final design and working drawings of any request for proposals for project facilities or operations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.068. SCREENING STUDY. (a) A screening study must provide a survey and assessment of the various factors affecting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination of whether those systems are potentially successful alternatives to existing systems.

(b) The survey and assessment must include:

- (1) the amount and characteristics of available waste;

- (2) the suitability and economics of existing solid waste management systems;
- (3) institutional factors affecting potential alternatives;
- (4) technologies available;
- (5) identification of potential material and energy markets;
- (6) economics of alternative systems; and
- (7) interest of the local citizenry in available alternatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.069. FEASIBILITY STUDY. A feasibility study must provide an evaluation of alternatives that:

- (1) identifies current solid waste management practices and costs;
- (2) analyzes the waste stream and its availability by composition and quantity;
- (3) identifies potential markets and obtains statements of interest for recovered materials and energy;
- (4) identifies and evaluates alternative solid waste management systems;
- (5) provides an assessment of potential effects of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;
- (6) conducts and evaluates results of public hearings or surveys of local citizens' opinions; and
- (7) makes recommendations on alternatives for further consideration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.070. IMPLEMENTATION STUDY. An implementation study must:

- (1) provide a recommended course of action for a public agency;
- (2) provide for the collection and analysis of data;
- (3) identify and characterize solid waste problems and

issues;

- (4) determine waste stream composition and quantity;
- (5) identify and analyze alternatives;
- (6) evaluate risk elements of alternatives;
- (7) identify and solidify markets;
- (8) make site analyses;
- (9) evaluate financing options and recommend preferred methods of financing;
- (10) evaluate the application of resource recovery technologies;
- (11) identify and discuss potential effects of alternative systems;
- (12) provide for public participation and recommend preferred alternatives; and
- (13) provide for implementation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER E. PLANNING FUND AND TECHNICAL ASSISTANCE FUND

Sec. 363.091. MUNICIPAL SOLID WASTE MANAGEMENT PLANNING FUND. (a) The municipal solid waste management planning fund is in the state treasury.

(b) In addition to money appropriated by the legislature, money received from other sources, including money received under contracts or agreements entered into under Section 363.116, shall be deposited to the credit of the planning fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.092. PLANNING FUND USE; FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS AND PLANNING REGIONS. (a) The executive director shall administer the financial assistance program and the planning fund under the commission's direction.

(b) The commission shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(c) The commission shall use the planning fund to provide financial assistance to:

- (1) local governments and planning regions to develop

regional and local solid waste management plans;

(2) public agencies and planning regions to prepare screening, feasibility, and implementation studies; and

(3) local governments and planning regions for costs of developing and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

(d) The commission shall use at least 90 percent of the money appropriated to it for the planning fund to provide financial assistance, and not more than 10 percent of the total funds appropriated to the commission for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(e) The planning fund may not be used for construction or to prepare final design and working drawings, acquire land or an interest in land, or pay for recovered resources.

(f) The commission by rule shall allocate a specific percentage of money provided under Subsection (c)(1) to be used to develop plans for community household hazardous waste collection programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 238, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.105, eff. Sept. 1, 1995.

Sec. 363.093. APPLICATION FOR FINANCIAL ASSISTANCE.

(a) An applicant for financial assistance from the planning fund must agree to comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission requirements.

(b) The commission may not authorize release of funds under a financial assistance application until the applicant furnishes to the commission a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

(1) the applicant will comply with the financial

assistance program's provisions and commission requirements;

(2) the funds will be used only for the purposes for which they are provided;

(3) regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy; and

(4) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(c) Financial assistance provided by the commission to a public agency or planning region must be matched at least equally by funds provided by the recipient, except that this matching requirement does not apply if the recipient is a council of governments created under Chapter 391, Local Government Code, or a municipality or county.

(d) The priority given to applicants in receiving financial assistance must be determined by:

(1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;

(2) the needs of the state;

(3) the applicant's financial need; and

(4) the degree to which the proposed program will result in improvements that meet the requirements of state, regional, and local solid waste management plans.

(e) The commission may approve an application for financial assistance if:

(1) the application is consistent with the rules adopted by the commission under Section 363.092(b); and

(2) the commission finds that the applicant requires state financial assistance and that it is in the public interest to provide the financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 737, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.106, eff. Sept. 1, 1995.

Sec. 363.094. MUNICIPAL SOLID WASTE RESOURCE RECOVERY APPLIED RESEARCH AND TECHNICAL ASSISTANCE FUND. (a) The

municipal solid waste resource recovery applied research and technical assistance fund is in the state treasury.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The technical assistance fund shall be used to:

(1) accomplish applied research and development studies; and

(2) provide technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(d) The executive director shall administer the technical assistance fund under the commission's direction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.107, eff. Sept. 1, 1995.

#### Sec. 363.095. USE OF TECHNICAL ASSISTANCE FUND.

(a) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission policy requirements.

(b) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided may include:

(1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for those systems;

(2) an evaluation of state of the art waste reduction systems and waste-to-energy systems that include steam generation and electrical production;

(3) establishment and evaluation of a pilot source separation and recycling project;

(4) feasibility studies of appropriate technology that may be applicable to several local governments for the



improvement of solid waste management systems;

(5) cost and economic comparisons of alternative solid waste management systems;

(6) an evaluation of available markets for energy and recovered materials;

(7) an evaluation of the availability of recovered materials and energy resources for new market opportunities; and

(8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(c) The commission may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.108, eff. Sept. 1, 1995.

#### SUBCHAPTER F. LOCAL SOLID WASTE SERVICES AND REGULATION

Sec. 363.111. ADOPTION OF RULES BY PUBLIC AGENCY. (a) A governing body may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

(b) The rules may not authorize any activity, method of operation, or procedure prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules or regulations of the commission or other state or federal agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.109, eff. Sept. 1, 1995.

Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid waste will not be

prohibited.

(b) The ordinance or order must be published for two consecutive weeks in a newspaper of general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.

(c) The governing body of a municipality or county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that municipality or county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(d) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance or order authorized by Subsection (a), unless the governing body of the municipality or county violated Subsection (c) in passing the ordinance or order. The commission by rule may establish procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance or order.

(e) The powers specified by this section may not be exercised by the governing body of a municipality or county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.110, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 4, eff. Sept. 1, 1999.

Sec. 363.113. ESTABLISHMENT OF SOLID WASTE MANAGEMENT SERVICES. Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.114. RESOURCE RECOVERY SERVICE; FEES. (a) A public agency may offer a resource recovery service to persons in its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a resource recovery service, a public agency, after notice and hearing, may suspend service provided by any utility owned or operated by the public agency to a person who is delinquent in payment of those fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.115. TAX EXEMPT STATUS OF CERTAIN RESOURCE RECOVERY SYSTEMS. A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from property taxes of any municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.116. AUTHORITY TO ENTER CONTRACTS CONCERNING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

(b) A home-rule municipality's charter provision restricting the duration of a municipal contract does not apply to a municipal contract that relates to solid waste management services. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.117. SOLID WASTE MANAGEMENT SERVICE CONTRACTS. Under a solid waste management service contract, a public agency may:

(1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems;

(2) contract with a person or other public agency to manage solid waste for that person or agency;

(3) contract with a person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;

(4) contract with a person or other public agency for the operation of all or any part of a solid waste management system, including a resource recovery system;

(5) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;

(6) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:

(A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the public agency a solid waste management system or part of a solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(7) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at a permitted solid waste management

facility, including a resource recovery facility, provided the contract may specify:

(A) the minimum quantity and quality of solid waste to be provided by the public agency; and

(B) the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(8) contract with a person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(9) contract with a person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.118. INDUSTRIAL DEVELOPMENT CORPORATIONS. (a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) If the system is located in the public agency's boundaries, the corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.16, eff. April 1, 2009.

Sec. 363.119. FUNDING SOLID WASTE MANAGEMENT SERVICES.

(a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract

may also be made from revenues of the public agency's solid waste, water, sewer, electric, or gas system or any combination of utility systems.

(d) As a source of payment or as the sole source of payment, a public agency may use and pledge available revenues or resources for and to the payment of amounts due under contracts and may enter into covenants concerning those sources of payment to assure their availability if required.

(e) A public agency may establish, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the public agency, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. The public agency may use and pledge those fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amounts sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or part of the costs of providing solid waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER G. BONDS

Sec. 363.131. AUTHORITY TO ISSUE BONDS. (a) A public agency may issue bonds in the name of the public agency to acquire, construct, improve, enlarge, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.132. TERMS; FORM. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years after the date of issuance and shall bear interest at a rate permitted by state law.

(c) A public agency's bonds and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be:

(1) issued registrable as to principal or as to principal and interest; and

(2) made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner, and under the terms, and shall be signed and executed, as provided by the governing body in the resolution or order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.133. BOND PROVISIONS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body may:

(1) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the physical property of the solid waste management system, the revenue of which is pledged.

(b) In the orders or resolutions authorizing the issuance of bonds, the governing body may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued; and

(2) include other provisions as the governing body may

determine.

(c) The governing body may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.134. APPROVAL AND REGISTRATION. (a) A public agency shall submit bonds issued by the public agency and records relating to their issuance to the attorney general for examination as to their validity. If the bonds are secured by a pledge of proceeds from a contract, the public agency shall submit to the attorney general for examination a copy of the contract and a copy of the records relating to the contract.

(b) If the attorney general finds that the bonds have been authorized and a contract entered into in accordance with law, the attorney general shall approve the bonds, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.135. BOND PAYMENT AND SECURITY. A public agency may pay the principal of and interest on bonds:

(1) from the levy and collection of taxes on all taxable property in the public agency's boundaries if the public agency is authorized by law to levy and collect property taxes;

(2) by pledging all or part of the designated revenues from the ownership or operation of physical property of a solid waste management system, including a resource recovery system, or from a contract entered into by a public agency under this chapter; or

(3) from other income of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.136. BOND ELECTION. Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at



an election ordered for that purpose. A bond election shall be held in the manner provided by law for other bond elections of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.137. OTHER SECURITY. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical property of a solid waste management system, including a resource recovery system, of the public agency and rights appurtenant to that property.

(b) The deed of trust or mortgage lien may give the trustee the power to operate the property, sell the property to pay the debt, or take any other action to secure the bonds. A purchaser at a sale under a deed of trust or mortgage lien is the absolute owner of the property and rights purchased.

(c) Regardless of any deed of trust or mortgage lien under Subsection (a), the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture; and

(3) provide for investment of the public agency's funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.138. BOND SALE AND EXCHANGE. (a) A public agency may sell bonds at a public or private sale at a price and on terms determined by the governing body.

(b) The public agency may exchange its bonds for property or an interest in property that its governing body considers necessary or convenient to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.139. INVESTMENT AND USE OF PROCEEDS. (a) Money may be set aside out of bond proceeds to provide for:

(1) interest to accrue on the bonds;

(2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and

(3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.140. REFUNDING BONDS. (a) A public agency may issue refunding bonds to refund all or part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds:

(1) mature serially or otherwise not more than 50 years after the date of issuance and bear interest at a rate permitted by state law; and

(2) may be payable from the same source as the bonds being refunded or from other additional sources.

(c) Refunding bonds must be approved by the attorney general in the same manner as other bonds.

(d) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the order or resolution authorizing the refunding bonds provides that their proceeds be deposited in the place where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of and interest on the original bonds up to their maturity date or to their option date if the bonds are called for payment before maturity according to their terms.

(e) A public agency may refund bonds in one or several

installments.

(f) Instead of the method provided by this section, a public agency may refund bonds, notes, or other obligations as provided by general law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.141. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.

(a) Public agency bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and

(9) a sinking fund of a municipality, county, school district, or other political subdivision of the state and other public funds of the state, including the permanent school fund.

(b) Public agency bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their value, if accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.142. TAX STATUS OF BONDS. Since a public agency is a public entity performing an essential public function, bonds issued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by a municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.143. FEES FOR SERVICES. (a) While bonds are outstanding, the governing body may adopt and collect fees for services furnished or made available by the solid waste management

system, including a resource recovery system.

(b) The fees must be adequate to provide and maintain the funds created by the resolution authorizing the bonds and to pay:

(1) operational costs or expenses allocable to the solid waste management system, including a resource recovery system; and

(2) the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.144. ADJUSTMENT OF RATES FOR ADEQUATE REVENUE. A public agency shall adopt and adjust the rates charged for solid waste management services so that revenues, together with taxes levied to support the services, will be sufficient to pay:

(1) the expense of operating and maintaining the solid waste management system, including a resource recovery system;

(2) the public agency's obligations under a contract; and

(3) the public agency's obligations under and in connection with bonds issued that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.145. BOND ANTICIPATION NOTES. (a) A public agency may declare an emergency if funds are not available to pay the principal of or interest on the public agency's bonds issued under this chapter.

(b) The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by state law and shall mature within one year of the date of issuance.

(c) The bond anticipation notes may be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of bond anticipation notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.