

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Gibson**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE TITLE  
9 8, CHAPTER 6 TO RENAME REGIONAL SOLID WASTE PLANNING  
10 BOARDS AND SOLID WASTE SERVICE AREA BOARDS AS REGIONAL  
11 SOLID WASTE MANAGEMENT BOARDS AND TO PROVIDE THE BOARDS  
12 ADDITIONAL POWERS AND DUTIES; AND FOR OTHER PURPOSES."

13  
14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

15

16 SECTION 1. FINDINGS OF THE GENERAL ASSEMBLY. The Arkansas General  
17 Assembly makes the following findings:

18 (1) The present landfill capacity in the State of Arkansas is  
19 inadequate and is at or near the critical point;

20 (2) As of July 30, 1990, the capacity in Arkansas was about 4.3 years  
21 of landfill life for 63 municipal solid waste landfills;

22 (3) Adequate solid waste management planning is not possible at the  
23 present time because of the lack of accurate statistics on industrial landfill  
24 capacity and use; and

25 (4) The state has taken important steps to encourage recycling but a  
26 much greater effort is necessary to assist in addressing our solid waste  
27 management needs.

28

29 SECTION 2. Arkansas Code Title 8, Chapter 6, Subchapter 7 is amended to  
30 read as follows:

31

32 "SUBCHAPTER 7 - REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS.

33

34 8-6-701. Purpose - Legislative findings - Construction.

35 The purpose of this subchapter is to protect the public health and the

1 state's environmental quality by establishing regional solid waste management  
2 and planning. The current system relying upon solid waste management by  
3 individual counties and municipalities has fostered present conditions in  
4 which certain areas of the state are facing capacity shortages of crisis  
5 proportions, while others experience a surfeit of capacity with individual  
6 disposal facilities which cannot muster the resources for environmentally  
7 responsible operations. Given these disparate environmental and economic  
8 concerns, the Arkansas General Assembly concludes that regional solid waste  
9 management and planning, under the oversight of the Arkansas Department of  
10 Pollution Control and Ecology and the Arkansas Pollution Control and Ecology  
11 Commission or Pollution Control and Ecology, is essential to address the  
12 imminent and future needs of the state. The terms and obligations of this  
13 subchapter shall be liberally construed so as to achieve remedial intent.

14

15 8-6-702. Definitions. As used in this subchapter, unless the context  
16 otherwise requires:

17 (1) "Board" or "regional board" means a regional solid waste management  
18 board established pursuant to this subchapter;

19 (2) "Commission" means the Arkansas Pollution Control and Ecology  
20 Commission;

21 (3) "Department" means the Arkansas Department of Pollution Control and  
22 Ecology;

23 (4) "Director" means the director of the Arkansas Department of  
24 Pollution Control and Ecology;

25 (5) "Disposal site" means any place at which solid waste is dumped,  
26 accepted, or disposed of for final disposition by landfilling, incinerating,  
27 composting, or any other method;

28 (6) "District" means a regional solid waste management district;

29 (7) "Interested party" means the director or his designee, the board,  
30 the person making application to the board, or any person submitting written  
31 comments on an application within the public comment period;

32 (8) "Landfill" means a permitted landfill under the Arkansas Solid  
33 Waste Management Act, §8-6-201 et seq.;

34 (9) "Recyclable materials" or "recyclables" means those materials from  
35 the solid waste stream that can be recovered for reuse in present or

1 reprocessed form;

2 (10) "Recyclable materials collection center" or "collection center"  
3 means a facility which receives or stores recyclable materials prior to timely  
4 transportation to material recovery facilities, markets for recycling, or  
5 disposal;

6 (11) "Recycling" means the systematic collection, sorting,  
7 decontaminating and returning of waste materials to commerce as commodities  
8 for use or exchange;

9 (12) "Solid waste" means all putrescible and nonputrescible wastes in  
10 solid, semisolid, or liquid form, including, but not limited to, yard or food  
11 waste, waste glass, waste metals, waste plastics, wastepaper, waste  
12 paperboard, and all other solid and semisolid wastes resulting from  
13 industrial, commercial, agricultural, community, and residential activities;

14 (13) "Solid waste management system" shall have the same meaning as  
15 provided in §8-6-203;

16 (14) "Source separation" means the act or process of removing a  
17 particular type of recyclable material from the solid waste stream at the  
18 point of generation or at a point under control of the generator for the  
19 purpose of collection and recycling; and

20 (15) "Yard waste" means grass clippings, leaves, brush, and tree  
21 prunings.

22

23 8-6-703. Creation of districts and boards - Members of boards.

24

25 (a)(1) The eight (8) regional solid waste planning districts created by  
26 Act 870 of 1989 and each solid waste service area created pursuant to Act 870  
27 of 1989 are renamed regional solid waste management districts. Each district  
28 shall be governed by a regional solid waste management board.

29 (2) The boundaries of a regional solid waste management district  
30 may be modified and new regional solid waste management districts may be  
31 created pursuant to §8-6-707.

32 (b) Each regional solid waste management board shall be composed of  
33 representatives of the counties and first class cities within the region,  
34 provided however that if a county contains no first class city, a  
35 representative of the largest city in that county shall also be a member of

1 the board. The regional board members shall be appointed as follows:

2 (1) The county judge with confirmation by the quorum court of  
3 each county within the district shall appoint one (1) member to the board.

4 (2) The mayor with confirmation by the governing body of each  
5 first class city in the district shall appoint one (1) member.

6 (3) For any county within the district containing no first class  
7 city, the mayor with confirmation by the governing body of the largest city in  
8 such a county shall appoint one (1) member.

9 (c) Regional board members shall serve for staggered terms of seven (7)  
10 years. The initial members of a board shall draw lots to determine terms of  
11 appointment so that, as nearly as possible, the terms of an equal number of  
12 members will expire each year.

13 (d) Vacancies shall be filled for the unexpired term in the same manner  
14 as the original appointment.

15 (e) A majority of the membership of the board shall constitute a  
16 quorum. A majority vote of those members present shall be required for any  
17 action of the board.

18 (f) Each board shall annually select a chairman.

19

20 8-6-704. Boards - Powers and duties.

21 (a) The regional solid waste management boards shall have the following  
22 powers and duties:

23 (1) To collect data, study, and initially evaluate the solid  
24 waste management needs of all localities within their districts, as provided  
25 in §8-6-716 and to publish their findings as a regional needs assessment;

26 (2) To evaluate on a continuous basis the solid waste needs of  
27 their districts, and thereby update the regional needs assessments at least  
28 biennially;

29 (3) To formulate recommendations to all local governments within  
30 their districts on solid waste management issues, and to formulate plans for  
31 providing adequate solid waste management;

32 (4) To issue or deny certificates of need to any applicant for a  
33 solid waste disposal facility permit within their district;

34 (5) To petition the commission or director to issue, continue in  
35 effect, revoke, modify, or deny any permit for any element of a solid waste

1 management system located within the district based on compliance or  
2 noncompliance with the solid waste management plan of the district;

3           (6) To adopt such rules or regulations pursuant to the  
4 Administrative Procedure Act, §24-15-201 et seq., as are reasonably necessary  
5 to assure public notice and participation in any findings or rulings of the  
6 boards and to administer the duties of the board;

7           (7) To establish programs to encourage recycling;

8           (8) To adopt an official seal and alter it at pleasure;

9           (9) To maintain an office at such places as it may determine;

10           (10) To sue and be sued in its own name and to plead and be  
11 impleaded;

12           (11) To make and execute contracts and other instruments  
13 necessary or convenient in the exercise of the powers and functions of the  
14 district; and

15           (12) To carry out all other powers and duties conferred by this  
16 subchapter and subchapter 8.

17           (b) The regional solid waste management boards may:

18           (1) Apply for such permits, licenses, certificates, or approvals  
19 as may be necessary to construct, maintain, and operate any portion of a solid  
20 waste management system, and to obtain, hold and use licenses, permits,  
21 certificates, or approvals in the same manner as any other person or operating  
22 unit of any other person;

23           (2) Employ such engineers, architects, attorneys, real estate  
24 counselors, appraisers, financial advisors, and other consultants and  
25 employees as may be required in the judgment of the district and to fix and  
26 pay their compensation from funds available to the district therefor; and

27           (3) Purchase all kinds of insurance including, but not limited  
28 to, insurance against tort liability, business interruption, and risks of  
29 damage to property.

30

31           8-6-705. Needs assessments.

32           (a) All needs assessments required by this subchapter are subject to  
33 review and approval for completeness by the Arkansas Department of Pollution  
34 Control and Ecology.

35           (b) Failure to provide complete assessments as required by this

1 subchapter may provide the department with grounds to initiate enforcement  
2 actions against the regional boards or their component governmental entities.  
3 Pursuant to established administrative procedures, sanctions may be imposed,  
4 including but not limited to denial, discontinuation, or reimbursement of any  
5 grant funding administered by the department to a district or any of their  
6 component government entities.

7 (c) The department may award grants to the districts for the  
8 development of the initial regional needs assessments, for the biennial  
9 updates, and for any other update required by the law .

10

11 8-6-706. Solid waste landfill permits.

12 (a) Any applicant for a solid waste landfill permit under the Arkansas  
13 Solid Waste Management Act, §8-6-201 et seq., must obtain a certificate of  
14 need from the board with jurisdiction over the proposed site prior to  
15 submitting the application to the Arkansas Department of Pollution Control and  
16 Ecology. The department may deny any permit based upon the denial of a  
17 certificate of need by any regional board.

18 (b)(1) Applicants must petition the board with jurisdiction over a  
19 proposed solid waste disposal site for a certificate of need in accordance  
20 with procedures adopted by the board.

21 (2) The applicant's petition must establish, at a minimum, that  
22 the proposed disposal facility:

23 (A) Is consistent with the regional planning strategy  
24 adopted by the board in the regional needs assessment or the regional solid  
25 waste management plan;

26 (B) Does not conflict with existing comprehensive land-use  
27 plans of any local governmental entities;

28 (C) Does not disturb an archaeological site as recognized  
29 by the Arkansas Archaeological Survey, or a rare and endangered species  
30 habitat as recognized by the Arkansas Game and Fish Commission or the United  
31 States Fish and Wildlife Service;

32 (D) Will not adversely affect the public use of any local,  
33 state, or federal facility, including but not limited to, parks and wildlife  
34 management areas;

35 (E) Does not conflict with the requirements of state or

1 federal laws and regulations on the location of disposal facilities; and

2 (F) If located in the 100-year floodplain, does not restrict  
3 the flow of the 100-year flood, reduce the temporary water storage capacity of  
4 the floodplain, or result in washout of solid waste so as to pose a hazard to  
5 human health or the environment.

6 (c) Any interested party to a certificate of need determination by a  
7 board may appeal the decision to the director of the department pursuant to  
8 procedures adopted by the commission. The director may issue a permit despite  
9 the denial of a certificate of need if the director finds upon appeal that the  
10 decision of the board was arbitrary and capricious.

11 (d) After notice and a public hearing to be held by the board in the  
12 county where the proposed landfill is to be located, certificates of need  
13 shall be issued or denied by the boards based upon an evaluation of:

14 (1) The information provided by the applicant in the petition for  
15 a certificate of need;

16 (2) The requirements and considerations of any needs assessments  
17 prepared pursuant to this section;

18 (3) The location of the applicant's proposed landfill based on  
19 the district's needs and its highway and road system;

20 (4) The need for the landfill based upon the district's excess  
21 projected capacity which is currently permitted for operation, but in no event  
22 shall the district's excess permitted projected capacity exceed thirty (30)  
23 years;

24 (5) Any solid waste management system plans, promulgated and  
25 approved pursuant to §§8-6-211 and 8-6-212 to the extent these plans conform  
26 to an overall regional planning strategy;

27 (6) A detailed history of the applicant's record and that of the  
28 stockholders and officers with respect to violations of environmental laws and  
29 regulations of the United States or any state or any political subdivision of  
30 any state; and

31 (7) Any procedures adopted by the board for issuance of  
32 certificates of need.

33

34 8-6-707. Creation of New Regional Districts.

35 (a) (1) After notification of the appropriate regional board or boards,

1 the commission may designate a county or counties within each district or  
2 counties within two (2) or more districts as a new regional solid waste  
3 management district pursuant to the limitations of this section.

4 (A) New regional solid waste management districts shall be  
5 designated for purposes which address local exigencies, needs, and other  
6 requirements of this subchapter.

7 (B) A regional solid waste management district shall only  
8 be composed of whole county jurisdictions, and each district shall contain  
9 more than one county unless that county has a population of at least fifty  
10 thousand (50,000) according to the latest decennial census.

11 (2) Commission approval of regional solid waste management  
12 district boundaries shall be sought and obtained pursuant to administrative  
13 procedures promulgated by the commission.

14 (b) Counties and municipalities included in a new district shall  
15 cease to be members of any other district. The term of a regional board  
16 member representing a county or municipality shall immediately expire upon the  
17 inclusion of the county or municipality within a new regional solid waste  
18 management district.

19

20 8-6-708. Procedures and regulations.

21 The Arkansas Pollution Control and Ecology Commission is authorized to  
22 prescribe procedures and regulations:

23 (1) To guide the initial and continued organization and operation of  
24 the respective boards in accordance with the purposes of this subchapter and  
25 subchapter 8;

26 (2) To assure public notice and participation prior to adoption of  
27 regional needs assessments, findings, or reports made by the boards;

28 (3) To defray some of the costs of the administration of this  
29 subchapter including, but not limited to, inspections and technical review of  
30 submissions required by this subchapter by setting graduated surcharges upon  
31 any waste stream increase in excess of ten percent (10%) as a result of  
32 receipt of solid waste from outside the district; and

33 (4) To require prompt compliance with the requirements of this  
34 subchapter and subchapter 8.

35

1           8-6-709. Agreements implementing subchapter.

2           (a) (1) Any regional solid waste management board may enter into  
3 agreements for the specific purpose of implementing this subchapter.

4           (2) Any such agreement shall specify the following:

5                   (A) Its duration;

6                   (B) The precise organization, composition, and nature of  
7 any separate legal or administrative entity created thereby, together with the  
8 powers delegated thereto, provided such entity may be legally created;

9                   (C) Its purpose or purposes;

10                  (D) The manner of financing the joint or cooperative  
11 undertaking and of establishing and maintaining a budget therefor provided  
12 that such legal entity may incur indebtedness for the lease or purchase of  
13 land, equipment, and other expenses necessary to the operation of a solid  
14 waste management system or any part thereof;

15                  (E) The permissible method or methods to be employed in  
16 accomplishing the partial or complete termination of the agreement and for  
17 disposing of property upon such partial or complete termination;

18                  (F) The degree to which the joint or individual plans are  
19 drawn in accordance with the regional needs assessments required by this  
20 subchapter; and

21                  (G) Any other necessary and proper matters.

22

23           8-6-710. Solid Waste Management Responsibility.

24           (a) Each regional solid waste management board shall be the  
25 governmental entity primarily responsible for providing a solid waste  
26 management system for the district. The counties and municipalities shall  
27 continue to be responsible for solid waste management services within their  
28 corporate boundaries until the regional solid waste management board  
29 determines in writing that the district is able to assume the solid waste  
30 management responsibilities of the municipality or county.

31           (b) Counties and municipalities in a district may provide a portion of  
32 the solid waste management services, such as solid waste pick-up, while the  
33 board provides other services and has assumed responsibility therefor, such as  
34 disposal facilities, in which event the counties and municipalities shall  
35 retain only the responsibility for the system related to the services

1 provided. In performing those retained responsibilities, or assisting the  
2 board in performing its responsibilities, counties and municipalities shall  
3 retain all present legal powers and authority related to those  
4 responsibilities, including but not limited to power and authority to levy and  
5 collect fees and charges.

6

7 8-6-711. District Solid Waste Management System.

8 (a) A district is authorized to own, acquire, construct, reconstruct,  
9 extend, equip, improve, operate, maintain, sell, lease, contract concerning,  
10 or otherwise deal in facilities of any nature necessary or desirable for the  
11 control, collection, removal, reduction, disposal, treatment, or other  
12 handling of solid waste.

13 (b) A district may elect to acquire the ownership or use of elements of  
14 solid waste management systems owned or controlled by municipalities,  
15 counties, improvement districts or sanitation authorities within the district  
16 by contract on such terms as are mutually agreed to be necessary, convenient  
17 or desirable. If the district has elected such acquisition of ownership or  
18 use, it shall also have assumed the responsibility associated with that  
19 project or element, as contemplated by §8-6-714. If the district and the  
20 other entity or entities which are parties to the acquisition cannot mutually  
21 agree on the fair value to be paid and the method of compensation for the  
22 acquired asset, then either party may have that value and method adjudicated  
23 as to fairness by the chancery court having jurisdiction of the district's  
24 principal office, in the manner of a declaratory judgment and not in the  
25 nature of eminent domain. The district shall have the discretion to proceed  
26 or not to proceed with the acquisition after the declaration is obtained.

27

28 8-6-712. Regulation of Solid Waste.

29 (a) A district which has an approved solid waste management plan may:

30 (1) Require, by regulation or other legal means, that solid waste  
31 generated or collected within the boundaries of the district be delivered to a  
32 particular project for disposal, treatment, or other handling;

33 (2) Prohibit, by regulation or other legal means, the collection,  
34 disposal, treatment, or other handling of solid waste within the boundaries of  
35 the district, by persons other than the district or any persons designated by

1 the district;

2 (3) Provide, by regulation or other legal means, that no person,  
3 other than as may be designated by the district, shall engage in the  
4 collection or utilization of solid waste within the district which would be  
5 competitive with the purposes or activities of the district; and

6 (4) Covenant in connection with the issuance of bonds, notes, or  
7 other evidence of indebtedness to adopt any regulation described in  
8 subdivisions (1)-(3) of this subsection and that any regulation so adopted  
9 shall remain in full force and effect and shall be enforced so long as any  
10 bonds, notes, or other evidences of indebtedness remain outstanding.

11 (b) Nothing in this section shall prohibit the disposal of solid waste  
12 generated by a private industry in a permitted landfill where the private  
13 industry bears the expense of operating and maintaining the landfill.

14 8-6-713. Restriction on Local Government Bonds and Pledges.

15 (a) Unless approved by the board, no municipality, county, improvement  
16 district or sanitation authority within the regional solid waste management  
17 district shall:

18 (1) Issue any bonds for solid waste management purposes; or

19 (2) Pledge any revenues derived from solid waste management  
20 services for any bond issue.

21 (b) The board shall not impair any existing bond issue or other  
22 financial obligation of a municipality, county, improvement district or  
23 sanitation authority.

24

25 8-6-714. Rents, Fees and Charges - Collection by Utilities.

26 (a) A regional solid waste management board may fix, charge, and  
27 collect rents, fees, and charges for the disposal, treatment, or other  
28 handling of solid waste by the district.

29 (b) The board may levy a service fee on each residence or business for  
30 which the board makes solid waste collection or disposal services available.

31 (c) (1) The board may, by majority vote, require fees or delinquent fees  
32 to be collected with the real and personal property taxes of any county within  
33 the district. If the board elects to collect such fees in this manner, it  
34 shall so notify the county tax collector, who shall enter such fees on tax  
35 notices to be collected with the real and personal property taxes of the

1 county. No county tax collector shall accept payment of any property taxes  
2 where the taxpayer has been billed for solid waste collection services unless  
3 the service fee is also receipted. If a property owner fails to pay the  
4 service fee, it shall become a lien on the property.

5 (2) The board may require any public utility to collect fees imposed by  
6 the board. If applicable, a municipality or county may require a public  
7 utility to collect rents, fees and charges of the municipality or county. A  
8 public utility required to collect rents, fees or charges under this section  
9 shall be entitled to a reasonable fee not to exceed the actual cost of  
10 administering the collection and may discontinue utility services to any  
11 person who fails to pay such rents, fees, or charges.

12

13 8-6-715. Eminent domain.

14 (a) In the event that necessary lands needed for the accomplishment of  
15 the purposes authorized by this chapter cannot be acquired by negotiation, any  
16 district is authorized to acquire the needed lands by condemnation proceedings  
17 under the power of eminent domain.

18 (b) The proceedings may be exercised in the manner now provided for  
19 taking private property for rights-of-way for railroads as set forth in  
20 §§18-15-1202 - 18-15-1207. As a part of the proceedings, the district shall  
21 file an environmental impact statement with the court.

22

23 8-6-716. Regional Needs Assessment.

24 (a) Each board created pursuant to this subchapter shall prepare a  
25 Regional Needs Assessment evaluating the solid waste management needs within  
26 its district. Such assessment shall be submitted for department review, and  
27 the director shall approve or disapprove it within ninety (90) days after  
28 submission. The assessments for boards created pursuant to §8-6-703 shall be  
29 due on January 31, 1993, with updated assessments due on January 31 of each  
30 odd-numbered year thereafter. If a board is created pursuant to §8-6-707, the  
31 initial Regional Needs Assessment shall be submitted on the next due date for  
32 assessments unless the board obtains an extension of that deadline from the  
33 commission, with updated assessments due on January 31 of each odd-numbered  
34 year thereafter. The assessment shall include, at the minimum, the following:

35 (1) An evaluation of the amount of solid waste generated within

1 the district and the amount of remaining disposal capacity, expressed in  
2 years, at the solid waste disposal facilities within the district that are  
3 permitted under the Arkansas Solid Waste Management Act, §8-6-201 et seq.;

4 (2) An evaluation of the solid waste collection, transportation,  
5 and disposal needs of all localities within the district; and

6 (3) An evaluation and balancing of the environmental, economic  
7 and other relevant factors which would be implicated by acceptance of solid  
8 waste from beyond the boundaries of the district.

9 (b) Each board shall update its Regional Needs Assessment, at the  
10 minimum, on a biennial basis.

11 (c) At a time not later than five (5) years before the disposal  
12 capacity in a region reaches its projected capacity, the board shall develop a  
13 request for proposals to increase the district's projected capacity for solid  
14 waste disposal within the district in accordance with its Regional Needs  
15 Assessment.

16 (d) No district shall receive solid waste from beyond its boundaries  
17 when projected capacity within the district is less than five (5) years.

18 (e) No owner or operator of a landfill serving a limited area of a  
19 district shall be required to increase the landfill's service area to  
20 accommodate the needs of the district.

21

22 8-6-717. Solid Waste Management Plan.

23 (a) Each board shall develop a plan to provide a solid waste management  
24 system. The plan shall be submitted to the department for approval. The plan  
25 shall include such information as the commission may require by regulation.

26 (b) The solid waste management plan of each board shall include a  
27 regional plan for establishing a recycling program and an educational program  
28 to provide the public information concerning solid waste and recycling.

29 (c) The solid waste management plan of each board shall include a plan  
30 to dispose of or recycle waste tires within the district. The plan shall  
31 provide a schedule for the identification and cleanup of illegal tire dump  
32 sites.

33

34 8-6-718. Waste Tires.

35 Beginning July 1, 1993, each board shall establish a waste tire

1 collection center at which residents of the district may dispose of their  
2 waste motor vehicle tires at no cost except as provided by regulation of the  
3 commission or the board.

4

5 8-6-719. Regional Composting Program.

6 (a) Each board shall establish a program for the composting of yard  
7 waste.

8 (b) Each board shall establish a pilot program for the composting of  
9 yard waste collected in an area with a population of at least five thousand  
10 (5,000) persons. The pilot program shall be established in each district by  
11 July 1, 1992.

12

13 8-6-720. Opportunity to Recycle - Recyclable Materials Collection  
14 Centers.

15 (a) (1) Beginning July 1, 1992, each board shall ensure that its  
16 residents have an opportunity to recycle. Opportunity to recycle means  
17 availability of curb side pick-up or collection centers for recyclable  
18 materials at sites that are convenient for persons to use.

19 (2) Beginning July 1, 1993, at least one recyclable materials  
20 collection center shall be available in each county of a district unless the  
21 commission grants the district an exemption. An exemption may be granted if a  
22 county is adequately served by a recyclable materials collection center in  
23 another county.

24 (3) Boards shall assess the operation of existing and proposed  
25 recycling centers and materials recovery facilities to determine the adequacy  
26 of these facilities for the collection and recovery of recyclable materials.  
27 Boards shall give due consideration to existing recycling facilities in  
28 ensuring the opportunity to recycle and are encouraged to use, to the extent  
29 practicable, persons engaged in the business of recycling on the effective  
30 date of this section, whether or not the persons were operating for profit.

31 (b) The department shall determine by regulation the adequacy of the  
32 facilities and the number and type of recyclable materials for which the  
33 services in this section must be provided.

34 (c) Each board shall provide information on how, when, and where  
35 materials may be recycled, including a promotional program that encourages

1 source separation of residential, commercial, industrial, and institutional  
2 materials.

3 (d) Each board should ensure alone or in conjunction with other boards  
4 that materials separated for recycling are taken to markets for sale or to  
5 materials recovery facilities.

6 (e) A board shall not prevent a person generating or collecting  
7 recyclable materials from delivering the recyclable materials to a recycling  
8 facility of the generator's or collector's choice.

9 (f) Each board shall incorporate into its solid waste management plan  
10 its proposal for fulfilling the obligations of this section.

11 (g) Nothing in this section shall be construed to prohibit the planning  
12 or implementation of any regional recycling program prior to compliance with  
13 the requirements of subsection (f) of this section.

14

15 8-6-721. Licensing Haulers of Solid Waste.

16 (a) A person who engages in the business of hauling solid waste must  
17 obtain a license from the regional solid waste management board if:

18 (1) the person is engaged in the collection of solid waste within  
19 the district; or

20 (2) is engaged in the transportation of solid waste for disposal  
21 or storage in the district.

22 (b) A license shall be issued only to an individual person, the State  
23 of Arkansas, a political subdivision of the state, an improvement district, a  
24 sanitation authority, or another regional solid waste management district.  
25 The district may engage in the hauling of solid waste within its own district  
26 without licensure but shall comply with all applicable standards required  
27 under this section.

28 (c) The commission shall establish classifications of haulers, which  
29 shall be used by districts in licensing haulers. The classifications shall be  
30 based on the nature and size of the loads transported.

31 (d) The commission shall promulgate minimum standards for a license to  
32 haul solid waste. One of the criteria for obtaining such a license shall be  
33 the financial responsibility of the hauler.

34 (e) The board may impose more stringent standards than the minimum  
35 standards established by the commission.

1 (f) The board may set a reasonable licensing fee for each class of  
2 haulers.

3

4 8-6-722. Penalties.

5 Any person who violates this subchapter or any regulation of the  
6 commission or of a board shall be deemed guilty of a misdemeanor. Upon  
7 conviction the person shall be subject to imprisonment for not more than  
8 thirty (30) days or a fine of not more than one thousand dollars (\$1,000), or  
9 both imprisonment and fine."

10

11 SECTION 3. Special Provisions.

12 (a) A county shall not be included in the boundaries of more than one  
13 regional solid waste management district formed from a regional solid waste  
14 planning district created pursuant to this act.

15 (b) The members of regional solid waste planning boards and solid waste  
16 service area boards shall serve as board members of their respective regional  
17 solid waste management districts until sixty (60) days after the effective  
18 date of this act.

19 (c) New members shall be appointed to the regional solid waste  
20 management boards pursuant to this act. The terms of the new appointees to  
21 the regional solid waste management boards shall begin sixty days (60) after  
22 the effective date of this act.

23 (d) The first meeting of the new board members shall be held within  
24 ninety (90) days after the effective date of this act. At the initial meeting  
25 the members shall draw lots to determine their terms of appointment so that,  
26 as nearly as possible, the terms of an equal number of members will expire  
27 each year.

28

29 SECTION 4. Arkansas Code Title 8, Chapter 6 is amended to add a new  
30 subchapter to read as follows:

31

32 "SUBCHAPTER 8 - BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS.

33

34 8-6-801. Definitions.

35 As used in this subchapter, unless the context otherwise requires:

- 1           (1) "Authority" means the Arkansas Development Finance Authority;
- 2           (2) "Board" means a regional solid waste management board created under  
3 subchapter 7 of this chapter;
- 4           (3) "Bonds" means bonds and any series of bonds authorized by and  
5 issued pursuant to the provisions of this subchapter and comprehends "revenue  
6 bonds," as defined in Amendment 65, §3, of the Arkansas Constitution;
- 7           (4) "Costs" or "project costs" means, but shall not be limited to:
- 8                 (A) All costs of acquisition, construction, reconstruction,  
9 improvement, enlargement, betterment, or extension of any project, including  
10 the cost of studies, plans, specifications, surveys, and estimates of costs  
11 and revenues relating thereto;
- 12                 (B) All costs of land, land rights, rights-of-way and easements,  
13 water rights, fees, permits, approvals, licenses, certificates, franchises,  
14 and the preparation of applications for and securing them;
- 15                 (C) Administrative, organizational, legal, engineering, and  
16 inspection expenses;
- 17                 (D) Financing fees, expenses, and costs, including but not  
18 limited to costs of credit enhancement or guaranties, trustees' fees, paying  
19 agents' fees or similar fees, and fees to financial advisors and other  
20 entities assisting in the issuance of bonds;
- 21                 (E) Working capital;
- 22                 (F) All machinery and equipment including construction equipment;
- 23                 (G) Interest on the bonds during the period of construction and  
24 for such reasonable period thereafter as may be determined by the issuing or  
25 borrowing district;
- 26                 (H) Establishment of reserves; and
- 27                 (I) All other expenditures of the issuing or borrowing district  
28 incidental, necessary, or convenient to the acquisition, construction,  
29 reconstruction, improvement, enlargement, betterment, or extension of any  
30 project and the placing of it in operation;
- 31           (5) "District" means a regional solid waste management district created  
32 under subchapter 7 of this chapter.
- 33           (6) "Project" means any real property, personal property, or mixed  
34 property of any and every kind that can be used or will be useful in  
35 controlling, collecting, storing, removing, handling, reducing, disposing of,

1 treating, and otherwise dealing in and concerning solid waste, including,  
2 without limitation, property that can be used or that will be useful in  
3 extracting, converting to steam, including the acquisition, handling, storage,  
4 and utilization of coal, lignite, or other fuel of any kind, or water that can  
5 be used or that will be useful in converting solid waste to steam, and  
6 distributing the steam to users thereof, or otherwise separating and preparing  
7 solid waste for reuse, or that can be used or will be useful in generating  
8 electric energy by the use of solid waste as a source of generating power and  
9 distributing the electric energy to purchasers or users thereof in accordance  
10 with the general laws of the state; and

11 (7) "Solid waste" shall have the same meaning as provided in §8-6-702.

12

13 8-6-802. Construction.

14 (a) The powers provided by this subchapter shall be supplemental to all  
15 other powers conferred on regional solid waste management boards.

16 (b) Except as expressly provided in this subchapter, the acquisition,  
17 construction, reconstruction, enlargement, equipment, or operation and  
18 maintenance of projects under the provisions of this subchapter need not  
19 comply with the requirements of any other law applicable to the acquisition,  
20 construction, reconstruction, enlargement, equipment, and operation and  
21 maintenance of public works or facilities including, without limitation, laws  
22 pertaining to public bidding, paying prevailing wages, transfer or exchange of  
23 title to real or personal property, or any other aspect of the acquiring,  
24 constructing, reconstructing, enlarging, equipping, or operation or  
25 maintenance of public works or public projects, or transfer or exchange of  
26 title to real or personal property, none of which laws shall be applicable to  
27 projects under this subchapter.

28 (c) This subchapter, being necessary for the welfare of the state and  
29 its inhabitants, shall be liberally construed to effect the purposes hereof.

30

31 8-6-803. Pledge of rents, fees and charges.

32 A regional solid waste management board may pledge any rents, fees and  
33 charges imposed by the board to secure the repayment of bonds issued to  
34 finance projects, as provided for in this subchapter.

35

1           8-6-804. Bonds - Issuance, execution, and sale.

2           (a) Regional solid waste management boards are authorized to use any  
3 available funds and revenues for the accomplishment of projects and may issue  
4 bonds, as authorized by this subchapter, for the purpose of paying project  
5 costs and accomplishing projects, either alone or together with other  
6 available funds and revenues.

7           (b)(1) The issuance of bonds shall be by resolution of the board.

8                       (2) The bonds may be coupon bonds payable to bearer, subject to  
9 registration as to principal or as to principal and interest, or fully  
10 registered bonds without coupons, may contain exchange privileges, may be  
11 issued in one (1) or more series, may bear such date or dates, may mature at  
12 such time or times, not exceeding forty (40) years from their respective  
13 dates, may bear interest at such rate or rates, may be in such form, may be  
14 executed in such manner, may be payable in such medium of payment, at such  
15 place or places, may be subject to such terms of redemption in advance of  
16 maturity at such prices, and may contain such terms, covenants, and conditions  
17 as the resolution may provide, including, without limitation, those pertaining  
18 to the custody and application of the proceeds of the bonds, the collection  
19 and disposition of revenues, the maintenance of various funds and reserves,  
20 the investing and reinvesting of any moneys during periods not needed for  
21 authorized purposes, the nature and extent of the security, the rights,  
22 duties, and obligations of the district and the trustee for the holders or  
23 registered owners of the bonds, and the rights of the holders or registered  
24 owners of the bonds.

25           (c) There may be successive bond issues for the purpose of financing  
26 the same project, and there may be successive bond issues for financing the  
27 cost of reconstructing, replacing, constructing additions to, extending,  
28 improving, and equipping projects already in existence, whether or not  
29 originally financed by bonds issued under this subchapter, with each  
30 successive issue to be authorized as provided by this subchapter. Priority  
31 between and among issues and successive issues as to security of the pledge of  
32 revenues and lien on the project involved may be controlled by the resolution  
33 authorizing the issuance of the bonds.

34           (d) Subject to the provisions of this subchapter pertaining to  
35 registration, the bonds shall have all the qualities of negotiable instruments

1 under the laws of the State of Arkansas.

2 (e) The bonds may be sold at public or private sale for such price,  
3 including, without limitation, sale at a discount and in such manner the board  
4 may determine by resolution.

5 (f) Bonds issued under this subchapter shall be executed by the manual  
6 or facsimile signatures of the chairman and secretary of the board, but one of  
7 such signatures must be manual. The coupons attached to the bonds may be  
8 executed by the facsimile signature of the chairman of the board. In case any  
9 of the officers whose signatures appear on the bonds or coupons shall cease to  
10 be officers before the delivery of the bonds or coupons, their signatures  
11 shall nevertheless be valid and sufficient for all purposes. The seal of the  
12 board shall be placed or printed on each bond in such manner as the board  
13 shall determine.

14 (g) (1) Prior to the issuance of any bonds pursuant to this subchapter,  
15 the district shall seek the advice of the Arkansas Development Finance  
16 Authority as to the financial feasibility of the project to be financed, and  
17 shall provide the Authority with such information and documentation as it may  
18 reasonably request in order to render that advice. No bonds shall be issued  
19 without a determination by the Authority that the financing and project are  
20 financially feasible and advisable, in view of capital financing alternatives,  
21 utilization of available funds from grants, proposed marketing strategies,  
22 cost of the financing, and proposed procedures and structures for issuance of  
23 the bonds;

24 (2) The district may request the Authority to designate it as a  
25 "developer," as contemplated by §15-5-403, and, hence, to guarantee the bonds,  
26 on such terms and conditions as may be mutually agreed upon by the district  
27 and the Authority, consistent with the program delineated in §15-5-401 et  
28 seq.;

29 (3) The district may also request that the Authority be the  
30 issuer of the bonds and loan the proceeds thereof to the district, secured by  
31 a pledge of revenues from the project on such terms as may be necessary to  
32 permit the sale of the bonds, consistent with the provisions hereof applicable  
33 to the issuance of bonds directly by districts.

34 (h) Regional solid waste management boards are specifically authorized  
35 to apply for and receive loans from the Arkansas Soil and Water Conservation

1 Commission to finance projects, from the proceeds of the commission's bonds  
2 issued pursuant to Act 686 of 1987 (§15-22-701 et seq.), on terms mutually  
3 acceptable to the borrowing board and the commission, including but not  
4 limited to provisions for a pledge of revenues to secure such loans, as set  
5 forth in §8-6-803. The Arkansas Soil and Water Conservation Commission is  
6 authorized but not required to require, as prerequisite to approving any such  
7 loan, that the borrowing board comply with some or all of the requirements of  
8 §8-6-804(a), (b)(1), (f) and (g)(1) hereof. The Arkansas Soil and Water  
9 Conservation Commission is further authorized to enter into agreements with  
10 the Authority for such services to the commission or to the borrowing boards  
11 as the commission deems necessary or desirable in furtherance of the  
12 commission's powers and duties under §15-22-701 et seq., the authority granted  
13 hereby being in addition to those powers and not in derogation or restriction  
14 thereof.

15

16 8-6-805. Bonds - Trust indenture.

17 (a) The resolution authorizing the bonds may provide for the execution  
18 by the district with a bank or trust company within or without this state of a  
19 trust indenture which defines the rights of the holders and registered owners  
20 of the bonds.

21 (b) The indenture may control the priority between and among successive  
22 issues and may contain any other terms, covenants, and conditions that are  
23 deemed desirable including, without limitation, those pertaining to the  
24 custody and application of proceeds of the bonds, the maintaining of rates and  
25 charges, the collection and disposition of revenues, the maintenance of  
26 various funds and reserves, the nature and extent of the security and pledging  
27 of revenues, the rights, duties, and obligations of the district and the  
28 trustee for the holders or registered owners of the bonds, and the rights of  
29 the holders and registered owners of the bonds.

30 (c) The resolution or trust indenture authorizing or securing any bonds  
31 issued under this subchapter may, or may not, impose a foreclosable mortgage  
32 lien upon, or security interest in, the project financed in whole or in part  
33 with the proceeds of the bonds, and the nature and extent of the mortgage lien  
34 or security interest may be controlled by the resolution or trust indenture  
35 including without limitation, provisions pertaining to the release of all or

1 part of the project properties from the mortgage lien or security interest and  
2 the priority of the mortgage lien or security interest in the event of the  
3 issuance of additional bonds.

4 (d) Subject to the terms, conditions, and restrictions which may be  
5 contained in the resolution or trust indenture, any holder or registered owner  
6 of bonds issued under this subchapter, or of any coupon attached thereto, may,  
7 either at law or in equity, enforce the mortgage lien or security interest and  
8 may, by proper suit, compel the performance of the duties of the members and  
9 employees of the board as set forth in the resolution or trust indenture  
10 authorizing or securing the bonds.

11

12 8-6-806. Bonds - Default.

13 (a) (1) In the event of a default in the payment of the principal of,  
14 premium on, if any, or interest on any bonds issued under this subchapter, any  
15 court having jurisdiction may appoint a receiver to take charge of all or any  
16 part of the project in which there is a mortgage lien or security interest  
17 securing the bonds in default.

18 (2) The receiver shall have the power and authority to operate  
19 and maintain the project, to charge and collect rates, payments, rents, and  
20 charges sufficient to provide for the payment of the principal of, premium on,  
21 if any, and interest on the bonds, after providing for the payment of any  
22 costs of receivership and operating expenses of the project, and to apply the  
23 revenues derived from the project in conformity with this subchapter and the  
24 resolution or trust indenture authorizing or securing the bonds.

25 (3) When the default has been cured, the receivership shall be  
26 ended and the project returned to the district.

27 (b) The relief afforded by this section shall be construed to be in  
28 addition and supplemental to the remedies that may be afforded the trustee for  
29 the bondholders and the bondholders in the resolution or trust indenture  
30 authorizing or securing the bonds and shall be so granted and administered as  
31 to accord full recognition to priority rights of bondholders as to the pledge  
32 of revenues from, and the mortgage lien on and security interest in, the  
33 project as specified in and fixed by the resolutions or trust indentures  
34 authorizing or securing successive bond issues.

35

1           8-8-807. Bonds - Liability - Payment and security.

2           (a) It shall be plainly stated on the face of each bond that it has  
3 been issued under the provisions of this subchapter, that the bonds are  
4 obligations only of the district.

5           (b) No member of the board shall be personally liable on the bonds or  
6 for any damages sustained by anyone in connection with any contracts entered  
7 into in carrying out the purpose and intent of this subchapter unless he shall  
8 have acted with corrupt intent.

9           (c) The principal of, and interest on, the bonds shall be payable from,  
10 and may be secured by a pledge of, revenues derived from the project acquired,  
11 constructed, reconstructed, equipped, extended, or improved, in whole or in  
12 part, with the proceeds of the bonds or obligations of the owners of projects.

13

14           8-6-808. Refunding bonds - Issuance.

15           (a) Bonds may be issued for the purpose of refunding any bonds issued  
16 under this subchapter. Refunding bonds may be combined with bonds issued  
17 under the provisions of §14-233-109 into a single issue.

18           (b) When refunding bonds are issued, they may either be sold or  
19 delivered in exchange for the bonds being refunded. If sold, the proceeds may  
20 either be applied to the payment of the bonds being refunded or deposited in  
21 escrow for the retirement thereof.

22           (c) All refunding bonds shall in all respects be issued and secured in  
23 the manner provided for other bonds issued under this subchapter and shall  
24 have all the attributes of those bonds.

25           (d) The resolution under which refunding bonds are issued may provide  
26 that any of the refunding bonds shall have the same priority of lien on and  
27 security interest in project revenues and the project as was enjoyed by the  
28 bonds refunded by them.

29

30           8-6-809. Rates, fees, and charges - Pledges.

31           (a) If the board pledges rates, fees, and charges, then for as long as  
32 any bonds are outstanding and unpaid, the rates, fees, and charges shall be so  
33 fixed by the district as to provide revenues sufficient:

34                   (1) To pay all costs of and charges and expenses in connection  
35 with the proper operation and maintenance of its projects, and all necessary

1 repairs, replacements, or renewals thereof;

2           (2) To pay when due the principal of, premium, if any, and  
3 interest on all bonds including bonds subsequently issued for additional  
4 projects, payable from the revenues;

5           (3) To create and maintain reserves as may be required by any  
6 resolution or trust indenture authorizing or securing bonds; and

7           (4) To pay any and all amounts which the district may be  
8 obligated to pay from project revenues by law or contract.

9           (b) Any pledge made by a district pursuant to this subchapter shall be  
10 valid and binding from the date the pledge is made. The revenues so pledged  
11 and then held or thereafter received by the district or any fiduciary on its  
12 behalf shall immediately be subject to the lien of the pledge without any  
13 physical delivery thereof or further act. The lien of the pledge shall be  
14 valid and binding as against all parties having claims of any kind in tort,  
15 contract, or otherwise against the district without regard to whether such  
16 parties have notice thereof.

17           (c) The resolution, trust indenture, or other instrument by which a  
18 pledge is created need not be filed or recorded in any manner.

19

20           8-6-810. Rights of bondholders.

21           Any holder or registered owner of bonds or coupons pertaining to the  
22 bonds, except to the extent the rights given in this subchapter may be  
23 restricted by the resolution or trust indenture authorizing or securing the  
24 bonds and coupons may, either at law or in equity, by suit, action, mandamus,  
25 or other proceeding protect and enforce any and all rights under the laws of  
26 the state or granted under this subchapter or, to the extent permitted by law,  
27 under the resolution or trust indenture authorizing or securing the bonds or  
28 under any agreement or other contract executed by a district pursuant to this  
29 subchapter, and may enforce and compel the performance of all duties required  
30 by this subchapter or by the resolution or trust indenture to be performed by  
31 any district, or by any officer of the foregoing, including the fixing,  
32 charging, and collecting of rates, fees, and charges.

33

34           8-6-811. Bonds - Tax exemption.

35           Bonds issued under the provisions of this subchapter, and the interest

1 thereon, shall be exempt from all state, county, and municipal taxes,  
2 including property, income, inheritance, and estate taxes; provided, however,  
3 that nothing herein shall preclude a district from requesting the Authority to  
4 issue taxable bonds in furtherance of the purposes hereof, on such terms as  
5 the district and Authority deem advisable and in conformity with the  
6 Authority's statutory authority for issuance of such bonds.

7

8 8-6-812. Tax exempt status of property and income of district.

9 All properties at any time owned by the district and the income  
10 therefrom shall be exempt from all taxation in the State of Arkansas.

11

12 8-6-813. Investment of public funds in bonds.

13 Any municipality, any board, commission, or other authority established  
14 by ordinance of any municipality, or the boards of trustees, respectively, of  
15 the firemen's relief and pension fund and the policemen's pension and relief  
16 fund of any municipality, or the board of trustees of any retirement system  
17 created by the General Assembly of the State of Arkansas, may in its  
18 discretion, invest any of its funds not immediately needed for its purposes in  
19 bonds issued under the provisions of this subchapter. Bonds issued under the  
20 provisions of this subchapter shall be eligible to secure the deposit of  
21 public funds.

22

23 8-6-814. Transfer of facilities to district by county or municipality.

24 Any municipality or county may acquire facilities for a project, or any  
25 portion thereof, including a project site, by gift, purchase, lease, or  
26 condemnation, and may transfer the facilities to the district by sale, lease,  
27 or gift. The transfer may be authorized by ordinance of the governing body  
28 without regard to the requirements, restrictions, limitations, or other  
29 provisions contained in any other law."

30

31 SECTION 5. All provisions of this Act of a general and permanent nature  
32 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
33 Revision Commission shall incorporate the same in the Code.

34

35 SECTION 6. If any provision of this Act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
2 other provisions or applications of the Act which can be given effect without  
3 the invalid provision or application, and to this end the provisions of this  
4 Act are declared to be severable.

5

6 SECTION 7. All laws or parts of laws in conflict with this Act are  
7 hereby repealed.

8

9 SECTION 8. EMERGENCY. It is hereby found and determined by the  
10 Seventy-Eighth General Assembly of the State of Arkansas that some areas of  
11 the state are facing critical shortages of solid waste disposal capacity due  
12 to the difficulties in siting landfill facilities and the difficulties of  
13 financing public waste recovery and disposal facilities at the local level. It  
14 is found that regional solid waste authorities are needed to expedite the  
15 financing, siting, and operation of new waste management facilities in order  
16 that the health and welfare of the citizens of Arkansas be insured and that  
17 the state's environment be protected. Therefore, an emergency is hereby  
18 declared to exist, and this act being necessary for the immediate preservation  
19 of the public peace, health and safety shall be in full force and effect from  
20 and after its passage and approval.

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