

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representatives Hunton and Fairchild**

A Bill

HOUSE BILL 1778

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 8-6-213 TO
9 REQUIRE THAT SOLID WASTE DISPOSAL PERMIT APPLICANTS SHALL
10 POST MINIMUM PERFORMANCE BONDS OF FIVE THOUSAND DOLLARS
11 (\$5,000) PER ACRE OR FRACTION OF AN ACRE AFFECTED BY THE
12 DISPOSAL OPERATION OR PLACE ASSETS OF EQUAL VALUE IN
13 ESCROW; AND FOR OTHER PURPOSES."

Subtitle

16 "TO REQUIRE SOLID WASTE DISPOSAL PERMIT APPLICANTS TO POST
17 PERFORMANCE BONDS OF AT LEAST \$5,000 PER ACRE OR FRACTION
18 OF AN ACRE OR ASSETS OF EQUAL VALUE."

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22 SECTION 1. Arkansas Code § 8-6-213 is hereby amended to read as
23 follows:

24 "8-6-213. Procedure generally.

25 (a) The procedure for issuance of permits for solid waste management
26 systems and for solid waste management disposal sites and facilities shall be
27 as provided in the rules and regulations adopted by the commission under this
28 subchapter or as otherwise provided by law. After an application to operate a
29 disposal site or facility has been reviewed and found to be approvable, but
30 before a permit is issued, the applicant shall post with the Department of
31 Pollution Control and Ecology, on forms prescribed by the department in
32 accordance with regulations issued under this subchapter, a corporate surety
33 bond for performance or an acceptable alternative, such as a certificate of
34 deposit or letter of credit, payable to the department and conditional upon
35 faithful performance of all requirements of this subchapter, the regulations

1 issued pursuant to this subchapter, and the permit, including, but not limited
2 to, proper closure of the site or facility. Liability under the bond shall be
3 for the duration of the disposal operation and for that period required to
4 properly close and revegetate the site in accordance with the regulations
5 issued by the commission. The bond shall be in the amount of the estimated
6 cost of closure as determined by the department, with a minimum bond of five
7 thousand dollars (\$5,000) for each acre or fraction of an acre affected by the
8 disposal operation. The commission shall issue regulations setting out the
9 criteria and procedures for processing requests for release of all or any part
10 of a performance bond and shall provide for the amount of the bond to be
11 increased or decreased to take into account any changes in the acreage covered
12 by the permit. However, no bond shall be fully released until all requirements
13 under this subchapter are fully met. Forfeiture of the bond shall be in such
14 amount as necessary to close the site. Nothing contained in this subchapter
15 shall be deemed to preclude the commission, the department, or the State of
16 Arkansas from requiring closure of a disposal site or facility instead of
17 seeking bond forfeiture or from recovering the cost of closure over and above
18 the amount of bond. The department may accept liquid or semi-liquid assets of
19 equal value deposited in an escrow account for the operating life of the
20 landfill plus not less than two (2) additional years as an alternative
21 guarantee of adequate financial responsibility for closure of the site.

22 (b) A municipality or county may, in lieu of a performance bond,
23 execute a contract of obligation with the Director of the Department of
24 Pollution Control and Ecology. The contract of obligation shall be a binding
25 agreement on the municipality or county, allowing the director or his designee
26 to collect a minimum of five thousand dollars (\$5,000) for each acre or
27 fraction of an acre affected by the disposal operation from any funds being
28 disbursed or to be disbursed from the state to the municipality or county on
29 failure of the municipality or county to close the disposal operation
30 properly. The contract shall be filed with the Director of the Department of
31 Finance and Administration who shall act pursuant to the terms of the contract
32 on notice from the Director of the Department of Pollution Control and Ecology
33 of failure to properly close the disposal operation, after notice to the
34 operator and opportunity for hearing.

35 (c) *A solid waste management district may, in lieu of a performance*

1 bond, execute a contract of obligation with the Director of the Department of
2 Pollution Control and Ecology. The contract of obligation shall be approved
3 by the governing body of each municipality and county comprising the solid
4 waste management district and shall contain a formula designating the
5 fractional share to be assessed each governing body by the Director of the
6 Department of Pollution Control and Ecology in the event of failure of
7 performance by the solid waste management district. The contract of
8 obligation shall be a binding agreement on each governing body, allowing the
9 director or his designee to collect a minimum of five thousand dollars
10 (\$5,000) for each acre or fraction of an acre affected by the disposal
11 operation from any funds being disbursed or to be disbursed from the state to
12 the municipality or county on failure of the solid waste management district
13 to close the disposal operation properly. The contract shall be filed with
14 the Director of the Department of Finance and Administration who shall act
15 pursuant to the terms of the contract on notice from the Director of the
16 Department of Pollution Control and Ecology of failure to properly close the
17 disposal operation, after notice to the operator and opportunity for a
18 hearing.

19 (d) In the event federal requirements for financial assurance become
20 more stringent than those required by this section, the minimum performance
21 bond shall be increased by the Director of the Department of Pollution Control
22 and Ecology to comply with those federal requirements.

23 (e) All forfeitures collected under this subchapter shall be deposited
24 into a separate Solid Waste Performance Bond Fund, which shall be maintained
25 by the department. The fund may only be used to accomplish remedial action,
26 including closure of lands covered by performance bonds forfeited under this
27 subchapter."

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29 SECTION 2. All provisions of this act of a general and permanent nature
30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
31 Revision Commission shall incorporate the same in the Code.

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33 SECTION 3. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 4. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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/s/J. Hunton, et al

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