

Act 870 of the 1989 Regular Session.

Act 870

HB1642

By: Representatives Beatty and Porter

"AN ACT TO PROVIDE FOR THE CREATION AND ESTABLISHMENT OF REGIONAL SOLID WASTE PLANNING DISTRICTS AND BOARDS WHICH SHALL CORRESPOND TO THE BOUNDARIES OF THE PLANNING AND DEVELOPMENT DISTRICTS ESTABLISHED PURSUANT TO A.C.A.

14-166-202; TO ESTABLISH A MORATORIUM ON THE EXPANSION OF ANY LANDFILL SERVICE AREA UNTIL JANUARY 31, 1991; TO PROVIDE THAT REGIONAL SOLID WASTE PLANNING BOARDS MUST EVALUATE THE SOLID WASTE MANAGEMENT NEEDS OF THEIR AREA; AND THAT ANY APPLICANT FOR A LANDFILL PERMIT UNDER A.C.A. 8-6-201, ET SEQ., MUST OBTAIN A CERTIFICATE OF NEED FROM THE BOARD WITH JURISDICTION OVER THE PROPOSED LANDFILL SITE; AND FOR OTHER PURPOSES."

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

SECTION 1. The purpose of this act is to protect the public health and the State's environmental quality by requiring regional solid waste management planning. The current system relying upon solid waste management by individual counties and municipalities has fostered present conditions in which certain areas of the State are facing capacity shortages of crisis proportions, while others experience a surfeit of capacity with individual disposal facilities which cannot muster the resources for environmentally responsible operations. Given these disparate environmental and economic concerns, the Arkansas General Assembly concludes that regional solid waste management planning, under the oversight of the Department of Pollution Control and Ecology and the Pollution Control and Ecology Commission or Pollution Control and Ecology, is essential to address the imminent and future needs of the State. The terms and obligations of this act shall be liberally construed so as to achieve remedial intent.

SECTION 2. As used in this act, unless the context otherwise requires:

- (1) "Board" or "Regional Board" means a Regional Solid Waste Planning Board established pursuant to this act;
- (2) "Department" means the Department of Pollution Control and Ecology;
- (3) "Director" means the Director of the Department of Pollution Control and Ecology;
- (4) "Disposal site" means any place at which solid waste is dumped, accepted or disposed of for final disposition by landfilling, incinerating, composting, or any other method;
- (5) "District" means a Regional Solid Waste Planning District or a Solid Waste Services Area as established pursuant to this act.
- (6) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (7) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, Arkansas Code 8-6-201 et seq., except those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character; and

(8) "Solid Waste Services Area" means an area within a Regional Solid Waste Planning District or within two or more Regional districts established in accordance with this act and with the approval of the commission.

(9) "Solid Waste" means all putrescible and non-putrescible wastes in solid or semi-solid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard and all other solid and semi-solid wastes resulting from industrial, commercial, agricultural, community and residential activities;

(10) "Interested party" means the Director or his designee, the Board, the person making application to the Board, or any person submitting written comments on an application within the public comment period.

SECTION 3. (a) There are hereby created eight (8) Regional Solid Waste Planning Districts and eight (8) Regional Solid Waste Planning Boards whose respective jurisdictions shall correspond to the boundaries of the Planning and Development Districts established pursuant to Arkansas Code 14-166-202.

(b) The county judge of each county within a district shall be a member of the Board for that district. In addition thereto, the mayor of the largest city in each county of the district shall be a member of the Board for that district. Each Board shall select one (1) member to each Board from their respective District who is an owner or operator of a private sector landfill to represent the private solid waste management industry and shall select three (3) members from the general public to serve on the Board. The term of the owner or operator of a private sector landfill shall be for three (3) years and the terms for the general public members shall be staggered three (3) year terms, except the initial terms for the general public members shall be for one (1), two (2), or three (3) years as determined by lot.

SECTION 4. The Regional Solid Waste Planning Boards shall have the following powers and duties:

(1) To collect data, study and initially evaluate the solid waste management needs of all localities within their Districts, as provided in section (5), and to publish their findings as a Regional Needs Assessment;

(2) To evaluate on a continuous basis the solid waste needs of their Districts, and thereby update the Regional Needs Assessments at least biennially;

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

(4) To issue or deny Certificates of Need to any applicant for a solid waste disposal facility permit within their District;

(5) To adopt such rules or regulations as necessary to assure public notice and participation in any findings or rulings of the Boards; and

(6) To carry out all other powers and duties conferred by this act.

SECTION 5. (a) No later than January 31, 1991, each Board shall prepare a Regional Needs Assessment evaluating the solid waste management needs within their Districts. This Regional Needs Assessment shall be submitted to the Department for review and approval. The assessment shall include, at the minimum, the following:

(1) An evaluation of the amount of solid waste generated within the District and the amount of remaining disposal capacity, expressed in years, at the solid waste disposal facilities within the District that are permitted under the Arkansas Solid Waste Management Act, Arkansas Code 8-6-201 et seq.

(2) An evaluation of the needs of all localities within the district

as to the adequacy or inadequacy of solid waste collection, transportation and disposal within those localities;

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

(b) The Board shall update their Regional Needs Assessments, at the minimum, on a biennial basis. At a time not later than five (5) years before the disposal capacity in the respective regions reach their projected capacity, the Boards shall seek request for proposals to increase the Districts projected capacity for solid waste disposal within the District according to their Regional Needs Assessments. No district shall receive solid waste from beyond its boundaries when projected capacity within the district less than five (5) years.

(c) However, any landfill serving a limited area of a District shall not be required to increase their service area to accommodate the needs of the District. If a landfill facility elects to maintain a limited service area within a District, the Board for the District shall adjust the Regional Needs Assessment of the overall District until a facility chooses otherwise.

SECTION 6. Until January 31, 1991, no existing landfill shall expand its service area outside of the District in which it is located. Existing landfills that currently serve areas outside of their respective Districts shall not increase the total amount of solid waste originating from outside their Districts by more than twenty percent (20%) of the total solid waste received at such facility. No new landfill shall be allowed to receive solid waste outside the boundaries of the District in which it is located until after January 31, 1991. No new applications for landfill permits seeking to dispose of solid waste originating outside of the district created hereunder, or that propose to dispose of solid waste originating from outside such district, shall be accepted or processed by the Commission or a regional solid waste planning board, unless such applications were pending before the Department of Pollution Control and Ecology as of March 1, 1989. All landfill permit applications shall specify the service areas which the landfill will serve under the permit.

SECTION 7. All Needs Assessments required by this act are subject to review and approval for completeness by the Department of Pollution Control and Ecology. Failure to provide complete assessments as required by this act may provide the Department with grounds to initiate enforcement actions against the Regional Boards or their component governmental entities. Pursuant to established administrative procedures, sanctions may be imposed, which may include denial, discontinuation, or reimbursement of any grant funding administered by the Department to a District or any of their component government entities. The Department shall award grants to the Districts for the development of the initial Regional Needs Assessments and for the biennial updates required by this act.

SECTION 8. (a) From on and after January 31, 1991, any applicant for a solid waste landfill permit under the Arkansas Solid Waste Management Act, Arkansas Code, 8-6-201 et seq., must obtain a Certificate of Need from the Board with jurisdiction over the proposed site prior to submitting the application to the Arkansas Department of Pollution Control and Ecology. The Department may deny any permit based upon the denial of a Certificate of Need by any Regional Board.

(b) Applicants must petition the Board with jurisdiction over a proposed solid waste disposal site for a Certificate of Need in accordance with

procedures adopted by the Board. The applicant's petition must establish, at a minimum, that the proposed disposal facility:

(1) Is consistent with the regional planning strategy adopted by the Board in the Regional Needs Assessment;

(2) Does not conflict with existing comprehensive land use plans of any local governmental entities;

(3) Does not disturb an archaeological site as recognized by the Arkansas Archaeological Survey, or a Rare and Endangered Species habitat as recognized by the Arkansas Game and Fish Commission or the U.S. Fish and Wildlife Service;

(4) Will not adversely affect the public use of any local, state or federal facility, including but not limited to parks and wildlife management areas.

(c) Any interested party to a Certificate of Need determination by a Board may appeal the decision to the Director of the Department pursuant to procedures adopted by the Commission.

(d) After notice and a public hearing to be held by the Board in the county where the proposed landfill is to be located, Certificates of Need shall be issued or denied by the Boards based upon an evaluation of:

(1) The information provided by the applicant in the petition for a Certificate of Need;

(2) The requirements and considerations of any Needs Assessments prepared pursuant to this section;

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

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

(5) Any Solid Waste Management System Plans, promulgated and approved pursuant to A.C.A. 8-6-211 and 8-6-212 to the extent these plans conform to an overall regional planning strategy;

(6) Any procedures adopted by the Board for issuance of Certificates of Need.

SECTION 9. (a) After notification of the appropriate Regional Board or Boards, the Commission may designate counties within each district or counties within two or more districts as Solid Waste Service Areas. Solid Waste Service Areas shall be designated for purposes which address local exigencies, needs, and other requirements of this act. However, no Solid Waste Service Area shall consist of an area containing fewer than five (5) counties or an area containing whole county jurisdictions with a total population of at least 150,000 according to the latest decennial census, whichever is less. Commission approval shall be sought and obtained pursuant to administrative procedures promulgated by the Commission.

(b) After receiving approval of the Commission, the Solid Waste Service Area shall succeed to all powers and duties of the Regional Solid Waste Planning District within its designated area. The Solid Waste Service Area shall be managed by a Service Area Board which shall succeed to all powers and duties of the regional Board within the area's jurisdiction. The county judge of each county with the Service Area shall be a member of the Service Area Board. In addition thereto, the mayor of the largest city in each county shall be a member of the Service Area Board. Each Service Area Board shall select one (1) member to each Board from their respective Service Area who is an owner or operator of a private sector landfill, if any exist within the Service Area, to represent the private solid waste management industry and shall select three (3) members from the general public to serve on the Service

Area Board. The term of the owner or operator of a private sector landfill, if any, shall be for three (3) years and the terms for the general public members shall be staggered three (3) year terms, except the initial terms for the general public members shall be for one (1), two (2), or three (3) years as determined by lot.

SECTION 10. The Commission on Pollution Control and Ecology is authorized to prescribe procedures and regulations:

(1) To guide the initial and continued organization and operation of the respective Boards in accordance with the purposes of this act;

(2) To assure public notice and participation prior to adoption of Regional Needs Assessments, findings or reports made by the Boards;

(3) To defray the costs of the administration of this act including, but not limited to, inspections and technical review of submissions required by this act by setting graduated surcharges upon any waste stream increase in excess of ten per cent (10%) as a result of receipt of solid waste from outside the District; and

(4) To require prompt compliance with the requirements of this act.

SECTION 11. Any Regional Solid Waste Planning Board or Solid Waste Service Area may enter into agreements for the specific purpose of implementing this act. Any such agreement shall specify the following:

(1) its duration;

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

(3) its purpose or purposes;

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

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

(6) the degree to which the joint or individual plans are drawn in accordance with the Regional Needs Assessments required by this act; and

(7) any other necessary and proper matters.

SECTION 12. (a) There is hereby created the Arkansas Solid Waste Fact Finding Task Force. The task force is charged with the duty to collect data and report upon the sociological, economic, environmental, political and public health ramifications of solid waste management practices currently in effect in Arkansas, and policies and practices which should be adopted to address problems discovered. The task force's research shall include, but not be limited to, the available means of transport for solid waste materials, the distribution of landfill capacity throughout the State, the closure and future maintenance of landfills, and current procedures and recurring problems regarding siting of landfills.

(b) The task force shall have ten (10) voting members and two (2) ex officio members. The composition of the Committee shall be as follows:

(1) Four (4) members shall be appointed by the Governor to represent each of the four (4) Arkansas Congressional districts, one of which shall be the chairman;

(2) Two (2) members shall be appointed by the Governor with one (1) member being a mayor of an Arkansas city and one (1) member being a county

judge;

(3) Two (2) members shall be appointed by the President Pro Tem of the Senate;

(4) Two (2) members shall be appointed by the Speaker of the House of Representatives;

(5) The Director of the Department of Pollution Control and Ecology shall serve as an ex officio member and the Director of the Arkansas Geological Commission or his designee shall serve as an ex officio member.

(c) The initial meeting of the task force shall take place before May 1, 1989. The initial meeting shall be called at a time and place of the choosing of the chairman. The task force shall report its findings and recommendations, including any proposed legislation, to the Seventy-Eighth General Assembly of the State of Arkansas on or before January 1, 1991. The task force shall terminate upon the filing of its final report with the General Assembly.

(d) Members of the task force shall serve without compensation and shall receive their actual and necessary traveling expenses and meals incurred in the performance of their duties as members of the task force. All disbursements of funds for task force expenses shall be at the rate and under the same guidelines as those expenses for state employees. The Director is authorized to pay the expenses of the task force from funds appropriated to his department for conference fees and travels or from other funds appropriated specifically for the purpose of paying the expenses of the task force.

SECTION 13. SEVERABILITY. If any provision of this section or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect.

SECTION 14. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 15. The provisions of this act shall be in addition and supplemental to all other laws of Arkansas now in effect pertaining to solid waste and solid waste management and regulation, and shall repeal only such laws or parts of laws as may be specifically in conflict with this act.

SECTION 16. EMERGENCY. It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the current system regulating solid waste in Arkansas does not foster long-range planning or efficient allocation of the State's solid waste resources; that some areas are facing serious shortages of capacity to the point of crisis and other areas have excess capacity to the point it wastes resources; and therefore to conserve precious financial resources and to avoid unnecessary land and water pollution, a system of regional solid waste planning should be implemented. Therefore, in order to address this serious environmental problem, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 22, 1989

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