

HOUSE BILL 517

By Terry

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 211, relative to solid waste disposal.

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

SECTION 1. Tennessee Code Annotated, Section 68-211-814, is amended by deleting subsection (b) and substituting:

(b)

(1)

(A) If the commissioner approves the plan, the region or solid waste authority, if one has been formed pursuant to part 9 of this chapter, by resolution and subsequent adoption of ordinances by counties and municipalities in the region, may also regulate the flow of collected municipal solid waste generated within the region. Prior to the adoption of a resolution declaring the necessity of requiring mandatory flow of municipal solid waste, the region or authority, following one (1) or more public hearings, shall demonstrate in writing to the commissioner that it has considered the utilization of a municipal solid waste management facility in existence within the region on July 1, 1991, which meets the proposed or final federal Resource Conservation and Recovery Act (RCRA), compiled in 42 U.S.C. § 6901 et seq., Subtitle D regulations. The region or authority must show that its decision not to use the existing facility is based on the fact that:

(i) The facility is environmentally unsound or inadequate to meet the region's ten-year capacity assurance plan;

(ii)

(a) Costs for the use of such facility are inconsistent with comparable facilities within this state; or

(b) The existing facility is operating in a manner that is inconsistent with the plan; and

(iii) The waste subject to flow control will be sent only to a facility that meets all state and federal regulations.

(B) The region or authority may restrict access to any landfills and incinerators which dispose of municipal solid waste by excluding waste originating with persons or entities outside the region in order to effectuate the plan. If a facility within a region has accepted waste from a specific source outside the region prior to July 1, 1991, the region may not prohibit that facility from continuing to accept waste from that source, unless the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan.

(C)

(i) The department shall exercise general supervision over:

(a) The operation and maintenance of solid waste processing facilities and disposal facilities or sites in this state, pursuant to § 68-211-107; and

(b) All the features of operation and maintenance of a processing or disposal facility that affect or may affect the:

(1) Public health or safety of the area in which the facility operates;

(2) Quality of the environment of the area in which the facility operates;

(3) Proper processing and disposal of solid waste; or

(4) Enforcement of state law or actions authorized by state law.

(ii) The commissioner may investigate a solid waste processing or disposal facility as often as the commissioner deems necessary.

(iii) The board may adopt and enforce rules governing the operation and maintenance of solid waste processing and solid waste disposal facilities, operations, and sites. A municipality, city, town, or local board of health may adopt and enforce rules or ordinances that are equally as stringent or more stringent than those adopted by the commissioner; provided, that the rules or ordinances are consistent with the purposes of this part.

(D)

(i) A person, including a landfill owner, landfill operator, or disposal hauling company, that violates or fails to comply with

subdivision (b)(1)(B), is subject to a civil penalty of not less than five thousand dollars (\$5,000) per violation.

(ii) Each separate vehicle that is accepted with solid waste material from out of region constitutes a separate violation.

(iii) Each day that a violation continues constitutes a separate violation. In addition, the person is also liable for any damages to the state, county, or city resulting from a violation.

(iv)

(a) All funds from the civil penalty must be allocated to the solid waste department of the county in which the violation occurred, or the county solid waste authority of the county in which the violation occurred. The funds must be placed in a special fund and may be used only for solid waste diversion.

(b) All funds from assessed damages must be allocated to the state, county, or city damaged by the violation. The funds must be placed in a special fund for identified damage repair. Any funds remaining after damage repair is completed must be used for solid waste diversion.

(E) An aggrieved person shall file an appeal of a final action of the region or authority, including a determination under subdivision (b)(1), with the chancery court in the county where the region or authority is located within thirty (30) days of the region or authority's final action.

(F) After the plan is approved, the region shall approve an application for a permit for a solid waste disposal facility or incinerator within the region as is consistent with the region's disposal needs before a permit is issued by the commissioner pursuant to this chapter.

(2)

(A) An applicant for a permit for construction or expansion of a solid waste disposal facility or incinerator shall submit a copy of the application to the region at or before the time the application is submitted to the commissioner. The region shall review the application for compliance with this section, and shall conduct a public hearing after public notice has been given in accordance with title 8, chapter 44, prior to making the determination provided for in this subdivision (b)(2). The hearing must afford all interested persons an opportunity to submit written and oral comments, and the proceeding must be recorded and transcribed. The region shall render a decision on the application within ninety (90) days after receipt of a complete application. The region shall immediately notify the commissioner of its acceptance or rejection of an application. If a decision is not rendered by the region on the application within ninety (90) days after receipt of a complete application, then the commissioner may continue processing of the application.

(B) The region may reject an application for a new solid waste disposal facility or incinerator or expansion of an existing solid waste disposal facility or incinerator within the region only upon determining that the application is inconsistent with the solid waste management plan adopted by the county or region and approved by the department, and the

region shall document in writing the specific grounds on which the application is inconsistent with such plan.

(C)

(i) Appeal of a final action of the region under this subdivision (b)(2) must be made by an aggrieved person within thirty (30) days to the chancery court of Davidson County. The court shall exercise the same review as it would in a case arising under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. For the purposes of this section, an "aggrieved person" is limited to a person applying for permits, a person who owns property or lives within a three-mile radius of the facility or site that is proposed for permitting, or cities or counties in which the proposed facility is located.

(ii) A permit that is the subject of an appeal made to the chancery court of Davidson County within the time prescribed in subdivision (b)(2)(C)(i) must not be:

(a) Processed by the commissioner until there is a final adjudication of the appeal on the merits; or

(b) Issued in contravention of the final adjudication on the merits.

(D) If an aggrieved party does not appeal a final action of the region in accordance with subdivision (b)(2)(C), then the commissioner may issue the permit unless the commissioner finds that the decision of the region to reject the application is arbitrary and capricious and unsupported in the record developed before the region.

(E) The region shall provide for reasonable public notice of meetings. The region is subject to title 10, chapter 7, part 5, and shall act in accordance with title 8, chapter 44.

(3) If the region has formed a solid waste authority pursuant to part 9 of this chapter, then the authority shall approve any permit applications as provided for in this section instead of the region.

(4) A region or solid waste authority may not impair the obligations of contracts entered into before the date of approval of the region's plan in violation of the article I, § 20 of the Tennessee Constitution.

(5) A region or solid waste authority may not restrict the movement of recovered materials into, out of, or within the region.

(6) Before submitting a plan required by this part, each municipal solid waste region shall hold a public hearing on the proposed plan or revised plan.

(c) Civil penalties or damages under this section must be assessed in the following manner:

(1) The commissioner shall issue an assessment against a person responsible for a violation of this part upon discovery of the violation, and shall include an assessment of the damage caused by the violation. The commissioner shall provide notice of the assessment by certified mail, return receipt requested;

(2) A person against which an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the person's objections and asking for a hearing in the matter involved before the board. When a petition is timely filed,

the contested case hearing must be conducted in accordance with § 68-211-113(b);

(3) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator is deemed to have consented to the assessment and the assessment becomes final;

(4) Whenever an assessment becomes final because of a person's failure to appeal either the commissioner's assessment or the board's order, the commissioner shall apply to the appropriate court for a judgment and seek execution of the judgment. The court shall treat the failure to appeal the assessment or order as a confession of judgment in the amount of the assessment; and

(5) The commissioner shall institute proceedings for an assessment in the chancery court of the county in which the violation or failure to comply occurred. Notwithstanding § 20-4-101, the court is an appropriate venue for the proceeding.

(d) In assessing damages, the following factors may be considered:

(1) The harm done to public health or the environment;

(2) The economic benefit gained by the violator;

(3) The amount of effort put forth by the violator to attain compliance; and

(4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

(e) Damages to this state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land, and other property, including animal, plant, and aquatic life, of this state to their former condition.

SECTION 2. This act takes effect July 1, 2023, the public welfare requiring it.