

SENATE BILL 2083

By Burchett

AN ACT to enact the Tennessee Solid Waste Commodity Management and Community Recycling Enhancement Act of 2009 and to amend Tennessee Code Annotated, Section 67-2-102; Section 67-2-119; Section 67-4-2007; Section 67-6-103; Section 67-6-504; Title 68, Chapter 203; Title 68, Chapter 211, Part 8 and Title 68, Chapter 211, Part 9.

WHEREAS, the State of Tennessee is dedicated to a solid waste management system that will require a significant reduction in the amount of solid waste disposed in landfills; and

WHEREAS, significant fluctuations in energy costs and the values of various commodities have adversely affected the expansion and success of recycling programs; and

WHEREAS, there exists in the philosophy utilized in pig farming, "where everything but the squeal is used" promotes the minimization of waste and efficient stewardship of resources, and this philosophy should be used by Tennessee's citizens, whether in TVA coal ash, shredded tires, used oil, food and yard waste, or soft-drink and malt beverage containers; and

WHEREAS, the State of Tennessee in its efforts to legislate change should promote technological and environmental innovation through a public policy based on the old adage of "Waste not, Want not", now, therefore,

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

SECTION 1. This act shall be known and may be cited as the "Tennessee Solid Waste Commodity Management and Community Recycling Enhancement Act of 2009".

SECTION 2. The general assembly with this act intends to encourage the use of recycling as a more efficient and less energy intensive approach to solid waste management. In doing this, the general assembly intends for this legislation to encourage the development of our present fragmented system of local community recycling programs into a comprehensive

regionalized approach. The general assembly also intends to encourage recycling education and litter prevention education. The general assembly recognizes the benefits and intends to encourage curbside collection and to reduce illegal littering and dumping.

SECTION 3. The following concepts are declared to be the policies of the state concerning the amount of solid waste generated, the reuse, recycling and composting of solid waste and resource recovery from solid waste:

(1) Maximum solid waste reduction, reuse, recycling, composting and resource recovery is in the best interest of the state in order to protect public health, to protect the quality of the natural environment and to conserve resources and energy;

(2) Solid waste reduction, reuse, recycling, composting and resource recovery projects should be encouraged in furtherance of these goals;

(3) Encouragement and support should be given to individuals, collectors, handlers and operators of waste facilities to separate solid waste at the source, in processing or at the time of disposal in order to facilitate reuse, recycling, composting or resource recovery;

(4) Research, development and innovation in the design, management and operation of solid waste reduction, reuse, recycling, composting and resource recovery systems and operations are necessary and should be encouraged in order to improve the processes, to lower the operating costs and to provide incentives for the use of these systems and operations and their products;

(5) The initiatives of current recyclers which facilitate reuse and recycling through separation, collection and processing of substantial volumes of scrap and waste material, reducing the amount of mixed solid waste that is disposed of in landfills or burned without energy recovery in incinerators, should be encouraged;

(6) The burning of solid waste with energy recovery as a substitute for the burning of nonrenewable fuels, such as coal or natural gas, to generate steam or electricity is in the public interest and should be encouraged, if done in a state approved program that protects the public health and welfare and the environment;

(7) The implementation of solid waste reduction, reuse, recycling, composting and resource recovery systems and operations requires the involvement and cooperation of all persons and entities comprising this state's society, including individuals, state and local governments, schools, private organizations and businesses. To achieve this involvement and cooperation, state government should rely to the maximum extent feasible on technical and financial assistance, education and managerial practices to implement these policies. Necessary regulations should be developed with maximum flexibility;

(8) Solid waste reduction, reuse, recycling, composting and resource recovery efforts in this state should be planned and coordinated in order to maximize beneficial results while minimizing duplication and inefficiency;

(9) To achieve the goals in this policy statement, the general assembly recognizes the necessity of the state to occupy a regulatory role in this field and the necessity to give local governments certain powers to adopt waste flow control ordinances and resolutions in order to require the use of recycling and resource recovery facilities;

(10) Solid waste reduction, reuse, recycling, composting and resource recovery systems and operations are preferable to land disposal;

(11) Developers and users of land disposal facilities should not become overly committed to land disposal because of the excessively long useful life of a facility or the excessive aggregate capacity of land disposal facilities so that reuse, recycling,

composting, and resource recovery systems and operations may be implemented rapidly without excessive disruption; and

(12) In the management of solid waste, whenever possible and practical, the state encourages the following priorities:

- (A) The reduction of the amount of solid waste generated;
- (B) The reuse of solid waste;
- (C) The recycling of solid waste;
- (D) The composting of solid waste;
- (E) The recovery of energy from solid waste;
- (F) The land disposal of solid waste; and
- (G) The burning of solid waste without resource recovery.

SECTION 4. After the creation and evaluation of the pilot projects authorized by this act, certain restrictions shall be imposed as follows:

(1) Beginning on January 1, 2015, a person may not dispose of yard waste in a solid waste disposal facility except in an approved land spreading or composting facility or burn yard waste without energy recovery in a solid waste facility in this state;

(2) Beginning on January 1, 2017, a person may not dispose of in a solid waste disposal facility or burn without energy recovery in a solid waste treatment facility any of the following:

- (A) An aluminum container;
- (B) Corrugated paper or other container board;
- (C) Foam polystyrene packaging;
- (D) A glass container;
- (E) A magazine or other material printed on similar paper;
- (F) A newspaper or other material printed on newsprint;

- (G) Office paper;
- (H) A plastic container; or
- (I) A steel container; and

(3) Beginning on January 1, 2017, a person may not convert into fuel or burn with energy recovery at a solid waste treatment facility any of the following:

- (A) An aluminum container;
- (B) Corrugated paper or other container board;
- (C) Foam polystyrene packaging;
- (D) A glass container;
- (E) A magazine or other material printed on similar paper;
- (F) A newspaper or other material printed on newsprint;
- (G) Office paper;
- (H) A plastic container; or
- (I) A steel container.

#### SECTION 5.

(a) Beginning January 1, 2010, the commissioner of environment and conservation shall solicit proposals for recycling pilot projects to be awarded across the state for the establishment of a single-stream or enhanced dual-stream recycling pilot program. A trash hauler serving a municipality that does not offer trash collection services as a municipal service may apply to be a pilot project. The commissioner may give preference to municipalities that do not have existing curbside recycling programs.

(b) Not later than April 1, 2010, proposals shall be submitted to the commissioner. The commissioner may reject any proposal that the commissioner determines to be incomplete. If the commissioner rejects a proposal, the commissioner shall promptly notify the proposer of the reasons for the rejection and, not later than

fifteen (15) days after the date of such notice, such proposer may resubmit the application in the same manner as the original application.

(c) Each proposal shall include:

(1) An estimate of the operational and capital expenses and income required to implement the plan over a three-year period;

(2) Goals for recycling;

(3) An estimate of savings in tipping fees, if applicable;

(4) A method for tracking the actual cost of the program;

(5) A method for calculating the actual savings of the program; and

(6) Any additional information required by the commissioner.

(d) Beginning July 1, 2010, the commissioner shall establish six (6) such recycling pilot projects across the three grand divisions of the state.

(e) In establishing the pilot projects, the commissioner shall allocate a grant for each pilot project to local governments of varying population sizes.

(1) One (1) pilot project shall be a local government with a population of more than one hundred thousand (100,000), according to the 2000 federal census or any subsequent federal census;

(2) Two (2) pilot projects shall be a local government with a population of not less than three thousand (3,000) nor more than one hundred thousand (100,000), according to the 2000 federal census or any subsequent federal census; and

(3) Three (3) pilot projects shall be a local government with a population of not more than three thousand (3,000), according to the 2000 federal census or any subsequent federal census.

(f) From the funds available under this act, the commissioner shall provide matching funds from the fund established by Section 12 of this act. A trash hauler serving a municipality that does not offer trash collection services as a municipal service may apply for such a grant. The commissioner may give preference to municipalities that do not have existing curbside recycling programs.

(g) Not less than two (2) of the pilot projects shall establish a system for households and businesses within a municipality to pay no fee for recycling and to pay for trash removal based upon the volume or weight of solid waste that such households or businesses generate, or establish other incentives, such as retail coupons given as awards for meeting volume benchmarks of recycling quantity per household. This system shall utilize the concepts from across the country in the programs known as "Pay as You Throw."

(h) No grand division shall have more than two (2) pilot projects.

#### SECTION 6.

(a) If a local government is designated as a pilot project, the local government is eligible to receive pilot project grant funds on a matching basis as follows:

(1) For the pilot project designated under Section 5(e)(1), the local government may receive not more than seventy-five percent (75%) of the cost of its proposal as matching state funds;

(2) For the pilot projects designated under Section 5(e)(2), the local government may receive not more than eighty-five percent (85%) of the cost of its proposal as matching state funds; and

(3) For the pilot projects designated under Section 5(e)(3), the local government may receive not more than ninety percent (90%) of the cost of its proposal as matching state funds.

(b) A local government shall propose conducting a pilot project for not more than three (3) years.

(c) As a condition of receiving grant funds, a local government grant recipient shall make regular reports to the commissioner.

(d) After two (2) years of operation, the commissioner with the assistance of the solid waste advisory committee, shall begin the evaluation of the pilot projects.

(e) After three (3) years of pilot project operation, the commissioner shall make a report with the evaluation of the pilot projects to the speaker of each house of the general assembly. The report shall include a recommendation of whether a particular pilot project should be continued or terminated, and shall recommend a range of options for projects on a statewide basis. In preparing the report, the commissioner shall consult with the solid waste advisory committee.

SECTION 7. Tennessee Code Annotated, Section 68-211-803, is amended by adding the following language as a new subsection (d):

(d)

(1) It is further declared to be the policy of this state that a seventy-five percent (75%) reduction in the amount of solid waste disposed of in Class I disposal facilities in this state shall be achieved on or before June 30, 2017, and that such reduction shall be accomplished through waste source reduction, reuse, composting, recycling and other methods identified by the department and board as beneficial to the citizens of the state.

(2) It is further declared to be the policy of this state that the recycling rate for used beverage containers be increased to seventy-five percent (75%) on or before June 30, 2019.

SECTION 8. Tennessee Code Annotated, Section 68-211-861(g), is amended by deleting the last sentence of the subsection and by substituting instead the following:

Upon the effective date of the rule, subsections (a)-(f) shall be repealed and of no further force and effect and the rule shall be enforceable according to its terms and in accordance with this section and § 68-211-816.

SECTION 9. Tennessee Code Annotated, Section 68-211-861, is amended by redesignating subsection (g) as subsection (h) and is further amended by adding the following language as a new subsection (g):

(g)

(1) On or after July 1, 2011, solid waste received by a Class III or Class IV disposal facility shall not be included as waste reduced or diverted for purposes of determining if a county or region has attained the waste reduction and diversion goal set by this section or by rule as provided in subsection (h) unless such waste is recycled or used for beneficial use activities.

(2) For purposes of this subsection (g), "beneficial use activity" means application of solid waste to a purpose that is not detrimental to public health, safety, or the environment and produces tangible or intangible economic or other benefits.

SECTION 10. Tennessee Code Annotated, Section 68-211-865, is amended by deleting subsection (b) and by substituting instead the following:

(b) The department shall:

(1) Expand the department's demonstration state office recycling program to the maximum extent practicable to include other kinds of recyclable materials, including, but not limited to, newsprint, mixed paper and steel cans;

(2) Demonstrate new uses of recovered materials; and

(3) On or before July 1, 2010, expand participation in the department's demonstration state office recycling program to include all buildings owned or leased by the state and expand the program to include at least the following recyclable materials: newsprint; mixed paper; cardboard; steel; and aluminum, glass, and plastic containers.

#### SECTION 11.

(a) As used in this section:

(1) "Newspaper" means a publication that is printed on newsprint and that is published, printed and distributed in this state, at daily, weekly or other short, periodic intervals, for the dissemination of current news and information of a general character and of a general interest to the public. "Newspaper" also includes any "shoppers guide" that is printed on newsprint; and

(2) "Recycled content" means the proportion of fiber in a newspaper that is derived from postconsumer waste.

(b) Each publisher of a newspaper shall annually pay to the department a newspaper recycling fee.

(c) The newspaper recycling fee does not apply to the publisher of a newspaper that meets or exceeds the target recycled content in this section.

(d) The amount of the newspaper recycling fee imposed on a publisher under subsection (b) for any year is one percent (1%) of the total cost of newsprint used to print the newspaper during the year multiplied by the recycling status specified in subsection (e).

(e) The recycling status is the target recycled content minus the actual recycled content specified in subsection (f).

(f) The target recycled content is the following recycled content in the specified year:

- (1) 2012, thirty percent (30%); and
- (2) 2017 and thereafter forty percent (40%).

(g) The actual recycled content is the average of the recycled content of all newsprint used by that publisher to print the publisher's newspaper during the year.

(h) This section does not apply to the publisher of a newspaper that has a circulation of less than ten thousand (10,000) if the department determines, based on a review of a written request by the publisher, that compliance with the target recycled content requirements would create a financial hardship for the publisher. The department shall promulgate rules for making determinations of financial hardship under this subsection (h).

(i) The department shall specify by rule the form and manner for payment of the newspaper recycling fee.

(j) The newspaper recycling fees collected under this section shall be deposited in the recycling enhancement fund established in Section 12 of this act.

SECTION 12. Tennessee Code Annotated, Title 68, Chapter 203, is amended by adding the following language as a new part:

Section 68-203-201.

(a) There is created a special account in the state treasury to be known as the "Tennessee solid waste commodity management and community recycling enhancement fund", hereinafter referred to as the "recycling enhancement fund".

(b) There shall be deposited in the recycling enhancement fund:

- (1) Funds produced by any fee imposed by this act; and

(2) Appropriations made by the general assembly to the recycling enhancement fund.

(c) In addition to the funds deposited pursuant to subsection (b), the commissioner of environment and conservation may accept other funds, public or private, by way of gift or grant to the fund.

(d) Moneys in the recycling enhancement fund may be invested by the state treasurer in accordance with § 9-4-603.

(e) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the recycling enhancement fund shall be credited to such fund, shall not revert to the general fund, and shall be carried forward into the subsequent fiscal year.

(f) Any balance remaining unexpended at the end of a fiscal year in the recycling enhancement fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(g) Money in the recycling enhancement fund may be expended only in accordance with annual appropriations approved by the general assembly.  
Section 68-203-202.

(a) Not more than sixty percent (60%) of the proceeds in the recycling enhancement fund shall be available for the recycling pilot projects authorized by this act.

(b)

(1) The commissioner shall offer pilot project preference points for any proposal that encourages regional action or joint action by two (2) or more local entities.

(2) The commissioner shall make awards for the recycling pilot projects from funds then available and appropriated from the environmental fund.

(3) All recipients are subject to audit by the comptroller of the treasury as to the funds received pursuant to this act.

(c) Not more than twenty five percent (25%) of the proceeds in the recycling enhancement fund shall be used for state aid to the counties to implement the reduction in the waste stream required by this act.

(d) Not more than five percent (5%) of the proceeds in the recycling enhancement fund shall be used for the state recycling program.

(e) Not more than five percent (5%) of the proceeds in the recycling enhancement fund shall be used for county recycling education efforts.

(f) Not more than five percent (5%) of the proceeds in the recycling enhancement fund shall be used for grants to higher education institutions in the state. Preference shall be given to the existing solid waste management and engineering programs at the University of Tennessee in Knoxville, the University of Memphis, and Tennessee Technological University.

SECTION 13. This act shall take effect on July 1, 2009, the public welfare requiring it.