

CHAPTER 105**(HB 246)**

AN ACT relating to solid waste management and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 109.041 is amended to read as follows:

- (1) In addition to all other powers enumerated in Chapter 67 and other sections of the Kentucky Revised Statutes, counties, acting by and through their fiscal courts, may own and hold the permit for, plan, initiate, acquire, construct, and maintain solid waste management facilities, enter into contracts or leases with private parties for the design, construction, or operation of a publicly-owned solid waste management facility, and adopt administrative regulations with respect thereto in accordance with this chapter. It is hereby determined and declared that in the implementation, acquisition, financing, and maintenance of solid waste management facilities, and in the enforcement of their use, counties will be performing state functions duly delegated to them for the public welfare. In such regard, the right of counties to condemn land necessary for the acquisition of solid waste management facilities pursuant to the Eminent Domain Act of Kentucky and to exercise the police power in respect thereto is confirmed. Any county may contract with third parties for the management by public or private means of solid waste within the county.
- (2) No solid waste management facility shall be acquired and constructed until the construction thereof has been approved in writing by the cabinet. Planning for a solid waste management facility shall be conducted in accordance with the policy set forth in KRS 109.011(7) and KRS Chapter 224.
- (3) No county or waste management district shall prohibit or otherwise restrict materials recovery by:
 - (a) Any materials recovery operation in existence in the county or district on the effective date of the mandatory program;
 - (b) Any person supplying material to materials recovery operations on the effective date of the mandatory program;
 - (c) Any new materials recovery operation that reclaims the same type of materials as materials recovery operations included in paragraph (a) of this subsection;
 - (d) Any new suppliers to materials recovery operations included in paragraphs (a) and (c) of this subsection;
 - (e) Any materials recovery operation for glass, plastic, or metal beverage containers, unless a commitment has been made by a local government or other political subdivision of the state, by ordinance or contract, to a solid waste project consistent with the provisions of this chapter, that is dependent upon the materials recovery of glass, plastic, or metal beverage containers to meet its financial obligations for said project, and such commitment has been made prior to the operation of any other such materials recovery facility in the county or district;~~{or}~~
 - (f) Any other materials recovery operation within the county or district not included in paragraphs (a) through (e) of this subsection or the supply of materials to such operation unless it is established that such operation would jeopardize the ability of a local government or other political subdivision of the state to meet financial obligations incurred in the maintenance, operation, or amortization of capital acquisition costs for a solid waste management facility; **or**
 - (g) ***In a county containing a consolidated local government, any municipality located within the geographic area of the county or waste management district created to serve that county.***
- (4) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, no county or waste management district shall regulate special wastes as defined in KRS 224.50-760, other than sludge from water and waste water treatment facilities as it pertains to landfarming, or solid waste from agricultural or mining operations.
- (5) Any county undertaking the planning, implementation, construction, installation, acquisition, and financing of a solid waste management facility pursuant to this chapter shall have the authority set forth in Chapter 58 of the Kentucky Revised Statutes concerning the financing of such solid waste management facility, including

the authority to promulgate, enforce, and collect reasonable rates, rentals, and charges for the use of such solid waste management facility.

- (6) Bonds authorized to be issued by any county pursuant to the authority of this chapter for the financing of solid waste management facilities may be sold at either private or public sale as may in the sound discretion of the county be in the best interests of the county.
- (7) Any county undertaking solid waste management pursuant to the provisions of this chapter may contract with any person for the provision of solid waste management services. A county may contract with any city to provide solid waste management services or may delegate the responsibility for solid waste management within incorporated areas to a city when the city agrees to assume such responsibility. In connection with solid waste management, any county may enter into contracts with any person for any term of years.
- (8) Counties are authorized to charge a reasonable fee to transporters for the handling of their waste at a solid waste management facility approved by the cabinet.
- (9) Counties are authorized to sell or market materials and energy recovered from solid waste and to enter into long-term contracts guaranteeing supply to insure markets for the sale of recovered products.
- (10) In carrying out the provisions of this chapter, counties shall be subject to standards set by regulations adopted by the cabinet on waste management pursuant to KRS Chapter 224.
- (11) No county or waste management district shall prohibit long-term contracts by ordinance or other means.
- (12) Counties are expressly authorized in addition to the powers enumerated in KRS Chapter 65 and this chapter to contract with one another in order to regionalize solid waste management to the maximum extent practicable.
- (13) Notwithstanding any other provision of law, a fiscal court may, by ordinance, create a solid waste district to exercise the powers of the county pursuant to this chapter, except that a district created for this purpose shall not levy or collect ad valorem property taxes.
- (14) *If a city within a county containing a consolidated local government is in conformity with the Resource Conservation and Recovery Act of 1976, 42 U.S.C. secs. 6901 et seq., and is in conformity with all state statutes and administrative regulations applicable to the collection, management, and treatment of solid waste and resource recovery therefrom, the consolidated local government or waste management district serving the county containing the consolidated local government shall not, directly or indirectly, hinder, delay, impair, prohibit, or impede any city or its contractors and agents from accessing, utilizing, and otherwise using any solid waste management facility for the disposal of solid waste. The consolidated local government or waste management district shall not charge a city within the county containing the consolidated local government, or the city's contractors and agents, directly or indirectly, any fee that is based, directly or indirectly, on the composition of the solid waste stream of that city if the solid waste stream is in conformity with state and federal law for the use of the solid waste management facility receiving the waste.*

➔Section 2. KRS 109.115 is amended to read as follows:

- (1) A single county, or two (2) or more counties may create a waste management district in accordance with the procedures of KRS 65.182. Waste management districts shall have all powers and authority set forth in KRS 109.041.
- (2) The waste management district shall be controlled and managed by a board of directors.
- (3) The fiscal court ***in a county not containing a consolidated local government*** shall determine the composition of the board of directors in one (1) of the following ways:
 - (a) Appointment of the county judge/executive of every county, or portion of a county, within that district and the mayor of the most populous city in each county. Appointment of a third member from each county in the district so that representation on the board shall be in proportion to the urban-rural population distribution in the county. The county judge/executive and the mayor may delegate a representative to serve in their stead.
 - (b) Appointment of members by the county judge/executive and confirmed by the respective fiscal court. In the case of multicounty districts, membership on the board shall be apportioned among the counties in ratio to their population with each county having at least one (1) member. The mayor of the most populous city in each county that is a participant in the waste management district shall be appointed a member. In no case shall the total membership of the board consist of fewer than three (3) persons.

When a county has two (2) or more members on the board, members shall be selected from urban or rural areas in the same proportion as the urban-rural population distribution in the county, except that there shall be at least one (1) member each from a rural and from an urban area.

- (4) ***In a county containing a consolidated local government, the mayor of the consolidated local government, with the approval of the legislative body of the consolidated local government, shall appoint the following seven (7) persons to constitute the board of directors:***
- (a) ***Three (3) residents, one (1) from each of the three (3) commissioner's districts in the county and no two (2) members shall reside within the same state Senate district;***
 - (b) ***One (1) resident of the county who shall also reside within and represent the urban services district within the consolidated local government;***
 - (c) ***One (1) resident of the county submitted by the organization representing the largest amount of cities within the county which does not have statewide membership;***
 - (d) ***One (1) resident of the county who does not reside within a city or the urban services district in the county; and***
 - (e) ***One (1) resident of the county submitted by the association representing the largest number of waste management entities operating within the county.***
- (5) A member of the board of directors may be removed from office pursuant to KRS 65.007.
- (6) ***Except for the initial board appointed pursuant to this section, each director shall serve a two (2) year term, and shall serve no more than three (3) consecutive terms. The initial board appointed pursuant to this section shall consist of three (3) directors appointed for one (1) year and four (4) directors appointed for two (2) years.***

➔Section 3. KRS 109.120 is amended to read as follows:

- (1) ***In counties not containing a consolidated local government, the board may adopt such rules and regulations as are necessary to carry out the purposes for which the waste management district was created and necessary for the adequate management of solid waste in a manner adequate to protect the public health and consistent with such rules and regulations as may be promulgated by the department.***
- (2) ***In counties containing a consolidated local government, all rules and regulations of the solid waste management district enacted from adoption of the most recent solid waste management plan prior to the effective date of this Act shall continue in full force and effect until the later of August 31, 2017, or the date on which a new solid waste management plan is approved by the department.***
- (3) ***In counties containing a consolidated local government, the board may adopt such rules and regulations as are necessary to carry out the purposes for which the waste management district was created and necessary for the adequate management of solid waste in a manner adequate to protect the public health and consistent with such rules and regulations as may be promulgated by the department. These rules and regulations shall not be enforceable within the boundaries of the city until approved by the legislative body of the city or, if outside of an incorporated municipality, the legislative body of the consolidated local government, where the rule or regulation is intended to apply. A city shall approve any rule or regulation if rejecting it would cause the city to be in violation of its approved solid waste management plan adopted in accordance with the provisions of KRS 224.43-345 and Section 4 of this Act.***
- (4) ***In counties containing a consolidated local government, a solid waste district shall be required to electronically make available on a Web site operated by the consolidated local government, all notices, meeting agendas, and meeting minutes.***

➔Section 4. KRS 224.43-340 is amended to read as follows:

- (1) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste, consistent with the statewide solid waste reduction and management plan, the goals established by KRS 224.43-010, and the provisions of KRS Chapter 109.
- (2) Waste management districts, counties, or any combination thereof, shall confer and determine which shall submit to the cabinet a solid waste management plan. The plan shall address municipal solid waste management needs for the area. Each county shall be responsible for implementing the plan, except that any city that develops the portion of the area plan applicable to its jurisdiction under KRS 224.43-315 shall be

responsible for implementing the portion of the plan prepared by the city. However, if a county participates in a regional solid waste management area, then the governing body of the solid waste management area shall be responsible for implementing those components of the plan it is assuming on behalf of the county. ***In counties containing a consolidated local government, all municipalities therein shall be deemed to be participating in the solid waste management plan adopted by the waste management district unless a municipality shall, by ordinance, specifically opt out of the plan, in which event the municipality shall comply with all requirements of KRS Chapter 224 and administrative regulations promulgated pursuant thereto.*** However, the cabinet shall not disapprove a solid waste management plan for a single county ***or municipality within a consolidated local government*** if the plan complies with the requirements of KRS Chapter 224 and administrative regulations adopted by the cabinet. Plans shall be updated once every five (5) years. Plans may be amended and such amendments shall be submitted to the cabinet for review and approval. The review and approval of the cabinet shall be limited to a determination of whether the proposed amendments are in conformity with KRS 224.43-345 and the statewide solid waste reduction and management plan and KRS Chapter 224 and administrative regulations adopted by the cabinet.

- (3) A county may delegate responsibility for preparing all or portions of the plan to one (1) or more cities within the county. Such delegation of responsibility shall be made only with the mutual agreement of the city and county. Each city and county shall be included in a solid waste management plan.
- (4) Cities authorized under KRS 224.43-315 shall have the sole responsibility for developing and preparing the portion of the solid waste management plan applicable to the jurisdiction of the city, unless the city elects to have the county prepare the plan. If the city prepares the solid waste management plan for its jurisdiction, the city plan shall be incorporated within the area plan prior to its submission to the cabinet. The plan developed by the city, to the extent practicable, shall be reasonably consistent with the plan developed by the county. The cabinet, as a part of the area plan approval process, shall determine whether the city portion of the area plan is reasonably consistent with the overall area plan so as to effectuate the purposes of this chapter.
- (5) Cities, other than those authorized under KRS 224.43-315, operating solid waste management facilities or services, or who contracted with a person to provide such services on or before July 13, 1984, and pay a pro rata share of the cost of plan development may assume joint responsibility with a county for plan development. Where joint responsibility for plan development is assumed, both the county fiscal court and city legislative body must adopt the plan before it is submitted to the cabinet for approval.
- (6) Counties, waste management districts, or any combination thereof preparing the solid waste management plan shall apply for and be designated as a solid waste management area. The application shall be submitted by June 1, 1991. The application shall include but not be limited to:
 - (a) A brief description of existing disposal capacity and of the capability of the proposed area to effectively manage solid waste;
 - (b) Resolution of the fiscal courts of all counties in the proposed area approving the application for designation;
 - (c) Resolution of those city legislative bodies in the proposed area that are currently operating solid waste management facilities or services and will participate in and provide financial assistance in plan development;
 - (d) Any agreement or contract necessary to establish the proposed area; and
 - (e) Resolution of the boards of any existing waste management districts located within the proposed area approving the application for designation.
- (7) The jurisdiction of the solid waste management area shall be limited to the geographical area established or designated by the cabinet in accordance with the provisions of this chapter unless the preparer submits justification for any deviation therefrom acceptable to the cabinet.
- (8) Upon receipt of such application, the cabinet shall, within thirty (30) days either approve the creation of a proposed solid waste management area or shall disapprove such application, and in the event of disapproval shall state in writing the reasons for such disapproval. Any changes in the application contents shall be submitted to the cabinet.
- (9) Solid waste management areas shall be designated for five (5) year periods. At the end of five (5) years, the plan shall be updated and reapproved by the cabinet.

- (10) If the cabinet does not receive on behalf of a county a solid waste management plan and the application for a solid waste management area in which the county will participate required by this section and KRS 224.43-345, the cabinet may develop a solid waste management plan for that county or may place that county in a designated solid waste management area.
- (11) If the solid waste management plan for a county is not implemented, the Commonwealth shall not endorse projects that generate solid waste under the Kentucky intergovernmental review process for that county.
- (12) The governing body of a solid waste management area may employ an enforcement representative to ensure compliance with applicable regulations of the cabinet relating to construction and operation of municipal solid waste management facilities. The enforcement representative shall possess at least minimum qualifications required of representatives of the cabinet performing similar functions.

➔Section 5. KRS 109.310 is amended to read as follows:

- (1) A county or urban-county government may collect solid waste pick-up fees which are delinquent three (3) consecutive months or more by combining the delinquent fees with the property tax bill for the property where the solid waste pick-up is made. The fees shall be limited to a return on capital expenditures and to cover operational costs.
- (2) The pick-up fee when combined with the property tax bill shall be clearly set out as the delinquent amount owed for solid waste pick-up services and shall in no way be represented as an assessment based on the value of the property.
- (3) Sixty (60) days before a property tax bill which includes a delinquent solid waste pick-up fee is mailed, the county office responsible for solid waste pick-up billing shall give written notice to the owner of the property that the pick-up bill is delinquent and that, if left unpaid, the fee will be combined with the next property tax bill.
- (4) A county or urban-county government may waive the solid waste pick-up fee for businesses which request a waiver. The request for a waiver shall include a certification that the solid waste generated by the business is disposed of properly and include a description of the disposal method and the property owner's federal employer's identification number.
- (5) If the owner of the property is not the occupant of the property where the solid waste is picked up, the county or urban-county government shall waive the delinquent solid waste pick-up fee portion of the property tax bill if the owner of the property requests a waiver. In requesting the waiver, the owner shall certify he is not the occupant of the property and that the occupant will be notified that failure of the occupant to pay the solid waste pick-up fee will be considered a breach of the occupant's lease making the occupant subject to eviction.
- (6) *(a) Notwithstanding the provisions of subsections (1) to (5) of this section, or any other provision of law to the contrary, no fine or fee shall be assessed on a residential property owner or lien placed on the residential property, relating to the failure of an occupant of the residential property to enter into a contract for solid waste collection services, or failure to pay solid waste pick-up fees if:*
 - 1. *The residential property owner does not occupy the residential property; and*
 - 2. *There is no valid agreement for the residential property owner to pay for or otherwise provide for solid waste collection services on behalf of the occupant.*
- (b) A fine or fee may be assessed against the occupant of the residential property or a lien may be placed on the property of the occupant when the occupant has failed to enter into a contract for solid waste collection services, or has failed to pay solid waste pick-up fees.*

➔Section 6. The amendments to KRS 109.115 in Section 2 of this Act shall be applied, on the effective date of this Act, to declare vacant the offices of current board members of a solid waste management district in a county containing a consolidated local government who were appointed under subsection (3) of Section 2 of this Act prior to its amendment in this Act. The mayor of the consolidated local government shall fill the vacant positions within 90 days of the effective date of this Act in accordance with subsection (4) of Section 2 of this Act; otherwise all appointment authority shall shift to the Governor.

➔Section 7. Whereas the citizens of counties containing a consolidated local government will be better served by a reconstituted waste management district board that is more diverse and representative of and responsive to the populace, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 21, 2017.