

LEGISLATIVE BILL 163

Passed over the Governor's veto April 9, 1990.

Introduced by R. Johnson, 34; Baack, 47; Schellpeper, 18; Scofield, 49; Hall, 7; Wesely, 26; Ashford, 6; Withem, 14; Schimek, 27; Beck, 8

AN ACT relating to waste management; to state intent; to create funds; to provide for the use of such funds; to provide for fees for the purchase of tires and for certain businesses as prescribed; to provide for grants for waste reduction and recycling programs and projects as prescribed; to provide procedures for the awarding of such grants; to provide for a comprehensive waste management plan; to appropriate funds; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) The Legislature hereby finds and declares that:

(a) Some licensed and unlicensed landfills in Nebraska exhibit numerous operational and management practices which are inconsistent with proper landfill management and licensing requirements, and the owners and operators of such landfills should be encouraged to cooperate and work with the Department of Environmental Control to ensure that the air, land, and water of this state are not polluted;

(b) Some landfills in Nebraska are reaching capacity and the siting of a new location can be a financially expensive and socially disruptive process, and because of this situation all Nebraska citizens and businesses are encouraged to implement waste reduction measures that will result in a reduction of waste entering landfills by at least twenty-five percent;

(c) Recycling and waste reduction are necessary components of any well-managed waste management system and can extend the lifespan of a landfill and provide alternative waste management options; and

(d) The state can encourage recycling by the example of its own purchase and use of recycled and recyclable materials. The state can also encourage recycling and waste reduction by the creation of funding

grants which support existing and future waste management systems.

(2) It is the intent of the Legislature that the state, as a major consumer and an example for others, should assist resource recovery by making a concerted effort to use recyclable and recycled products and encourage other levels of government and the private sector to follow its example. When purchasing products, materials, or supplies for use by the State of Nebraska, the Department of Administrative Services, the University of Nebraska, and any other state agency making such purchases shall give preference to and purchase products, materials, and supplies which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference shall also be given to the purchase of corn-based biodegradable plastics and road deicers, depending on the availability and suitability of such products. Such preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality or substantially higher cost.

Sec. 2. (1) There is hereby created a Waste Reduction and Recycling Incentive Fund to be administered by the Department of Environmental Control. The fund shall consist of revenue from the following sources:

(a) Proceeds from the fee imposed on each new tire sold in the state and the fee imposed on each tire of each new motor vehicle sold in the state pursuant to section 4 of this act; and

(b) Proceeds from the annual fee imposed on businesses pursuant to section 5 of this act.

(2) The fund may be used for the following purposes, including, but not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement

composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs;

(h) Incentive grants to political subdivisions to assist and encourage the closure of unlicensed landfills, the regional consolidation of licensed solid waste disposal facilities, and the use of transfer stations. Grants awarded for programs involving land disposal shall include provisions for waste reduction and recycling; and

(i) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate waste to generate and recover energy resources.

(3) No grant shall be made under section 3 of this act to a political subdivision which operates an unlicensed landfill unless the grant will be used to meet licensure standards and the landfill is licensed within two years after the award of the grant.

(4) The Department of Environmental Control may receive gifts, bequests, and any other contributions for deposit in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 3. (1) Allocations from the Waste Reduction and Recycling Incentive Fund may be made as grants to a political subdivision when it is found that the reduction or recycling program or project proposed by the political subdivision appears to benefit the general public, to further the goals of waste reduction and recycling, and to be consistent with proper waste management practices. A political subdivision may file an application with the Department of Environmental Control for a grant from the fund. Each application shall be filed in a manner and form prescribed by the department.

(2) An application for a grant from the fund shall: (a) Describe the nature and purpose of the proposed program or project; (b) set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the department; (c) state whether money

other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose; (d) when appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands; (e) show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and (f) demonstrate the probable environmental and ecological consequences that may result from such proposed program or project. Upon receipt of an application the Director of Environmental Control shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for the development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the Environmental Control Council. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make recommendations to the applicant which the director considers necessary to make the plan or the application satisfactory.

(3) The director shall within a reasonable time, not to exceed six months, after receipt of such application report to the council the results of his or her evaluation and investigation and shall recommend approval or rejection of funding for the program or project. The director shall indicate what form of allocation he or she deems appropriate. The council shall act in accordance with the director's recommendations unless action to the contrary is approved by each council member eligible to vote on the specific recommendation under consideration. No council member shall be eligible to participate in the action of the council concerning an application for funding to any entity in which such council member has any interest.

(4) It is the intent of the Legislature that allocations from the fund shall be made in an equitable manner which maximizes the benefits of the fund. When awarding grants, the council shall balance the needs of: (a) All geographic areas of the state; (b) all sizes and classes of communities; and (c) all manner and scale of programs and projects. The council shall also give

consideration to eligible programs and projects which would specifically employ disabled or handicapped persons.

(5) If after review of the recommendation by the director the council determines that an application for a grant is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated the council shall enter into an agreement in the name of the state with the applicant and any other entity it deems to be involved in the program or project to which funds shall be applied. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant if it fails to apply the funds in accordance with the agreement.

Sec. 4. (1) Commencing October 1, 1990, there is hereby imposed a fee of one dollar on each tire of every new motor vehicle, trailer, or semitrailer sold at retail in this state. Such fee shall be collected by the county treasurer at the time of registration of the motor vehicle, trailer, or semitrailer and remitted to the Department of Revenue.

(2) Commencing October 1, 1990, there is hereby imposed a fee of one dollar on every tire sold at retail in this state, including every farm tractor tire, which tires are not on a motor vehicle, trailer, or semitrailer pursuant to subsection (1) of this section. Such fee shall be collected from the purchaser by the retailer at the time of purchase and shall be remitted to the Department of Revenue.

(3) For purposes of this section, tire shall mean any tire made of rubber or other resilient material and normally used on any vehicle listed in this section. Tire shall include a pneumatic and solid tire but shall not include a recapped or regrooved tire.

Sec. 5. Commencing July 1, 1991, there is hereby imposed an annual waste reduction and recycling fee on all businesses engaged in business in this state as follows: Businesses with retail sales of tangible personal property, which sales are subject to the tax imposed by the Nebraska Revenue Act of 1967, of at least thirty thousand dollars and not more than one hundred ninety-nine thousand dollars, twenty-five dollars; and businesses with retail sales of tangible personal property subject to such tax of more than one hundred ninety-nine thousand dollars, fifty dollars. Subject to

section 7 of this act, the fee shall be collected by the Department of Revenue and remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund.

Sec. 6. (1) The fees imposed by section 4 of this act shall be collected in the same manner as the sales tax under the Nebraska Revenue Act of 1967, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

(2) The fees imposed by section 5 of this act shall be collected in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

Sec. 7. The Tax Commissioner shall deduct and withhold from the fees collected pursuant to sections 4 and 5 of this act a fee sufficient to reimburse himself or herself for the actual cost of collecting and administering such fees and shall credit such collection fee to the Waste Reduction and Recycling Incentive Fees Collection Fund which is hereby created. The Legislature shall appropriate money from the fund to the Department of Revenue to cover the actual costs of the department in administering sections 1 to 7 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 8. Revenue from the sale by the state of recyclable and reusable products, materials, and supplies shall be remitted to the State Treasurer for credit to the Resource Recovery Fund.

Sec. 9. The Department of Environmental Control, with the advice and consent of the Environmental Control Council, shall contract for the preparation of a comprehensive solid waste management plan. Such plan shall be contracted for and prepared within one year after the effective date of this act.

It is the intent of the Legislature that in preparation of the plan the state consider the following hierarchy of criteria: (1) Volume reduction at the source; (2) recycling, reuse, and vegetative waste composting; (3) incineration with energy resource recovery; (4) incineration for volume reduction; and (5) land disposal.

It is the intent of the Legislature that the

plan be used as a guide to assist political subdivisions in the planning and implementation of their individual, joint, or regional solid waste management systems. The state plan shall not supersede or impair plans, agreements, or contracts initiated by political subdivisions prior to the effective date of this act.

The Environmental Control Council shall adopt and promulgate rules and regulations for solid waste management options which comply with Environmental Protection Agency rules and guidelines, including rules and guidelines promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments to Subtitle D of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.

Sec. 10. There is hereby appropriated five hundred thousand dollars from the General Fund for FY1990-91 and five hundred thousand dollars from the General Fund for FY1991-92, to the Department of Environmental Control, to prepare and implement the plan prescribed in section 9 of this act.

Sec. 11. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.