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3 SUBSTITUTE FOR HB395
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8 SYNOPSIS: Under current law, counties and
9 municipalities may make available collection and
10 disposal facilities for solid wastes, with certain
11 exceptions. In certain instances, counties may
12 provide for the collection of fees for solid waste
13 collection or disposal, with certain exceptions,
14 and authorize civil proceedings for delinquent
15 fees. However, there is no statewide fee on solid
16 waste disposal in Alabama and no unified statewide
17 regulatory control on the management of solid
18 wastes and recyclable materials, which has the
19 potential to create a number of problems for the
20 state. Specifically, insufficient and improper
21 methods of managing solid waste such as the
22 formation of unauthorized dumps can pose hazards to
23 public health, cause pollution of air, land and
24 water resources, constitute a waste of natural
25 resources, and create public nuisances. The
26 economic growth and population growth in the state
27 have required increased industrial production

1 which, together with related commercial and
2 agricultural operations, have resulted in increased
3 amounts of discarded materials. Similarly, the
4 continuing technological progress and improvements
5 in methods of manufacturing, packaging, and
6 marketing of consumer products have resulted in an
7 increased amount of material discarded by the
8 purchasers of these products, necessitating a
9 statewide approach to assist local governments in
10 improving solid waste management practices and
11 promoting more efficient methods of solid waste
12 management. The failure or inability to
13 economically recover material and energy resources
14 from solid waste results in the unnecessary waste
15 and depletion of natural resources; therefore,
16 maximum resource recovery from solid waste and
17 maximum recycling and reuse of these resources must
18 be considered goals of the state, and a coordinated
19 statewide solid waste and recyclable materials
20 management program is needed to protect public
21 health and safety, protect and preserve the quality
22 of the environment, and conserve and efficiently
23 utilize natural resources.

24 This bill would: Designate the Alabama
25 Department of Environmental Management as the
26 primary regulatory agency in solid waste management
27 except for the collection and transportation of

1 nonhazardous and nonmedical solid waste; authorize
2 the state to collect fees for solid waste disposal
3 in the state; require the department to adopt
4 minimum statewide recycling and waste minimization
5 standards for solid waste generated in Alabama;
6 create a four-year statute of limitations for
7 violations; require local governments to develop
8 and implement source separation, resource recovery,
9 or recycling programs, or all of the above, or to
10 enhance existing programs so that valuable
11 materials may be returned to productive use, energy
12 and natural resources conserved, and the useful
13 life of solid waste management facilities extended;
14 clarify provisions for approval of solid waste
15 management facilities; clarify the duties of
16 landowners to avoid and correct unauthorized dumps;
17 prohibit unlawful activities; clarify certain
18 ambiguities by defining the term "solid waste
19 management." This bill would establish a trust fund
20 to pay the cost of investigation, required cleanup,
21 and closure of unauthorized dumps by innocent
22 landowners.

23 This bill would also establish a trust fund
24 for a recyclable materials management grants
25 program to assist local governments or nonprofit
26 organizations in the development and implementation

1 of new, or enhancement of existing, recycling
2 programs.

3
4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 To establish a statewide program for solid waste
9 management to be coordinated by the Department of
10 Environmental Management; to amend Sections 22-27-1, 22-27-2,
11 and 22-27-4, Code of Alabama 1975, and to add Sections
12 22-27-9, 22-27-10, 22-27-11, 22-27-12, 22-27-13, 22-27-14,
13 22-27-15, 22-27-16, 22-27-17, and 22-27-18 to the Code of
14 Alabama 1975, relating to solid waste management; to specify
15 certain duties of the Alabama Department of Environmental
16 Management as the primary agency regulating solid waste
17 management facilities and the Department of Health as the
18 primary agency for the collection and transportation of solid
19 waste; to control unauthorized dumping; to establish a trust
20 fund to pay the cost of investigation, required cleanup, and
21 closure of unauthorized dumps; to authorize fees for disposal
22 of solid waste within the state the proceeds of which shall be
23 used to adequately fund the solid waste management program of
24 the Alabama Department of Environmental Management; to
25 establish a trust fund to provide for a grant program for
26 local governments to develop, implement, and enhance recycling
27 and waste minimization efforts; to establish minimum standards

1 for solid waste reduction, minimization, and recycling; to
2 provide for penalties and other enforcement remedies for
3 violations; to provide confidentiality for certain
4 information; and to clarify requirements of local approval.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 22-27-1, 22-27-2, and 22-27-4,
7 Code of Alabama 1975, are amended to read as follows:

8 "§22-27-1.

9 "This article shall be known as the "Solid Wastes
10 ~~Disposal~~ and Recyclable Materials Management Act."

11 "§22-27-2.

12 "For the purpose of this article, the following
13 terms shall have the meanings respectively ascribed to them by
14 this section:

15 "(1) AGENCY. Any controlling agency, public or
16 private, elected, appointed, or volunteer utilizing methods
17 approved by the health department or the department for the
18 purpose of controlling and supervising the collection or
19 ~~disposal, or both,~~ management of solid wastes or recyclable
20 materials.

21 "(2) ASHES. The solid residue from burning of wood,
22 coal, coke, or other combustible material used for heating or
23 from incineration of solid wastes, but excepting solid
24 residue, the storage or disposition of which is controlled by
25 other agencies.

26 "(3) COMPOSTING OR COMPOST PLANT. An officially
27 controlled method or operation whereby putrescible solid

1 wastes are broken down through microbic action to a material
2 offering no hazard or nuisance factors to public health or
3 well-being.

4 "(4) DEPARTMENT. The Alabama Department of
5 Environmental Management.

6 "(5) DIRECTOR. The Director of the Alabama
7 Department of Environmental Management or his or her designee.

8 "(6) DISCHARGE. The accidental or intentional
9 spilling, leaking, pumping, emitting, emptying, or dumping of
10 solid waste, including leachate, into or on any land or water.

11 "(7) DISPOSAL. The discharge, deposit, injection,
12 dumping, spilling, leaking, or placing of any solid waste into
13 or on any land or water so that the waste or any constituent
14 thereof may enter the environment or be emitted into the air
15 or discharged into any waters, including, but not limited to,
16 ground waters.

17 "(8) FACILITY. All contiguous land, structures, and
18 other appurtenances used for the processing, treatment,
19 storage, or disposal of solid waste, or the recovery of
20 recyclable materials from solid waste, whether or not
21 authorized or permitted, including, but not limited to, waste
22 disposal areas and waste disposed therein.

23 "~~(6)~~(9) FINANCIAL ASSURANCE. A financial arrangement
24 by the owner or operator of a municipal solid waste landfill
25 which guarantees the availability of funds which may be used
26 to close, provide post-closure care, or conduct corrective
27 action at that facility if the owner or operator fails to

1 properly execute his or her responsibilities under this
2 article and any ~~regulations~~ rules promulgated by the
3 department for closure, post-closure care, or corrective
4 action and the terms of any permit issued for operation of
5 that facility.

6 "~~(7)~~ (10) GARBAGE. Putrescible animal and vegetable
7 wastes resulting from the handling, preparation, cooking, and
8 consumption of food, including wastes from markets, storage
9 facilities, handling and sale of produce and other food
10 products and excepting such materials that may be serviced by
11 garbage grinders and handled as household sewage.

12 "(11) GENERATION. The act or process of producing
13 solid waste. Solid waste shall be considered to be generated
14 at the point that waste materials are first discarded or
15 collected, regardless of any subsequent materials recovery or
16 recycling.

17 "~~(8)~~ (12) HAZARDOUS WASTES. Those wastes defined in,
18 and regulated under, the Alabama Hazardous Waste Management
19 and Minimization Act of 1978, as amended (~~Section 22-30-21 et~~
20 seq.).

21 "~~(9)~~ (13) HEALTH DEPARTMENT. An approved county or
22 district health department, including the Alabama State
23 Department of Public Health and the affected state and county
24 ~~boards of health~~ department.

25 "~~(10)~~ (14) HEALTH OFFICER. The state or affected
26 county health officer or his or her designee.

1 "(15) HOUSEHOLD WASTE. Any solid waste, including,
2 but not limited to, garbage, trash, and sanitary waste in
3 septic tanks derived from households, including single and
4 multiple residences, hotels and motels, bunkhouses, ranger
5 stations, crew quarters, campgrounds, picnic grounds, and
6 day-use recreational areas. Sanitary waste in septic tanks
7 shall be considered as household waste only when it is
8 disposed in a landfill or unauthorized dump and its inclusion
9 as a household waste shall in no way prohibit or supersede the
10 authority of the board or the department to regulate onsite
11 sewage systems or the management of sanitary waste in septic
12 tanks.

13 ~~"(11)~~(16) INCINERATOR. A device designed to burn
14 that portion of garbage and rubbish which will be consumed at
15 temperatures generally ranging 1600 degrees Fahrenheit or
16 over. The unburned residue from an incinerator, including
17 metal, glass, and the like shall be called ashes.

18 "(17) INDUSTRIAL SOLID WASTE. Solid waste generated
19 by manufacturing or industrial processes that is not a
20 hazardous waste regulated under Chapters 22 to 30, inclusive,
21 of Title 22.

22 "(18) INNOCENT LANDOWNER. An owner of real property
23 upon which there is located an unauthorized dump and who meets
24 all of the following conditions:

25 "a. The solid waste was disposed of on the property
26 after the owner acquired title to the property or the waste

1 was disposed of before the owner acquired title to the
2 property and title was acquired by bequest or devise.

3 "b. The owner did not have knowledge that the waste
4 was being disposed of on the property or the owner took steps,
5 including, but not limited to, posting signs to prevent
6 disposal on the property.

7 "c. The owner did not participate in or consent to
8 the disposal of solid waste on the property.

9 "d. The owner did not receive any financial benefit
10 from the disposal of solid waste on the property.

11 "e. Title to the property was not transferred to the
12 owner for the purpose of evading liability for operating an
13 unauthorized dump.

14 "f. The person or persons responsible for disposing
15 of the solid waste on the property, in doing so, was not
16 acting as an agent for the owner.

17 "(12)(19) LANDFILL. A method of compaction and earth
18 cover of solid wastes other than those containing garbage or
19 other putrescible wastes, including, but not limited to, tree
20 limbs and stumps, demolition materials, incinerator residues,
21 and like materials not constituting a health or nuisance
22 hazard, where cover need not be applied on a per day used
23 basis.

24 "(20) MATERIALS RECOVERY FACILITY. A solid waste
25 management facility that provides for the extraction from
26 solid waste of recyclable materials, materials suitable for
27 use as a fuel or soil amendment, or any combination of those

1 materials. A materials recovery facility shall be deemed to be
2 a solid waste treatment facility.

3 "(21) MEDICAL WASTE. A solid waste or combination of
4 solid wastes which because of its infectious characteristics
5 may either:

6 "a. Cause, or significantly contribute to, an
7 increase in mortality or an increase in serious irreversible
8 or incapacitating reversible illness.

9 "b. Pose a substantial present hazard or potential
10 hazard to human health or the environment when improperly
11 treated, stored, transported, disposed, or otherwise managed.

12 "(13)(22) MUNICIPAL SOLID WASTE LANDFILL. A discrete
13 area of land or an excavation that receives household waste
14 and that is not a land application unit, surface impoundment,
15 injection well, or waste pile. A municipal solid waste
16 landfill may also receive other types of solid wastes, such as
17 commercial solid waste, nonhazardous sludge, conditionally
18 exempt small quantity generator waste, industrial solid waste,
19 construction/demolition waste, and rubbish. A municipal solid
20 waste landfill is a sanitary landfill.

21 "(14) OPEN DUMP. Any officially recognized place,
22 land, or building which serves as a final depository for solid
23 wastes, whether or not burned or buried, which does not meet
24 the minimum requirements for a sanitary landfill, except
25 approved incinerators, compost plants, and salvage yards.

26 "(15)(23) PERSON. An individual, trust, firm, joint
27 stock company, corporation (including a government

1 corporation), partnership, agent, agency, association, state,
2 municipality, commission, political subdivision of a state, an
3 interstate body, or other private or public legal entity.

4 "(24) PRIVATE SOLID WASTE MANAGEMENT FACILITY. A
5 solid waste management facility that is operated exclusively
6 by and for a private solid waste generator for the purpose of
7 accepting solid waste generated on-site or by the permittee.

8 "(25) PUBLIC SOLID WASTE MANAGEMENT FACILITY. A
9 solid waste management facility that accepts solid waste from
10 the public generally or for a fee or any solid waste
11 management facility that is not a private solid waste
12 management facility.

13 "(26) RECOVERED MATERIALS. Those materials which
14 have known recycling potential; which can be feasibly
15 recycled; which have been diverted or removed from the solid
16 waste stream for recycling, whether or not requiring
17 subsequent separation and processing; and which have a
18 substantial portion that are consistently used in the
19 manufacture of products which may otherwise be produced from
20 raw or virgin materials. Recovered materials shall not include
21 solvents or materials, except sawdust, bark, and paper
22 materials that are destined for incineration, energy recovery,
23 or any use which constitutes disposal. Recovered materials
24 shall only be those materials for which during the calendar
25 year (commencing on January 1), the amount of material
26 recycled or diverted from the solid waste stream for recycling
27 and transferred to a different site for recycling equals at

1 least 75 percent by weight or volume of the amount of that
2 material accumulated at the beginning of the period.

3 "(27) RECOVERED MATERIALS PROCESSING FACILITY. A
4 facility primarily engaged in the storage, processing, and
5 resale or reuse of recovered materials. A recovered materials
6 processing facility is not a solid waste management facility;
7 however, any solid waste resulting from the operation of a
8 facility shall be subject to all applicable laws and
9 regulations relating to solid waste and shall be deemed to be
10 generated for purposes of reporting pursuant to solid waste
11 reduction goals, at the point of collection of the recovered
12 materials from which the solid waste resulted. A recovered
13 material processing facility shall provide notification to the
14 department according to rules adopted by the department.

15 "(28) RECYCLABLE MATERIALS. Those materials which
16 are capable of being recycled, whether or not the materials
17 have been diverted or removed from the solid waste stream.

18 "(29) RECYCLING. Any process by which materials are
19 collected, separated, stored, recovered, or processed and
20 reused or returned to use in the form of raw materials or
21 products, but does not include the use of materials as a fuel,
22 or for any use which constitutes disposal.

23 "~~(16)~~(30) RUBBISH. Nonputrescible solid wastes,
24 excluding ashes, consisting of both combustible and
25 noncombustible wastes. Combustible rubbish includes paper,
26 rags, cartons, wood, furniture, rubber, plastics, yard
27 trimmings, leaves, and similar materials. Noncombustible

1 rubbish includes glass, crockery, metal cans, metal furniture,
2 and like materials which will not burn at ordinary incinerator
3 temperatures, not less than 1600 degrees Fahrenheit.

4 "~~(17)~~(31) SANITARY LANDFILL. A controlled area of
5 land upon which solid waste is deposited and is compacted and
6 covered with compacted earth each day as deposited, with no
7 on-site burning of wastes, and so located, contoured, and
8 drained that it will not constitute a source of water
9 pollution as determined by the Alabama Department of
10 Environmental Management.

11 "~~(18)~~(32) SOLID WASTES. All ~~putrescible and~~
12 ~~nonputrescible discarded materials, except household sewage~~
13 ~~and livestock and poultry wastes, including, but not limited~~
14 ~~to, garbage, rubbish, ashes, street and highway cleanings,~~
15 ~~dead animals, including offal, abandoned automobiles, and such~~
16 ~~industrial wastes as are not controlled by other agencies. Any~~
17 ~~garbage, rubbish, construction or demolition debris, ash, or~~
18 ~~sludge from a waste treatment facility, water supply plant, or~~
19 ~~air pollution control facility, and any other discarded~~
20 ~~materials, including solid, liquid, semisolid, or contained~~
21 ~~gaseous material resulting from industrial, commercial,~~
22 ~~mining, or agricultural operations or community activities, or~~
23 ~~materials intended for or capable of recycling, but which have~~
24 ~~not been diverted or removed from the solid waste stream. The~~
25 ~~term "solid waste" does not include recovered materials, solid~~
26 ~~or dissolved materials in domestic sewage, solid or dissolved~~
27 ~~material in irrigation return flows, or industrial discharges~~

1 which are point sources subject to the National Pollutant
2 Discharge Elimination System permits under the Federal Water
3 Pollution Control Act, as amended, or the Alabama Waste
4 Pollution Control Act, as amended; or source, special,
5 nuclear, or by-product materials as defined by the Atomic
6 Energy Act of 1954, as amended. Also excluded from this
7 definition are land applications of crop residues, animal
8 manure, and ash resulting exclusively from the combustion of
9 fossil fuels or wood during accepted agricultural operations,
10 waste from silvicultural operations, or mining refuse as
11 defined and regulated pursuant to the Alabama Mining Act.

12 "(33) SOLID WASTE DISPOSAL FACILITY. Any landfill or
13 part of a facility where final deposition of solid waste
14 occurs and at which waste may remain after closure.

15 "(34) SOLID WASTE MANAGEMENT. The systematic control
16 of solid waste including its storage, processing, treatment,
17 recovery of materials from solid waste, or disposal.

18 "(35) SOLID WASTE MANAGEMENT FACILITY. Any solid
19 waste volume reduction plant, transfer station, material
20 recovery facility, or other facility, the purpose of which is
21 the storage, treatment, utilization, processing, disposal, or
22 recovery of materials from solid waste, or any combination
23 thereof.

24 "~~(19)~~(36) UNAUTHORIZED DUMP. Any collection of solid
25 wastes either dumped or caused to be dumped or placed on any
26 public or private property ~~either public or private~~, whether
27 or not regularly used, and not ~~under the control and~~

1 ~~supervision of any person or agency. An abandoned automobile,~~
2 ~~large appliance, or similar large item of solid waste shall be~~
3 ~~considered as forming an unauthorized dump within the meaning~~
4 ~~of this article, but not the careless littering of smaller~~
5 ~~individual items as tires, bottles, cans, and the like. having~~
6 ~~a permit from the department. Abandoned automobiles, large~~
7 ~~appliances, or similar large items of solid waste shall be~~
8 ~~considered an unauthorized dump within the meaning of this~~
9 ~~article. The careless littering of a relatively few, smaller~~
10 ~~individual items such as tires, bottles, cans, and the like~~
11 ~~shall not be considered an unauthorized dump, unless the~~
12 ~~accumulation of solid waste poses a threat to human health or~~
13 ~~the environment.~~ An unauthorized dump shall also mean any
14 solid waste disposal site which does not meet the regulatory
15 provisions of this article.

16 "§22-27-4.

17 "(a) Hazardous wastes. Hazardous wastes shall be
18 ~~handled~~ managed in accordance with the provisions of Sections
19 22-30-1 through 22-30-24, and the ~~regulations~~ rules
20 promulgated thereunder.

21 "(b) Unauthorized dumps. The ~~formation~~ creation,
22 contribution to, or operation of unauthorized dumps ~~is hereby~~
23 ~~declared to be a public nuisance per se, a menace to public~~
24 ~~health, and a violation of this article and in addition to~~
25 ~~other remedies which are available may be enjoined through an~~
26 ~~action by the department in the circuit court of the state~~
27 ~~having jurisdiction over the property on which the violation~~

1 occurred shall be prohibited, removed, enjoined, and enforced
2 upon and regulated as provided in this article generally, and
3 Section 22-27-11, specifically.

4 "(c) Vermin controls. Rodents and insects of public
5 health importance, ~~as including, but not limited to,~~ rats,
6 flies, and mosquitoes ~~and the like,~~ shall be controlled in a
7 manner ~~satisfactory to the health department~~ consistent with
8 the administrative rules of the Board of Health and the
9 department, and the ~~closing out or conversion to sanitary~~
10 ~~landfill operations of existing open dumps shall, where deemed~~
11 ~~necessary by the health officer, be accompanied by an adequate~~
12 ~~rat eradication program to prevent the spread of rodents to~~
13 ~~nearby properties~~ closure of any unauthorized dump where
14 deemed necessary by the health officer and the department,
15 shall be accompanied by an adequate vermin eradication program
16 to prevent the spread of vermin to nearby properties."

17 Section 2. Sections 22-27-9, 22-27-10, 22-27-11,
18 22-27-12, 22-27-13, 22-27-14, 22-27-15, 22-27-16, 22-27-17,
19 and 22-27-18 are added to Article 1 of Chapter 27, Title 22,
20 Code of Alabama 1975, to read as follows:

21 §22-27-9.

22 (a) The Department of Environmental Management shall
23 be the agency with primary regulatory authority over the
24 management of solid waste in the state, except for the
25 collection and transportation of nonhazardous and nonmedical
26 solid waste. The department may exercise the regulatory
27 authority over the permitting and operation of solid waste

1 management facilities necessary to enforce the requirement and
2 purposes of this article.

3 (b) The Alabama Department of Public Health shall
4 have primary regulatory authority over the collection and
5 transportation of solid waste, excluding medical waste and
6 hazardous waste, the management of sanitary waste in septic
7 tanks, excluding landfill disposal, and the management of
8 collection activities including, but not limited to, the
9 provision of collection services by county and municipal
10 governing bodies, participation in local collection systems,
11 the temporary retainment of solid waste on the generator's own
12 property, not constituting storage, and any containers, or
13 container systems used in the collection of solid waste, such
14 as bulk refuse receptacles, dumpsters, roll-off containers,
15 and household collection carts. The State Board of Health may
16 adopt rules necessary to enforce the requirements of this
17 article.

18 (c) The State Health Officer and the Director of the
19 Alabama Department of Environmental Management shall ensure
20 that their responsibilities under Article 1 are consistently
21 and equitably applied.

22 §22-27-10.

23 (a) Solid waste shall be collected, transported,
24 disposed, managed, or any combination thereof, according to
25 the requirements of this article, and the rules of the
26 department or the health department, as authorized by this
27 article, and if disposed of in this state, shall be disposed

1 in a permitted landfill or permitted incineration, or reduced
2 in volume through composting, materials recovery, or other
3 existing or future means approved by and according to the
4 requirements of the department, under authorities granted by
5 this article.

6 (b) The creation, contribution to, or operation of
7 an unauthorized dump is declared to be a public nuisance per
8 se, a menace to public health, and a violation of this
9 article. In addition to other remedies which are available, an
10 unauthorized dump may be enjoined through an action in the
11 circuit court having jurisdiction over the property in which
12 the violation occurred. In addition to any fines, penalties,
13 and other remedies set forth herein, any person who
14 participates in the creation or operation of an unauthorized
15 dump, or contributed to an unauthorized dump, shall be
16 responsible for the removal of the waste or otherwise the
17 closure of the unauthorized dump in accordance with this
18 article and rules of the department. If those who created,
19 operated, or contributed to an unauthorized dump do not remove
20 or close the unauthorized dump, the landowner shall also be
21 responsible for the removal or otherwise the closure of the
22 unauthorized dump; an innocent landowner, as further detailed
23 by department rules, shall have access to the Solid Waste Fund
24 to pay for reasonable or actual costs of investigation,
25 required cleanup, and closure of the dump, subject to a
26 ranking system established by the department through rules.
27 Landowners shall cooperate with local governments and/or the

1 department in stopping unauthorized dumping and removing the
2 waste or otherwise closing an unauthorized dump in accordance
3 with this article, and where applicable, the rules of the
4 department. Innocent landowners who do not participate in the
5 creation or operation of an unauthorized dump, and who have
6 not contributed to the unauthorized dump shall not be liable
7 for any fines, costs, actions, punishments, sanctions, or
8 penalties under this article if they are part of the site
9 ranking system established in accordance with department rules
10 to use the Solid Waste Fund to remove the waste or otherwise
11 close the unauthorized dump in accordance with this article
12 and rules of the department with reasonable diligence after
13 written notice. Unless excepted, each landowner shall be
14 liable for applicable fines, penalties, and sanctions under
15 this article if he or she fails to remove the waste or
16 otherwise close the unauthorized dump with reasonable
17 diligence after written notice. It shall be unlawful for any
18 person to fail to comply with an administrative order from the
19 department or, unless excepted, to knowingly or intentionally
20 abandon an unauthorized dump without either removing the waste
21 or otherwise closing the unauthorized dump in accordance with
22 this article and the rules of the department. The sale or
23 lease of land does not constitute an abandonment within the
24 meaning of this section, however, the purchaser or lessee
25 shall not be considered an innocent landowner.

26 (c) Open burning at a solid waste management
27 facility is prohibited except as necessary to respond to

1 emergencies and pursuant to a restricted burning approval
2 issued by the department. Approved open burning operations
3 must also comply with all applicable federal, state, and local
4 air pollution control laws and regulations.

5 (d) The permittee shall be responsible for the
6 compliance of a permitted facility with all applicable rules
7 notwithstanding the performance of compliance-related duties
8 by independent contractors or agents.

9 (e) No provision of this article and no rule
10 promulgated under the authority of this article shall be
11 construed to be a limitation on any of the following:

12 (1) The power of a municipality or county to
13 declare, prohibit, or abate public nuisances; provided no
14 municipality, county, or solid waste authority utilizes or
15 adopts definitions related to any of the subjects or
16 activities contained within Article 1 that are not consistent
17 with the definitions contained in Section 22-27-2, as may be
18 amended from time to time.

19 (2) The power of the Attorney General to bring an
20 action in the name of the State of Alabama to enforce this
21 article, including, but limited to, enjoin any public
22 nuisance.

23 (3) The power of any state agency in the enforcement
24 or administration of any law it is specifically permitted or
25 required to enforce or administer.

1 (4) The right of any person to maintain at any time
2 any appropriate action for relief against any private
3 nuisance.

4 (f) Nothing contained in this article shall be
5 construed in any way to abridge or alter civil or criminal
6 rights of action or remedies now or hereafter existing. No
7 provision of this article, or the granting of any permit under
8 this article, or any act done by virtue of this article, shall
9 be construed as prohibiting the state, counties,
10 municipalities, or its citizens in the exercise of their
11 rights from proceeding to suppress public nuisances, to abate
12 any pollution now or hereafter existing, or to enforce any
13 law. Nothing in this article shall be construed in any way to
14 alter or abridge that authority granted under Chapter 3A,
15 Title 11, commencing with Section 11-3A-1.

16 §22-27-11.

17 (a) Any violation of this article, any rule
18 promulgated under the authority of this article, any order
19 issued under the authority, or any term or condition of any
20 permit issued under the authority of this article is unlawful.
21 In addition to any penalties lawfully assessed, any person
22 committing a violation shall be liable for all costs of
23 abatement of any pollution and correction of any public
24 nuisance caused by the violation.

25 (b) The department may issue administrative orders
26 under Section 22-22A-5 or initiate civil actions, or both, as
27 it deems necessary against any person in the enforcement of

1 this article, or any regulation promulgated or permit issued
2 under the authority of this article.

3 (c) In addition to any other remedies provided in
4 this article, the department or the health department may
5 institute suit against any person for a violation of law or,
6 whenever a public nuisance is threatened or exists, for an
7 injunction to restrain a violation of this article, or the
8 rules, standards, or orders adopted or issued under this
9 article.

10 (d) In addition to any other remedies provided in
11 this article, upon relation of the Attorney General or any
12 district attorney, an action may be brought in a court of
13 competent jurisdiction for an injunction to restrain any and
14 all violations of this article, or the rules promulgated under
15 this article, or to restrain any public nuisance or detriment
16 to public health.

17 (e) Other than administrative orders and notices
18 issued by the department or the health department to enforce
19 this article, all citations to violators of this article shall
20 be served by any law enforcement officer or by the solid waste
21 officer.

22 §22-27-12.

23 The department may do the following:

24 (1) Adopt rules to implement this article.

25 (2) Adopt rules establishing requirements and
26 restrictions for the management of solid waste, excluding the
27 collection and transportation of nonhazardous and nonmedical

1 solid waste. The rules may include factors such as the
2 characteristics of the solid waste, the potential for
3 contamination of soils, or ground and surface waters, the
4 design and operation of management facilities, the financial
5 capabilities of the applicant, soil and geological
6 considerations, human health, and other environmental
7 considerations. With respect to solid waste disposal or
8 materials recovery facilities, the rules may also include
9 factors such as the quantity, nature, and origin of solid
10 wastes and recovered materials to be managed. The department
11 may condition the issuance of a permit for any solid waste
12 management or materials recovery facility upon the facility
13 being consistent with applicable rules as are necessary to
14 carry out the intent of this article and the department's
15 responsibilities under this article. Permits shall be issued
16 for a period of time based on design life of the facility and
17 may include renewal periods as determined by rules and not
18 inconsistent with federal law.

19 (3) Issue permits, notices, and orders to specify
20 the terms and conditions of permits or notices, to conduct
21 inspections, to require that records be established and
22 maintained, to direct the abatement of unauthorized dumps or
23 other public nuisances involving solid waste, and to implement
24 the rules and standards adopted pursuant to this article.

25 (4) Require postclosure activities be conducted in
26 accordance with the Alabama Uniform Covenants Act and the
27 corresponding rules developed by the department.

1 (5) Require that solid waste management facilities
2 identify the volumes and types of solid waste to be managed
3 and the counties and state where such solid waste will be
4 generated.

5 (6) Enter upon, during reasonable hours, all solid
6 waste management and materials recovery facilities owned and
7 operated by persons subject to this chapter to inspect,
8 investigate, obtain samples, monitor, or observe the transfer,
9 treatment, storage, or disposal of solid waste and recovered
10 materials, and to examine or copy records to determine
11 compliance with this article and the rules promulgated under
12 this article.

13 (7) No later than two years after the effective date
14 of this article, require that operators of all public solid
15 waste management facilities be certified. The department
16 shall, by rule or regulation, establish qualifications for
17 certification programs, to include variance procedures for
18 existing programs which meet the qualifications and taking
19 into account the types of solid waste management facilities.

20 (8) Promote, initiate, conduct, and support
21 research, demonstration projects, and investigations and
22 participate in all state agency research programs pertaining
23 to solid waste handling, disposal, materials recovery, and
24 energy recovery systems.

25 (9) Promulgate rules to ban certain wastes from
26 landfilling or incineration in order to protect the public
27 health and environment and to promote recycling.

1 (10) Regulate the management, including collection
2 and transportation of all medical waste, until such time as
3 the United States Environmental Protection Agency may
4 establish specific rules which are applicable within the state
5 for infectious waste under Subtitle C of the federal Resource
6 Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et
7 seq., as amended.

8 (11) Do any and all other actions not inconsistent
9 with this article or other state law which it deems necessary
10 and proper for the effective enforcement of this article and
11 the rules promulgated pursuant to it.

12 §22-27-13.

13 The department or any appropriate law enforcement
14 agency may apply for, and any judge of a court of record may
15 issue, an appropriate search warrant necessary to achieve the
16 purposes of this article within the court's territorial
17 jurisdiction. The warrant shall be issued upon probable cause.

18 §22-27-14.

19 Notwithstanding any other law to the contrary,
20 actions to correct any violations of this article, the rules
21 promulgated under this article, or for civil or criminal
22 penalties under this article shall be commenced within a
23 period of four years from the date the offense is discovered
24 by the department or other enforcing agency or person.

25 §22-27-15.

26 (a) No later than 18 months after the effective date
27 of the act adding this section, the department shall

1 establish, by rule, a goal for the percentage, on a statewide
2 basis, of the reduction in the amount of household and
3 commercial solid waste and the time frames for that reduction.
4 Reduction, by means including, but not limited to, recycling,
5 source reduction, waste minimization, reuse, and composting
6 shall be determined at public solid waste disposal or
7 incineration facilities on a statewide, per capita basis. The
8 department shall adopt rules for the determination of base
9 year data, and reporting requirements by local governing
10 bodies and public solid waste disposal or incineration
11 facilities, to include both the quantity and origin of the
12 solid waste disposed or incinerated at such facilities.
13 Notwithstanding anything herein to the contrary, the reduction
14 shall take place prior to delivery to public solid waste
15 disposal or incineration facilities, unless reduction
16 activities are provided on the site of the solid waste
17 disposal or incineration facility under an agreement between
18 the generator or collector of the solid waste and the solid
19 waste disposal facility.

20 (b) Every three years after the implementation of
21 subsection (a), the director shall review the solid waste
22 reduction activities of the state and determine whether the
23 reduction goal established pursuant to this section should be
24 modified by future rulemaking.

25 (c) In determining the minimum solid waste reduction
26 goals, the department may consider factors such as local
27 collection and disposal costs, solid waste composition, the

1 population density of counties or municipalities, and the
2 distance to available markets for recovered materials.

3 §22-27-16.

4 Notwithstanding any other law or any provision of
5 Article 1 to the contrary, a generator of recovered materials
6 owns those materials until such time as the generator may
7 voluntarily relinquish ownership of those materials. The
8 generator may not be prohibited from selling, conveying, or
9 arranging for the transportation of recovered materials to a
10 recycler or recovered materials processing facility for reuse
11 or recycling, nor preventing a recycling company, recovered
12 materials processing facility, or nonprofit entity from
13 buying, accepting, collecting, or transporting recovered
14 materials from a buy-back center, drop-box, or from any
15 generator of recovered materials.

16 §22-27-17.

17 (a) Beginning on October 1, 2008, the following
18 disposal fees are levied upon solid waste management
19 facilities disposing of solid waste permitted by the
20 department subject to this chapter, which shall be collected
21 in accordance with subsection (b):

22 (1) One dollar (\$1) per ton for all waste disposed
23 of in a municipal solid waste landfill.

24 (2) One dollar (\$1) per ton or twenty-five cents
25 (\$.25) per cubic yard for all waste disposed of in public
26 industrial landfills, construction and demolition landfills,

1 incinerators, or composting facilities, which receive waste
2 not generated by the permittee.

3 (3) Twenty-five cents (\$0.25) per cubic yard for all
4 waste disposed of in a private solid waste management
5 facility, not to exceed one thousand dollars (\$1,000) per
6 calendar year.

7 (4) Solid waste that may be approved by the
8 department as alternate cover materials in landfills shall be
9 assessed the disposal fees applicable in subdivisions (1) and
10 (2) above.

11 (5) Solid waste received from out-of-state for
12 disposal at public solid waste facilities permitted by the
13 department shall be assessed the same disposal fees applicable
14 in subdivisions (1) and (2) above, to be collected by the
15 operator of the solid waste facility and remitted in
16 accordance with subsection (b).

17 (b) Unless exempted under subsection (e), operators
18 of permitted solid waste disposal facilities shall assess the
19 disposal fees levied in subsection (a) on all solid waste as
20 the waste is delivered to solid waste facilities and shall
21 collect and remit the disposal fees on all wastes received at
22 the facility to the Department of Revenue on a quarterly basis
23 not later than the 20th day of January, April, July, and
24 October. Any sums collected from a generator that purports to
25 be collected due to this section shall be paid to the
26 Department of Revenue. The owner or operator shall certify to
27 the Department of Revenue the volumes of solid waste received

1 for disposal. The Department of Revenue may retain one percent
2 of the solid waste fees collected as an administrative
3 collection allowance. All owners and operators collecting the
4 solid waste fee established in this section may retain four
5 percent of the total solid waste fees collected at their
6 facility as an administrative collection allowance.

7 (c) The Department of Revenue shall transfer each
8 month all funds collected from this section less its
9 administrative collection allowance as follows:

10 (1) Twenty-five percent of the net fees collected
11 shall be paid to the State Treasury to the credit of the
12 Alabama Recycling Fund (ARF), which is hereby created, to be
13 used by the department exclusively to provide grants to local
14 governments, authorities, and nonprofit organizations for use
15 in developing, implementing, and enhancing local recycling,
16 reuse and waste minimization projects and programs. Such
17 grants shall be awarded annually by the department in
18 accordance with rules adopted pursuant to this article. The
19 ARF is authorized to receive funding from other sources
20 including interest generated by the fund, grants, allotments,
21 and contributions whether public or private. In addition to
22 any other appropriations provided by law to the Alabama
23 Department of Environmental Management, there is hereby
24 appropriated from the Alabama Recycling Fund in the State
25 Treasury to the department for the fiscal year ending
26 September 30, 2009, all amounts described in this subdivision
27 (1).

1 (2) Twenty-five percent of the net fees collected
2 shall be paid to the State Treasury to the credit of the Solid
3 Waste Fund (SWF), which is hereby created, to be used by the
4 department to pay the costs of remediation, abatement,
5 removal, or other actions related to the closure of
6 unauthorized dumps and landfills, including, but not limited
7 to, equipment, labor, supplies, materials, and professional
8 services. The funds shall be disbursed according to rules
9 adopted by the department and shall be carried out in
10 accordance with any applicable state contracting requirements.
11 The SWF is authorized to receive funding from other sources
12 including interest generated by the fund, grants, allotments,
13 and contributions, whether public or private. In addition to
14 any other appropriations provided by law to the Alabama
15 Department of Environmental Management, there is hereby
16 appropriated from the Solid Waste Fund in the State Treasury
17 to the department for the fiscal year ending September 30,
18 2009, all amounts described in this subdivision (2).

19 (3) Forty-five percent of the fee shall be paid to
20 the State Treasury to the credit of the Alabama Department of
21 Environmental Management to be used exclusively to pay the
22 costs of performing its duties under this article and to fund
23 educational programs administered by the department on solid
24 waste management, waste minimization, and recycling. In
25 addition to any appropriations provided by law to the Alabama
26 Department of Environmental Management, there is hereby
27 appropriated from the State Treasury to the department for the

1 fiscal year ending September 30, 2009, all amounts described
2 in this subdivision (3).

3 (d) Where operators of solid waste facilities have
4 entered into fixed-price contracts for disposal of solid waste
5 prior to the effective date of the act adding this article,
6 the disposal fee collected by the solid waste facilities
7 pursuant to subsection (b) shall not be considered part of the
8 contract price for disposal.

9 (e) For fixed-price contracts entered into by waste
10 haulers prior to the effective date of the act adding this
11 section for transportation and disposal of solid waste, the
12 waste haulers may increase their contract prices for
13 transportation and disposal in an amount equal to the disposal
14 fee imposed in subsection (a) and paid by the waste hauler.

15 (f) The following persons are exempt from payment of
16 fees required by this article:

17 (1) Operators of industrial boilers, furnaces, and
18 other processing equipment that burn solid waste generated on
19 site for the purpose of fuel replacement or energy recovery
20 and which are permitted by the department or by a local air
21 pollution control agency.

22 (2) Operators of composting facilities which are
23 owned by the Alabama Department of Corrections and which
24 receive only wastes generated by Alabama Department of
25 Corrections facilities and institutions or those composting
26 facilities otherwise exempt from permitting as provided in
27 rules promulgated by the department.

1 (3) Operators of industrial boilers, furnaces, and
2 other processing equipment that burn scrap tires for the
3 purpose of fuel replacement or energy recovery and are
4 registered with the department as provided in rules
5 promulgated by the department.

6 (4) Scrap tire processors who receive and process
7 scrap tires and who are permitted by or registered with the
8 department as provided in rules promulgated by the department,
9 except that a solid waste disposal facility permitted as a
10 scrap tire processor shall collect the fee on all waste
11 disposed of in its landfill.

12 (g) The department may adjust the fees provided for
13 in subsection (a) through the adoption of appropriate rules.
14 Regulatory adjustments to include proportionate changes to the
15 fees outlined in subdivision (3) of subsection (a) of this
16 section shall be limited to no more frequently than once every
17 three years and shall reflect the cumulative change in the
18 Consumer Price Index for All Urban Consumers (CPI-U), for the
19 South Region, as published by the U.S. Department of Labor,
20 Bureau of Labor Statistics. The base reference period for the
21 CPI-U shall be the annual average for 2008. Any fees
22 established through regulatory adjustment shall not be less
23 than those provided for in subsection (a). Any fees
24 established through the adoption of rules shall become
25 effective no earlier than 60 days after the effective date of
26 adoption of the rule. The department shall notify the

1 Department of Revenue in advance of any proposed change in
2 fees and upon completion of the rulemaking process.

3 (h) The department or the Department of Revenue may
4 review or audit all records of wastes received for disposal at
5 each solid waste disposal facility to determine compliance
6 with this article. Further, the Department of Revenue shall
7 perform the following duties:

8 (1) Collect and administer the fees imposed in this
9 chapter in accordance with Chapter 2A, commencing with Section
10 40-2A-1, of Title 40.

11 (2) Impose appropriate interest on any disposal fees
12 paid after the due date in accordance with Section 40-1-44.

13 (3) Promulgate and enforce rules to effectuate the
14 reporting, collection, and payment of disposal fees
15 established by this article. All rules promulgated shall have
16 the same force and effect of law.

17 (4) Share information, data, reports, or
18 documentation related to the collection and administration of
19 the disposal fees imposed by this article with the department
20 for the purpose of administering the provisions of this
21 article, notwithstanding any provisions of law requiring
22 confidentiality.

23 (i) All fees, interest, or other income distributed
24 under this section shall only be used for the purposes
25 specified in this chapter. Any unexpended funds during a
26 budget year shall be carried over to the subsequent budget
27 year and added to the subsequent year's distribution.

1 (j) The department shall, on or before January 20,
2 2011, and biennially thereafter, transmit a report to the
3 Alabama Environmental Management Commission, the Legislature,
4 and the Governor concerning the implementation of this article
5 for the preceding two fiscal years. Each biennial report shall
6 include the following information:

7 (1) The amount of solid waste disposed of at solid
8 waste facilities in the state.

9 (2) The amount of disposal fees collected under this
10 article.

11 (3) How funds generated by this article were
12 expended for the previous fiscal years.

13 (4) The activities and accomplishments of the
14 department in implementing this article.

15 §22-27-18.

16 (a) There are established separate special revenue
17 trust funds in the State Treasury to be known as the Solid
18 Waste Fund (SWF) and the Alabama Recycling Fund (ARF). These
19 funds shall be used for the purposes set forth in this article
20 and for no other governmental purposes, nor shall any portion
21 hereof ever be available to borrow from by any branch of
22 government, it being the intent of the Legislature that these
23 funds and their increments shall remain intact and inviolate
24 for the purposes set out in this article. Any interest or
25 earnings on the funds shall be credited only to the funds.

26 (b) The funds shall be audited annually by the
27 Department of Examiners of Public Accounts.

1 Section 3. There is appropriated from the solid
2 waste fee imposed on the disposal of solid waste at solid
3 waste disposal, composting, and incineration facilities
4 pursuant to the newly created Section 22-27-18 for the fiscal
5 year ending September 30, 2009, the following sums:

6 (1) Twenty-five percent of the solid waste fee
7 collected to the Alabama Recycling Fund.

8 (2) Twenty-five percent of the solid waste fee
9 collected to the Solid Waste Fund.

10 (3) Forty-five percent of the solid waste fee
11 collected to the Alabama Department of Environmental
12 Management.

13 Section 4. All laws or parts of laws which conflict
14 with this act are repealed.

15 Section 5. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.