

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 143

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO COUNTIES AND COUNTY LAW; AMENDING SECTION 31-4401A, IDAHO CODE,
2 TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 31-4402, IDAHO CODE, TO PROVIDE CERTAIN AUTHORITY TO A BOARD OF COUNTY
4 COMMISSIONERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION
5 31-4407, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE A TECH-
6 NICAL CORRECTION; AMENDING SECTION 31-4407A, IDAHO CODE, TO REVISE A
7 PROVISION REGARDING PROCEDURES FOR CHANGES IN STATUS OF MAJOR WASTE
8 GENERATORS AND MUNICIPALITIES AND TO MAKE TECHNICAL CORRECTIONS; AND
9 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 31-4401A, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 31-4401A. DEFINITIONS. In this chapter:

15 (1) "Flow control" means any method or system under which a governmen-
16 tal entity, by ordinance, regulation, or other official directive, compels
17 solid waste haulers to process or dispose of waste at a designated facility.

18 ~~(1)~~ (2) "Major solid waste generator" means any person who generates
19 two ~~per cent~~ percent (2%) or more of the total solid waste originating in any
20 county.

21 ~~(2)~~ (3) "Person" means any natural person, firm, corporation, or other
22 entity, but does not include a municipality, a state agency or a state educa-
23 tional institution.

24 ~~(3)~~ (4) "Significant effect" means any change in the amount of solid
25 waste to be sent to any waste disposal site ~~which that~~ exceeds either five ~~per~~
26 ~~cent~~ percent (5%) of the total monthly amount of waste disposal at any par-
27 ticular solid waste disposal site during the most recent calendar year, ~~or~~
28 five ~~per cent~~ percent (5%) of the projected processing capacity of any new
29 solid waste disposal site.

30 ~~(4)~~ (5) "State agency" means each state board, commission, department
31 or officer authorized by law to make rules or to determine contested cases.

32 ~~(5)~~ (6) "State educational institution" means a public educational fa-
33 cility or institution regulated by the state board of education or the board
34 of regents of the university of Idaho.

35 ~~(6)~~ (7) "System" means lands, sites, facilities, equipment and man-
36 power necessary for collection, transportation, storage, treatment, pro-
37 cessing, reuse, recycling or other means necessary for the disposal of solid
38 waste.

39 ~~(7)~~ (8) "Waste processing facility" means any waste disposal site or
40 any public work at which solid waste is compacted, incinerated, or otherwise
41 treated prior to disposal. It shall not include the placement of portable

1 collection facilities or similar equipment used solely to facilitate col-
2 lection of solid waste.

3 SECTION 2. That Section 31-4402, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 31-4402. AUTHORITY OF COUNTY COMMISSIONERS. (1) The board of county
6 commissioners in each of the several counties is hereby authorized to ac-
7 quire, establish, maintain and operate such solid waste disposal systems
8 as are necessary and to provide reasonable and convenient access to such
9 disposal systems by all the citizens of the county. For the purpose of estab-
10 lishing systems for solid waste disposal, the board of county commissioners
11 may purchase, lease, condemn or receive as gifts such areas as are suitable,
12 or the board may exchange land with any other unit or units of government
13 under such terms as are mutually advantageous. In order that a county may
14 acquire sites or systems as expeditiously and advantageously as possible,
15 a county may use funds from current revenues, may use funds made available
16 through the issuance of bonds, or may use funds made available from county
17 building construction funds, and the provisions of chapter 10, title 31,
18 Idaho Code, are hereby made applicable for the acquisition of solid waste
19 disposal systems ~~and a.~~ A solid waste disposal system is declared to be a
20 public building within the definition of chapter 10, title 31, Idaho Code,
21 except that notwithstanding any other provisions of law, no board of county
22 commissioners or other public authority shall be required to contract out
23 the establishment, acquisition, operation or maintenance of a solid waste
24 disposal system, but if it should elect to do so, it may waive the giving of
25 a bond or other security in connection with such contract upon such terms
26 and conditions as it deems appropriate, and provided further that any county
27 may itself, without contracting out to any other party, establish, acquire,
28 operate and maintain a solid waste disposal system.

29 (2) The board of county commissioners may enact flow control measures
30 to protect public investment in solid waste facilities and systems, to re-
31 duce county liabilities, to avoid the creation of publicly funded assets
32 that cannot be fully utilized, to ensure waste management is facilitated in
33 an environmentally compliant manner, and to promote public health.

34 (3) Notwithstanding any other provision of law to the contrary, flow
35 control measures pursuant to this section shall only be enacted after the
36 county completes an independent study by a qualified professional demon-
37 strating that flow control is necessary to achieve the goals provided for
38 in subsection (2) of this section. Counties that are members of a regional
39 solid waste or domestic septage disposal district pursuant to chapter 49,
40 title 31, Idaho Code, are exempt from the provisions of this subsection. The
41 study shall include:

42 (a) A comprehensive financial impact analysis of potential economic
43 impacts on county-funded solid waste facilities if flow control is
44 not enacted. Such analysis shall include revenue projections for the
45 facility under various scenarios, including with and without flow con-
46 trol, demonstrating the anticipated return on public investment;

47 (b) A comparative cost-benefit analysis illustrating the costs and
48 benefits of implementing flow control versus allowing unrestricted
49 disposal options. Such comparative analysis shall evaluate the facil-

1 ity's long-term sustainability and predict maintenance and operational
 2 costs relative to expected revenues under flow control. Special empha-
 3 sis shall be put on identifying how flow control can help prevent the
 4 creation of stranded assets such as facilities or infrastructure that
 5 are underutilized or abandoned that will result in sunk costs or unre-
 6 coverable investments funded by public moneys;

7 (c) A liability and risk mitigation evaluation of potential liabili-
 8 ties associated with the solid waste system under scenarios where flow
 9 control is enacted and is not enacted. Such evaluation shall assess
 10 risks related to underutilized capacity, unrecouped capital invest-
 11 ments, and the financial burden of maintaining idle facilities if waste
 12 is diverted to other disposal locations, including facilities outside
 13 of the county;

14 (d) A compliance verification assessment verifying that waste gener-
 15 ated within the county is not sent to facilities that are noncompliant
 16 with federal, state, or local regulations. Such assessment shall in-
 17 clude an analysis of the regulatory compliance of any facilities out-
 18 side of the county that might otherwise receive waste from the county,
 19 ensuring that flow control is implemented only to prevent waste from be-
 20 ing diverted to noncompliant facilities, which could pose risks to pub-
 21 lic health and the environment;

22 (e) A regulatory and environmental impact assessment, including doc-
 23 umentation on how flow control supports the county's commitment to
 24 responsible waste management practices that meet or exceed regulatory
 25 standards for public health and environmental protection, including
 26 air, soil, and water quality; and

27 (f) A comprehensive alternative analysis review of other potential
 28 measures that may be used to achieve the same goals as provided for
 29 in subsection (2) of this section, including any available compliant
 30 facilities outside the county. The analysis shall provide a detailed
 31 explanation for why the alternatives may be more or less effective or
 32 feasible than flow control in protecting public investment in solid
 33 waste facilities and systems, reducing county liabilities, avoiding
 34 the creation of publicly funded assets that cannot be fully utilized,
 35 ensuring waste management is facilitated in an environmentally compli-
 36 ant manner, and promoting public health.

37 (4) Upon completion of the study provided for in subsection (3) of this
 38 section, it shall be presented in a public forum before any final decision is
 39 made on flow control measures to ensure transparency and to provide oppor-
 40 tunities for public comment. The board of county commissioners shall pro-
 41 vide adequate notice of such public process, including public access to the
 42 study's findings, to allow citizens to participate and offer input.

43 SECTION 3. That Section 31-4407, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 31-4407. EXISTING AND FUTURE MUNICIPAL FACILITIES TO CONFORM TO
 46 CHAPTER. Solid waste disposal facilities now in existence or hereafter es-
 47 tablished and maintained and/or operated by any city shall conform in the
 48 same manner as county solid waste disposal facilities as provided in ~~section~~
 49 sections 34-4402 and 31-4405, Idaho Code.

1 SECTION 4. That Section 31-4407A, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 31-4407A. CHANGES IN STATUS OF MAJOR WASTE GENERATORS AND MUNICIPALITI-
4 TIES -- PROCEDURES. (1) Major solid waste generators and municipalities op-
5 erating solid waste collection or disposal systems pursuant to the authority
6 conferred by law or desiring to initiate or abandon such systems shall con-
7 form to the procedures and standards set forth in this section before tak-
8 ing any action ~~which that~~ would significantly affect the amount or distribu-
9 tion of solid waste within any county. The board of county commissioners of
10 any county may waive operation of the procedure called for in this section by
11 passage of a resolution indicating ~~their~~ its intent to do so.

12 (2) Whenever a county ~~shall propose~~ proposes the establishment of a new
13 solid waste processing facility within the boundaries of the county or in
14 conjunction with adjoining counties, it shall give notice to the public and
15 all municipalities within its boundaries that it intends to establish a pro-
16 cessing facility. In conjunction with the notice, the county shall provide
17 a copy of a feasibility study prepared by a licensed professional engineer
18 concerning the proposed processing facility ~~which that~~ shall address the es-
19 timated capital cost of the facility, the estimated costs of operation of the
20 facility, and the estimated life span of the facility. The notice shall be
21 provided to potentially affected municipalities at least one hundred eighty
22 (180) days prior to the scheduled initiation of construction of any solid
23 waste processing facility.

24 (3) Within ninety (90) days of receipt of the notice, each affected mu-
25 nicipality shall respond to the notice provided by the county, indicating in
26 its response the intention of the municipality to participate in the use of
27 the proposed facility or to develop or continue operation of an independent
28 solid waste processing facility of its own for the projected duration of the
29 proposed county project.

30 (4) Pursuant to the responses received from affected municipalities,
31 the county proposing development of the solid waste processing facility may
32 tender contracts to participating municipalities assuring the availabil-
33 ity of waste disposal capacity at the proposed facility for any duration
34 promised by contract and securing commitments from the municipalities to
35 participate in use of the facility for the duration of its projected life.
36 The contracts shall not constitute guarantees of costs or duration of ser-
37 viceability of the proposed facility. The contracts may provide for annual
38 adjustments to reflect changes in the relative contribution rates of mu-
39 nicipalities to the waste stream feeding the disposal facility. No capital
40 contribution obligation shall extend beyond fifteen (15) years. Additional
41 contracts for capital participation may be proposed and entered into after
42 the expiration of the initial agreement.

43 (5) Any municipality ~~which that~~ indicates its intent not to participate
44 in a proposed facility shall be barred from later participation without the
45 consent of the board of county commissioners and without payment of a capital
46 contribution adequate to finance the cost of additional capacity adequate to
47 accommodate the waste stream generated within the municipality. The amount
48 and method of payment of the capital contribution shall be established by the
49 board of county commissioners.

1 (6) Any municipality ~~which~~ that elects to participate in a given solid
2 waste processing facility, but later elects to withdraw from said project,
3 may do so, but shall remain obligated for any capital costs incurred in its
4 behalf, but may receive partial credit for operational economies created by
5 its withdrawal. The burden of proof of the extent of operational economies
6 shall rest upon the withdrawing municipality.

7 (7) Major solid waste generators located outside participating munic-
8 ipalities shall be treated in the same manner as municipalities concerning
9 commitments to waste facility capacity. Boards of county commissioners are
10 authorized to enter into contracts with major solid waste generators for the
11 expected duration of operation of any solid waste processing facility.

12 SECTION 5. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2025.