

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 769

BY: CAPPS

AS INTRODUCED

AN ACT RELATING TO SOLID WASTE AND CONTROLLED INDUSTRIAL WASTE FACILITIES; CREATING THE OKLAHOMA SOLID AND CONTROLLED INDUSTRIAL WASTE FACILITY SITING ACT; PROVIDING SHORT TITLE; PROHIBITING STATE DEPARTMENT OF HEALTH FROM ISSUING CERTAIN PERMITS UNTIL CERTAIN REQUIREMENTS ARE MET; DEFINING TERMS; REQUIRING APPLICANT TO FILE NOTICE OF INTENT FOR LAND USE DECISION; STATING CERTAIN PROCEDURES REQUIRED OF APPLICANT WITHIN CERTAIN TIME PERIOD; REQUIRING THE STATE DEPARTMENT OF HEALTH TO NOTIFY CERTAIN STATE AGENCIES OF OPPORTUNITY TO COMMENT ON APPLICATION; PROVIDING FOR CERTAIN LOCAL GOVERNMENTAL ENTITIES TO FORM A LOCAL ASSESSMENT COMMITTEE WITHIN CERTAIN TIME PERIOD; STATING MEMBERSHIP OF COMMITTEE; REQUIRING COMMITTEE TO COMPLY WITH THE OKLAHOMA OPEN MEETING ACT AND THE OKLAHOMA OPEN RECORDS ACT; PROVIDING FOR COMMITTEE TO ELECT OFFICERS; REQUIRING COMMITTEE TO ESTABLISH CERTAIN TIMETABLE FOR CONSIDERATION OF APPLICANT'S PROPOSAL; AUTHORIZING LOCAL GOVERNMENTS TO JOINTLY ASSUME CERTAIN MONITORING AND INSPECTIONS OF FACILITY; REQUIRING COMMITTEE TO PREPARE A DRAFT RECOMMENDATION; REQUIRING COMMITTEE TO PUBLISH DRAFT

RECOMMENDATION, SET A DATE FOR PUBLIC HEARING AND GIVE APPLICANT CERTAIN NOTICE; REQUIRING APPLICANT GIVE LEGAL NOTICE IN CERTAIN NEWSPAPER OF PUBLIC HEARING FOR CERTAIN TIME PERIOD; AUTHORIZING THE COMMITTEE TO PRESIDE AT PUBLIC HEARING; ALLOWING ALL INTERESTED PARTIES TO PARTICIPATE; REQUIRING CERTAIN COMMENTS BE INCLUDED IN COMMITTEE'S FINAL REPORT; REQUIRING CERTAIN LOCAL GOVERNMENTAL ENTITIES APPROVE OR REJECT PROPOSAL; STATING PROPOSAL BE DENIED IN THE EVENT OF DIFFERING VOTES OF LOCAL GOVERNMENTAL ENTITIES; STATING PROCEDURES IF PROPOSAL IS APPROVED; PROVIDING FOR THE STATE DEPARTMENT OF HEALTH TO REFER CERTAIN REPORT BACK TO THE LOCAL ASSESSMENT COMMITTEE; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Solid and Controlled Industrial Waste Facility Siting Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

No permit for a controlled industrial or solid waste disposal facility shall be issued by the State Department of Health until such facility meets the following requirements:

1. The site and land use thereof shall be first approved by all affected local governmental entities as provided for in this act;

2. The site and land use thereof shall not be subject to outstanding objections by any state agency with regulatory authority over such site or land use thereof;

3. The siting of such a facility would not pose a significant threat to public health and safety as determined by the State Department of Health in accordance with its rules and the statutes of the State of Oklahoma;

4. The permit applicant has demonstrated its financial and technical reliability as determined by the State Department of Health in accordance with its rules and the statutes of the State of Oklahoma; and

5. The permit conforms to all local, state and federal laws and the rules of any governmental agency with regulatory authority over such a site or facility.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Affected area" means the area within a ten-mile radius of a proposed facility's outer boundary;

2. "Committee" means the Local Assessment Committee;

3. "Consideration" means but is not limited to the following:

- a. risk and impact of the facility, which would adversely affect the health or safety of local residents or facility employees, wildlife, agriculture, natural resources, groundwater and air quality,
- b. on-site and off-site monitoring to prevent adverse health effects and a baseline study,
- c. accident assessment, including on-site and transportation preparedness,
- d. emergency response plan and employee training,

- e. projected costs to local government for emergency response equipment, maintenance and training; police and fire protection; road repair and maintenance, health monitoring; and administrative costs,
- f. compensation for property devaluation,
- g. the permit applicant's financial security, bonding and technical reliability,
- h. purchase of green buffer, beautification or wetlands set-asides,
- i. compliance with ordinances and zoning requirements, and
- j. satisfaction of public notice and hearing requirements; and

4. "Local governments" means city and county governmental entities located within an affected area.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The applicant for a Solid or Controlled Industrial Waste Permit shall file with the State Department of Health a written notice of intent to apply for land use decision. Within ten (10) days thereof such applicant shall:

1. Notify local governments of its proposed land use and provide them with an adequate number of copies of their notice of intent for interested persons;

2. Publish, in a newspaper of general circulation in the county which is authorized to publish legal notices, a legal notice describing the proposed facility, transportation routes, sources of waste, types and amount of waste to be handled, and identify the local government location where interested persons may obtain a free copy of the applicant's notice of intent;

3. Mail to landowners, adjacent to the proposed facility, a description of the proposed facility, transportation routes, sources of waste, types and amount of waste to be handled, and identify the local governmental location where adjacent landowners can obtain a free copy of the applicant's notice of intent; and

4. File with the city commissioners and the county commissioners of each local government within a ten-mile radius of the outer boundary of the proposed site, a description of the proposed facility, transportation routes, sources of waste, and the types and amounts of waste to be handled.

B. The State Department of Health shall notify all interested or affected state agencies of the opportunity to comment on the proposed facility. Provided, however, participation in the siting comment process shall not initiate or substitute for any part of the permit application process with any participating agency.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within forty-five (45) days of notification, all local governments within the affected area shall form a Local Assessment Committee which shall be comprised of the following members:

1. Two members appointed by the governing entity of any affected city, if any;

2. Two members appointed by the board of county commissioners of any affected county government entities;

3. Two members, financially disinterested in said proposed facility, who will be representatives of industry and appointed by the Chamber of Commerce located in the city nearest the proposed facility;

4. Two members who shall be financially disinterested representatives of environmental groups within the affected area who

will be selected by the Oklahoma Environmental Awareness Network, or a similar environmental coalition in existence at the time;

5. One member who shall be a technical engineer from the State Department of Health in either the controlled industrial or solid waste division;

6. One attorney to represent each city and county government within the affected area; and

7. A number of citizens, who are residents living within the affected area, equal to the actual number of members listed above. At least fifty percent (50%) of the citizens shall be selected by the Oklahoma Environmental Awareness Network, or a similar environmental coalition in existence at the time.

B. The committee shall conduct business in compliance with the provisions of the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes and the Oklahoma Open Records Act, Section 24A.1 of Title 51 of the Oklahoma Statutes.

C. Within twenty (20) days of its formation, the committee shall meet and elect a chairperson and any other officers the members deem necessary. During the first meeting, the committee shall establish a timetable for consideration of the applicants land use proposal. During the time period established by the committee, it shall make full consideration as defined in this act of the land use proposal of the applicant.

D. Local governmental entities shall have the option to jointly assume responsibility with the State of Oklahoma for inspection and monitoring of the facility.

E. The committee shall prepare a draft recommendation memorializing its consideration of the proposal and negotiated terms, identifying such terms and conditions as it may deem to be in the best interest of the citizens of the affected area. The committee may tentatively recommend the siting or reject the proposed land use.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Contemporaneous with the publication of its draft recommendation, the committee shall set a date for a public hearing and notify the applicant in writing thereof.

B. The applicant shall give notice, in a newspaper of general circulation in the affected county and which is authorized to publish legal notices, stating the date, time and location of the public hearing and identifying the local government location where interested persons may obtain a free copy of the draft recommendation. The applicant will make an adequate supply of copies available for the local governmental entity. Said legal notice of the public hearing must be published once a week for two (2) weeks and the second publication thereof shall occur not less than fourteen (14) days prior to the scheduled date of the public hearing.

C. The committee shall preside at the public hearing. Public comments and evidence shall be accepted from residents in the affected area and all other interested persons. Such comments along with any responses from the applicant shall be included in the committee's final report.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2350.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon completion of the Local Assessment Committee's final report, the affected local governments shall vote to approve or reject the applicant's land use proposal. In the event that the vote of a city government differs from the vote of the county commissioners, the proposal shall be denied to the applicant.

B. If approved by all affected local governmental entities, a copy of the final report shall be forwarded to the State Department

of Health, and made available for review by interested state agencies.

C. Any discrepancies or deficiencies in the committee's final report which are identified by the State Department of Health or any interested state agency, shall be referred back to the committee with written comments and the committee shall re-address those issues in accordance with the provisions of this act.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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