

EMERGENCY BILL

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By: Delegate Stup

Introduced and read first time: February 21, 1997

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Assumption of Waste Facilities**

3 FOR the purpose of requiring the State through the Department of the Environment to
4 assume ownership, operation, and control of certain refuse disposal systems, solid
5 waste acceptance facilities, rubble landfills, and certain recycling facilities under
6 certain circumstances; requiring the Department to assume certain responsibilities;
7 requiring the Department to operate the facilities in a certain manner under certain
8 circumstances; prohibiting the Department from charging certain tipping charges
9 except under certain circumstances; clarifying the authority of local governments
10 under certain circumstances; requiring the Department to adopt certain regulations;
11 providing that the State through the Department is the successor of the former
12 owner of the facility for certain purposes; providing for the continuity of certain
13 laws, regulations, contracts, and transactions; making provisions of this Act
14 severable; making this Act an emergency measure; defining certain terms; and
15 generally relating to requiring the State through the Department of the
16 Environment to assume ownership, operation, and control of certain refuse disposal
17 systems, solid waste acceptance facilities, rubble landfills, and recycling facilities.

18 BY repealing and reenacting, without amendments,
19 Article - Environment
20 Section 9-201(a) and (e), 9-501(n), and 9-1701(l)
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 1996 Supplement)

23 BY adding to
24 Article - Environment
25 Section 9-201(v) and 9-204(j); and 9-2001 through 9-2005 to be under the new
26 subtitle "Subtitle 20. State Assumption of Waste Facilities"
27 Annotated Code of Maryland
28 (1996 Replacement Volume and 1996 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Environment
31 Section 9-204.1
32 Annotated Code of Maryland

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1 (1996 Replacement Volume and 1996 Supplement)

2 Preamble

3 WHEREAS, The State of Maryland has the responsibility to protect and preserve
4 the health, welfare, and safety of its citizens at all times, to the fullest extent possible; and

5 WHEREAS, One threat to the health, welfare, and safety of many Marylanders
6 comes from the operation of certain waste incinerators, sanitary landfills, rubble landfills,
7 and recycling facilities which are proliferating given Maryland's growing population; and

8 WHEREAS, There are two principal concerns emanating from the current public
9 debate surrounding the operation of these waste facilities: (1) that the State is imposing
10 unreasonable financial burdens on the owners and operators of these public or private
11 facilities; and (2) that, despite existing regulatory safeguards, many of these facilities are
12 likely releasing unacceptable levels of harmful toxins into the air and into the
13 underground aquifers; and

14 WHEREAS, A continuation of existing regulatory policies arguably threatens not
15 only the health of many Marylanders today, but poses an equally alarming long-term
16 threat to the health of future generations; and

17 WHEREAS, It is incumbent on the State to assume ownership, control, and
18 operation of the waste incinerators, sanitary landfills, rubble landfills, and recycling
19 facilities which are currently owned and operated by private owners and certain county
20 and municipal governments in order to effect a strategic uniform policy that helps protect
21 the short-term and long-term health, welfare, and safety of the citizens of Maryland; and

22 WHEREAS, It is the intent of the General Assembly that the State: (1) assume
23 ownership, control, and operation of publicly and privately owned waste facilities on
24 request of the appropriate public or private entity on or before September 1, 1997; (2)
25 continue to operate such facilities on an "as is" basis consistent with the facility's
26 scheduled life cycle on the assumption of ownership; (3) be responsible for satisfying all
27 outstanding liabilities incurred by the previous public or private owner; (4) be responsible
28 for complying with any and all outstanding court-ordered consent decrees; and (5) not
29 increase any tipping fee beyond \$40 per ton without the written consent of the General
30 Assembly's Legislative Policy Committee; and

31 WHEREAS, Maryland's Department of the Environment will be the regulatory
32 agency responsible for complying with the provisions of this Act; and

33 WHEREAS, The Department of Budget and Management and the Department of
34 the Environment will, on formal transfer of ownership of these public and private
35 facilities consistent with this Act, take immediate steps to transfer the displaced
36 employees from these previously nonstate-owned waste facilities into State service with
37 no diminution of salary, seniority rights, health care, retirement and other fringe benefits
38 afforded them under their previous employment contracts as of the date the State
39 assumes ownership; now, therefore,

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
41 MARYLAND, That the Laws of Maryland read as follows:

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1 **Article - Environment**

2 9-201.

3 (a) In this subtitle the following words have the meanings indicated.

4 (e) "Refuse disposal system" includes:

5 (1) An incinerator;

6 (2) A transfer station;

7 (3) A landfill system;

8 (4) A landfill;

9 (5) A solid waste processing facility; and

10 (6) Any other solid waste acceptance facility.

11 (V) "APPLICANT" INCLUDES THE DEPARTMENT IF, AS PROVIDED IN SUBTITLE
12 20 OF THIS TITLE, THE DEPARTMENT HAS ASSUMED OWNERSHIP, OPERATION, AND
13 CONTROL OF A REFUSE DISPOSAL SYSTEM, A REFUSE DISPOSAL SYSTEM THAT IS A
14 SOLID WASTE ACCEPTANCE FACILITY AS DEFINED IN § 9-501(N) OF THIS TITLE, OR A
15 RECYCLING FACILITY.

16 9-204.

17 (J) ON OR BEFORE SEPTEMBER 1, 1997, THE OWNER OR OPERATOR OF A
18 REFUSE DISPOSAL SYSTEM, A REFUSE DISPOSAL SYSTEM THAT IS A SOLID WASTE
19 ACCEPTANCE FACILITY AS DEFINED IN § 9-501(N) OF THIS TITLE, OR A RECYCLING
20 FACILITY MAY REQUEST THE DEPARTMENT TO ASSUME OWNERSHIP, OPERATION,
21 AND CONTROL OF THE SYSTEM OR FACILITY AS PROVIDED IN SUBTITLE 20 OF THIS
22 TITLE.

23 9-204.1.

24 [The Secretary may not issue a permit to install, materially alter, or materially
25 extend an incinerator for disposal of a solid waste stream, as defined in § 9-1701 of this
26 title, unless] UNLESS the county where the proposed incinerator is to be installed,
27 materially altered, or materially extended has a recycling plan submitted and approved in
28 accordance with § 9-505 of this title:

29 (1) THE SECRETARY MAY NOT ISSUE A PERMIT TO INSTALL,
30 MATERIALLY ALTER, OR MATERIALLY EXTEND AN INCINERATOR FOR DISPOSAL OF
31 A SOLID WASTE STREAM, AS DEFINED IN § 9-1701 OF THIS TITLE; AND

32 (2) THE SECRETARY MAY NOT INSTALL, MATERIALLY ALTER, OR
33 MATERIALLY EXTEND AN INCINERATOR FOR THE DISPOSAL OF A SOLID WASTE
34 STREAM, AS DEFINED IN § 9-1701 OF THIS TITLE, OF WHICH THE SECRETARY HAS
35 ASSUMED OWNERSHIP, OPERATION, AND CONTROL AS PROVIDED UNDER SUBTITLE
36 20 OF THIS TITLE.

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1 9-501.

2 (n) "Solid waste acceptance facility" means any sanitary landfill, incinerator,
3 transfer station, or plant whose primary purpose is to dispose of, treat, or process solid
4 waste.

5 9-1701.

6 (l) (1) "Solid waste stream" means garbage or refuse that would, unless
7 recycled, be disposed of in a refuse disposal system located in this State.

8 (2) "Solid waste stream" does not include:

9 (i) Hospital waste;

10 (ii) Rubble;

11 (iii) Scrap material;

12 (iv) Land clearing debris;

13 (v) Sewage sludge; or

14 (vi) Waste generated by a single individual or business and disposed of
15 in a facility dedicated solely for that entity's waste.

16 SUBTITLE 20. STATE ASSUMPTION OF WASTE FACILITIES.

17 9-2001.

18 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) (1) "OWNER" MEANS THE PRINCIPAL OWNER OR OPERATOR OF A
21 FACILITY.

22 (2) "OWNER" INCLUDES:

23 (I) A PRIVATE ENTITY THAT OWNS A FACILITY;

24 (II) A POLITICAL SUBDIVISION OF THE STATE THAT OWNS AND
25 OPERATES A FACILITY; OR

26 (III) ANY OTHER ENTITY ESTABLISHED BY LAW AND AUTHORIZED
27 TO OPERATE A FACILITY.

28 (C) "FACILITY" MEANS:

29 (1) A REFUSE DISPOSAL SYSTEM AS DEFINED UNDER § 9-201(E) OF THIS
30 TITLE;

31 (2) A SOLID WASTE ACCEPTANCE FACILITY AS DEFINED UNDER §
32 9-501(N) OF THIS TITLE;

33 (3) A RUBBLE LANDFILL SUBJECT TO THIS TITLE; OR

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1 (4) A RECYCLING FACILITY APPROVED BY THE SECRETARY.

2 9-2002.

3 (A) THE STATE, THROUGH THE DEPARTMENT, SHALL ASSUME OWNERSHIP,
4 OPERATION, AND CONTROL OF ANY FACILITY IN THE STATE IF THE OWNER OF THE
5 FACILITY REQUESTS THE STATE, THROUGH THE DEPARTMENT, TO ASSUME
6 OWNERSHIP, OPERATION, AND CONTROL OF THE FACILITY BEFORE SEPTEMBER 1,
7 1997.

8 (B) AFTER THE DEPARTMENT ASSUMES OWNERSHIP OF ANY FACILITY AS
9 PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT IS RESPONSIBLE
10 FOR FULFILLING:

11 (1) ALL OUTSTANDING FINANCIAL OBLIGATIONS OF THE FACILITY
12 INCLUDING THE SALARIES OF EMPLOYEES OF THE FACILITY; AND

13 (2) THE REQUIREMENTS OF ANY CONSENT DECREES OR JUDGMENTS
14 UNDER WHICH THE FACILITY IS OPERATING.

15 (C) THE DEPARTMENT SHALL BE RESPONSIBLE FOR OPERATING THE
16 FACILITY IN COMPLIANCE WITH:

17 (1) THE REQUIREMENTS OF THE DEPARTMENT'S REGULATIONS AND
18 THE PROVISIONS OF THIS ARTICLE; AND

19 (2) ANY LOCAL LAW OR ORDINANCES WITH WHICH THE FACILITY WAS
20 REQUIRED TO COMPLY BEFORE THE DEPARTMENT ASSUMED OWNERSHIP,
21 OPERATION, AND CONTROL OF THE FACILITY.

22 (D) THE DEPARTMENT SHALL OPERATE THE FACILITY "AS IS" AND MAY NOT
23 SIGNIFICANTLY ALTER THE OPERATIONAL STATUS, FUNCTIONS, OR HOURS OF THE
24 FACILITY.

25 9-2003.

26 AS THE OWNER AND OPERATOR OF A FACILITY FOR WHICH THE STATE,
27 THROUGH THE DEPARTMENT, HAS ASSUMED CONTROL UNDER THIS SUBTITLE, THE
28 DEPARTMENT MAY NOT CHARGE TIPPING FEES HIGHER THAN \$40 PER TON
29 WITHOUT RECEIVING THE EXPRESS WRITTEN APPROVAL OF THE LEGISLATIVE
30 POLICY COMMITTEE.

31 9-2004.

32 (A) THIS SUBTITLE MAY NOT BE CONSTRUED TO IMPLY THAT THE GENERAL
33 ASSEMBLY INTENDS TO PREEMPT LOCAL LAW ANY MORE THAN LOCAL LAW HAS
34 BEEN PREEMPTED BEFORE SEPTEMBER 1, 1997.

35 (B) THIS SUBTITLE DOES NOT AFFECT, AND MAY NOT BE CONSTRUED TO
36 AFFECT, THE PLANNING OR ZONING AUTHORITY OF A COUNTY OR MUNICIPAL
37 CORPORATION.

38 (C) NOTWITHSTANDING STATE OWNERSHIP, OPERATION, AND CONTROL OF
39 A FACILITY AS PROVIDED IN THIS SUBTITLE, A LOCAL GOVERNMENT THAT BEFORE

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1 THE STATE ACTION HAD JURISDICTION OVER A FACILITY SHALL CONTINUE TO
2 HAVE JURISDICTION OVER THE FACILITY AND, IF APPLICABLE, MAY CONTINUE TO
3 TAKE ACTION AGAINST THE FACILITY TO PREVENT OR ABATE AN IMMINENT AND
4 SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR THE ENVIRONMENT AT
5 THE FACILITY.

6 9-2005.

7 THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF BUDGET
8 AND MANAGEMENT, SHALL ADOPT REGULATIONS TO IMPLEMENT THE PURPOSES
9 OF THIS SUBTITLE.

10 SECTION 2. AND BE IT FURTHER ENACTED, That with respect to functions
11 transferred by this Act, the State, through the Department of the Environment, is the
12 successor of the owner of any facility for which the Department has assumed ownership,
13 operation, and control as provided in Title 9, Subtitle 20 of the Environment Article.

14 SECTION 3. AND BE IT FURTHER ENACTED, That every person who is
15 employed by any facility for which the State, through the Department, has assumed
16 ownership, operation, and control as provided in Title 9, Subtitle 20 of the Environment
17 Article is hereby transferred to the Department of the Environment, effective the date
18 the State, through the Department, assumes ownership, without any change or loss of
19 rights or status.

20 SECTION 4. AND BE IT FURTHER ENACTED, That, except as expressly
21 provided to the contrary in this Act, any transaction affected by or flowing from any
22 statute here amended, repealed, or transferred, and validly entered into before the
23 effective date of this Act and every right, duty, or interest following from it remains valid
24 after the effective date of this Act and may be terminated, completed, consummated, or
25 enforced pursuant to law.

26 SECTION 5. AND BE IT FURTHER ENACTED, That, except as otherwise
27 provided in this Act, all permits and licenses, applications for permits and licenses,
28 regulations, proposed regulations, standards and guidelines, proposed standards and
29 guidelines, orders and other directives, forms, plans, memberships, special funds,
30 appropriations, grants, applications for grants, contracts, properties, investigations,
31 administrative and judicial proceedings, rights to sue and be sued, and all other duties
32 and responsibilities associated with those functions transferred by this Act shall continue
33 in effect under the Department of the Environment or the appropriate board,
34 commission, or other unit within the Department of the Environment, until completed,
35 withdrawn, canceled, modified, or otherwise changed pursuant to law.

36 SECTION 6. AND BE IT FURTHER ENACTED, That if any provision of this Act
37 or the application thereof to any person or circumstance is held invalid for any reason in
38 a court of competent jurisdiction, the invalidity does not affect other provisions or any
39 other application of this Act which can be given effect without the invalid provision or
40 application, and for this purpose the provisions of this Act are declared severable.

41 SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an emergency
42 measure, is necessary for the immediate preservation of the public health and safety, has
43 been passed by a yea and nay vote supported by three-fifths of all the members elected to

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1 each of the two Houses of the General Assembly, and shall take effect from the date it is
2 enacted.