By:  Darby (Senate Sponsor - Perry) H.B. No. 1598

(In the Senate - Received from the House April 26, 2023; May 18, 2023, read first time and referred to Committee on Water, Agriculture & Rural Affairs; May 19, 2023, reported favorably by the following vote: Yeas 8, Nays 0; May 19, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Perry           X

Hancock         X

Blanco          X

Flores          X

Gutierrez       X

Johnson                   X

Kolkhorst       X

Sparks          X

Springer        X

A BILL TO BE ENTITLED

AN ACT

relating to local government and other political subdivision regulation of certain solid waste facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 361.095, Health and Safety Code, is amended to read as follows:

Sec. 361.095.  LOCAL PERMITS FOR [~~APPLICANT FOR~~] HAZARDOUS WASTE MANAGEMENT AND MUNICIPAL SOLID WASTE FACILITIES [~~FACILITY PERMIT EXEMPT FROM LOCAL PERMIT~~]. (a) An applicant for a permit under this subchapter is not:

(1)  required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state; or

(2)  required to obtain a permit for the siting, construction, or operation of a municipal solid waste facility from a local government or other political subdivision of the state as a prerequisite to a permit being issued by the commission.

(b)  A local government or other political subdivision of the state may not adopt a rule, order, or ordinance that conflicts with or is inconsistent with:

(1)  the requirements for hazardous waste management or municipal solid waste facilities as specified by:

(A)  the rules of the commission; or

(B)  [~~by~~] a permit issued by the commission; or

(2)  the requirements for municipal solid waste facilities under Section 361.011.

(c)  In an action to enforce a rule, order, or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d)  The validity or applicability of a rule, order, or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule, order, or ordinance, or its threatened application, interferes with, [~~or~~] impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an issued permit, an application for a permit, or the issuance of a permit for the siting, construction, or operation of a hazardous waste management or municipal solid waste facility.

(e)  The local government or other political subdivision whose rule, order, or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f)  A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule, order, or ordinance in question.

(g)  This section may not be construed to prevent or limit the right of:

(1)  a county or municipality to exercise the authority granted under Section 363.112 to prohibit the processing or disposal of municipal solid waste;

(2)  a county to exercise the authority granted under Section 364.012 to prohibit the disposal of municipal solid waste; or

(3)  a local government or other political subdivision to adopt or enforce a rule, order, or ordinance under the authority of the National Flood Insurance Program governing permits or other approvals for the development of land in areas prone to floods or mudslides.

SECTION 2.  Section 361.095, Health and Safety Code, as amended by this Act, applies only to an order, ordinance, or other regulation related to the siting or location of a solid waste disposal facility adopted by a local government or other political subdivision after the effective date of this Act. An order, ordinance, or other regulation related to the siting or location of a solid waste disposal facility adopted before the effective date of this Act is governed by the law in effect on the date it was adopted, and the former law is continued in effect for that purpose.

SECTION 3.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

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