

## RESOLUTION

### **Opposing Senate Bill No. 2684, An Act to Amend Section 17-17-305 Mississippi Code 1972, To Revise The Definition Of "Municipal Solid Waste" As Used In The Mississippi Regional Solid Waste Management Authority Act To Exclude Wastes From For-profit Entities; And For Related Purposes.**

**WHEREAS**, the Mississippi Legislature created the Regional Solid Waste Management Act, Sections 17-17-301 through 17-17-349 of the Mississippi Code of 1972, to provide efficient municipal solid waste collection and disposal services for the citizens of this State. Under the Regional Solid Waste Management Act, any unit of local government or any combination of units may form a regional solid waste management authority (hereinafter “authority”). § 17-17-307. An authority may include multiple “members” which are units of local government participating in the authority. § 17-17-305(l). Authorities are charged with acquiring, constructing, operating, and maintaining municipal solid waste management facilities protect the health, safety, and welfare of the citizens of the State. § 17-17-303. By enacting the Regional Solid Waste Management Act, the Legislature intended to “provide adequate incentives and processes for reducing operation and other costs in the management of municipal solid waste.” *Id.*;

**WHEREAS**, the City of Laurel has determined that the amendment to the Regional Solid Waste Management Act as proposed in Senate Bill No. 2684 will modify the State’s definition of “municipal solid waste” as it is presently defined under Mississippi Code Ann. § 17-17-305 in a manner detrimental to this City of Laurel and other authorities’ abilities to manage municipal solid waste in a manner that ensures protection of human health, safety, and welfare and the environment;

**WHEREAS**, the Regional Solid Waste Management Act, along with regulations adopted pursuant to the Act, rely on the current definition of “municipal solid waste” that means “any nonhazardous solid waste resulting from the operation of residential, commercial, governmental, industrial or institutional establishments except oil field exploration and production wastes and sewage sludge.” Miss. Code Ann. § 17-17-305(m); 11 Code Miss. R. Pt. 4, R. 1.1 (2018);

**WHEREAS**, Senate Bill No 2684 would modify the definition of “municipal solid waste” to mean “any nonhazardous solid waste resulting from the operation of residential, commercial, governmental, industrial or institutional establishments, except oil field exploration and production wastes, wastes from for-profit entities, but not wastes from regional solid waste management authorities that were incorporated before July 1, 2019, and sewage sludge”;

**WHEREAS**, the revised definition of “municipal solid waste” would undermine the State’s existing regulatory structure that allows the Commission on Environmental Quality to adopt rules and regulations governing disposal of “municipal solid waste” and defined in Section 17-

17-205 and in accordance with Section 17-17-231 of the Nonhazardous Solid Waste Planning Act of 1991, Section 17-17-201 through 17-17-235 of the Mississippi Code of 1972, as amended;

**WHEREAS**, the revised definition of “municipal solid waste,” as proposed in Senate Bill No. 2684, would increase municipal solid waste disposal costs of the citizens of the State of Mississippi. To assure the viability of municipal solid waste management facilities, the Mississippi Regional Solid Waste Management Authority Act allows authorities to enact resolutions declaring that municipal solid waste generated within their designated geographic area must be disposed of at the permitted municipal solid waste management facility or facilities serving such area and to require that members of the authorities enact ordinances or resolutions that require the same. Miss. Code. Ann. § 17-17-319(2). These resolutions or ordinances are commonly referred to as “flow control ordinances.” Flow control ordinances are an essential mechanism through which authorities fulfill their statutory obligation to provide environmentally sound and fiscally viable municipal solid waste disposal programs. *See E.g., Nat'l Solid Waste Mgmt. Ass'n v. Pine Belt Reg'l Solid Waste Mgmt. Auth.*, 389 F.3d 491, 502 (5th Cir. 2004) (flow control ordinances have a legitimate local purpose “to ensure the economic viability” of solid waste disposal facilities). Flow control ordinances allow authorities to guarantee volume of wastes expected to be disposed at a particular disposal facility and prevent revenue losses due to wastes being taken outside the geographic area. In this manner, flow control ordinances promote the development of facilities that can accommodate larger volumes of municipal solid wastes, providing benefits that have a positive impact on the financing of capital costs and day-to-day utilization of equipment and personnel required at permitted municipal solid waste disposal facilities. In addition, municipal solid waste disposal facilities incur certain fixed costs mandated by state and federal law that may be commensurately reduced by the economy of scale benefits;

**WHEREAS**, this amendment, as drafted, will detrimentally impair the ability of authorities and their members to enforce flow control ordinances. Numerous solid waste management authorities and their members have enacted flow control ordinances that define “municipal solid waste” using language identical to the current version of the Mississippi Regional Solid Waste Management Authority Act. The revised definition of “municipal solid waste” in Senate Bill No. 2684 would undermine the obligations in existing flow control ordinances that require that all municipal solid wastes be directed to the solid waste management authority’s designated facility for disposal. In particular, this language would remove all wastes generated by for-profit entities (i.e., wastes from any commercial and industrial process) from the requirement in an applicable flow control ordinance to dispose of wastes at a designated facility. Moreover, this amendment would require the revision of all flow control ordinances in effect across the State at considerable expense to the authorities, their members, and the citizens that they serve;

**WHEREAS**, this amendment will hinder the ability of authorities to issue and repay bonds as authorized under Section 17-17-327 of the Mississippi Code of 1972 and to temporarily borrow funds in anticipation of the issuance of bonds under Section 17-17-331. Section 17-17-327 authorizes authorities to issue tax-exempt bonds for the acquisition, construction, improvement,

closure, and post-closure maintenance of their facilities and to repay bonds from the revenues generated from waste disposal facilities. Today, many authorities have issued bonds based on revenues expected from disposal facilities that receive municipal solid wastes as defined under the current definition. Authorities' revenues depend directly on the amount of solid wastes that it receives at its facilities. House Bill 2684 would reduce the tonnage of commercial wastes that must be directed to the facilities. Therefore, Senate Bill No. 2684 will decrease the security of outstanding municipal solid waste bonds issued by the solid waste management authorities to the detriment of their issuers, citizens, and bondholders and will impair the ability of authorities to secure financing for future activities through bond issuance, forcing authorities to finance projects and provide for construction, operation, and closure of their facilities using other mechanisms such as increased user fees;

**WHEREAS**, the Fifth Circuit found that flow control ordinances adopted by Mississippi counties were constitutional because they did not “disparately impact interstate commerce relative to intrastate commerce.” *Nat'l Solid Waste Mgmt. Ass'n v. Pine Belt Reg'l Solid Waste Mgmt. Auth.*, 389 F.3d 491, 503 (5th Cir. 2004). Subsequently, the United States Supreme Court has ruled that flow control ordinances are acceptable under the United States Constitution. The case of *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330, 345 (2007), held that a flow control ordinance requiring trash haulers to deliver solid waste to a processing plant owned by a public authority did not discriminate against interstate commerce because the ordinance “treat[ed] in-state private business interests exactly the same out-of-states ones.” The Court in *United Haulers*, distinguished its decision, which involved a municipality owned, public benefit corporation, from a previous decision that struck down a flow control ordinance that required waste haulers to deliver waste to a particular *private* processing facility. *Id.* at 334 (citing *C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383 (1994)). Existing provisions of the Mississippi Regional Solid Waste Management Authority Act are fully consistent with the Court's ruling in *United Haulers Association*;

**WHEREAS**, Senate Bill No. 2684 would exclude wastes generated by for-profit entities from the definition of “municipal solid wastes.” This exclusion has the presumably unintended consequence of removing the solid wastes generated by for-profit entities from the definition of “municipal solid waste,” thereby removing wastes from for-profit entities from the requirements of the Regional Solid Waste Management Act, the Nonhazardous Solid Waste Planning Act of 1991, and regulations adopted pursuant to these laws. Thus, if enacted, this Bill would allow waste generated by for-profit entities to be disposed of without these regulatory protections of state law. The Bill also contains a limiting clause that excludes wastes “from regional solid waste management authorities that were incorporated before July 1, 2019” from wastes from for-profit entities. This exclusion is superfluous because wastes generated “from regional solid waste management authorities” are not, by definition, also generated by for-profit entities. In sum, the language of Senate Bill 2684 narrows the definition of “municipal solid waste” subject to state laws and regulations to exclude waste from for-profit entities. This change will

undoubtedly lead to public health hazards, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** The City of Laurel hereby opposes adoption of Senate Bill No. 2684, a summary of which is hereto attached as Exhibit A. The proposed amendment to Section 17-17-305 would adversely and detrimentally affect the ability of the City of Laurel and other solid waste management authorities to secure funding necessary to provide cost-efficient municipal solid waste disposal facilities for the citizens of the State of Mississippi;

**BE IT FURTHER RESOLVED THAT** that Senate Bill No. 2684 would impair the ability of authorities and their members to enforce flow control ordinances and will require the authorities and their members to modify or replace existing flow control ordinances;

**BE IT FURTHER RESOLVED THAT** the language of Senate Bill No. 2684 would exempt wastes from for-profit entities from the definition of “municipal solid wastes” and applicable state laws and regulations that govern disposal of municipal solid wastes, allowing wastes from for-profit entities to be disposed of in ways that could create dangers to public health and contaminate the State’s natural resources;

**BE IT FINALLY RESOLVED THAT** for the issues described above, the City of Laurel stands in opposition to Senate Bill No. 2684 and urges members of the Accountability, Efficiency, and Transparency Committee to revise this proposed amendment such that it preserves the ability of authorities to secure funding necessary to construct, operate, and close municipal solid waste disposal facilities that are protective of the environment and health and welfare of all Mississippians.

Motion was made by Councilperson Travares Comegys and seconded by Councilperson Tony Wheat, for the adoption of the above and foregoing Resolution.

Upon roll call vote, the result was as follows:

YEAS: Capers, Wheat, Thaxton, Carmichael, S. Comegys, T. Comegys, Page

NAYS: None

ABSTAINING: None

ABSENT: None

The President thereupon declared the motion carried and the Resolution be adopted this the 5th day of FEBRUARY, A.D. 2019.

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President of the City Council

ATTESTED AND SUBMITTED TO THE MAYOR BY THE CLERK OF THE COUNCIL ON THIS  
THE \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Clerk of the Council

APPROVED ( ) DATE \_\_\_\_\_

VETOED ( ) DATE \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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Min. of 02/05/19; Book No. 101; Page No. \_\_\_\_\_; Agenda Item No. 4C