

## **HB/SB XXXX – Amends the Solid Waste Planning and Recycling Act (SWPRA)**

### ***Introduction***

**HB/SB XXXX** creates a new section within the Solid Waste Planning and Recycling Act (“SWPRA”) (415 ILCS 15). Clarifies that nothing in the SWPRA shall confer upon any county with a population of less than 2 million the power to impose regulations or operational requirements on a pollution control facility or recycling center. **HB/SB XXXX** defines “pollution control facility” and “recycling center” as those terms are defined in the Illinois Environmental Protection Act. Effective immediately.

### ***Background***

This legislation is being introduced in response to a recent (2016) Illinois Appellate Court decision in *Nat'l Waste & Recycling Ass'n, an Ill. Not-For-Profit Corp. v. Cnty. of Cook*, 2016 IL App (1st) 143694-U (Ill. App., 2016). In that case, the Court upheld a Cook County ordinance that imposes taxes upon and regulates waste transfer stations and recycling centers in Cook County but located outside the City of Chicago.

On January 15, 2014, Cook County adopted an ordinance that imposes taxes and regulations on solid waste transfer stations and recycling centers – irrespective of their regional nature and operations – based solely on their physical location within Cook County but outside of the City of Chicago.

The National Waste & Recycling Association (“NWRA”) challenged the validity of this ordinance in both the Cook County Circuit Court and the First Appellate District Court. Among other arguments, the NWRA alleged that the County ordinance exceeded the County’s authority because the ordinance purports to regulate: (1) regional facilities; (2) issues involving the other counties participating in a regional solid waste management system; and (3) issues currently and traditionally regulated on a regional and statewide basis by the State of Illinois.

In response, the County argued that it had the statutory authority to enact and enforce the ordinance.

In relevant part, the First District Appellate Court held as follows:

“Because the Illinois Solid Waste Planning and Recycling Act expressly grants each county the authority to craft waste management plans according to its respective needs, we find that the challenged provisions of the [Cook County Ordinance], in which the County imposes regulations, operational requirements and fees on operators of

Cook County based solid waste and recycling facilities, is well within the County's grant of authority by the Legislature." [*Nat'l Waste & Recycling Ass'n, an Ill. Not-For-Profit Corp. v. Cnty. of Cook*, 2016 IL App (1st) 143694-U (Ill. App., 2016), at 11.]

HB/SB XXXXX addresses this specific holding and the Appellate Court's interpretation of the SWRPA.

### ***Discussion***

HB/SB XXXX amends the SWRPA and addresses the authority of counties under that Act. HB/SB XXXX makes no change to the Illinois Environmental Protection Act, nor to the powers, duties or authority of counties under that Act. Further, HB/SB XXXX makes no changes with respect to municipal or home rule authority.

The Appellate Court held that the SWPRA grants each county "the primary responsibility to implement policies and procedures that adequately address waste management concerns within their respective boundaries." The Appellate Court based this holding on what it described as the "plain language" of the statute, though the statute never mentions implementation of any program other than the recycling program, much less programs directed at the broad category of "waste management concerns."

The SWPRA was enacted in 1988. The Appellate Court interpreted the SWPRA's grant of authority to "plan" and to "propose" facilities and programs to the Illinois Environmental Protection Agency as legal authority to "implement" such plans and to otherwise regulate solid waste management in whatever way a county may see fit. The Appellate Court's ruling marks the first and only appellate court interpretation of the SWPRA as granting regulatory authority over solid waste management facilities to Illinois counties. Further, the Appellate Court's interpretation of the SWPRA is at odds with a 1994 Illinois Attorney General's opinion that the SWPRA does not authorize the imposition or collection of fees.

One possible outcome of the Appellate Court's decision is the creation of multiple, new county level environmental regulatory and enforcement schemes, and a dramatic change in the manner solid waste management and pollution control facilities are regulated in Illinois.