

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 976

Short Title: Abolish Waste Management Board.

(Public)

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Sponsors: Representatives DeVane; Barnes, Cummings, Hackney, Hightower, and H. Hunter.

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Referred to: Environment.

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April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO ABOLISH THE GOVERNOR'S WASTE MANAGEMENT BOARD, TO  
2 MAKE CONFORMING CHANGES, AND TO TRANSFER THE OFFICE OF  
3 ENVIRONMENTAL EDUCATION TO THE OFFICE OF WASTE REDUCTION.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. Part 4A of Chapter 143B of the General Statutes is repealed.

7 Sec. 2. G.S. 7A-29 reads as rewritten:

8 "**§ 7A-29. (See Note) Appeals of right from certain administrative agencies.**

9 (a) From any final order or decision of the North Carolina Utilities Commission  
10 not governed by subsection (b) of this section, the Department of Human Resources  
11 under G.S. 131E-188(b), the Commissioner of Banks under Articles 17, 18, 18A, and 21  
12 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under  
13 Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial  
14 Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax  
15 Commission under G.S. 105-290 and G.S. 105-342, or an appeal from the  
16 Commissioner of Insurance under G.S. 58-2-80, ~~or from the Governor's Waste  
17 Management Board under G.S. 130A-293 and G.S. 104E-6.2,~~ appeal as of right lies directly  
18 to the Court of Appeals."

19 Sec. 3. G.S. 104E-6.2 reads as rewritten:

20 "**§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities  
21 invalid; petition to preempt local ordinance.**

22 (a) Notwithstanding any authority granted to counties, municipalities, or other  
23 local authorities to adopt local ordinances (including but not limited to those imposing

1 taxes, fees, or charges or regulating health, environment, or land use), any local  
2 ordinance ~~which~~ that prohibits or has the effect of prohibiting the establishment or  
3 operation of a low-level radioactive waste facility ~~which the Governor's Waste~~  
4 ~~Management Board (hereinafter 'the Board') has preempted pursuant to subsections (b) through~~  
5 ~~(f) of this section,~~ shall be invalid to the extent necessary to effectuate the purposes of  
6 this Chapter or Chapter 104G of the General Statutes. ~~For the purpose of this section, the~~  
7 ~~Board shall include, in addition to the members enumerated in G.S. 143B-285.12(a), two~~  
8 ~~members appointed by the board of commissioners of the county in which the facility is or is to~~  
9 ~~be located. If the facility is or is to be located in more than one county, or if the facility is or is~~  
10 ~~to be located within the boundaries of a city, the governing body of each city and county in~~  
11 ~~which any portion of the facility is or is to be located shall have one appointment. Failure of a~~  
12 ~~local governing body to make an appointment within 30 days after receipt of written notice~~  
13 ~~from the Board to do so shall be deemed a vacancy in an unexpired term and shall be filled by~~  
14 ~~appointment by the Board. The terms of members appointed by local governing bodies shall~~  
15 ~~end upon the final determination of the Board under this section, and such members shall serve~~  
16 ~~as members of the Board only for the purpose of this section.~~

17 (b) When a low-level radioactive waste facility would be prevented from  
18 construction or operation by a county, municipal, or other local ordinance(s), the  
19 operator of the proposed facility or the North Carolina Low-Level Radioactive Waste  
20 Management Authority established pursuant to Chapter 104G of the General Statutes  
21 (hereinafter 'the Authority') may petition ~~the Board~~ the Department to review the matter.  
22 After receipt of a petition, the ~~Board~~ Department shall hold a hearing in accordance with  
23 the procedures in subsection (c) of this section and shall determine whether or to what  
24 extent to preempt the local ordinance to allow for the establishment and operation of the  
25 facility.

26 (c) When a petition described in subsection (b) of this section has been filed with  
27 the ~~Board, the Board~~ Department, the Department shall hold a public hearing to consider  
28 the petition. Such hearing shall be held in the affected locality within 60 days after  
29 receipt of the petition by the ~~Board. The Board~~ Department. The Department shall give  
30 notice of the public hearing by:

- 31 (1) Publication in a newspaper or newspapers having general circulation in  
32 the county or counties where the facility is or is to be located or  
33 operated, once a week for three consecutive weeks, the first notice  
34 appearing at least 30 days prior to the scheduled date of the hearing;  
35 and
- 36 (2) First class mail to persons who have requested such notice. The ~~Board~~  
37 Department shall maintain a mailing list of persons who request notice  
38 in advance of the hearing pursuant to this section. Notice by mail shall  
39 be complete upon deposit of a copy of the notice in a post-paid  
40 wrapper addressed to the person to be notified at the address which  
41 appears on the mailing list maintained by the Board, in a post office or  
42 official depository under the exclusive care and custody of the United  
43 States Postal Service.

44 Any interested person may appear before the ~~Board~~ Department at the hearing to  
45 offer testimony. In addition to testimony before the ~~Board, Department,~~ any interested

1 person may submit written evidence to the ~~Board~~Department for its consideration. At  
2 least 20 days shall be allowed for receipt of written comment following the hearing.

3 (d) The ~~Board~~Department shall determine whether or to what extent to preempt  
4 local ordinance(s) so as to allow for the establishment and operation of the facility no  
5 later than 60 days after conclusion of the hearing. The ~~Board~~Department shall preempt  
6 a local ordinance only if it makes all five of the following findings:

7 (1) That there is a local ordinance which would prohibit or have the effect  
8 of prohibiting the establishment or operation of a low-level radioactive  
9 waste facility;

10 (2) That the proposed facility is needed in order to establish adequate  
11 capability to meet the current or projected low-level radioactive waste  
12 management needs of this State or to comply with the terms of any  
13 interstate agreement for the management of low-level radioactive  
14 waste to which the State is a party and therefore serves the interests of  
15 the citizens of the State as a whole;

16 (3) That all legally required State and federal permits or approvals have  
17 been issued by the appropriate State and federal agencies or that all  
18 State and federal permit requirements have been satisfied and that the  
19 permits or approvals have been denied or withheld only because of the  
20 local ordinance(s);

21 (4) That local citizens and elected officials have had adequate opportunity  
22 to participate in the siting process; and

23 (5) That the construction and operation of the facility will not pose an  
24 unreasonable health or environmental risk to the surrounding locality  
25 and that the facility operator or the Authority has taken or consented to  
26 take reasonable measures to avoid or manage foreseeable risks and to  
27 comply to the maximum feasible extent with any applicable local  
28 ordinance(s).

29 If the ~~Board~~Department does not make all five findings set out above, the ~~Board~~  
30 Department shall not preempt the challenged local ordinance(s). The ~~Board's~~  
31 Department's decision shall be in writing and shall identify the evidence submitted to  
32 the ~~Board~~Department plus any additional evidence used in arriving at the decision.

33 (e) The decision of the ~~Board~~Department shall be final unless a party to the  
34 action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified  
35 by G.S. 7A-29 and this section, files a written appeal within 30 days of the date of such  
36 decision. The record on appeal shall consist of all materials and information submitted  
37 to or considered by the ~~Board, the Board's Department, the Department's~~ written decision,  
38 a complete transcript of the hearing, all written material presented to the ~~Board~~  
39 Department regarding the location of the facility, the specific findings required by  
40 subsection (d) of this section, and any minority positions on the specific findings  
41 required by subsection (d) of this section. The scope of judicial review shall be that the  
42 court may affirm the decision of the ~~Board, Department,~~ or may remand the matter for  
43 further proceedings, or may reverse or modify the decision if the substantial rights of

1 the parties may have been prejudiced because the agency findings, inferences,  
2 conclusions, or decisions are:

- 3 (1) In violation of constitutional provisions; or
- 4 (2) In excess of the statutory authority or jurisdiction of the agency; or
- 5 (3) Made upon unlawful procedure; or
- 6 (4) Affected by other error of law; or
- 7 (5) Unsupported by substantial evidence admissible under G.S. 150B-  
8 29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- 9 (6) Arbitrary or capricious.

10 ♦ If the court reverses or modifies the decision of the agency, the judge shall set out in  
11 writing, which writing shall become part of the record, the reasons for such reversal or  
12 modification.

13 (f) In computing any period of time prescribed or allowed by this procedure, the  
14 provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

15 Sec. 4. G.S. 104G-2(2) is repealed.

16 Sec. 5. G.S. 113-8.01 reads as rewritten:

17 **"§ 113-8.01. Pollution Prevention Pays Programs.**

18 There is established within the Department a non-regulatory technical assistance  
19 program to be known as the Pollution Prevention Pays Program. The purpose of this  
20 program is to encourage voluntary waste and pollution reduction efforts through  
21 research and by providing information, technical assistance, and matching grants to  
22 businesses and industries interested in establishing or enhancing activities to prevent,  
23 reduce, or recycle waste. The Pollution Prevention Pays Program shall coordinate its  
24 activities with the appropriate regulatory agencies ~~and with the Governor's Waste~~  
25 ~~Management Board agencies."~~

26 Sec. 6. G.S. 120-70.33 reads as rewritten:

27 **"§ 120-70.33. Powers and duties.**

28 The Joint Select Committee shall have the following powers and duties:

- 29 (1) To study alternatives available to the State for dealing with low-level  
30 radioactive waste and the ramifications of each of those alternatives;
- 31 (2) To evaluate actions of the North Carolina Low-Level Radioactive  
32 Waste Management Authority, its operator, and other persons with  
33 whom the Authority contracts;
- 34 (3) To evaluate actions of ~~the Governor's Waste Management Board,~~ the  
35 Radiation Protection Commission, ~~and~~ the Division of Radiation  
36 Protection of the Department of Environment, Health, and Natural  
37 Resources, and of any other board, commission, department, or agency  
38 of the State or local government as such actions relate to low-level  
39 radioactive waste management;
- 40 (4) To receive, review, and evaluate reports and recommendations  
41 submitted to the General Assembly by the North Carolina Low-Level  
42 Radioactive Waste Management Authority and the Inter-Agency  
43 Committee on Low-Level Radioactive Waste;

- 1 (5) To review and evaluate changes in federal law and regulations,  
2 relevant court decisions, and changes in technology affecting low-level  
3 radioactive waste management;
- 4 (6) To review existing and proposed State law and rules affecting low-  
5 level radioactive waste management and to determine whether any  
6 modification of law or rules is in the public interest;
- 7 (7) To make reports and recommendations, including draft legislation, to  
8 the General Assembly from time to time as to any matter relating to  
9 the powers and duties set out in this section; and
- 10 (8) **(For applicability see note)** To undertake such additional studies as it  
11 deems appropriate or as may from time to time be requested by the  
12 President Pro Tempore of the Senate, the Speaker of the House of  
13 Representatives, either house of the General Assembly, the Legislative  
14 Research Commission, the Joint Legislative Commission on  
15 Governmental Operations, the Environmental Review Commission, or  
16 the Joint Legislative Utility Review Committee, and to make such  
17 reports and recommendations to the General Assembly regarding such  
18 studies as it deems appropriate."

19 Sec. 7. G.S. 120-123(23) is repealed.

20 Sec. 8. G.S. 130A-294(c)(18) reads as rewritten:

21 "(18) The operator of a hazardous waste disposal facility shall make monthly  
22 reports to ~~the Governor's Waste Management Board and to the board of~~  
23 county commissioners of the county in which the facility is located on  
24 the kinds and amounts of hazardous wastes in the facility."

25 Sec. 9. G.S. 130A-294(i) reads as rewritten:

26 "(i) The Department, in consultation with ~~the Governor's Waste Management Board~~  
27 ~~and the~~ Division of Environmental Management of the Department of Environment,  
28 Health, and Natural Resources, shall develop a comprehensive hazardous waste  
29 management plan for the State. This plan shall be completed by 1 July 1990 and shall  
30 be revised at two-year intervals thereafter."

31 Sec. 10. G.S. 130B-2(b) reads as rewritten:

32 "(b) Unless a different meaning is required by the context, the following  
33 definitions shall apply throughout this Chapter:

- 34 (1) 'Authorized hazardous waste facility' means a hazardous waste facility  
35 authorized by the Governor as provided in G.S. 130B-5(a) and G.S.  
36 130B-5(b)(1).
- 37 (2) ~~'Board' means the Governor's Waste Management Board established~~  
38 ~~pursuant to Part 4A of Article 7 of Chapter 143B of the General~~  
39 ~~Statutes.~~
- 40 (3) 'Commission' means the North Carolina Hazardous Waste  
41 Management Commission established pursuant to this Chapter or any  
42 successor thereto.
- 43 (4) 'Department' means the Department of Environment, Health, and  
44 Natural Resources."

1           Sec. 11. G.S. 130B-4 reads as rewritten:

2   **"§ 130B-4. Purpose.**

3       It is the purpose of this Chapter to provide for the siting, construction, and operation  
4 of hazardous waste facilities to the end that hazardous waste may be treated or disposed  
5 of in the most cost-effective manner, while protecting public health and safety and the  
6 environment. It is the purpose of this Chapter to promote a regional approach to  
7 hazardous waste management. It is the purpose of this Chapter to provide a mechanism  
8 to assess the need for hazardous waste treatment and disposal in this State and in the  
9 region, to determine the scope and capacity of hazardous waste facilities needed in this  
10 State in order that North Carolina is in a position to assume its fair share in the  
11 management of hazardous waste so that the benefits and burdens of hazardous waste  
12 management are equitably shared by all states, and to cause to come into existence such  
13 facilities as are needed. It is the purpose of this Chapter to promote interstate  
14 agreements for the management of hazardous waste which will assure access to  
15 hazardous waste facilities on a regional basis. It is the purpose of this Chapter to  
16 encourage the development of hazardous waste facilities which are needed in this State  
17 through the efforts of private enterprise. It is the purpose of this Chapter to create a  
18 commission to assist private enterprise with the development of needed hazardous waste  
19 facilities through the performance of those tasks which private enterprise is unable to  
20 undertake or accomplish. It is the purpose of this Chapter to authorize the Commission,  
21 when authorized by the Governor, to site, design, finance, construct, operate, oversee,  
22 acquire, hold, sell, lease, or convey needed hazardous waste facilities to the extent that  
23 private enterprise fails to provide such facilities.

24       It is also the purpose of the General Assembly ~~through powers granted to the~~  
25 ~~Governor's Waste Management Board~~ to limit the extent to which units of local  
26 government may regulate the management of hazardous waste by means of local acts,  
27 laws, resolutions, ordinances, rules, or regulations, including but not limited to those  
28 relating to taxes and fees, local land use including zoning and other restrictions on the  
29 use of property, building codes, fire protection, civil defense, preparation for and  
30 response to emergencies, and public health.

31       Furthermore, it is the purpose of this Chapter to establish an effective and  
32 comprehensive policy of negotiation and arbitration between the Commission or other  
33 applicant for a permit to operate a hazardous waste facility pursuant to this Chapter and  
34 a committee representing the affected local government(s) to assure that:

- 35           (1) The legitimate concerns of nearby residents and affected  
36 municipalities can be expressed in a public forum, negotiated and, if  
37 need be, arbitrated with the Commission in a fair manner and reduced  
38 to a written document that is legally binding; and  
39           (2) Environmentally sound and economically viable hazardous waste  
40 facilities will be established."

41       Sec. 12. G.S. 130B-5(c) reads as rewritten:

42       "(c) The Governor is authorized to enter into interstate agreements for the  
43 management of hazardous waste. Such agreements shall provide for access to suitable  
44 facilities for management of hazardous waste; encourage reductions in the volume or

1 quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations  
2 of hazardous waste management equitably among the party states; and provide for  
3 protection of human health and the environment in a manner that is both ecologically  
4 and economically sound. In negotiating such agreements, the Governor may request  
5 such assistance as he deems appropriate from the Attorney General, the Solid Waste  
6 Management Division of the Department, ~~the Governor's Waste Management Board,~~ and  
7 the Commission. The Governor shall submit any such agreement to the General  
8 Assembly for its approval, and no such agreement shall be effective until approved by  
9 the General Assembly."

10 Sec. 13. G.S. 130B-6(b) reads as rewritten:

11 "(b) Membership. – The Commission shall be composed of nine members.  
12 Members of the General Assembly, ~~the Board,~~ the Commission for Health Services, and  
13 members or employees of any State or federal agency, board, or commission which  
14 exercises regulatory authority with respect to any activity of the Commission shall be  
15 ineligible for appointment to membership on the Commission."

16 Sec. 14. G.S. 130B-7(a)(1) reads as rewritten:

17 "(1) Shall (i) with the assistance of ~~the Board and~~ the Solid Waste  
18 Management Division of the Department, periodically review current  
19 and projected hazardous waste generation from all sources within the  
20 State, the current and projected effect of efforts to minimize and  
21 reduce the generation of hazardous waste, the potential for further  
22 reductions in the generation of hazardous waste, current and projected  
23 availability and adequacy of facilities for the management of  
24 hazardous waste within and outside the State, whether and to what  
25 extent private enterprise will provide needed hazardous waste  
26 facilities, and capacity assurance requirements under CERCLA/SARA,  
27 (ii) determine whether additional facilities for the management of  
28 hazardous waste may be needed in this State, and (iii) make  
29 appropriate recommendations to the Governor and the General  
30 Assembly;"

31 Sec. 15. G.S. 130B-19(d) reads as rewritten:

32 "(d) Subject to appropriation by the General Assembly, the ~~Board-Department~~ may  
33 provide technical assistance grants of up to fifty thousand dollars (\$50,000) to each site  
34 designation review committee. In the event that a proposed site is located in more than  
35 one county, or that one or more site designation review committees are appointed  
36 pursuant to subsection (h) of this section, the ~~Board-Department~~ may provide technical  
37 grants to a site designation review committee in each county, provided that the  
38 maximum amount the ~~Board-Department~~ may grant to all site designation review  
39 committees for a particular site is seventy-five thousand dollars (\$75,000)."

40 ♦ Sec. 16. G.S. 130B-19(i) reads as rewritten:

41 "(i) No grant funds shall be used for litigation expenses. Each site designation  
42 review committee shall properly account for all funds. Unexpended funds shall revert  
43 to the ~~Board-Department~~, and at the end of the biennium shall revert to the General  
44 Fund."

1           Sec. 17. G.S. 130B-20(c) reads as rewritten:

2           "(c) An applicant for a permit to operate a hazardous waste facility pursuant to  
3 this Chapter shall pay a one-time local application fee of one hundred thousand dollars  
4 (\$100,000) to the ~~Board~~. ~~The Board~~ Department. The Department shall distribute not  
5 less than sixty-five thousand dollars (\$65,000) of the local application fee to the county  
6 or counties where the site of the proposed facility is located. If the site lies in more than  
7 one county, the local application fee will be distributed to the counties in which the site  
8 is located in equal amounts. If the board of commissioners appoints a preferred site  
9 local advisory committee the local application fee shall be used to support the work of  
10 the committee."

11           Sec. 18. G.S. 130B-20(d) reads as rewritten:

12           "(d) A preferred site local advisory committee may also be appointed as provided  
13 by this section by the board of commissioners of any county whenever the board of  
14 commissioners determines that the county may be affected by the siting of a hazardous  
15 waste facility in another county. If a preferred site local advisory committee is  
16 appointed pursuant to this subsection, the committee may apply to the ~~Board~~ Department  
17 for a portion of the local application fee to support the work of the committee. The  
18 ~~Board~~ Department may allocate up to twenty-five thousand dollars (\$25,000) to each  
19 preferred site local advisory committee appointed pursuant to this subsection, provided  
20 that the maximum amount that the ~~Board~~ Department may allocate to all preferred site  
21 local advisory committees appointed pursuant to this subsection for a particular site is  
22 thirty-five thousand dollars (\$35,000). The ~~Board~~ Department shall base allocations  
23 under this subsection on the likelihood that the proposed hazardous waste facility will  
24 have a significant effect in the county, taking distance to the facility and other factors  
25 into account. Decisions of the ~~Board~~ Department regarding allocations under this  
26 subsection are final. Any portion of the local application fee which is not allocated by  
27 the ~~Board~~ Department under this subsection shall be distributed by the ~~Board~~  
28 Department to the county or counties where the site of the proposed facility is located as  
29 provided in subsection (c) of this section."

30           ◆           Sec. 19. G.S. 130B-21 reads as rewritten:

31           "**§ 130B-21. Negotiation, mediation, and arbitration.**

32           (a) Any local government in the county or counties where a hazardous waste  
33 facility is proposed to be located pursuant to this Chapter may negotiate with the  
34 Commission with respect to any issue relating to the facility except:

- 35           (1) The need for the facility;
- 36           (2) Any proposal to reduce the duties of the Commission under this  
37 Chapter or under any permit or license issued for the facility;
- 38           (3) Any proposal to reduce the duties of the Commission for Health  
39 Services or the Department, or to make less stringent any rule of the  
40 Commission for Health Services;
- 41           (4) ~~Any proposal to reduce the duties of the Board;~~
- 42           (5) Any act or decision of the Governor pursuant to G.S. 130B-5; or



1 (6) Any decision of the Commission regarding site selection, contractor  
2 selection, or technology pursuant to G.S. 130B-11, 130B-13, and  
3 130B-14.

4 (b) The Commission shall negotiate in good faith with any local government in  
5 the county or counties where a hazardous waste facility is proposed to be located. A  
6 local government may designate itself or any other person to negotiate on its behalf.

7 (c) Negotiations may be conducted with the assistance of a mediator if mediation  
8 is requested by both the Commission and a local government. The function of the  
9 mediator is to encourage a voluntary settlement of unresolved negotiable issues. ~~The~~  
10 ~~Board shall provide the Commission and the local government with the names and~~  
11 ~~qualifications of persons willing to serve as mediators. If the Commission and a local~~  
12 ~~government cannot agree on the selection of a mediator, the Commission and the local~~  
13 ~~government may request the Board to appoint a mediator.~~

14 (d) If the Commission and a local government have not reached agreement on all  
15 issues by negotiation within six months after selection of the preferred site pursuant to  
16 G.S. 130B-11(d), the following issues may be submitted to arbitration pursuant to the  
17 provisions of Article 45A of Chapter 1 of the General Statutes (Uniform Arbitration  
18 Act):

- 19 (1) Compensation to any local government for substantial economic  
20 impacts which are a direct result of the siting and operation of a  
21 hazardous waste facility and for which adequate compensation is not  
22 otherwise provided;
- 23 (2) Reimbursement of reasonable costs incurred by the local government  
24 relating to negotiation, mediation and arbitration activities under this  
25 section;
- 26 (3) Screening, fencing, and other matters related to the appearance of a  
27 facility;
- 28 (4) Operational concerns other than design capacity and regulatory issues;
- 29 (5) Traffic flows and patterns which result from the operation of a facility;
- 30 (6) Uses of the site where a facility is located after the facility is closed;
- 31 (7) The applicability or nonapplicability of any local ordinance;
- 32 (8) Emergency response capabilities, including training and resources;
- 33 (9) Access to facility records and monitoring data; and
- 34 (10) Ongoing health surveys of persons living in the area around the  
35 facility.

36 (e) In addition to those issues set out in subsection (d), ~~upon petition to the Board~~  
37 ~~by a local government in the county or counties where a hazardous waste facility is~~  
38 ~~proposed to be located,~~ any other issue may be submitted for arbitration except:

- 39 (1) Those issues excluded from negotiation under subsection (a) of this  
40 section;
- 41 (2) Any issue relating to the imposition by the General Assembly of a tax,  
42 or the imposition of a fee not authorized by this Chapter; and
- 43 (3) Any issue requiring an appropriation by the General Assembly.

1       (~~f~~)    ~~The Board shall serve as the arbitrator or shall appoint the arbitrator of any~~  
2 ~~issue submitted for arbitration under this section."~~

3            Sec. 20. G.S. 143B-279.3(b)(1) is repealed.

4            Sec. 21. G.S. 150B-1(e)(2) is repealed.

5            Sec. 22. The Office of Environmental Education in the Department of  
6 Environment, Health, and Natural Resources is transferred to the Office of Waste  
7 Reduction in the Department of Environment, Health, and Natural Resources.

8            Sec. 23. This act becomes effective July 1, 1993.