

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 544

Short Title: Transfer Facilities Public Hearings.

(Public)

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Sponsors: Senator Shaw.

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Referred to: Agriculture/Environment/Natural Resources

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April 3, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT A PUBLIC HEARING BE HELD PRIOR TO THE  
2 APPROVAL OF AN APPLICATION FOR A NEW PERMIT, THE RENEWAL OF  
3 A PERMIT, OR A SUBSTANTIAL AMENDMENT TO A PERMIT FOR A  
4 TRANSFER STATION.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 130A-294 reads as rewritten:

8 **"§ 130A-294. Solid waste management program.**

9 (a) The Department is authorized and directed to engage in research, conduct  
10 investigations and surveys, make inspections and establish a statewide solid waste  
11 management program. In establishing a program, the Department shall have authority to:

12 (1) Develop a comprehensive program for implementation of safe and  
13 sanitary practices for management of solid waste;

14 (2) Advise, consult, cooperate and contract with other State agencies, units  
15 of local government, the federal government, industries and individuals  
16 in the formulation and carrying out of a solid waste management  
17 program;

18 (3) Develop and adopt rules to establish standards for qualification as a  
19 waste "recycling, reduction or resource recovering facility" or as waste  
20 "recycling, reduction or resource recovering equipment" for the purpose

1 of special tax classifications or treatment, and to certify as qualifying  
2 those applicants which meet the established standards. The standards  
3 shall be developed to qualify only those facilities and equipment  
4 exclusively used in the actual waste recycling, reduction or resource  
5 recovering process and shall exclude any incidental or supportive  
6 facilities and equipment;

- 7 (4) a. Develop a permit system governing the establishment and operation  
8 of solid waste management facilities. A landfill with a disposal area of  
9 1/2 acre or less for the on-site disposal of land clearing and inert debris  
10 is exempt from the permit requirement of this section and shall be  
11 governed by G.S. 130A-301.1. The Department shall not approve an  
12 application for a new permit, the renewal of a permit, or a substantial  
13 amendment to a permit for a transfer facility as defined in rules adopted  
14 by the Commission for Health Services or for a sanitary landfill,  
15 excluding demolition landfills as defined in the rules of the Commission  
16 for Health Services, except as provided in subdivisions (3) and (4) of  
17 subsection (b1) of this section. No permit shall be granted for a solid  
18 waste management facility having discharges which are point sources  
19 until the Department has referred the complete plans and specifications  
20 to the Environmental Management Commission and has received advice  
21 in writing that the plans and specifications are approved in accordance  
22 with the provisions of G.S. 143-215.1. If the applicant is a unit of local  
23 government, and has not submitted a solid waste management plan that  
24 has been approved by the Department pursuant to G.S. 130A-  
25 309.09A(b), the Department may deny a permit for a sanitary landfill or  
26 a facility that disposes of solid waste by incineration, unless the  
27 Commission has not adopted rules pursuant to G.S. 130A-309.29 for  
28 local solid waste management plans. In any case where the Department  
29 denies a permit for a solid waste management facility, it shall state in  
30 writing the reason for denial and shall also state its estimate of the  
31 changes in the applicant's proposed activities or plans which will be  
32 required for the applicant to obtain a permit.

33 b. The issuance of permits for sanitary landfills operated by local  
34 governments is exempt from the environmental impact  
35 statements required by Article 1 of Chapter 113A of the General  
36 Statutes, entitled the North Carolina Environmental Policy Act of  
37 1971. All sanitary landfill permits issued to local governments  
38 prior to July 1, 1984, are hereby validated notwithstanding any  
39 failure to provide environmental impact statements pursuant to  
40 the North Carolina Environmental Policy Act of 1971;

- 41 (4a) No permit shall be granted for any public or private sanitary landfill to  
42 receive solid non-radioactive waste generated outside the boundaries of  
43 North Carolina to be deposited, unless such waste has previously been

1 inspected by the solid waste regulatory agency of that nation, state or  
2 territory, characterized in detail as to its contents and certified by that  
3 agency to be non-injurious to health and safety. The Commission shall  
4 adopt rules to implement this subsection.

5 (5) Repealed by Session Laws 1983, c. 795, s. 3.

6 (5a) Designate a geographic area within which the collection, transportation,  
7 storage and disposal of all solid waste generated within said area shall  
8 be accomplished in accordance with a solid waste management plan.  
9 Such designation may be made only after the Department has received a  
10 request from the unit or units of local government having jurisdiction  
11 within said geographic area that such designation be made and after  
12 receipt by the Department of a solid waste management plan which shall  
13 include:

14 a. The existing and projected population for such area;

15 b. The quantities of solid waste generated and estimated to be  
16 generated in such area;

17 c. The availability of sanitary landfill sites and the environmental  
18 impact of continued landfill of solid waste on surface and  
19 subsurface waters;

20 d. The method of solid waste disposal to be utilized and the energy  
21 or material which shall be recovered from the waste; and

22 e. Such other data that the Department may reasonably require.

23 (5b) Authorize units of local government to require by ordinance, that all  
24 solid waste generated within the designated geographic area that is  
25 placed in the waste stream for disposal be collected, transported, stored  
26 and disposed of at a permitted solid waste management facility or  
27 facilities serving such area. The provisions of such ordinance shall not  
28 be construed to prohibit the source separation of materials from solid  
29 waste prior to collection of such solid waste for disposal, or prohibit  
30 collectors of solid waste from recycling materials or limit access to such  
31 materials as an incident to collection of such solid waste; provided such  
32 prohibitions do not authorize the construction and operation of a  
33 resource recovery facility unless specifically permitted pursuant to an  
34 approved solid waste management plan. If a private solid waste landfill  
35 shall be substantially affected by such ordinance then the unit of local  
36 government adopting the ordinance shall be required to give the  
37 operator of the affected landfill at least two years written notice prior to  
38 the effective date of the proposed ordinance.

39 (5c) Except for the authority to designate a geographic area to be serviced by  
40 a solid waste management facility, delegate authority and responsibility  
41 to units of local government to perform all or a portion of a solid waste  
42 management program within the jurisdictional area of the unit of local  
43 government; provided that no authority over or control of the operations

1 or properties of one local government shall be delegated to any other  
2 local government.

3 (5d) Require that an annual report of the implementation of the solid waste  
4 management plan within the designated geographic area be filed with  
5 the Department.

6 (6) The Department is authorized to charge and collect fees from operators  
7 of hazardous waste disposal facilities. The fees shall be used to establish  
8 a fund sufficient for each individual facility to defray the anticipated  
9 costs to the State for monitoring and care of the facility after the  
10 termination of the period during which the facility operator is required  
11 by applicable State and federal statutes, regulations or rules to remain  
12 responsible for post-closure monitoring and care. In establishing the  
13 fees, consideration shall be given to the size of the facility, the nature of  
14 the hazardous waste and the projected life of the facility.

15 (7) Establish and collect annual fees from generators and transporters of  
16 hazardous waste, and from storage, treatment, and disposal facilities  
17 regulated under this Article as provided in G.S. 130A-294.1.

18 (b) The Commission shall adopt and the Department shall enforce rules to  
19 implement a comprehensive statewide solid waste management program. The rules shall  
20 be consistent with applicable State and federal law; and shall be designed to protect the  
21 public health, safety, and welfare; preserve the environment; and provide for the greatest  
22 possible conservation of cultural and natural resources. Rules for the establishment,  
23 location, operation, maintenance, use, discontinuance, recordation, post-closure care of  
24 solid waste management facilities also shall be based upon recognized public health  
25 practices and procedures, including applicable epidemiological research and studies;  
26 hydrogeological research and studies; sanitary engineering research and studies; and  
27 current technological development in equipment and methods. The rules shall not apply  
28 to the management of solid waste that is generated by an individual or individual family  
29 or household unit on the individual's property and is disposed of on the individual's  
30 property.

31 The Commission may adopt rules for financial responsibility to ensure the availability  
32 of sufficient funds for closure and post-closure maintenance and monitoring at solid  
33 waste management facilities, and for any corrective action the Department may require  
34 during the active life of a facility or during the closure and post-closure periods. The rules  
35 may permit demonstration of financial responsibility through the use of a letter of credit,  
36 insurance, surety, trust agreement, financial test, or guarantee by corporate parents or  
37 third parties who can pass the financial test.

38 (b1) (1) For purposes of this subsection and subdivision (4) of  
39 subsection (a) of this section, a "substantial amendment" means  
40 either:

41 a. An increase of ten percent (10%) or more in:

42 1. The population of the geographic area to be served by the  
43 sanitary ~~landfill~~; landfill or transfer facility;

- 1                                   2.     The quantity of solid waste to be disposed of in the  
2                                   sanitary ~~landfill~~; landfill or managed at a transfer facility;  
3                                   or  
4                                   3.     The geographic area to be served by the sanitary ~~landfill~~.  
5                                   landfill or transfer facility.
- 6                   b.     A change in the categories of solid waste to be disposed of in the  
7                   sanitary landfill or managed at the transfer facility or any other  
8                   change to the application for a permit or to the permit for a  
9                   sanitary landfill or transfer facility that the Commission or the  
10                   Department determines to be substantial.
- 11           (2)    Within 10 days after receiving an application for a permit, for the  
12           renewal of a permit, or for a substantial amendment to a permit for a  
13           sanitary ~~landfill~~; landfill or transfer facility, the Department shall notify  
14           the clerk of the board of commissioners of the county or counties in  
15           which the sanitary landfill or transfer facility is proposed to be located  
16           or is located and, if the sanitary landfill or transfer facility is proposed to  
17           be located or is located within a city, the clerk of the governing board of  
18           the city, that the application has been filed and shall file a copy of the  
19           application with the clerk. Prior to the issuance of a permit, the renewal  
20           of a permit, or a substantial amendment to a permit, the board of  
21           commissioners of the county or counties in which the sanitary landfill or  
22           transfer facility is proposed to be located or is located or, if the sanitary  
23           landfill or transfer facility is proposed to be located or is located in a  
24           city, the governing board of the city shall conduct a public hearing when  
25           sufficient public interest exists. The board of commissioners of the  
26           county or counties in which the sanitary landfill is proposed to be  
27           located or is located or, if the sanitary landfill or transfer facility is  
28           proposed to be located or is located in a city, the governing board of the  
29           city shall provide adequate notice to the public of the public hearing and  
30           shall specify the procedure to be followed at the public hearing.
- 31           (3)    An applicant for a new permit, the renewal of a permit, or a substantial  
32           amendment to a permit for a sanitary landfill or transfer facility shall  
33           obtain, prior to applying for a permit, a franchise for the operation of the  
34           sanitary landfill or transfer facility from each local government having  
35           jurisdiction over any part of the land on which the sanitary landfill or  
36           transfer facility and its appurtenances are located or to be located. A  
37           local government shall adopt a franchise ordinance under G.S. 153A-  
38           136 or G.S. 160A-319 prior to the submittal by an applicant of an  
39           application for a new permit, the renewal of a permit, or a substantial  
40           amendment to a permit for a sanitary ~~landfill~~; landfill or transfer facility.  
41           A franchise granted for a sanitary landfill or transfer facility shall  
42           include:

- 1 a. A statement of the population to be served, including a
- 2 description of the geographic area.
- 3 b. A description of the volume and characteristics of the waste
- 4 stream.
- 5 c. A projection on the useful life of the ~~landfill~~ landfill or transfer
- 6 facility.

7 (4) An applicant for a new permit, the renewal of a permit, or a substantial  
8 amendment to a permit for a sanitary landfill or transfer facility shall  
9 request each local government having jurisdiction over any part of the  
10 land on which the sanitary landfill or transfer facility and its  
11 appurtenances are located or to be located to issue a determination as to  
12 whether the local government has in effect a franchise, zoning,  
13 subdivision, or land-use planning ordinance applicable to the sanitary  
14 landfill or transfer facility and whether the proposed sanitary ~~landfill~~,  
15 landfill or transfer facility, or the existing sanitary landfill or transfer  
16 facility as it would be operated under the renewed or substantially  
17 amended permit, would be consistent with the applicable ordinances.  
18 The request to the local government shall be accompanied by a copy of  
19 the permit application and shall be delivered to the clerk of the local  
20 government personally or by certified mail. In order to serve as a basis  
21 for a determination that an application for a new permit, the renewal of  
22 a permit, or a substantial amendment to a permit for a sanitary landfill  
23 or transfer facility is consistent with a zoning, subdivision, or land-use  
24 planning ordinance, an ordinance or zoning classification applicable to  
25 the real property designated in the permit application shall have been in  
26 effect not less than 90 days prior to the date the request for a  
27 determination of consistency is delivered to the clerk of the local  
28 government. The determination shall be verified or supported by  
29 affidavit signed by the chief administrative officer, the chief  
30 administrative officer's designee, clerk, or other official designated by  
31 the local government to make the determination and, if the local  
32 government states that the sanitary landfill or transfer facility as it  
33 would be operated under the new, renewed, or substantially amended  
34 permit is inconsistent with a franchise, zoning, subdivision, or land-use  
35 planning ordinance, shall include a copy of the ordinance and the  
36 specific reasons for the determination of inconsistency. A copy of the  
37 determination shall be provided to the applicant when the determination  
38 is submitted to the Department. The Department shall not act upon an  
39 application for a permit under this section until it has received a  
40 determination from each local government requested to make a  
41 determination by the applicant; provided that if a local government fails  
42 to submit a determination to the Department as provided by this  
43 subsection within 15 days after receipt of the request, the Department

1 shall proceed to consider the permit application without regard to a  
2 franchise, local zoning, subdivision, and land-use planning ordinances.  
3 Unless the local government makes a subsequent determination of  
4 consistency with all ordinances cited in the determination or the sanitary  
5 landfill transfer facility as it would be operated under the new, renewed,  
6 or substantially amended permit is determined by a court of competent  
7 jurisdiction to be consistent with the cited ordinances, the Department  
8 shall attach as a condition of the permit a requirement that the applicant,  
9 prior to construction or operation of the sanitary landfill or transfer  
10 facility under the permit, comply with all lawfully adopted local  
11 ordinances cited in the determination that apply to the sanitary ~~landfill~~  
12 landfill or transfer facility. This subsection shall not be construed to  
13 affect the validity of any lawfully adopted franchise, local zoning,  
14 subdivision, or land-use planning ordinance or to affect the  
15 responsibility of any person to comply with any lawfully adopted  
16 franchise, local zoning, subdivision, or land-use planning ordinance.  
17 This subsection shall not be construed to limit any opportunity a local  
18 government may have to comment on a permit application under any  
19 other law or rule. This subsection shall not apply to any facility with  
20 respect to which local ordinances are subject to review under either G.S.  
21 104E-6.2 or G.S. 130A-293."

22 Sec. 2. This act is effective upon ratification.