

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 920\*  
House Committee Substitute Favorable 10/18/01

Short Title: Environmental Technical Corrections.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE STATUTES AND TO MAKE CLARIFYING,  
CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS  
RELATED TO THE ENVIRONMENT, PUBLIC HEALTH, AND NATURAL  
RESOURCES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 130B of the General Statutes is repealed.

**SECTION 2.** G.S. 104E-7(b) reads as rewritten:

"(b) No license for a low-level radioactive waste facility ~~which~~that would accept low-level radioactive waste from the public, or from another person for a fee, shall be issued other than for a facility ~~to be operated pursuant to Chapter 104G of the General Statutes~~authorized by the General Assembly."

**SECTION 3.** G.S. 104E-9(a)(9) reads as rewritten:

"(9) To enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a low-level radioactive waste facility or low-level radioactive disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities. ~~This authority shall also apply to the North Carolina Low Level Radioactive Waste Management Authority.~~"

**SECTION 4.** G.S. 104E-18(c) is repealed.

**SECTION 5.** G.S. 104E-19(a) reads as rewritten:

"(a) In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(c), of enforcing and carrying out the inspection provisions in G.S. 104E-7(a)(7) and ~~104E-11(a)~~G.S. 104E-11(a), and of administering

1 the licensing program in G.S. 104E-10.3, ~~and of licensing low level radioactive waste~~  
2 ~~facilities operated pursuant to Chapter 104G of the General Statutes~~, the Department is  
3 authorized to charge and collect such reasonable fees as it may by rule ~~or regulation~~  
4 establish."

5 **SECTION 6.** G.S. 104E-27 reads as rewritten:

6 "**§ 104E-27. Volume reduction required.**

7 (a) The Commission shall develop and adopt rules ~~which~~that require generators  
8 of low-level radioactive waste to implement best management practices, including  
9 prevention, minimization, reduction, segregation, and hold-for-decay ~~storage~~, ~~as a~~  
10 ~~condition of access to the low level radioactive waste disposal facility.~~storage.

11 (b) ~~No license for access to the disposal facility operated pursuant to Chapter~~  
12 ~~104G of the General Statutes shall be issued unless the Commission certifies to the~~  
13 ~~Low Level Radioactive Waste Management Authority that the generator is reducing~~  
14 ~~waste volume to the extent technologically and economically feasible.~~

15 (c) The Department shall periodically review the State's comprehensive low-level  
16 radioactive waste management system and make recommendations to the Governor,  
17 cognizant State agencies, and the General Assembly on ways to improve waste  
18 management; reduce the amount of waste generated; and minimize the amount of  
19 low-level radioactive waste ~~which~~that must be disposed of."

20 **SECTION 7.** G.S. 105-164.14(c) reads as rewritten:

21 "(c) Certain Governmental Entities. – A governmental entity listed in this  
22 subsection is allowed an annual refund of sales and use taxes paid by it under this  
23 Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct  
24 purchases of tangible personal property. Sales and use tax liability indirectly incurred by  
25 a governmental entity on building materials, supplies, fixtures, and equipment that  
26 become a part of or annexed to any building or structure that is owned or leased by the  
27 governmental entity and is being erected, altered, or repaired for use by the  
28 governmental entity is considered a sales or use tax liability incurred on direct  
29 purchases by the governmental entity for the purpose of this subsection. A request for a  
30 refund must be in writing and must include any information and documentation required  
31 by the Secretary. A request for a refund is due within six months after the end of the  
32 governmental entity's fiscal year.

33 This subsection applies only to the following governmental entities:

34 ...

35 (18) ~~The North Carolina Low Level Radioactive Waste Management~~  
36 ~~Authority created pursuant to Chapter 104G of the General Statutes.~~

37 (19) ~~The North Carolina Hazardous Waste Management Commission~~  
38 ~~created pursuant to Chapter 130B of the General Statutes.~~

39 ...."

40 **SECTION 8.** G.S. 105-275, as amended by S.L. 2001-84 and S.L. 2001-427,  
41 reads as rewritten:

42 "**§ 105-275. Property classified and excluded from the tax base.**

1 The following classes of property are hereby designated special classes under  
2 authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be  
3 listed, appraised, assessed, or taxed:

4 ...

5 ~~(36) Real and personal property belonging to the North Carolina Low Level~~  
6 ~~Radioactive Waste Management Authority created under Chapter~~  
7 ~~104G of the General Statutes.~~

8 (37) Poultry and livestock and feed used in the production of poultry and  
9 livestock.

10 ~~(38) Real and personal property belonging to the North Carolina Hazardous~~  
11 ~~Waste Management Commission created under Chapter 130B of the~~  
12 ~~General Statutes.~~

13 ...."

14 **SECTION 9.** The caption of Article 1 of Subchapter I of Chapter 113 of the  
15 General Statutes reads as rewritten:

16 "Powers and Duties of Department of ~~Environment, Health, Environment~~ and Natural  
17 Resources Generally."

18 **SECTION 10.** G.S. 113-145.5(g) reads as rewritten:

19 "(g) Meeting Facilities. – The Secretary of ~~the Department of Environment and~~  
20 Natural Resources shall provide meeting facilities for the Board of Trustees and its staff  
21 as requested by the Chair."

22 **SECTION 11.** G.S. 113-145.8 reads as rewritten:

23 **"§ 113-145.8. Clean Water Management Trust Fund: Advisory Council.**

24 There is established the Clean Water Management Trust Fund Advisory Council.  
25 The Council shall advise the Trustees with regard to allocations made from the Fund,  
26 and other issues as requested by the Trustees. The Council shall be composed of the  
27 following or its designees:

28 (1) Commissioner of Agriculture.

29 (2) Chair of the Wildlife Resources Commission.

30 (3) Secretary of ~~the Department of Environment and Natural Resources.~~

31 (4) Secretary of the Department of Commerce."

32 **SECTION 12.** G.S. 120-70.33(2), 120-70.33(4), 120-70.43(c)(8), and  
33 120-70.43(c)(9) are repealed.

34 **SECTION 13.** G.S. 120-123 reads as rewritten:

35 **"§ 120-123. Service by members of the General Assembly on certain boards and**  
36 **commissions.**

37 No member of the General Assembly may serve on any of the following boards or  
38 commissions:

39 ...

40 ~~(54) The North Carolina Low Level Radioactive Waste Management~~  
41 ~~Authority, as established by G.S. 104G-5.~~

42 (55) Repealed by Session Laws 1998-217, s. 45.

1           ~~(56) The North Carolina Hazardous Waste Management Commission, as~~  
2           ~~established by G.S. 130B-6.~~

3           ~~...."~~

4           **SECTION 14.** G.S. 120-150 reads as rewritten:

5   "**§ 120-150. Creation; appointment of members.**

6       There is created an Agriculture and Forestry Awareness Study Commission.  
7       Members of the Commission shall be citizens of North Carolina who are interested in  
8       the vitality of the agriculture and forestry sectors of the State's economy. Members shall  
9       be as follows:

- 10           (1) Three appointed by the Governor;
- 11           (2) Three appointed by the President Pro Tempore of the Senate;
- 12           (3) Three appointed by the Speaker of the House;
- 13           (4) The chairman of the House Agriculture Committee;
- 14           (5) The chairman of the Senate Agriculture Committee;
- 15           (6) The Commissioner of Agriculture or ~~his~~ the Commissioner's designee;
- 16           (7) A member of the Board of Agriculture designated by the chairman of  
17           the Board of Agriculture;
- 18           (8) The President of the North Carolina Farm Bureau Federation, Inc., or  
19           ~~his~~ the President's designee;
- 20           (9) The Master of the North Carolina State Grange or ~~his~~ the Master's  
21           designee;
- 22           (10) The Secretary of ~~the Department of~~ Environment and Natural  
23           Resources or ~~his~~ the Secretary's designee; and
- 24           (11) The President of the North Carolina Forestry Association, Inc., or ~~his~~  
25           the President's designee.

26       Members shall be appointed for two-year terms beginning October 1 of each  
27       odd-numbered year. The cochairmen of the Commission shall be the chairmen of the  
28       Senate and House Agriculture Committees respectively."

29           **SECTION 15.** G.S. 126-5(c1) reads as rewritten:

30       "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions  
31       of this Chapter shall not apply to:

32           ~~...~~

33           ~~(12) Employees of the North Carolina Low-Level Radioactive Waste~~  
34           ~~Management Authority whose salaries are fixed pursuant to G.S.~~  
35           ~~104G-5(g)(1) and G.S. 104G-5(g)(2).~~

36           ~~(13) Employees of the North Carolina Hazardous Waste Management~~  
37           ~~Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)~~  
38           ~~and G.S. 130B-6(g)(2).~~

39           ~~...."~~

40           **SECTION 16.** G.S. 104E-6.2 reads as rewritten:

41   "**§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities**  
42   **invalid; petition to preempt local ordinance.**

1 (a) It is the intent of the General Assembly to maintain a uniform system for the  
2 management of low-level radioactive waste and to place limitations upon the exercise  
3 by all units of local government in North Carolina of the power to regulate the  
4 management of low-level radioactive waste by means of special, local, or private acts or  
5 resolutions, ordinances, property restrictions, zoning regulations, or otherwise.  
6 Notwithstanding any authority granted to counties, municipalities, or other local  
7 authorities to adopt local ~~ordinances (including ordinances, including~~ but not limited to  
8 those imposing taxes, fees, or charges or regulating health, environment, or land ~~use),~~  
9 use, any local ordinance that prohibits or has the effect of prohibiting the establishment  
10 or operation of a low-level radioactive waste facility ~~which~~ that the Secretary has  
11 preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the  
12 extent necessary to effectuate the purposes of this ~~Chapter or Chapter 104G of the~~  
13 ~~General Statutes.~~ Chapter. To this end, all provisions of special, local, or private acts or  
14 resolutions are repealed ~~which~~ that:

- 15 (1) Prohibit the transportation, treatment, storage, or disposal of low-level  
16 radioactive waste within any county, city, or other political  
17 ~~subdivision;~~ subdivision.
- 18 (2) Prohibit the siting of a low-level radioactive waste facility within any  
19 county, city, or other political ~~subdivision;~~ subdivision.
- 20 (3) Place any restriction or condition not placed by this Chapter ~~or Chapter~~  
21 ~~104G of the General Statutes~~ upon the transportation, treatment,  
22 storage, or disposal of low-level radioactive waste, or upon the siting  
23 of a low-level radioactive waste facility within any county, city, or  
24 other political ~~subdivision;~~ or subdivision.
- 25 (4) In any manner are in conflict or inconsistent with the provisions of this  
26 ~~Chapter or Chapter 104G of the General Statutes.~~ Chapter.

27 (a1) No special, local, or private acts or resolutions enacted or taking effect  
28 hereafter may be construed to modify, amend, or repeal any portion of this Chapter ~~or~~  
29 ~~Chapter 104G of the General Statutes~~ unless it expressly provides for such by specific  
30 references to the appropriate section of this ~~Chapter or Chapter 104G of the General~~  
31 ~~Statutes.~~ Chapter. Further to this end, all provisions of local ordinances, including those  
32 regulating land use, adopted by counties, municipalities, or other local authorities that  
33 prohibit or have the effect of prohibiting the establishment or operation of a low-level  
34 radioactive waste facility are invalidated to the extent preempted by the Secretary  
35 pursuant to this Section.

36 (b) When a low-level radioactive waste facility would be prevented from  
37 construction or operation by a county, municipal, or other local ~~ordinance(s), ordinance,~~  
38 the operator of the proposed facility ~~or the North Carolina Low-Level Radioactive~~  
39 ~~Waste Management Authority established pursuant to Chapter 104G of the General~~  
40 ~~Statutes (hereinafter "the Authority")~~ may petition the Secretary to review the matter.  
41 After receipt of a petition, the Secretary shall hold a hearing in accordance with the  
42 procedures in subsection (c) of this section and shall determine whether or to what

1 extent to preempt the local ordinance to allow for the establishment and operation of the  
2 facility.

3 (c) When a petition described in subsection (b) of this section has been filed with  
4 the Secretary, the Secretary shall hold a public hearing to consider the petition. ~~Such~~  
5 The public hearing shall be held in the affected locality within 60 days after receipt of  
6 the petition by the Secretary. The Secretary shall give notice of the public hearing by:

7 (1) Publication in a newspaper or newspapers having general circulation in  
8 the county or counties where the facility is or is to be located or  
9 operated, once a week for three consecutive weeks, the first notice  
10 appearing at least 30 days prior to the scheduled date of the hearing;  
11 and

12 (2) First class mail to persons who have requested ~~such~~ notice. The  
13 Secretary shall maintain a mailing list of persons who request notice in  
14 advance of the hearing pursuant to this section. Notice by mail shall be  
15 complete upon deposit of a copy of the notice in a post-paid wrapper  
16 addressed to the person to be notified at the address ~~which that~~ appears  
17 on the mailing list maintained by the Secretary, in a post office or  
18 official depository under the exclusive care and custody of the United  
19 States Postal Service.

20 (c1) Any interested person may appear before the Secretary at the hearing to offer  
21 testimony. In addition to testimony before the Secretary, any interested person may  
22 submit written evidence to the Secretary for ~~its~~ the Secretary's consideration. At least 20  
23 days shall be allowed for receipt of written comment following the hearing.

24 (d) The Secretary shall determine whether or to what extent to preempt local  
25 ~~ordinance(s)~~ ordinances so as to allow ~~for~~ the establishment and operation of the facility  
26 no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local  
27 ordinance only if ~~it~~ the Secretary makes all five of the following findings:

28 (1) That there is a local ordinance ~~which that~~ would prohibit or have the  
29 effect of prohibiting the establishment or operation of a low-level  
30 radioactive waste ~~facility;~~ facility.

31 (2) That the proposed facility is needed in order to establish adequate  
32 capability to meet the current or projected low-level radioactive waste  
33 management needs of this State or to comply with the terms of any  
34 interstate agreement for the management of low-level radioactive  
35 waste to which the State is a party and therefore serves the interests of  
36 the citizens of the State as a ~~whole;~~ whole.

37 (3) That all legally required State and federal permits or approvals have  
38 been issued by the appropriate State and federal agencies or that all  
39 State and federal permit requirements have been satisfied and that the  
40 permits or approvals have been denied or withheld only because of the  
41 ~~local-ordinance(s);~~ ordinance.

1 (4) That local citizens and elected officials have had adequate opportunity  
2 to participate in the siting ~~process; and~~ process.

3 (5) That the construction and operation of the facility will not pose an  
4 unreasonable health or environmental risk to the surrounding locality  
5 and that the facility operator ~~or the Authority~~ has taken or consented to  
6 take reasonable measures to avoid or manage foreseeable risks and to  
7 comply to the maximum feasible extent with ~~any~~ applicable local  
8 ~~ordinance(s).~~ ordinances.

9 (d1) If the Secretary does not make all five findings set out above, the Secretary  
10 shall not preempt the challenged local ~~ordinance(s).~~ ordinance. The Secretary's decision  
11 shall be in writing and shall identify the evidence submitted to the Secretary plus any  
12 additional evidence used in arriving at the decision.

13 (e) The decision of the Secretary shall be final unless a party to the action ~~shall,~~  
14 ~~pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-~~  
15 ~~29 and this section,~~ files a written appeal under Article 4 of Chapter 150B of the  
16 General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date  
17 of ~~such~~ the decision. The record on appeal shall consist of all materials and information  
18 submitted to or considered by the Secretary, the Secretary's written decision, a complete  
19 transcript of the hearing, all written material presented to the Secretary regarding the  
20 location of the facility, the specific findings required by subsection (d) of this section,  
21 and any minority positions on the specific findings required by subsection (d) of this  
22 section. The scope of judicial review shall be that the court may affirm the decision of  
23 the Secretary, or may remand the matter for further proceedings, or may reverse or  
24 modify the decision if the substantial rights of the parties may have been prejudiced  
25 because the agency findings, inferences, conclusions, or decisions are:

26 (1) In violation of constitutional provisions;

27 (2) In excess of the statutory authority or jurisdiction of the agency;

28 (3) Made upon unlawful procedure;

29 (4) Affected by other error of law;

30 (5) Unsupported by substantial evidence admissible under G.S.  
31 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted;

32 or

33 (6) Arbitrary or capricious.

34 (e1) If the court reverses or modifies the decision of the agency, the judge shall set  
35 out in writing, which writing shall become part of the record, the reasons for ~~such~~ the  
36 reversal or modification.

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

39 **SECTION 17.** G.S. 130A-293 reads as rewritten:

40 "**§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid;**  
41 **petition to preempt local ordinance.**

1 (a) It is the intent of the General Assembly to maintain a uniform system for the  
2 management of hazardous waste and to place limitations upon the exercise by all units  
3 of local government in North Carolina of the power to regulate the management of  
4 hazardous waste by means of special, local, or private acts or resolutions, ordinances,  
5 property restrictions, zoning regulations, or otherwise. Notwithstanding any authority  
6 granted to counties, municipalities, or other local authorities to adopt local ~~ordinances~~  
7 ~~(including ordinances, including~~ but not limited to those imposing taxes, fees, or charges  
8 or regulating health, environment, or land ~~use), use~~, any local ordinance that prohibits or  
9 has the effect of prohibiting the establishment or operation of a hazardous waste facility  
10 ~~which that~~ the Secretary has preempted pursuant to subsections (b) through (f) of this  
11 section, shall be invalid to the extent necessary to effectuate the purposes of this  
12 ~~Chapter or Chapter 130B of the General Statutes. Chapter.~~ To this end, all provisions of  
13 special, local, or private acts or resolutions are repealed ~~which that~~:

- 14 (1) Prohibit the transportation, treatment, storage, or disposal of hazardous  
15 waste within any county, city, or other political  
16 ~~subdivision; subdivision.~~
- 17 (2) Prohibit the siting of a hazardous waste facility within any county,  
18 city, or other political ~~subdivision; subdivision.~~
- 19 (3) Place any restriction or condition not placed by Article 9 of Chapter  
20 130A ~~or Chapter 130B~~ of the General Statutes upon the transportation,  
21 treatment, storage, or disposal of hazardous waste, or upon the siting  
22 of a hazardous waste facility within any county, city, or other political  
23 ~~subdivision; or subdivision.~~
- 24 (4) In any manner are in conflict or inconsistent with the provisions of  
25 Article 9 of Chapter 130A ~~or Chapter 130B~~ of the General Statutes.

26 (a1) No special, local, or private acts or resolutions enacted or taking effect  
27 hereafter may be construed to modify, amend, or repeal any portion of Article 9 of  
28 Chapter 130A ~~or Chapter 130B~~ of the General Statutes unless it expressly provides for  
29 such by specific references to the appropriate section of this Part. Further to this end, all  
30 provisions of local ordinances, including those regulating land use, adopted by counties,  
31 municipalities, or other local authorities that prohibit or have the effect of prohibiting  
32 the establishment or operation of a hazardous waste facility are invalidated to the extent  
33 preempted by the Secretary pursuant to this Section.

34 (b) When a hazardous waste facility would be prevented from construction or  
35 operation by a county, municipal, or other local ~~ordinance(s); ordinance,~~ the operator of  
36 the proposed facility ~~or the North Carolina Hazardous Waste Management Commission~~  
37 ~~established pursuant to Chapter 130B of the General Statutes (hereinafter "the~~  
38 ~~Commission")~~ may petition the Secretary to review the matter. After receipt of a  
39 petition, the Secretary shall hold a hearing in accordance with the procedures in  
40 subsection (c) of this section and shall determine whether or to what extent to preempt  
41 the local ordinance to allow for the establishment and operation of the facility.



1 (c) When a petition described in subsection (b) of this section has been filed with  
2 the Secretary, the Secretary shall hold a public hearing to consider the petition. ~~Such~~  
3 The public hearing shall be held in the affected locality within 60 days after receipt of  
4 the petition by the Secretary. The Secretary shall give notice of the public hearing by:

5 (1) Publication in a newspaper or newspapers having general circulation in  
6 the county or counties where the facility is or is to be located or  
7 operated, once a week for three consecutive weeks, the first notice  
8 appearing at least 30 days prior to the scheduled date of the hearing;  
9 and

10 (2) First class mail to persons who have requested ~~such~~ notice. The  
11 Secretary shall maintain a mailing list of persons who request notice in  
12 advance of the hearing pursuant to this section. Notice by mail shall be  
13 complete upon deposit of a copy of the notice in a post-paid wrapper  
14 addressed to the person to be notified at the address ~~which~~that appears  
15 on the mailing list maintained by the Board, in a post office or official  
16 depository under the exclusive care and custody of the United States  
17 Postal Service.

18 (c1) Any interested person may appear before the Secretary at the hearing to offer  
19 testimony. In addition to testimony before the Secretary, any interested person may  
20 submit written evidence to the Secretary for ~~its~~the Secretary's consideration. At least 20  
21 days shall be allowed for receipt of written comment following the hearing.

22 (d) The Secretary shall determine whether or to what extent to preempt local  
23 ~~ordinance(s)~~ordinances so as to allow for the establishment and operation of the facility  
24 no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local  
25 ordinance only if ~~it~~the Secretary makes all five of the following findings:

26 (1) That there is a local ordinance ~~which~~that would prohibit or have the  
27 effect of prohibiting the establishment or operation of a hazardous  
28 waste ~~facility;~~facility.

29 (2) That the proposed facility is needed in order to establish adequate  
30 capability to meet the current or projected hazardous waste  
31 management needs of this State or to comply with the terms of any  
32 interstate agreement for the management of hazardous waste to which  
33 the State is a party and therefore serves the interests of the citizens of  
34 the State as a ~~whole;~~whole.

35 (3) That all legally required State and federal permits or approvals have  
36 been issued by the appropriate State and federal agencies or that all  
37 State and federal permit requirements have been satisfied and that the  
38 permits or approvals have been denied or withheld only because of the  
39 local ~~ordinance(s);~~ordinance.

40 (4) That local citizens and elected officials have had adequate opportunity  
41 to participate in the siting ~~process;~~and process.

1           (5) That the construction and operation of the facility will not pose an  
2 unreasonable health or environmental risk to the surrounding locality  
3 and that the facility operator ~~or the Commission~~ has taken or consented  
4 to take reasonable measures to avoid or manage foreseeable risks and  
5 to comply to the maximum feasible extent with ~~any~~ applicable local  
6 ~~ordinance(s)-ordinances.~~

7       (d1) If the Secretary does not make all five findings set out above, the Secretary  
8 shall not preempt the challenged local ~~ordinance(s)-ordinance.~~ The Secretary's decision  
9 shall be in writing and shall identify the evidence submitted to the Secretary plus any  
10 additional evidence used in arriving at the decision.

11       (e) The decision of the Secretary shall be final unless a party to the action ~~shall,~~  
12 ~~pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-~~  
13 ~~29 and this section,~~ files a written appeal under Article 4 of Chapter 150B of the  
14 General Statutes, as modified by G.S. 7A-29 and this section, within 30 days of the date  
15 of ~~such~~ the decision. The record on appeal shall consist of all materials and information  
16 submitted to or considered by the Secretary, the Secretary's written decision, a complete  
17 transcript of the hearing, all written material presented to the Secretary regarding the  
18 location of the facility, the specific findings required by subsection (d) of this section,  
19 and any minority positions on the specific findings required by subsection (d) of this  
20 section. The scope of judicial review shall be that the court may affirm the decision of  
21 the Secretary, or may remand the matter for further proceedings, or may reverse or  
22 modify the decision if the substantial rights of the parties may have been prejudiced  
23 because the agency findings, inferences, conclusions, or decisions are:

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

32       (e1) If the court reverses or modifies the decision of the agency, the judge shall set  
33 out in writing, which writing shall become part of the record, the reasons for ~~such~~ the  
34 reversal or modification.

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

37       (g) Repealed by Session Laws 1989, c. 168, s. 13."

38       **SECTION 18.** G.S. 130A-4(d) reads as rewritten:

39       "(d) When requested by the Secretary of ~~the Department of~~ Environment and  
40 Natural Resources, a local health department shall enforce the rules of the Commission  
41 under the supervision of the Department of Environment and Natural Resources. The

1 local health department shall utilize local staff authorized by the Department of  
2 Environment and Natural Resources to enforce the specific rules."

3 **SECTION 19.** G.S. 130A-17(b) reads as rewritten:

4 "(b) The Secretary of ~~the Department of~~ Environment and Natural Resources and  
5 a local health director shall have the same rights enumerated in subsection (a) of this  
6 section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

7 **SECTION 20.** G.S. 130A-18(b) reads as rewritten:

8 "(b) The Secretary of ~~the Department of~~ Environment and Natural Resources and  
9 a local health director shall have the same rights enumerated in subsection (a) of this  
10 section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter."

11 **SECTION 21.** G.S. 130A-22(d) reads as rewritten:

12 "(d) In determining the amount of the penalty in subsections (a), (b) and (c), the  
13 Secretary and the Secretary of ~~the Department of~~ Environment and Natural Resources  
14 shall consider the degree and extent of the harm caused by the violation and the cost of  
15 rectifying the damage."

16 **SECTION 22.** G.S. 130A-294(a), as amended by S.L. 2001-357, reads as  
17 rewritten:

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

22 ...

- 23 (4) a. Develop a permit system governing the establishment and  
24 operation of solid waste management facilities. A landfill with a  
25 disposal area of 1/2 acre or less for the on-site disposal of land  
26 clearing and inert debris is exempt from the permit requirement of  
27 this section and shall be governed by G.S. 130A-301.1. A landfill  
28 for the disposal of demolition debris generated on the same parcel  
29 or tract of land on which the landfill is located that has a disposal  
30 area of one acre or less is exempt from the permit requirement of  
31 this section and rules adopted pursuant to this section, and shall be  
32 governed by G.S. 130A-301.2. The Department shall not approve  
33 an application for a new permit, the renewal of a permit, or a  
34 substantial amendment to a permit for a sanitary landfill, excluding  
35 demolition landfills as defined in the rules of the ~~Commission for~~  
36 ~~Health Services, Commission,~~ except as provided in subdivisions  
37 (3) and (4) of subsection (b1) of this section. No permit shall be  
38 granted for a solid waste management facility having discharges  
39 ~~which~~ that are point sources until the Department has referred the  
40 complete plans and specifications to the Environmental  
41 Management Commission and has received advice in writing that  
42 the plans and specifications are approved in accordance with the

1 provisions of G.S. 143-215.1. If the applicant is a unit of local  
2 government, and has not submitted a solid waste management plan  
3 that has been approved by the Department pursuant to G.S.  
4 130A-309.09A(b), the Department may deny a permit for a sanitary  
5 landfill or a facility that disposes of solid waste by incineration,  
6 unless the Commission has not adopted rules pursuant to G.S.  
7 130A-309.29 for local solid waste management plans. In any case  
8 where the Department denies a permit for a solid waste  
9 management facility, it shall state in writing the reason for denial  
10 and shall also state its estimate of the changes in the applicant's  
11 proposed activities or plans ~~which~~ that will be required for the  
12 applicant to obtain a permit.

13 ...."

14 **SECTION 23.** G.S. 130A-294(h) reads as rewritten:

15 "(h) Rules adopted by the Commission shall be subject to the following  
16 requirements:

17 ...

18 ~~(5) No hazardous waste disposal facility operated pursuant to Chapter  
19 130B of the General Statutes shall be located within 25 miles of a  
20 polychlorinated biphenyl landfill facility.~~

21 ...."

22 **SECTION 24.** G.S. 130A-294(r) reads as rewritten:

23 "(r) The Commission for Health Services shall, in accordance with the procedures  
24 set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific  
25 privilege license tax rates ~~which~~ that localities may apply to waste management  
26 facilities in their jurisdiction."

27 **SECTION 25.** G.S. 130A-294(s) reads as rewritten:

28 "(s) The Department is authorized to enter upon any lands and structures upon  
29 lands to make surveys, borings, soundings, and examinations as may be necessary to  
30 determine the suitability of a site for a hazardous waste facility or hazardous waste  
31 disposal facility. The Department shall give 30 ~~days'~~ days notice of the intended entry  
32 authorized by this section in the manner prescribed for service of process by G.S. 1A-1,  
33 Rule 4. Entry under this section shall not be deemed a trespass or taking; provided,  
34 however, that the Department shall make reimbursement for any damage to ~~such land~~  
35 land or structures caused by ~~such~~ these activities. ~~This authority shall also apply to the~~  
36 ~~North Carolina Hazardous Waste Management Commission."~~

37 **SECTION 26.** Effective 1 July 2003, G.S. 143-15.3B(a) reads as rewritten:

38 "(a) The Clean Water Management Trust Fund is established in G.S. 113-145.3.  
39 The General Assembly finds that, due to the critical need in this State to clean up  
40 pollution in the State's surface waters and to protect and conserve those waters that are  
41 not yet polluted, it is imperative that the State provide a minimum of one hundred  
42 million dollars (\$100,000,000) each calendar year to the Clean Water Management

1 ~~Management~~-Trust Fund; therefore, there is annually appropriated from the General  
2 Fund to the Clean Water Management Trust Fund the sum of one hundred million  
3 dollars (\$100,000,000)."

4 **SECTION 27.** G.S. 143-215.3A(b1) reads as rewritten:

5 "(b1) The I & M Air Pollution Control Account is established as a nonreverting  
6 account within the Department. Fees transferred to the Division of Air Quality of the  
7 Department pursuant to ~~G.S. 20-183.7(e)(2)~~G.S. 20-183.7(c) shall be credited to the I &  
8 M Air Pollution Control Account and shall be applied to the costs of developing and  
9 implementing an air pollution control program for mobile sources."

10 **SECTION 28.** G.S. 143-215.22I(j) reads as rewritten:

11 "(j) In the case of water supply problems caused by drought, a pollution incident,  
12 temporary failure of a water plant, or any other temporary condition in which the public  
13 health requires a transfer of water, the Secretary of ~~the Department of Environment and~~  
14 Natural Resources may grant approval for a temporary transfer. Prior to approving a  
15 temporary transfer, the Secretary of ~~the Department of Environment and Natural~~  
16 ~~Resources~~ shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely  
17 to be affected by the proposed transfer. However, the Secretary of ~~the Department of~~  
18 ~~Environment and Natural Resources~~ shall not be required to satisfy the public notice  
19 requirements of this section or make written findings of fact and conclusions in  
20 approving a temporary transfer under this subsection. If the Secretary of ~~the Department~~  
21 ~~of Environment and Natural Resources~~ approves a temporary transfer under this  
22 subsection, the Secretary shall specify conditions to protect other water users. A  
23 temporary transfer shall not exceed six months in duration, but the approval may be  
24 renewed for a period of six months by the Secretary of ~~the Department of Environment~~  
25 ~~and Natural Resources~~ based on demonstrated need as set forth in this subsection."

26 **SECTION 29.** G.S. 143-215.22J(b) reads as rewritten:

27 "(b) The Council shall have eight members, including the Secretary of ~~the~~  
28 ~~Department of Environment and Natural Resources~~, who shall chair the Council, and  
29 the Dean of the ~~School~~ College of Agriculture and Life Sciences of North Carolina State  
30 University. The members of the Council shall elect a vice-chair from among the Council  
31 membership. The Chair of the Council shall solicit three recommendations from the  
32 scientific community including private scientists representing industrial and  
33 environmental concerns, as well as the academic community for each of the six  
34 appointees and shall select members from among those recommendations. Members  
35 shall have the following qualifications:

- 36 (1) One member with expertise and training in water quality;
- 37 (2) One member with expertise and training in coastal or marine fisheries;
- 38 (3) One member with expertise and training in resource economics;
- 39 (4) One member with expertise and training in physical modeling;
- 40 (5) One member with expertise and training in wetlands; and
- 41 (6) One member with expertise and training in the social sciences.

1 The members shall be appointed for staggered two-year terms and may be reappointed  
2 for subsequent terms. Members shall serve at the pleasure of the Secretary."

3 **SECTION 30.** G.S. 143B-279.7(a) reads as rewritten:

4 "(a) The Department of Environment and Natural Resources shall coordinate an  
5 intradepartmental effort to develop scientific protocols to respond to significant fish kill  
6 events utilizing staff from the Division of ~~Environmental Management, Water Quality,~~  
7 Division of Marine Fisheries, Department of Health and Human Services, Wildlife  
8 Resources Commission, the scientific community, and other agencies, as necessary. In  
9 developing these protocols, the Department of Environment and Natural Resources shall  
10 address the unpredictable nature of fish kills caused by both natural and man-made  
11 factors. The protocols shall contain written procedures to respond to significant fish kill  
12 events including:

- 13 (1) Developing a plan of action to evaluate the impact of fish kills on  
14 public health and the environment.
- 15 (2) Responding to fish kills within 24 hours.
- 16 (3) Investigating and collecting data relating to fish kill events.
- 17 (4) Summarizing and distributing fish kill information to participating  
18 agencies, scientists and other interested parties."

19 **SECTION 31.** G.S. 143B-279.7(b) reads as rewritten:

20 "(b) The Secretary of ~~the Department of~~ Environment and Natural Resources shall  
21 take all necessary and appropriate steps to effectively carry out the purposes of this Part  
22 including:

- 23 (1) Providing adequate training for fish kill investigators.
- 24 (2) Taking immediate action to protect public health and the environment.
- 25 (3) Cooperating with agencies, scientists, and other interested parties, to  
26 help determine the cause of the fish kill."

27 **SECTION 32.** G.S. 143B-289.52(f) reads as rewritten:

28 "(f) The Commission shall adopt rules as provided in this Chapter. All rules  
29 adopted by the Commission shall be enforced by the Department of ~~Environment,~~  
30 ~~Health, Environment~~ and Natural Resources."

31 **SECTION 33.** G.S. 143B-318(a) reads as rewritten:

32 "(a) The Air Quality Compliance Advisory Panel of the Department of  
33 Environment and Natural Resources shall consist of two members who are not owners  
34 or representatives of owners of small business stationary sources, appointed by the  
35 Governor to represent the general public; two members appointed one each by the  
36 Speaker and the minority leader of the House of Representatives, and who are owners,  
37 or who represent owners, of small business stationary sources; two members appointed  
38 one each by the President Pro Tempore and the minority leader of the Senate, who are  
39 owners, or who represent owners, of small business stationary sources; and one member  
40 appointed by the Secretary of ~~the Department of~~ Environment and Natural Resources."

41 **SECTION 34.** G.S. 150B-1(d), as amended by S.L. 2001-299, S.L.  
42 2001-395, and S.L. 2001-424, reads as rewritten:

1       "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to  
2 the following:

- 3           (1) The Commission.
- 4           (2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
- 5           (3) ~~The North Carolina Hazardous Waste Management Commission in~~  
6           ~~administering the provisions of G.S. 130B-13 and G.S. 130B-14.~~
- 7           (4) The Department of Revenue, with respect to the notice and hearing  
8           requirements contained in Part 2 of Article 2A.
- 9           (5) The North Carolina Global TransPark Authority with respect to the  
10          acquisition, construction, operation, or use, including fees or charges,  
11          of any portion of a cargo airport complex.
- 12          (6) The Department of Correction, with respect to matters relating solely  
13          to persons in its custody or under its supervision, including prisoners,  
14          probationers, and parolees.
- 15          (7) The North Carolina Teachers' and State Employees' Comprehensive  
16          Major Medical Plan in administering the provisions of Parts 2 and 3 of  
17          Article 3 of Chapter 135 of the General Statutes.
- 18          (8) The North Carolina Federal Tax Reform Allocation Committee, with  
19          respect to the adoption of the annual qualified allocation plan required  
20          by 26 U.S.C. § 42(m), and any agency designated by the Committee to  
21          the extent necessary to administer the annual qualified allocation plan.
- 22          (9) The Department of Health and Human Services in adopting new or  
23          amending existing medical coverage policies under the State Medicaid  
24          Program.
- 25          (10) The Department of Health and Human Services in adopting new or  
26          amending existing medical coverage policies under the State Medicaid  
27          Program."

28       **SECTION 35.** G.S. 150B-1(e), as amended by S.L. 2001-192, reads as  
29 rewritten:

30       "(e) Exemptions From Contested Case Provisions. – The contested case  
31 provisions of this Chapter apply to all agencies and all proceedings not expressly  
32 exempted from the Chapter. The contested case provisions of this Chapter do not apply  
33 to the following:

- 34           (1) The Department of Health and Human Services and the Department of  
35           Environment and Natural Resources in complying with the procedural  
36           safeguards mandated by Section 680 of Part H of Public Law 99-457  
37           as amended (Education of the Handicapped Act Amendments of  
38           1986).
- 39           (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 40           (3) ~~The North Carolina Low-Level Radioactive Waste Management~~  
41           ~~Authority in administering the provisions of G.S. 104G-9, 104G-10,~~  
42           ~~and 104G-11.~~

- 1           (4) ~~The North Carolina Hazardous Waste Management Commission in~~  
2           ~~administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.~~
- 3           (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public  
4           Law 93-122), as amended and federal regulations promulgated  
5           thereunder. G.S. 150B-51(a) is considered a contested case hearing  
6           provision that does not apply to these hearings.
- 7           (6) The Department of Revenue.
- 8           (7) The Department of Correction.
- 9           (8) The Department of Transportation, except as provided in G.S. 136-29.
- 10          (9) The Occupational Safety and Health Review Board.
- 11          (10) The North Carolina Global TransPark Authority with respect to the  
12          acquisition, construction, operation, or use, including fees or charges,  
13          of any portion of a cargo airport complex.
- 14          (11) Hearings that are provided by the Department of Health and Human  
15          Services regarding the eligibility and provision of services for eligible  
16          assaultive and violent children, as defined in G.S. 122C-3(13a), shall  
17          be conducted pursuant to the provisions outlined in G.S. 122C, Article  
18          4, Part 7.
- 19          (12) The North Carolina Teachers' and State Employees' Comprehensive  
20          Major Medical Plan with respect to disputes involving the  
21          performance, terms, or conditions of a contract between the Plan and  
22          an entity under contract with the Plan."

23          **SECTION 36.** G.S. 159-81(3), as amended by S.L. 2001-414, reads as

24 rewritten:

25          "(3) 'Revenue bond project' means any undertaking for the acquisition,  
26          construction, reconstruction, improvement, enlargement, betterment,  
27          or extension of any one or combination of the revenue-producing  
28          utility or public service enterprise facilities or systems listed in this  
29          subdivision, to be financed through the issuance of revenue bonds,  
30          thereby providing funds to pay the costs of the undertaking or to  
31          reimburse funds loaned or advanced by or on the behalf of either the  
32          State or a municipality to pay the costs of the undertaking.

33                 A revenue bond project shall be (i) owned or leased as lessee by the  
34                 issuing unit or (ii) owned by one or more of the municipalities  
35                 participating in an undertaking established pursuant to Part 1 of Article  
36                 20 of Chapter 160A of the General Statutes. If the revenue bond  
37                 project is owned by one or more municipalities as provided in (ii) of  
38                 this subdivision, any one or more of the participating municipalities  
39                 may each be an issuing unit consistent with their agreement to  
40                 establish a joint undertaking. In addition, any joint agency established  
41                 by participating municipalities pursuant to Part 1 of Article 20 of



1 Chapter 160A of the General Statutes may be an issuing unit without  
2 owning the revenue bond project or leasing it as lessee.

3 The cost of an undertaking may include all property, both real and  
4 personal and improved and unimproved, plants, works, appurtenances,  
5 machinery, equipment, easements, water rights, air rights, franchises,  
6 and licenses used or useful in connection with the undertaking; the cost  
7 of demolishing or moving structures from land acquired and the cost of  
8 acquiring any lands to which ~~such~~the structures are to be moved;  
9 financing charges; the cost of plans, specifications, surveys, and  
10 estimates of cost and revenues; administrative and legal expenses; and  
11 any other expense necessary or incident to the project.

12 The following facilities or systems may be revenue bond projects  
13 under this subdivision:

- 14 a. Water systems or facilities, including all plants, works,  
15 instrumentalities and properties used or useful in obtaining,  
16 conserving, treating, and distributing water for domestic or  
17 industrial use, irrigation, sanitation, fire protection, or any other  
18 public or private use.
- 19 b. Sewage disposal systems or facilities, including all plants,  
20 works, instrumentalities, and properties used or useful in the  
21 collection, treatment, purification, or disposal of sewage.
- 22 c. Systems or facilities for the generation, production,  
23 transmission, or distribution of gas (natural, artificial, or mixed)  
24 or electric energy for lighting, heating, or power for public and  
25 private uses, where gas systems shall include the purchase  
26 and/or lease of natural gas fields and natural gas reserves and  
27 the purchase of natural gas supplies, and where any parts of  
28 such gas systems may be located either within the State or  
29 without.
- 30 d. Systems, facilities and equipment for the collection, treatment,  
31 or disposal of solid waste.
- 32 e. Public transportation systems, facilities, or equipment,  
33 including but not limited to bus, truck, ferry, and railroad  
34 terminals, depots, trackages, vehicles, and ferries, and mass  
35 transit systems.
- 36 f. Public parking lots, areas, garages, and other vehicular parking  
37 structures and facilities.
- 38 g. Aeronautical facilities, including but not limited to airports,  
39 terminals, and hangars.
- 40 h. Marine facilities, including but not limited to marinas, basins,  
41 docks, dry docks, piers, marine railways, wharves, harbors,  
42 warehouses, and terminals.

- 1 i. Hospitals and other health-related facilities.  
2 j. Public auditoriums, gymnasiums, stadiums, and convention  
3 centers.  
4 k. Recreational facilities.  
5 ~~l. In addition to the foregoing, in the case of the State of North  
6 Carolina, low level radioactive waste facilities developed  
7 pursuant to Chapter 104G of the General Statutes, hazardous  
8 waste facilities developed pursuant to Chapter 130B of the  
9 General Statutes, and any other project authorized by the  
10 General Assembly.~~  
11 m. Economic development projects, including the acquisition and  
12 development of industrial parks, the acquisition and resale of  
13 land suitable for industrial or commercial purposes, and the  
14 construction and lease or sale of shell buildings in order to  
15 provide employment opportunities for citizens of the  
16 municipality.  
17 n. Facilities for the use of any agency or agencies of the  
18 government of the United States of America.  
19 o. Structural and natural stormwater and drainage systems of all  
20 types."

21 **SECTION 37.** G.S. 159-81(4) reads as rewritten:

22 "(4) 'Revenues' include all moneys received by the State or a municipality  
23 from, in connection with, or as a result of its ownership or operation of  
24 a revenue bond project or a utility or public service enterprise facility  
25 or system of which a revenue bond project is a part, including (to the  
26 extent deemed advisable by the State or a municipality) moneys  
27 received from the United States of America, the State of North  
28 Carolina, or any agency of either, pursuant to an agreement with the  
29 State or a municipality, as the case may be, pertaining to the project.  
30 ~~'Revenues' also include all moneys received by, or on behalf of, the  
31 North Carolina Low Level Radioactive Waste Management Authority  
32 in connection with its financing of a low level radioactive waste  
33 facility and all money received by, or on behalf of, the North Carolina  
34 Hazardous Waste Management Commission in connection with its  
35 financing of a hazardous waste facility.'~~

36 **SECTION 38.** G.S. 159-83(a)(5) reads as rewritten:

37 "(5) To borrow money for the purpose of acquiring, constructing,  
38 reconstructing, extending, bettering, improving, or otherwise paying  
39 the cost of revenue bond projects, and to issue its revenue bonds or  
40 bond anticipation notes therefor, in the name of the State or a  
41 municipality, as the case may be, but no encumbrance, mortgage, or  
42 other pledge or real property of the State or a municipality may be

1                    ~~created in any manner. Notwithstanding the foregoing, the North~~  
2                    ~~Carolina Low Level Radioactive Waste Management Authority may~~  
3                    ~~create an encumbrance, mortgage, or other pledge of real property of~~  
4                    ~~the Authority in connection with its financing of a low-level~~  
5                    ~~radioactive waste facility and the North Carolina Hazardous Waste~~  
6                    ~~Management Commission may create an encumbrance, mortgage, or~~  
7                    ~~other pledge of real property of the Commission in connection with its~~  
8                    ~~financing of a hazardous waste facility."~~

9                    **SECTION 39.** G.S. 159-83(e), 159-85(d), 159-88(d), 159-94(b), and  
10                    159-96(c) are repealed.

11                    **SECTION 40.** Except as otherwise provided in this act, this act is effective  
12                    when it becomes law.