

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 353
Judiciary I Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/26/06**

Short Title: Landfill Moratorium and Studies.

(Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

1 AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT
2 APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION
3 OF NEW LANDFILLS IN THE STATE FOR A PERIOD BEGINNING ON 1
4 AUGUST 2006 AND ENDING ON 1 AUGUST 2007, SUBJECT ONLY TO THE
5 FOLLOWING EXCEPTIONS: (I) AN AMENDMENT, MODIFICATION, OR
6 OTHER CHANGE TO A PERMIT FOR A LANDFILL ISSUED ON OR BEFORE
7 1 JUNE 2006; (II) A PERMIT FOR A HORIZONTAL OR VERTICAL
8 EXPANSION OF THE LANDFILL PERMITTED ON OR BEFORE 1 JUNE 2006;
9 (III) A PERMIT TO CONSTRUCT A NEW LANDFILL WITHIN THE FACILITY
10 BOUNDARY IDENTIFIED IN THE FACILITY PLAN OF A LANDFILL
11 PERMITTED ON OR BEFORE 1 JUNE 2006; (IV) A PERMIT TO OPERATE A
12 NEW LANDFILL IF A PERMIT TO CONSTRUCT THE NEW LANDFILL WAS
13 ISSUED ON OR BEFORE 1 JUNE 2006; (V) A PERMIT FOR A SANITARY
14 LANDFILL USED ONLY TO DISPOSE OF WASTE GENERATED BY A
15 COAL-FIRED GENERATING UNIT THAT IS OWNED OR OPERATED BY AN
16 INVESTOR-OWNED UTILITY SUBJECT TO THE REQUIREMENTS OF
17 G.S. 143-215.107D; AND (VI) A PERMIT FOR A SANITARY LANDFILL
18 DETERMINED TO BE NECESSARY BY THE SECRETARY OF
19 ENVIRONMENT AND NATURAL RESOURCES IN ORDER TO RESPOND TO
20 AN IMMINENT HAZARD TO PUBLIC HEALTH OR A NATURAL DISASTER;
21 TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY
22 ISSUES RELATED TO SOLID WASTE DISPOSAL IN ORDER TO PROTECT
23 PUBLIC HEALTH AND THE ENVIRONMENT; AND TO CREATE THE JOINT
24 SELECT COMMITTEE ON ENVIRONMENTAL JUSTICE.

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26 Whereas, North Carolina has experienced severe problems from widespread
27 flooding during the past five years; and

1 Whereas, large areas of the State have also experienced severe drought
2 conditions during the past five years; and

3 Whereas, groundwater is the source of drinking water for approximately half
4 the population of the State; and

5 Whereas, depletion of certain large groundwater aquifers in the State has been
6 documented in recent years; and

7 Whereas, protection and enhancement of water quality in the State's rivers
8 and coastal estuaries is the declared public policy of the State; and

9 Whereas, North Carolina is home to many rare and endangered species of
10 plants and animals; and

11 Whereas, the State has established many parks, natural areas, and wildlife
12 refuges to protect habitats for migrating birds and other species; and

13 Whereas, many fragile ecosystems exist in the State which are in need of
14 further study and protection; and

15 Whereas, the State recognizes that ecosystems transcend state borders, and
16 that changes affecting the State's water, air, natural habitats, and scenic resources also
17 have impacts outside the State; and

18 Whereas, it is the policy of the State to ensure the continued public enjoyment
19 of the natural attractions of the State; and

20 Whereas, improperly sited, designed, or operated landfills have the potential
21 to cause serious environmental damage, including groundwater contamination; and

22 Whereas, it is essential that the State study the siting, design, and operational
23 requirements for landfills for the disposal of solid waste in areas susceptible to flooding
24 from natural disasters, areas with high water tables, and other environmentally sensitive
25 areas in order to protect public health and the environment; and

26 Whereas, it is critical to the protection of public health and the environment
27 to adequately staff the State solid waste program to review permit applications, ensure
28 compliance with State solid waste management laws and rules, and provide technical
29 assistance on solid waste management issues; and

30 Whereas, economic and other factors may cause landfills to be concentrated
31 in minority and low-income communities in the State; and

32 Whereas, minority and low-income communities may be at particularly high
33 risk for potential threats to human health and the environment from the siting of
34 landfills in these areas; and

35 Whereas, it is the policy of the State to promote methods of solid waste
36 management that are alternatives to disposal in landfills; Now, therefore,
37 The General Assembly of North Carolina enacts:

38 **SECTION 1.** Definitions. – The definitions set forth in G.S. 130A-290 apply
39 throughout this act.

40 **SECTION 2.** Moratorium Established. – There is hereby established a
41 moratorium on consideration of applications for a permit and on the issuance of permits
42 for new landfills in the State. The purposes of this moratorium are to allow the State to
43 study solid waste disposal issues in order to protect public health and the environment.
44 The Department of Environment and Natural Resources shall not consider a permit

1 application nor issue a permit for a new landfill for the disposal of construction or
2 demolition waste, municipal solid waste, or industrial solid waste for a period beginning
3 on 1 August 2006 and ending on 1 August 2007.

4 **SECTION 3.** Exceptions. – The moratorium established by Section 2 of this
5 act shall not prohibit consideration of an application for or issuance of:

- 6 (1) An amendment, modification, or other change to a permit for a landfill
7 issued on or before 1 June 2006.
- 8 (2) A permit for a horizontal or vertical expansion of the landfill permitted
9 on or before 1 June 2006.
- 10 (3) A permit to construct a new landfill within the facility boundary
11 identified in the facility plan of a landfill permitted on or before 1 June
12 2006.
- 13 (4) A permit to operate a new landfill if a permit to construct the new
14 landfill was issued on or before 1 June 2006.
- 15 (5) A permit for a sanitary landfill used only to dispose of waste generated
16 by a coal-fired generating unit that is owned or operated by an
17 investor-owned utility subject to the requirements of
18 G.S. 143-215.107D.
- 19 (6) A permit for a sanitary landfill determined to be necessary by the
20 Secretary of Environment and Natural Resources in order to respond to
21 an imminent hazard to public health or a natural disaster.

22 **SECTION 4.(a)** Study. – The Environmental Review Commission, with the
23 assistance of the Division of Waste Management of the Department of Environment and
24 Natural Resources, shall study issues related to solid waste. The Commission shall
25 specifically study measures concerning:

- 26 (1) Financial responsibility requirements for solid waste landfills,
27 including the application of requirements to limited liability companies
28 and other business entity structures of applicants seeking solid waste
29 landfill permits.
- 30 (2) Application of franchise requirements and local government approval
31 for solid waste landfill permits, including adequacy of public notice
32 and comment, community studies, and site designations prior to local
33 government approval.
- 34 (3) Siting, design, and operational requirements for landfills for the
35 disposal of construction or demolition waste, municipal solid waste, or
36 industrial solid waste that are proposed in areas susceptible to flooding
37 from natural disasters, areas with high water tables, and other
38 environmentally sensitive areas.
- 39 (4) Formation of dangerous chemicals and gases in flood-prone landfill
40 environments.
- 41 (5) Traffic considerations for proposed landfills.
- 42 (6) Regulatory oversight and staffing for permitting and compliance of
43 solid waste landfills, and inspection of waste containers on barges,
44 railways, and trucks.

1 (7) Compliance with statutory prohibitions on disposal of certain types of
2 solid waste and measures to prevent disposal of hazardous waste in
3 solid waste and construction and demolition landfills.

4 (8) Ways to reduce the amount of solid waste disposed of within North
5 Carolina landfills, including statewide tipping fees, bans on the
6 disposal of certain types of waste in landfills, more aggressive
7 recycling requirements, and enhanced regulatory requirements for
8 landfills and other solid waste management facilities.

9 **SECTION 4.(b)** Subcommittee. – In order to facilitate the conduct of this
10 study, the Cochairs of the Environmental Review Commission may establish a
11 subcommittee of the Commission. The subcommittee of the Commission may include
12 nonlegislative members who have special knowledge, interest, or expertise in various
13 aspects of solid waste management, appointed in consultation with the President Pro
14 Tempore of the Senate and the Speaker of the House of Representatives.

15 **SECTION 4.(c)** Report. – The Commission shall report its findings, together
16 with any recommended legislation, to the 2007 Regular Session of the General
17 Assembly upon its convening.

18 **SECTION 5.(a)** Committee Established. – The Joint Select Committee on
19 Environmental Justice is hereby established.

20 **SECTION 5.(b)** Membership. –The Committee shall consist of 12 members
21 as follows:

- 22 (1) Four members appointed by the President Pro Tempore of the Senate.
- 23 (2) Four members appointed by the Speaker of the House of
24 Representatives.
- 25 (3) The Director of the Division of Waste Management of the Department
26 of Environment and Natural Resources, or the Director's designee.
- 27 (4) The President of the North Carolina Conference of the NAACP, or the
28 President's designee.
- 29 (5) The Executive Director of the North Carolina Association of County
30 Commissioners, or the Director's designee.
- 31 (6) The Executive Director of the North Carolina League of
32 Municipalities, or the Director's designee.

33 **SECTION 5.(c)** Cochairs. – The Committee shall have two cochairs, one
34 designated by the President Pro Tempore of the Senate and one designated by the
35 Speaker of the House of Representatives from among their respective appointees. The
36 Committee shall meet upon the call of the cochairs.

37 **SECTION 5.(d)** Quorum. – A quorum of the Committee shall consist of
38 seven members.

39 **SECTION 5.(e)** Vacancies. – Any vacancy on the Committee shall be filled
40 by the original appointing authority.

41 **SECTION 5.(f)** Purpose and Duties. – The Committee shall study:

- 42 (1) The location of landfills in the State, with historical and current
43 demographic information, including health statistics of the surrounding
44 population of each site where available. The Committee shall identify

1 landfills located in proximity to minority and low-income
2 communities.

3 (2) The impacts that landfills located in proximity to minority and
4 low-income communities have on these communities with regard to
5 human health, the environment, and economic development.

6 (3) Factors, including economic factors, that may have caused landfills to
7 be concentrated in minority and low-income communities in the State.

8 (4) Past enforcement actions taken by the U.S. Environmental Protection
9 Agency or the Department of Environment and Natural Resources for
10 violations affecting human health or the environment at any landfill in
11 the State in order to assess whether enforcement practices for
12 violations at these sites have resulted in uneven enforcement
13 outcomes, and to determine if alternative or stronger enforcement
14 measures could be taken, or in the alternative if other methods could
15 be used to allocate resources, in order to more equitably serve minority
16 and low-income communities.

17 (5) Statutes, rules, and policies used by State, regional, and local
18 governments, and a review of the role played by these entities to
19 influence or make siting and land-use decisions concerning landfills in
20 the State.

21 (6) Data and methodologies by which State, regional, and local
22 governments might become more specifically aware of situations in
23 which neighborhoods are at particularly high risk for potential threats
24 to human health and the environment from the siting of landfills.

25 (7) Approaches to ensure consideration of environmental justice and
26 equity issues when formulating and implementing policies, procedures,
27 and legislation within governmental agencies and other institutions.

28 **SECTION 5.(g)** Expenses of Members. – Members of the Committee shall
29 receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1.

30 **SECTION 5.(h)** Staff. – Upon the prior approval of the Legislative Services
31 Commission, the Legislative Services Officer shall assign professional staff to the
32 Committee to aid in its work.

33 **SECTION 5.(i)** Consultants. – The Committee may hire consultants to assist
34 with the study as provided in G.S. 120-32.02(b).

35 **SECTION 5.(j)** Meetings. – The Committee may meet in the Legislative
36 Building or the Legislative Office Building upon the approval of the Legislative
37 Services Committee.

38 **SECTION 5.(k)** Report. – The Committee shall report its findings and
39 recommendations to the General Assembly and the Environmental Review Commission
40 on or before 1 February 2007, at which time the Committee shall terminate.

41 **SECTION 5.(l)** Funding. – From funds appropriated to the General
42 Assembly, the Legislative Services Commission shall allocate funds for the purpose of
43 conducting the study provided for in this act.

44 **SECTION 6.** Effective Date. – This act is effective when it becomes law.