

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-474
SENATE BILL 920**

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 Chapter 130B of the General Statutes is repealed.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 G.S. 104E-18(c) is repealed.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 the licensing program in G.S. 104E-10.3, and of licensing low level radioactive waste facilities operated pursuant to Chapter 104G of the General Statutes,~~ the Department is authorized to charge and collect such reasonable fees as it may by rule ~~or regulation~~ establish."

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

"§ 104E-27. Volume reduction required.

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

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

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

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

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

This subsection applies only to the following governmental entities:

- ~~...~~
~~(18) The North Carolina Low Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.~~
- ~~(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.~~
- "

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

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

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

- ~~...~~
~~(36) Real and personal property belonging to the North Carolina Low Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes.~~
- (37) Poultry and livestock and feed used in the production of poultry and livestock.
- ~~(38) Real and personal property belonging to the North Carolina Hazardous Waste Management Commission created under Chapter 130B of the General Statutes.~~
- "

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

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

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

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

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

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

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

- (1) Commissioner of Agriculture.
- (2) Chair of the Wildlife Resources Commission.
- (3) Secretary of ~~the Department of Environment and Natural Resources.~~
- (4) Secretary of the Department of Commerce."

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

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

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

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

- ...
- ~~(54) The North Carolina Low Level Radioactive Waste Management Authority, as established by G.S. 104G-5.~~
 - (55) Repealed by Session Laws 1998-217, s. 45.
 - ~~(56) The North Carolina Hazardous Waste Management Commission, as established by G.S. 130B-6.~~
- "

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

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

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

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

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

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

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

- ...
- ~~(12) Employees of the North Carolina Low Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).~~
 - ~~(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).~~
- "

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

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

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

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

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

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

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

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

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

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

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

- (1) That there is a local ordinance ~~which that~~ would prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste ~~facility;~~ facility.
- (2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected low-level radioactive waste management needs of this State or to comply with the terms of any interstate agreement for the management of low-level radioactive waste to which the State is a party and therefore serves the interests of the citizens of the State as a ~~whole;~~ whole.
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the ~~local ordinance(s);~~ ordinance.
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting ~~process;~~ and process.
- (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator ~~or the Authority~~ has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with ~~any~~ applicable local ~~ordinance(s)~~ ordinances.

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

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

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

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

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

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

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

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

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

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

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ~~ordinance(s); ordinance,~~ the operator of the proposed facility ~~or the North Carolina Hazardous Waste Management Commission established pursuant to Chapter 130B of the General Statutes (hereinafter "the Commission")~~ may petition the Secretary to review the matter. After receipt of a petition, the Secretary shall hold a hearing in accordance with the procedures in

subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

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

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

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

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

- (1) That there is a local ordinance ~~which that~~ would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste ~~facility; facility.~~
- (2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party and therefore serves the interests of the citizens of the State as a ~~whole; whole.~~
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ~~ordinance(s); ordinance.~~
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting ~~process; and process.~~
- (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator ~~or the Commission~~ has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with ~~any~~ applicable local ~~ordinance(s)-ordinances.~~

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

(e) The decision of the Secretary shall be final unless a party to the action ~~shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-~~

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

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

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

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

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

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

"(d) When requested by the Secretary of ~~the Department of~~ Environment and Natural Resources, a local health department shall enforce the rules of the Commission under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

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

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

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

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

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

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

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

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

- ...
(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of

this section and shall be governed by G.S. 130A-301.1. A landfill for the disposal of demolition debris generated on the same parcel or tract of land on which the landfill is located that has a disposal area of one acre or less is exempt from the permit requirement of this section and rules adopted pursuant to this section, and shall be governed by G.S. 130A-301.2. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the ~~Commission for Health Services, Commission,~~ except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges ~~which that~~ are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans ~~which that~~ will be required for the applicant to obtain a permit.

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

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

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

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

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

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

"(s) The Department is authorized 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 hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 ~~days' 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~~ land or structures caused by ~~such these~~ activities. ~~This authority shall also apply to the North Carolina Hazardous Waste Management Commission.~~"

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

"(a) The Clean Water Management Trust Fund is established in G.S. 113-145.3. The General Assembly finds that, due to the critical need in this State to clean up

pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars (\$100,000,000) each calendar year to the Clean Water Management ~~Management~~ Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars (\$100,000,000)."

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

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

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

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

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

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

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

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

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

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

factors. The protocols shall contain written procedures to respond to significant fish kill events including:

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

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

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

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

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

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

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

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

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

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

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

- (9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.
- (10) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program."

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

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

- (1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
- (2) Repealed by Session Laws 1993, c. 501, s. 29.
- ~~(3) The North Carolina Low Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.~~
- ~~(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.~~
- (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
- (6) The Department of Revenue.
- (7) The Department of Correction.
- (8) The Department of Transportation, except as provided in G.S. 136-29.
- (9) The Occupational Safety and Health Review Board.
- (10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.
- (12) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan with respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan."

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

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

A revenue bond project shall be (i) owned or leased as lessee by the issuing unit or (ii) owned by one or more of the municipalities

participating in an undertaking established pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes. If the revenue bond project is owned by one or more municipalities as provided in (ii) of this subdivision, any one or more of the participating municipalities may each be an issuing unit consistent with their agreement to establish a joint undertaking. In addition, any joint agency established by participating municipalities pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes may be an issuing unit without owning the revenue bond project or leasing it as lessee.

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

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

- a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
- b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
- c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
- d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
- e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
- f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
- g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
- h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
- i. Hospitals and other health-related facilities.
- j. Public auditoriums, gymnasiums, stadiums, and convention centers.
- k. Recreational facilities.
- ~~l. In addition to the foregoing, in the case of the State of North Carolina, low level radioactive waste facilities developed~~

~~pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.~~

- m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
- n. Facilities for the use of any agency or agencies of the government of the United States of America.
- o. Structural and natural stormwater and drainage systems of all types."

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

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

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

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner. ~~Notwithstanding the foregoing, the North Carolina Low Level Radioactive Waste Management Authority may create an encumbrance, mortgage, or other pledge of real property of the Authority in connection with its financing of a low level radioactive waste facility and the North Carolina Hazardous Waste Management Commission may create an encumbrance, mortgage, or other pledge of real property of the Commission in connection with its financing of a hazardous waste facility.'~~

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

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

In the General Assembly read three times and ratified this the 16th day of November, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:05 p.m. this 29th day of November, 2001