

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

4

HOUSE BILL 976
Committee Substitute Favorable 6/2/93
Committee Substitute #2 Favorable 7/13/93
Fourth Edition Engrossed 7/15/93

Short Title: Reorganize Governor's Waste Mgmt. Board.

(Public)

Sponsors:

Referred to:

April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO REORGANIZE AND TRANSFER THE GOVERNOR'S WASTE
2 MANAGEMENT BOARD TO THE OFFICE OF ENVIRONMENTAL
3 EDUCATION, TO MAKE CONFORMING CHANGES, AND TO CREATE THE
4 POLLUTION PREVENTION ADVISORY COUNCIL.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Part 4A of Article 7 of Chapter 143B of the General Statutes is
8 repealed.

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

10 "**§ 7A-29. (See Note) Appeals of right from certain administrative agencies.**

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

21 Sec. 2.1. G.S. 104E-5 is amended by adding a new subdivision to read:

1 "(14b) 'Secretary' means the Secretary of the Department of Environment,
2 Health, and Natural Resources."

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

4 "**§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities**
5 **invalid; petition to preempt local ordinance.**

6 (a) It is the intent of the General Assembly to maintain a uniform system for the
7 management of low-level radioactive waste and to place limitations upon the exercise
8 by all units of local government in North Carolina of the power to regulate the
9 management of low-level radioactive waste by means of special, local, or private acts or
10 resolutions, ordinances, property restrictions, zoning regulations, or otherwise.
11 Notwithstanding any authority granted to counties, municipalities, or other local
12 authorities to adopt local ordinances (including but not limited to those imposing taxes,
13 fees, or charges or regulating health, environment, or land use), any local ordinance
14 ~~which that~~ prohibits or has the effect of prohibiting the establishment or operation of a
15 low-level radioactive waste facility ~~which the Governor's Waste Management Board~~
16 ~~(hereinafter 'the Board') which the Secretary~~ has preempted pursuant to subsections (b)
17 through (f) of this section, shall be invalid to the extent necessary to effectuate the
18 purposes of this Chapter or Chapter 104G of the General Statutes. ~~For the purpose of this~~
19 ~~section, the Board shall include, in addition to the members enumerated in G.S. 143B-~~
20 ~~285.12(a), two members appointed by the board of commissioners of the county in which the~~
21 ~~facility is or is to be located. If the facility is or is to be located in more than one county, or if~~
22 ~~the facility is or is to be located within the boundaries of a city, the governing body of each city~~
23 ~~and county in which any portion of the facility is or is to be located shall have one appointment.~~
24 ~~Failure of a local governing body to make an appointment within 30 days after receipt of~~
25 ~~written notice from the Board to do so shall be deemed a vacancy in an unexpired term and~~
26 ~~shall be filled by appointment by the Board. The terms of members appointed by local~~
27 ~~governing bodies shall end upon the final determination of the Board under this section, and~~
28 ~~such members shall serve as members of the Board only for the purpose of this section. To~~
29 this end, all provisions of special, local, or private acts or resolutions are repealed
30 which:

- 31 (1) Prohibit the transportation, treatment, storage, or disposal of low-level
32 radioactive waste within any county, city, or other political
33 subdivision;
34 (2) Prohibit the siting of a low-level radioactive waste facility within any
35 county, city, or other political subdivision;
36 (3) Place any restriction or condition not placed by this Chapter or Chapter
37 104G of the General Statutes upon the transportation, treatment,
38 storage, or disposal of low-level radioactive waste, or upon the siting
39 of a low-level radioactive waste facility within any county, city, or
40 other political subdivision; or
41 (4) In any manner are in conflict or inconsistent with the provisions of this
42 Chapter or Chapter 104G of the General Statutes.

43 No special, local, or private acts or resolutions enacted or taking effect hereafter may be
44 construed to modify, amend, or repeal any portion of this Chapter or Chapter 104G of
45 the General Statutes unless it expressly provides for such by specific references to the

1 appropriate section of this Chapter or Chapter 104G of the General Statutes. Further to
2 this end, all provisions of local ordinances, including those regulating land use, adopted
3 by counties, municipalities, or other local authorities that prohibit or have the effect of
4 prohibiting the establishment or operation of a low-level radioactive waste facility are
5 invalidated to the extent preempted by the Secretary pursuant to this Section.

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

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

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

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

33 Any interested person may appear before the ~~Board~~ Secretary at the hearing to offer
34 testimony. In addition to testimony before the ~~Board~~, Secretary, any interested person
35 may submit written evidence to the ~~Board~~ Secretary for its consideration. At least 20
36 days shall be allowed for receipt of written comment following the hearing.

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

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

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

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

24 (e) The decision of the ~~Board~~-Secretary shall be final unless a party to the action
25 shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S.
26 7A-29 and this section, files a written appeal within 30 days of the date of such
27 decision. The record on appeal shall consist of all materials and information submitted
28 to or considered by the ~~Board~~, ~~the Board's~~-Secretary, ~~the Secretary's~~ written decision, a
29 complete transcript of the hearing, all written material presented to the ~~Board~~-Secretary
30 regarding the location of the facility, the specific findings required by subsection (d) of
31 this section, and any minority positions on the specific findings required by subsection
32 (d) of this section. The scope of judicial review shall be that the court may affirm the
33 decision of the ~~Board~~, Secretary, or may remand the matter for further proceedings, or
34 may reverse or modify the decision if the substantial rights of the parties may have been
35 prejudiced because the agency findings, inferences, conclusions, or decisions are:

- 36 (1) In violation of constitutional provisions; ~~or~~
37 (2) In excess of the statutory authority or jurisdiction of the agency; ~~or~~
38 (3) Made upon unlawful procedure; ~~or~~
39 (4) Affected by other error of law; ~~or~~
40 (5) Unsupported by substantial evidence admissible under G.S. 150B-
41 29(a) or G.S. 150B-30 in view of the entire record as submitted; or
42 (6) Arbitrary or capricious.

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

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

6 Sec. 4. G.S. 104E-9(a) reads as rewritten:

7 "(a) The Department of Environment, Health, and Natural Resources is
8 authorized:

9 (1) To advise, consult and cooperate with other public agencies and with
10 affected groups and industries;

11 (2) To encourage, participate in, or conduct studies, investigations, public
12 hearings, training, research, and demonstrations relating to the control
13 of sources of radiation, the measurement of radiation, the effect upon
14 public health and safety of exposure to radiation and related problems;

15 (3) To require the submission of plans, specifications, and reports for new
16 construction and material alterations on (i) the design and protective
17 shielding of installations for radioactive material and radiation
18 machines and (ii) systems for the disposal of radioactive waste
19 materials, for the determination of any radiation hazard and may
20 render opinions, approve or disapprove such plans and specifications;

21 (4) To collect and disseminate information relating to the sources of
22 radiation, including but not limited to: (i) maintenance of a record of
23 all license applications, issuances, denials, amendments, transfers,
24 renewals, modifications, suspensions, and revocations; and (ii)
25 maintenance of a record of registrants and licensees possessing sources
26 of radiation requiring registration or licensure under the provisions of
27 this Chapter, and regulations hereunder, and any administrative or
28 judicial action pertaining thereto; and to develop and implement a
29 responsible data management program for the purpose of collecting
30 and analyzing statistical information necessary to protect the public
31 health and safety. The Department may refuse to make public
32 dissemination of information relating to the source of radiation within
33 this State after the Department first determines that the disclosure of
34 such information will contravene the stated policy and purposes of this
35 Chapter and such disclosure would be against the health, welfare and
36 safety of the public.

37 (5) To respond to any emergency which involves possible or actual release
38 of radioactive material; and to perform or supervise decontamination
39 and otherwise protect the public health and safety in any manner
40 deemed necessary. This section does not in any way alter or change the
41 provisions of Chapter 166 of the North Carolina General Statutes
42 concerning response during an emergency by the Department of
43 Military and Veterans Affairs or its successor.

- 1 (6) To develop and maintain a statewide environmental radiation program
2 for monitoring the radioactivity levels in air, water, soil, vegetation,
3 animal life, milk, and food as necessary to ensure protection of the
4 public and the environment from radiation hazards.
- 5 (7) To implement the provisions of this Chapter and the regulations duly
6 promulgated under the Chapter.
- 7 (8) To establish annual fees for activities under this Chapter based on
8 actual administrative costs to be applied to training, enforcement, and
9 inspection pursuant to the provisions of this Chapter and to charge and
10 collect fees from operators and users of low-level radioactive waste
11 facilities pursuant to the provisions of this Chapter.
- 12 (9) To enter upon any lands and structures upon lands to make surveys,
13 borings, soundings, and examinations as may be necessary to
14 determine the suitability of a site for a low-level radioactive waste
15 facility or low-level radioactive disposal facility. The Department
16 shall give 30 days' notice of the intended entry authorized by this
17 section in the manner prescribed for service of process by G.S. 1A-1,
18 Rule 4. Entry under this section shall not be deemed a trespass or
19 taking; provided, however, that the Department shall make
20 reimbursement for any damage to such land or structures caused by
21 such activities. This authority shall also apply to the North Carolina
22 Low-Level Radioactive Waste Management Authority.
- 23 (10) To encourage research and development and disseminate information
24 on state-of-the-art means of handling and disposing of low-level
25 radioactive waste.
- 26 (11) The Department shall promote public education and public
27 involvement in the decision-making process for the siting and
28 permitting of proposed low-level radioactive waste facilities. The
29 Department shall assist localities in which facilities are proposed in
30 collecting and receiving information relating to the suitability of the
31 proposed site. At the request of a local government in which facilities
32 are proposed, the Department shall direct the appropriate agencies of
33 State government to develop such relevant data as that locality shall
34 reasonably request."

35 Sec. 5. G.S. 104E-27 is amended by adding a new subsection to read:

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

41 Sec. 5.1. Chapter 104F of the General Statutes is amended by adding a new
42 section to read:

43 **"§ 104F-2.1. Restrictions on importing waste from outside the compact.**

1 The North Carolina members of the Southeast Interstate Low-Level Radioactive
2 Waste Management Commission appointed under G.S. 104F-2 shall not vote in favor of
3 importing waste into the North Carolina regional facility from any person, state, or
4 similar regional body or group of states, or foreign country, outside the compact under
5 G.S. 104F-1, Article IV(e) without prior approval from the North Carolina General
6 Assembly."

7 Sec. 6. G.S. 104G-2(2) is repealed.

8 Sec. 7. G.S. 104G-19(d) reads as rewritten:

9 "(d) The ~~Board~~Department shall provide technical assistance grants of up to fifty
10 thousand dollars (\$50,000) to each site designation review committee. The maximum
11 amount that the ~~Board~~Department may grant to all site designation review committees
12 for a particular site is seventy-five thousand dollars (\$75,000)."

13 Sec. 8. G.S. 104G-21 reads as rewritten:

14 **"§ 104G-21. Negotiation and arbitration.**

15 (a) Any local government in the county or counties where a low-level radioactive
16 waste facility is proposed to be located pursuant to this Chapter may negotiate with the
17 Authority with respect to any issue relating to the facility except:

- 18 (1) The need for the facility;
- 19 (2) Any proposal to reduce the duties of the Authority under this Chapter
20 or under any license issued for the facility;
- 21 (3) Any proposal to reduce the duties of the Commission or to make less
22 stringent any rule of the Commission; or
- 23 (4) Any decision of the Authority regarding site selection, operator
24 selection, or technology pursuant to G.S. 104G-9, 104G-10, and 104G-
25 11.

26 (b) The Authority shall negotiate in good faith with any local government in the
27 county or counties where a low-level radioactive waste facility is proposed to be
28 located. A local government may designate itself or any other person to negotiate on its
29 behalf.

30 (c) Negotiations may be conducted with the assistance of a mediator if mediation
31 is requested by both the Authority and a local government. The function of the
32 mediator is to encourage a voluntary settlement of unresolved negotiable issues. The
33 ~~Board~~Department shall provide the Authority and the local government with the names
34 and qualifications of persons willing to serve as mediators. If the Authority and a local
35 government cannot agree on the selection of a mediator, the Authority and the local
36 government may request the ~~Board~~Department to appoint a mediator.

37 (d) If the Authority and a local government have not reached agreement on all
38 issues by negotiation within six months after selection of the preferred site pursuant to
39 G.S. 104G-9(g), the following issues may be submitted to arbitration pursuant to the
40 provisions of Article 45A of Chapter 1 of the General Statutes (Uniform Arbitration
41 Act):

- 42 (1) Compensation to any local government for substantial economic
43 impacts which are a direct result of the siting and operation of a low-

- 1 level radioactive waste facility and for which adequate compensation
2 is not otherwise provided;
- 3 (2) Reimbursement of reasonable costs incurred by the local government
4 relating to negotiation, mediation and arbitration activities under this
5 section;
- 6 (3) Screening, fencing, and other matters related to the appearance of a
7 facility;
- 8 (4) Operational concerns other than design capacity and regulatory issues;
- 9 (5) Traffic flows and patterns which result from the operation of a facility;
- 10 (6) Uses of the site where a facility is located after the facility is closed;
- 11 (7) The applicability or nonapplicability of any local ordinance;
- 12 (8) Emergency response capabilities, including training and resources;
- 13 (9) Access to facility records and monitoring data; and
- 14 (10) Ongoing health surveys of persons living in the area around the
15 facility.

16 (e) In addition to those issues set out in subsection (d), ~~upon petition to the Board by~~
17 ~~a local government in the county or counties where a low-level radioactive waste~~
18 ~~facility is proposed to be located,~~ any other issue may be submitted for arbitration
19 except:

- 20 (1) Those issues excluded from negotiation under subsection (a) of this
21 section;
- 22 (2) Any issue relating to the imposition by the General Assembly of a tax,
23 or fee not authorized by this Chapter; and
- 24 (3) Any issue requiring an appropriation by the General Assembly.

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

27 Sec. 9. G.S. 104G-22(a) reads as rewritten:

28 "(a) To assist the Authority in the performance of its responsibilities under this
29 Chapter and to advise the General Assembly, there is created the Inter-Agency
30 Committee on Low-Level Radioactive Waste (herein called the 'Committee') consisting
31 of ~~11~~ 10 members. The members shall be composed of: ~~the Chairman of the Board; the~~
32 ~~Chairman of the Board's Technical Committee on Low-Level Radioactive Waste; the~~
33 Secretary or the Secretary's designee; the Chief of the North Carolina Radiation
34 Protection Section; the Chairman of the Commission's Low-Level Radioactive Waste
35 Management Committee; the Chairman of the Authority; the Chairman of the
36 Authority's Technical Committee; three representatives of the Department of
37 Environment, Health, and Natural Resources with expertise in geology, groundwater,
38 and air quality; and the two representatives of the Attorney General's office who provide
39 legal services to the Authority and the Commission. ~~The Chairman of the Board~~ The
40 Secretary or the Secretary's designee shall serve as the Chairman of the Committee, and
41 ~~the Board~~ Radiation Protection Division of the Department shall provide professional
42 and clerical support to the Committee."

43 Sec. 10. G.S. 113-8.01 reads as rewritten:

44 "**§ 113-8.01. Pollution Prevention Pays Programs.**

1 There is established within the Department a non-regulatory technical assistance
2 program to be known as the Pollution Prevention Pays Program. The purpose of this
3 program is to encourage voluntary waste and pollution reduction efforts through
4 research and by providing information, technical assistance, and matching grants to
5 businesses and industries interested in establishing or enhancing activities to prevent,
6 reduce, or recycle waste. The Pollution Prevention Pays Program shall coordinate its
7 activities with the appropriate regulatory agencies and with the Governor's Waste
8 Management Board-agencies."

9 Sec. 11. G.S. 120-70.33 reads as rewritten:

10 **"§ 120-70.33. Powers and duties.**

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

- 12 (1) To study alternatives available to the State for dealing with low-level
13 radioactive waste and the ramifications of each of those alternatives;
- 14 (2) To evaluate actions of the North Carolina Low-Level Radioactive
15 Waste Management Authority, its operator, and other persons with
16 whom the Authority contracts;
- 17 (3) To evaluate actions of ~~the Governor's Waste Management Board, the~~
18 Radiation Protection Commission, ~~and the~~ Division of Radiation
19 Protection of the Department of Environment, Health, and Natural
20 Resources, and of any other board, commission, department, or agency
21 of the State or local government as such actions relate to low-level
22 radioactive waste management;
- 23 (4) To receive, review, and evaluate reports and recommendations
24 submitted to the General Assembly by the North Carolina Low-Level
25 Radioactive Waste Management Authority and the Inter-Agency
26 Committee on Low-Level Radioactive Waste;
- 27 (5) To review and evaluate changes in federal law and regulations,
28 relevant court decisions, and changes in technology affecting low-level
29 radioactive waste management;
- 30 (6) To review existing and proposed State law and rules affecting low-
31 level radioactive waste management and to determine whether any
32 modification of law or rules is in the public interest;
- 33 (7) To make reports and recommendations, including draft legislation, to
34 the General Assembly from time to time as to any matter relating to
35 the powers and duties set out in this section; and
- 36 (8) **(For applicability see note)** To undertake such additional studies as it
37 deems appropriate or as may from time to time be requested by the
38 President Pro Tempore of the Senate, the Speaker of the House of
39 Representatives, either house of the General Assembly, the Legislative
40 Research Commission, the Joint Legislative Commission on
41 Governmental Operations, the Environmental Review Commission, or
42 the Joint Legislative Utility Review Committee, and to make such
43 reports and recommendations to the General Assembly regarding such
44 studies as it deems appropriate."

1 Sec. 12. G.S. 120-123(23) is repealed.

2 Sec. 13. G.S. 130A-293 reads as rewritten:

3 **"§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid;**
4 **petition to preempt local ordinance.**

5 (a) It is the intent of the General Assembly to maintain a uniform system for the
6 management of hazardous waste and to place limitations upon the exercise by all units
7 of local government in North Carolina of the power to regulate the management of
8 hazardous waste by means of special, local, or private acts or resolutions, ordinances,
9 property restrictions, zoning regulations, or otherwise. Notwithstanding any authority
10 granted to counties, municipalities, or other local authorities to adopt local ordinances
11 (including but not limited to those imposing taxes, fees, or charges or regulating health,
12 environment, or land use), any local ordinance which that prohibits or has the effect of
13 prohibiting the establishment or operation of a hazardous waste facility which the
14 Governor's Waste Management Board (hereinafter "the Board") which the Secretary has
15 preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the
16 extent necessary to effectuate the purposes of this Chapter or Chapter 130B of the
17 General Statutes. For the purpose of this section, the Board shall include, in addition to the
18 members enumerated in G.S. 143B-285.12(a), two members appointed by the board of
19 commissioners of the county in which the facility is or is to be located. If the facility is or is to
20 be located in more than one county, or if the facility is or is to be located within the boundaries
21 of a city, the governing body of each city and county in which any portion of the facility is or is
22 to be located shall have one appointment. Failure of a local governing body to make an
23 appointment within 30 days after receipt of written notice from the Board to do so shall be
24 deemed a vacancy in an unexpired term and shall be filled by appointment by the Board. The
25 terms of the members appointed by local governing bodies shall end upon the final
26 determination of the Board under this section, and such members shall serve as members of the
27 Board only for the purpose of this section. To this end, all provisions of special, local, or
28 private acts or resolutions are repealed which:

29 (1) Prohibit the transportation, treatment, storage, or disposal of hazardous
30 waste within any county, city, or other political subdivision;

31 (2) Prohibit the siting of a hazardous waste facility within any county,
32 city, or other political subdivision;

33 (3) Place any restriction or condition not placed by Article 9 of Chapter
34 130A or Chapter 130B of the General Statutes upon the transportation,
35 treatment, storage, or disposal of hazardous waste, or upon the siting
36 of a hazardous waste facility within any county, city, or other political
37 subdivision; or

38 (4) In any manner are in conflict or inconsistent with the provisions of
39 Article 9 of Chapter 130A or Chapter 130B of the General Statutes.

40 No special, local, or private acts or resolutions enacted or taking effect hereafter may be
41 construed to modify, amend, or repeal any portion of Article 9 of Chapter 130A or
42 Chapter 130B of the General Statutes unless it expressly provides for such by specific
43 references to the appropriate section of this Part. Further to this end, all provisions of
44 local ordinances, including those regulating land use, adopted by counties,
45 municipalities, or other local authorities that prohibit or have the effect of prohibiting

1 the establishment or operation of a hazardous waste facility are invalidated to the extent
2 preempted by the Secretary pursuant to this Section.

3 (b) When a hazardous waste facility would be prevented from construction or
4 operation by a county, municipal, or other local ordinance(s), the operator of the
5 proposed facility or the North Carolina Hazardous Waste Management Commission
6 established pursuant to Chapter 130B of the General Statutes (hereinafter 'the
7 Commission') may petition the ~~Board~~Secretary to review the matter. After receipt of a
8 petition, the ~~Board~~Secretary shall hold a hearing in accordance with the procedures in
9 subsection (c) of this section and shall determine whether or to what extent to preempt
10 the local ordinance to allow for the establishment and operation of the facility.

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

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

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

29 Any interested person may appear before the ~~Board~~Secretary at the hearing to offer
30 testimony. In addition to testimony before the ~~Board, Secretary,~~ any interested person
31 may submit written evidence to the ~~Board~~Secretary for its consideration. At least 20
32 days shall be allowed for receipt of written comment following the hearing.

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

37 (1) That there is a local ordinance which would prohibit or have the effect
38 of prohibiting the establishment or operation of a hazardous waste
39 facility;

40 (2) That the proposed facility is needed in order to establish adequate
41 capability to meet the current or projected hazardous waste
42 management needs of this State or to comply with the terms of any
43 interstate agreement for the management of hazardous waste to which

1 the State is a party and therefore serves the interests of the citizens of
2 the State as a whole;

3 (3) That all legally required State and federal permits or approvals have
4 been issued by the appropriate State and federal agencies or that all
5 State and federal permit requirements have been satisfied and that the
6 permits or approvals have been denied or withheld only because of the
7 local ordinance(s);

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

10 (5) That the construction and operation of the facility will not pose an
11 unreasonable health or environmental risk to the surrounding locality
12 and that the facility operator or the Commission has taken or consented
13 to take reasonable measures to avoid or manage foreseeable risks and
14 to comply to the maximum feasible extent with any applicable local
15 ordinance(s).

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

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

32 (1) In violation of constitutional provisions; or

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

34 (3) Made upon unlawful procedure; or

35 (4) Affected by other error of law; or

36 (5) Unsupported by substantial evidence admissible under G.S. 150B-
37 29(a) or G.S. 150B-30 in view of the entire record as submitted; or

38 (6) Arbitrary or capricious.

39 If the court reverses or modifies the decision of the agency, the judge shall set out in
40 writing, which writing shall become part of the record, the reasons for such reversal or
41 modification.

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

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

1 Sec. 14. G.S. 130A-294 reads as rewritten:

2 **"§ 130A-294. Solid waste management program.**

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

- 7 (1) Develop a comprehensive program for implementation of safe and
8 sanitary practices for management of solid waste;
- 9 (2) Advise, consult, cooperate and contract with other State agencies, units
10 of local government, the federal government, industries and
11 individuals in the formulation and carrying out of a solid waste
12 management program;
- 13 (3) Develop and adopt rules to establish standards for qualification as a
14 waste 'recycling, reduction or resource recovering facility' or as waste
15 'recycling, reduction or resource recovering equipment' for the purpose
16 of special tax classifications or treatment, and to certify as qualifying
17 those applicants which meet the established standards. The standards
18 shall be developed to qualify only those facilities and equipment
19 exclusively used in the actual waste recycling, reduction or resource
20 recovering process and shall exclude any incidental or supportive
21 facilities and equipment;
- 22 (4) Develop a permit system governing the establishment and operation of
23 solid waste management facilities. No permit shall be granted for a
24 sanitary landfill, excluding demolition landfills as defined in the rules
25 of the Commission for Health Services, without the Department
26 receiving the prior approval for such permit from the county where it
27 is to be located, except if it is to be located within the corporate limits
28 or extraterritorial jurisdiction under Article 19 of Chapter 160A of the
29 General Statutes, of a city as defined in G.S. 160A-1(2), from the city
30 where it is to be located or whose jurisdiction it is in. No permit shall
31 be granted for a solid waste management facility having discharges
32 which are point sources until the Department has referred the complete
33 plans and specifications to the Environmental Management
34 Commission and has received advice in writing that the plans and
35 specifications are approved in accordance with the provisions of G.S.
36 143-215.1. In any case where the Department denies a permit for a
37 solid waste management facility, it shall state in writing the reason for
38 denial and shall also state its estimate of the changes in the applicant's
39 proposed activities or plans which will be required for the applicant to
40 obtain a permit.

41 The issuance of permits for sanitary landfills operated by local
42 governments is exempt from the environmental impact statements
43 required by Article 1 of Chapter 113A of the General Statutes, entitled
44 the North Carolina Environmental Policy Act of 1971. All sanitary

1 landfill permits issued to local governments prior to July 1, 1984, are
2 hereby validated notwithstanding any failure to provide environmental
3 impact statements pursuant to the North Carolina Environmental
4 Policy Act of 1971;

5 (4a) No permit shall be granted for any public or private sanitary landfill to
6 receive solid non-radioactive waste generated outside the boundaries
7 of North Carolina to be deposited, unless such waste has previously
8 been inspected by the solid waste regulatory agency of that nation,
9 state or territory, characterized in detail as to its contents and certified
10 by that agency to be non-injurious to health and safety. The
11 Commission shall adopt rules to implement this subsection.

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

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

- 21 a. The existing and projected population for such area;
- 22 b. The quantities of solid waste generated and estimated to be
23 generated in such area;
- 24 c. The availability of sanitary landfill sites and the environmental
25 impact of continued landfill of solid waste on surface and
26 subsurface waters;
- 27 d. The method of solid waste disposal to be utilized and the energy
28 or material which shall be recovered from the waste; and
- 29 e. Such other data that the Department may reasonably require.

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

1 required to give the operator of the affected landfill at least two years
2 written notice prior to the effective date of the proposed ordinance.

3 (5c) Except for the authority to designate a geographic area to be serviced
4 by a solid waste management facility, delegate authority and
5 responsibility to units of local government to perform all or a portion
6 of a solid waste management program within the jurisdictional area of
7 the unit of local government; provided that no authority over or control
8 of the operations or properties of one local government shall be
9 delegated to any other local government.

10 (5d) Require that an annual report of the implementation of the solid waste
11 management plan within the designated geographic area be filed with
12 the Department.

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

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

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

39 The Commission may adopt rules for financial responsibility to ensure the
40 availability of sufficient funds for closure and post-closure maintenance and monitoring
41 at solid waste management facilities, and for any corrective action the Department may
42 require during the active life of a facility or during the closure and post-closure periods.
43 The rules may permit demonstration of financial responsibility through the use of a
44 letter of credit, insurance, surety, trust agreement, financial test, or guarantee by

1 corporate parents or third parties who can pass the financial test. Financial
2 responsibility rules shall not apply to solid waste management facilities operated by
3 local government.

4 (c) The Commission shall adopt and the Department shall enforce rules
5 concerning the management of hazardous waste. These rules shall establish a complete
6 and integrated regulatory scheme in the area of hazardous waste management and shall
7 provide for:

- 8 (1) Establishing criteria for hazardous waste, identifying the
9 characteristics of hazardous waste and listing particular hazardous
10 waste;
- 11 (1a) Establishing criteria for hazardous constituents, identifying the
12 characteristics of hazardous constituents and listing particular
13 hazardous constituents;
- 14 (2) Record-keeping and reporting by generators and transporters of
15 hazardous waste and owners and operators of hazardous waste
16 facilities;
- 17 (3) Proper labeling of hazardous waste containers;
- 18 (4) Use of appropriate containers for hazardous waste;
- 19 (5) A manifest system to assure that all hazardous waste is designated for
20 treatment, storage or disposal at a hazardous waste facility to which a
21 permit has been issued;
- 22 (6) Proper transportation of hazardous waste;
- 23 (7) Treatment, storage and disposal standards of performance and
24 techniques to be used by hazardous waste facilities;
- 25 (8) Location, design, ownership and construction of hazardous waste
26 facilities; provided, however, that no hazardous waste disposal facility
27 or polychlorinated biphenyl disposal facility shall be located within 25
28 miles of any other hazardous waste disposal facility or polychlorinated
29 biphenyl disposal facility;
- 30 (9) Plans to minimize unanticipated damage from treatment, storage or
31 disposal of hazardous waste; and a plan or plans providing for the
32 establishment and/or operation of one or more hazardous waste
33 facilities in the absence of adequate approved hazardous waste
34 facilities established or operated by any person within the State;
- 35 (10) Proper maintenance and operation of hazardous waste facilities,
36 including requirements for ownership by any person or the State,
37 financial responsibility (including requirements for sufficient
38 availability of funds for facility closure and post-closure monitoring
39 and corrective measures through the use of a letter of credit, insurance,
40 surety, trust agreement, financial test, or financial test and corporate
41 guarantee), training of personnel, continuity of operation and
42 procedures for establishing and maintaining hazardous waste facilities;
- 43 (11) Monitoring by owners or operators of hazardous waste facilities;
- 44 (12) Inspection or copying of records required to be kept;

- 1 (13) Obtaining and analyzing hazardous waste samples and samples of
2 hazardous waste containers and labels from generators and
3 transporters and from owners and operators of hazardous waste
4 facilities;
- 5 (14) A permit system governing the establishment and operation of
6 hazardous waste facilities;
- 7 (15) Additional requirements as necessary for the effective management of
8 hazardous waste;
- 9 (16) The operator of the hazardous waste disposal facility shall maintain
10 adequate insurance to cover ~~forseeable~~-foreseeable claims arising from
11 the operation of the facility. The ~~Board~~-Department shall determine
12 what constitutes an adequate amount of insurance;
- 13 (17) The bottom of a hazardous waste disposal facility shall be at least 10
14 feet above the seasonal high water table and more when necessary to
15 protect the public health and the environment; and
- 16 (18) The operator of a hazardous waste disposal facility shall make monthly
17 reports to ~~the Governor's Waste Management Board and to the board of~~
18 county commissioners of the county in which the facility is located on
19 the kinds and amounts of hazardous wastes in the facility.
- 20 (d) The Commission is authorized to adopt and the Department is authorized to
21 enforce rules where appropriate for public participation in the consideration,
22 development, revision, implementation and enforcement of any permit rule, guideline,
23 information or program under this Article.
- 24 (e) Rules adopted under this section may incorporate standards and restrictions
25 which exceed and are more comprehensive than comparable federal regulations.
- 26 (f) Within 10 days of receiving an application for a permit or for an amendment
27 to an existing permit for a hazardous waste facility, the Department shall notify the
28 clerk of the board of commissioners of the county or counties in which the facility is
29 proposed to be located or is located and, if the facility is proposed to be located or is
30 located within a city, the clerk of the governing board of the city, that the application
31 has been filed, and shall file a copy of the application with the clerk. Prior to the
32 issuance of a permit or an amendment of an existing permit the Secretary or his
33 designee shall conduct a public hearing in the county, or in one of the counties in which
34 the hazardous waste facility is proposed to be located or is located. The Secretary or his
35 designee shall give notice of the hearing, and the public hearing shall be in accordance
36 with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B
37 of the General Statutes. Where the provisions of the federal regulations and Chapter
38 150B of the General Statutes are inconsistent, the federal regulations shall apply.
- 39 (g) The Commission shall develop and adopt standards for permitting of
40 hazardous waste facilities. Such standards shall be developed with, and provide for,
41 public participation; shall be incorporated into rules; shall be consistent with all
42 applicable federal and State law, including statutes, regulations and rules; shall be
43 developed and revised in light of the best available scientific data; and shall be based on
44 consideration of at least the following factors:

- 1 (1) Hydrological and geological factors, including flood plains, depth to
2 water table, groundwater travel time, soil pH, soil cation exchange
3 capacity, soil composition and permeability, cavernous bedrock,
4 seismic activity, slope, mines, and climate;
 - 5 (2) Environmental and public health factors, including air quality, quality
6 of surface and groundwater, and proximity to public water supply
7 watersheds;
 - 8 (3) Natural and cultural resources, including wetlands, gamelands,
9 endangered species habitats, proximity to parks, forests, wilderness
10 areas, nature preserves, and historic sites;
 - 11 (4) Local land uses;
 - 12 (5) Transportation factors, including proximity to waste generators, route
13 safety, and method of transportation;
 - 14 (6) Aesthetic factors, including the visibility, appearance, and noise level
15 of the facility;
 - 16 (7) Availability and reliability of public utilities; and
 - 17 (8) Availability of emergency response personnel and equipment.
- 18 (h) Rules adopted by the Commission shall be subject to the following
19 requirements:
- 20 (1) Repealed by Session Laws 1989, c. 168, s. 20.
 - 21 (2) Hazardous waste shall be treated prior to disposal in North Carolina.
22 The Commission shall determine the extent of waste treatment
23 required before hazardous waste can be disposed of in a hazardous
24 waste disposal facility.
 - 25 (3) Any hazardous waste disposal facility hereafter constructed in this
26 State shall meet, at the minimum, the standards of construction
27 imposed by federal regulations adopted under the RCRA at the time
28 the permit is issued.
 - 29 (4) No hazardous waste disposal facility or polychlorinated biphenyl
30 disposal facility shall be located within 25 miles of any other
31 hazardous waste disposal facility or polychlorinated biphenyl disposal
32 facility.
 - 33 (5) No hazardous waste facility operated pursuant to Chapter 130B of the
34 General Statutes shall be located within 25 miles of a polychlorinated
35 biphenyl landfill facility.
 - 36 (6) The following ~~will~~shall not be disposed of in a hazardous waste
37 disposal facility: ignitables as defined in the RCRA, polyhalogenated
38 biphenyls of 50 ppm or greater concentration, and free liquids whether
39 or not containerized.
 - 40 (7) Facilities for disposal or long-term storage of hazardous waste shall
41 have at a minimum the following: a leachate collection and removal
42 system above an artificial impervious liner of at least 30 mils in
43 thickness, a minimum of five feet of clay or clay-like liner with a
44 maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec)

1 below said artificial liner, and a leachate detection system immediately
2 below the clay or clay-like liner.

3 (8) Hazardous waste shall not be stored at a hazardous waste treatment
4 facility for over 90 days prior to treatment or disposal.

5 (9) The Commission shall consider any hazardous waste treatment process
6 proposed to it, if the process lessens treatment cost or improves
7 treatment over then current methods or standards required by the
8 Commission.

9 (10) Prevention, reduction, recycling, and detoxification of hazardous
10 wastes should be encouraged and promoted. Hazardous waste disposal
11 facilities and polychlorinated biphenyl disposal facilities shall be
12 detoxified as soon as technology which is economically feasible is
13 available and sufficient money is available without additional
14 appropriation.

15 (i) ~~The Department, in consultation with the Governor's Waste Management~~
16 ~~Board and the Division of Environmental Management of the Department of~~
17 ~~Environment, Health, and Natural Resources, Department shall develop a~~
18 comprehensive hazardous waste management plan for the State. This plan shall be
19 completed by ~~1 July July 1, 1990~~ and shall be revised at two-year intervals thereafter.
20 The Department shall make recommendations to the Governor, cognizant State
21 agencies, and the General Assembly on ways to: improve waste management; reduce
22 the amount of waste generated; maximize resource recovery, reuse, and conservation;
23 and minimize the amount of hazardous waste which must be disposed of.

24 (j) The Commission may adopt rules for financial responsibility (including
25 requirements for sufficient availability of funds for facility closure and postclosure
26 monitoring and corrective measures, and for potential liability for sudden and
27 nonsudden accidental occurrences), which may permit the use of insurance, financial
28 tests, third-party guarantees by persons who can pass the financial test, guarantees by
29 corporate parents who can pass the financial test, irrevocable letters of credit, trusts,
30 surety bonds, or any other financial device, or any combination of the foregoing, shown
31 to provide protection equivalent to the financial protection that would have been
32 provided by insurance if insurance were the only mechanism used. Any direct or
33 indirect parent corporation or other parent entity of the operator of a commercial
34 hazardous waste treatment facility shall be deemed to be a guarantor of payment by the
35 operator for closure, monitoring, and corrective measures and for liability incurred by
36 the operator arising from the operation of the commercial hazardous waste treatment
37 facility. The Department may provide a copy of any filing to meet the financial
38 responsibility requirements to the State Treasurer, who shall review the filing and
39 provide written comments on the equivalency of protection provided by the filing,
40 including recommended changes.

41 (k) Each person who generates hazardous waste who is required to pay a fee
42 under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which
43 treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall

1 submit to the Department at the time such fees are due, a written description of any
2 program to minimize or reduce the volume and quantity or toxicity of such waste.

3 (l) Disposal of solid waste in or upon water in a manner that results in solid
4 waste entering waters or lands of the State is unlawful. Nothing herein shall be
5 interpreted to affect disposal of solid waste in a permitted landfill.

6 (m) **(Expires July 1, 1993)** Demolition debris consisting of used asphalt or used
7 asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material
8 may be used as fill and need not be disposed of in a permitted landfill or solid waste
9 disposal facility. Such demolition debris may not be placed in the waters of the State or
10 at or below the seasonal high water table.

11 (n) The Department shall encourage research and development and disseminate
12 information on state-of-the-art means of handling and disposing of hazardous waste.
13 The Department may establish a waste information exchange for the State.

14 (o) The Department shall promote public education and public involvement in
15 the decision-making process for the siting and permitting of proposed hazardous waste
16 facilities. The Department shall assist localities in which facilities are proposed in
17 collecting and receiving information relating to the suitability of the proposed site. At
18 the request of a local government in which facilities are proposed, the Department shall
19 direct the appropriate agencies of State government to develop such relevant data as that
20 locality shall reasonably request.

21 (p) The Department shall each year recommend to the Governor a recipient for a
22 'Governor's Award of Excellence' which the Governor shall award for outstanding
23 achievement by an industry or company in the area of waste management.

24 (q) The Secretary shall, at the request of the Governor and under the Governor's
25 direction, assist with the negotiation of interstate agreements for the management of
26 hazardous waste.

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

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

40 Sec. 15. G.S. 130A-296 is repealed.

41 Sec. 16. G.S. 130B-2(b) reads as rewritten:

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

- 1 (1) 'Authorized hazardous waste facility' means a hazardous waste facility
2 authorized by the Governor as provided in G.S. 130B-5(a) and G.S.
3 130B-5(b)(1).
- 4 (2) ~~'Board' means the Governor's Waste Management Board established~~
5 ~~pursuant to Part 4A of Article 7 of Chapter 143B of the General~~
6 ~~Statutes.~~
- 7 (3) 'Commission' means the North Carolina Hazardous Waste
8 Management Commission established pursuant to this Chapter or any
9 successor thereto.
- 10 (4) 'Department' means the Department of Environment, Health, and
11 Natural Resources."

12 Sec. 17. G.S. 130B-4 reads as rewritten:

13 **"§ 130B-4. Purpose.**

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

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

42 Furthermore, it is the purpose of this Chapter to establish an effective and
43 comprehensive policy of negotiation and arbitration between the Commission or other

1 applicant for a permit to operate a hazardous waste facility pursuant to this Chapter and
2 a committee representing the affected local government(s) to assure that:

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

9 Sec. 18. G.S. 130B-5(c) reads as rewritten:

10 "(c) The Governor is authorized to enter into interstate agreements for the
11 management of hazardous waste. Such agreements shall provide for access to suitable
12 facilities for management of hazardous waste; encourage reductions in the volume or
13 quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations
14 of hazardous waste management equitably among the party states; and provide for
15 protection of human health and the environment in a manner that is both ecologically
16 and economically sound. In negotiating such agreements, the Governor may request
17 such assistance as he deems appropriate from the Attorney General, the Solid Waste
18 Management Division of the Department, ~~the Governor's Waste Management Board,~~ and
19 the Commission. The Governor shall submit any such agreement to the General
20 Assembly for its approval, and no such agreement shall be effective until approved by
21 the General Assembly."

22 Sec. 19. G.S. 130B-6(b) reads as rewritten:

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

28 Sec. 20. G.S. 130B-7(a)(1) reads as rewritten:

- 29 "(1) Shall (i) with the assistance of ~~the Board and~~ the Solid Waste
30 Management Division of the Department, periodically review current
31 and projected hazardous waste generation from all sources within the
32 State, the current and projected effect of efforts to minimize and
33 reduce the generation of hazardous waste, the potential for further
34 reductions in the generation of hazardous waste, current and projected
35 availability and adequacy of facilities for the management of
36 hazardous waste within and outside the State, whether and to what
37 extent private enterprise will provide needed hazardous waste
38 facilities, and capacity assurance requirements under CERCLA/SARA,
39 (ii) determine whether additional facilities for the management of
40 hazardous waste may be needed in this State, and (iii) make
41 appropriate recommendations to the Governor and the General
42 Assembly;"

43 Sec. 21. G.S. 130B-19(d) reads as rewritten:

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

9 Sec. 22. G.S. 130B-19(i) reads as rewritten:

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

14 Sec. 23. G.S. 130B-20(c) reads as rewritten:

15 "(c) An applicant for a permit to operate a hazardous waste facility pursuant to
16 this Chapter shall pay a one-time local application fee of one hundred thousand dollars
17 (\$100,000) to the ~~Board-The Board-Department~~. The Department shall distribute not
18 less than sixty-five thousand dollars (\$65,000) of the local application fee to the county
19 or counties where the site of the proposed facility is located. If the site lies in more than
20 one county, the local application fee will be distributed to the counties in which the site
21 is located in equal amounts. If the board of commissioners appoints a preferred site
22 local advisory committee the local application fee shall be used to support the work of
23 the committee."

24 Sec. 24. G.S. 130B-20(d) reads as rewritten:

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

43 ♦ Sec. 25. G.S. 130B-21 reads as rewritten:

44 "**§ 130B-21. Negotiation, mediation, and arbitration.**"

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

- 4 (1) The need for the facility;
- 5 (2) Any proposal to reduce the duties of the Commission under this
6 Chapter or under any permit or license issued for the facility;
- 7 (3) Any proposal to reduce the duties of the Commission for Health
8 Services or the Department, or to make less stringent any rule of the
9 Commission for Health Services;
- 10 (4) ~~Any proposal to reduce the duties of the Board;~~
- 11 (5) Any act or decision of the Governor pursuant to G.S. 130B-5; or
- 12 (6) Any decision of the Commission regarding site selection, contractor
13 selection, or technology pursuant to G.S. 130B-11, 130B-13, and
14 130B-14.

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

18 (c) Negotiations may be conducted with the assistance of a mediator if mediation
19 is requested by both the Commission and a local government. The function of the
20 mediator is to encourage a voluntary settlement of unresolved negotiable issues. The
21 ~~Board-Department~~ shall provide the Commission and the local government with the
22 names and qualifications of persons willing to serve as mediators. If the Commission
23 and a local government cannot agree on the selection of a mediator, the Commission
24 and the local government may request the ~~Board-Department~~ to appoint a mediator.

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

- 30 (1) Compensation to any local government for substantial economic
31 impacts which are a direct result of the siting and operation of a
32 hazardous waste facility and for which adequate compensation is not
33 otherwise provided;
- 34 (2) Reimbursement of reasonable costs incurred by the local government
35 relating to negotiation, mediation and arbitration activities under this
36 section;
- 37 (3) Screening, fencing, and other matters related to the appearance of a
38 facility;
- 39 (4) Operational concerns other than design capacity and regulatory issues;
- 40 (5) Traffic flows and patterns which result from the operation of a facility;
- 41 (6) Uses of the site where a facility is located after the facility is closed;
- 42 (7) The applicability or nonapplicability of any local ordinance;
- 43 (8) Emergency response capabilities, including training and resources;
- 44 (9) Access to facility records and monitoring data; and

1 (10) Ongoing health surveys of persons living in the area around the
2 facility.

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

6 (1) Those issues excluded from negotiation under subsection (a) of this
7 section;

8 (2) Any issue relating to the imposition by the General Assembly of a tax,
9 or the imposition of a fee not authorized by this Chapter; and

10 (3) Any issue requiring an appropriation by the General Assembly.

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

13 Sec. 26. G.S. 130B-22(a) reads as rewritten:

14 "(a) To assist the Commission in the performance of its responsibilities under this
15 Chapter and to advise the General Assembly, there is created the Inter-Agency
16 Committee on Hazardous Waste (herein called the 'Committee'). The members shall be:
17 ~~the Chairman of the Board; the Chairman of the Board's Technical Committee on Hazardous~~
18 ~~Waste; the Secretary or the Secretary's designee;~~ the Director of the Solid Waste
19 Management Division of the Department or his designee; the Chief of the Hazardous
20 Waste Management Section of the Solid Waste Management Division or his designee;
21 one additional representative of the Solid Waste Management Division with expertise in
22 CERCLA/SARA capacity assurance requirements appointed by the Director of the
23 Division, the Chairman of the Commission or his designee; one additional member of
24 the Commission appointed by the Chairman of the Commission; the Executive Director
25 of the Commission; the Director of the Pollution Prevention Pays Program; four
26 representatives of the Department of Environment, Health, and Natural Resources with
27 expertise in geology, groundwater, water quality, and air quality; the representative of
28 the Attorney General's office who provides legal services to the Commission; and a
29 representative of the Attorney General's office who provides legal services to the Solid
30 Waste Management Division designated by the Director of the Solid Waste
31 Management Division with the approval of the Attorney General. ~~The Chairman of the~~
32 ~~Board-Secretary or the Secretary's designee~~ shall serve as the Chairman of the
33 Committee, and the ~~Board-Solid Waste Management Division of the Department~~ shall
34 provide professional and clerical support to the Committee."

35 Sec. 27. G.S. 143B-279.3(b)(1) is repealed.

36 Sec. 28. Article 7 of Chapter 143B is amended by adding a new Part 4B to
37 read:

38 **"PART 4B. OFFICE OF ENVIRONMENTAL EDUCATION.**

39 **"§ 143B-285.20. Short title.**

40 This Part shall be known and cited as the Environmental Education Act of 1993.

41 **"§ 143B-285.21. Declaration of purpose.**

42 The purpose of this Part shall be to encourage, promote, and support the
43 development of programs, facilities, and materials for the purpose of environmental
44 education in North Carolina.

1 **"§ 143B-285.22. Creation.**

2 There is hereby created a North Carolina Office of Environmental Education
3 (hereinafter referred to as 'Office') within the Department of Environment, Health, and
4 Natural Resources.

5 **"§ 143B-285.23. Powers and duties of the Secretary of Environment, Health, and**
6 **Natural Resources.**

7 The Secretary of Environment, Health, and Natural Resources shall:

- 8 (1) Establish an Office of Environmental Education to:
9 a. Serve as a clearinghouse of environmental information for the
10 State.
11 b. Plan for the Department's future needs for environmental
12 education materials and programs.
13 c. Maintain a computerized database of existing education
14 materials and programs within the Department.
15 d. Maintain a speaker's bureau of environmental specialists to
16 address environmental concerns and issues in communities
17 across the State.
18 e. Evaluate opportunities for establishing regional environmental
19 education centers.
20 f. Administer the Project Tomorrow Award Program to encourage
21 school children to discover and explore ways to protect the
22 environment.
23 g. Assist the Department of Public Instruction in integrating
24 environmental education into course curricula.
25 h. Develop and implement a grants and award program for
26 environmental education projects in schools and communities.
27 (2) Coordinate, through technical assistance and staff support and with
28 participation of the Department of Public Instruction and other relevant
29 agencies, institutions, and citizens, the planning and implementation of
30 a statewide program of environmental education.
31 (3) Be responsible for such matters as the purchase of educational
32 equipment, materials, and supplies; the construction or modification of
33 facilities; and the employment of consultants and other personnel
34 necessary to carry out the provisions of this Part.
35 (4) Encourage coordination between the various State and federal
36 agencies, citizens groups, and the business and industrial community,
37 in the dissemination of environmental information and education.
38 (5) Utilize existing programs, educational materials, or facilities, both
39 public and private, wherever feasible.

40 **"§ 143B-285.24. Grants and awards.**

41 The objective of grants and awards made under the provisions of this Part shall be to
42 promote the further development of local and regional environmental education and
43 information dissemination to aid especially, but not be limited to, school-age children.
44 The Office shall recommend each year to the Governor recipients for the Project

1 Tomorrow Award, which the Governor shall award for outstanding environmental
2 projects by elementary schools in North Carolina.

3 **"§ 143B-285.25. Liaison between the Office of Environmental Education and the**
4 **Department of Public Instruction.**

5 The Superintendent of the Department of Public Instruction shall identify an
6 environmental education liaison within the Office of Instructional Services of the
7 Department of Public Instruction to:

- 8 (1) Coordinate environmental education within the State curriculum and
9 among the Department and other State agencies.
- 10 (2) Conduct teacher training in environmental education topics in
11 conjunction with Department and other State agencies.
- 12 (3) Coordinate and integrate topics within the various curriculum areas of
13 the standard course of study.
- 14 (4) Promote awareness of environmental issues to the public and to the
15 school communities, including students, teachers, and administrators.
- 16 (5) Establish a repository of environmental education instructional
17 materials and disseminate information on the availability of these
18 materials to schools.
- 19 (6) Promote and facilitate the sharing of information through electronic
20 networks to all schools."

21 Sec. 29. G.S. 150B-1(e)(2) is repealed.

22 Sec. 30. There is created the Pollution Prevention Advisory Council.

23 (a) The Council shall consist of 15 members as follows:

- 24 (1) The Secretary of Environment, Health, and Natural Resources or the
25 Secretary's designee.
- 26 (2) The Secretary of Commerce or the Secretary's designee.
- 27 (3) Four members appointed by the Governor as follows: one
28 representative of industry; one representative of small business; one
29 representative of the environmental and conservation community; and
30 one citizen representative.
- 31 (4) Four members appointed by the President Pro Tempore of the Senate
32 as follows: one member of the Environmental Review Commission;
33 one representative of industry; one representative of the environmental
34 and conservation community; and one representative of county
35 government.
- 36 (5) Four members appointed by the Speaker of the House of
37 Representatives as follows: one member of the Environmental Review
38 Commission; one representative of industry; one representative of the
39 environmental and conservation community; and one representative of
40 city government.
- 41 (6) One member appointed by the Lieutenant Governor from the general
42 public.

43 (b) The Secretary of Environment, Health, and Natural Resources or the
44 Secretary's designee shall serve as chair of the Council.

1 (c) The Council shall, in an advisory capacity, assist the Governor, the Secretary
2 of Environment, Health, and Natural Resources, the Secretary of Commerce, and the
3 General Assembly in reviewing issues relating to hazardous waste management,
4 including, but not limited to:

5 (1) The regulation of hazardous waste generation and management in
6 North Carolina;

7 (2) The potential to promote greater reduction of waste generation through
8 new and existing programs and policies; and

9 (3) The hazardous waste management capacity needs of North Carolina
10 business and industry.

11 (d) Any appointed member of the Council may be removed by the appointing
12 authority for misfeasance, malfeasance, or nonfeasance. A member who fails to attend
13 three consecutive meetings of the Council shall cease to be a member of the Council.
14 Vacancies shall be filled by the appointing authority.

15 (e) The Council shall meet upon the call of the Chair. A majority of the
16 Council shall constitute a quorum for the transaction of business.

17 (f) Any person who is a member of the Council may hold such membership
18 concurrently with and in addition to any other elective or appointive office or offices
19 such as a person is permitted to hold under G.S. 128-1.1.

20 (g) Members of the Council who are not State employees shall receive per
21 diem and necessary travel and subsistence expenses in accordance with the provisions
22 of G.S. 138-5.

23 (h) All clerical services required by the Council shall be supplied by the
24 Department of Environment, Health, and Natural Resources. The Attorney General
25 shall provide legal services provided by the Council. The Council may select outside
26 contractors to provide technical and other support services pursuant to the budgetary
27 provisions in this act.

28 (i) The Council shall hold public meetings in at least three locations to
29 receive public comments. The Council may prepare separate reports on issues it selects.
30 The Council shall make an interim report to the Governor, the Secretary of
31 Environment, Health, and Natural Resources, the Secretary of Commerce, and the
32 Environmental Review Commission of the General Assembly on or before March 1,
33 1994. The Council shall make its final written report to the same bodies on or before
34 October 1, 1994. Upon making its final written report, the Council shall terminate.

35 Sec. 31. This act is effective upon ratification.