

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1631\*

Environment and Natural Resources Committee Substitute Adopted 6/21/94

Short Title: Local Govt. Review Landfill Permit.

(Public)

Sponsors:

Referred to:

June 9, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE STANDARDS FOR USE BY LOCAL GOVERNMENTS IN THE REVIEW OF APPLICATIONS FOR PERMITS OR FOR SUBSTANTIAL AMENDMENTS TO PERMITS FOR SANITARY LANDFILLS IN ORDER TO ENSURE THAT LOCAL GOVERNMENT REVIEW OF PERMIT APPLICATIONS MEETS CONSTITUTIONAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294(a)(4) reads as rewritten:

"(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. ~~No~~ The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit shall be granted for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, without the Department receiving the prior approval for the sanitary landfill for which the application the new permit, renewal of the permit, or substantial amendment to the permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in. except as provided in subdivision (3) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having

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

16 b. The issuance of permits for sanitary landfills operated by local  
17 governments is exempt from the environmental impact  
18 statements required by Article 1 of Chapter 113A of the  
19 General Statutes, entitled the North Carolina Environmental  
20 Policy Act of 1971. All sanitary landfill permits issued to local  
21 governments prior to July 1, 1984, are hereby validated  
22 notwithstanding any failure to provide environmental impact  
23 statements pursuant to the North Carolina Environmental Policy  
24 Act of 1971;".

25 Sec. 2. G.S. 130A-294(b1) reads as rewritten:

26 "(b1) (1) For purposes of this subsection and subdivision (4) of  
27 subsection (a) of this section, a 'substantial amendment' means  
28 either:

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

30 1. The population of the geographic area to be served by  
31 the sanitary landfill;

32 2. The quantity of solid waste to be disposed of  
33 in the sanitary landfill; or

34 3. The geographic area to be served by the sanitary landfill.

35 b. A change in the categories of solid waste to be disposed of in  
36 the sanitary landfill or any other change to the application for a  
37 permit or to the permit for a sanitary landfill that the  
38 Commission or the Department determines to be substantial.

39 (2) Within 10 days after receiving an application for a permit, for the  
40 renewal of a permit, or for a substantial amendment to a permit for a  
41 sanitary landfill, the Department shall notify the clerk of the board of  
42 commissioners of the county or counties in which the sanitary landfill  
43 is proposed to be located or is located and, if the sanitary landfill is  
44 proposed to be located or is located within a city, the clerk of the

1 governing board of the city, that the application has been filed and  
2 shall file a copy of the application with the clerk. Prior to the issuance  
3 of a permit, the renewal of a permit, or a substantial amendment to a  
4 permit, the board of commissioners of the county or counties in which  
5 the sanitary landfill is proposed to be located or is located or, if the  
6 sanitary landfill is proposed to be located or is located in a city, the  
7 governing board of the city shall conduct a public hearing when  
8 sufficient public interest exists. The board of commissioners of the  
9 county or counties in which the sanitary landfill is proposed to be  
10 located or is located or, if the sanitary landfill is proposed to be located  
11 or is located in a city, the governing board of the city shall provide  
12 adequate notice to the public of the public hearing and shall specify the  
13 procedure to be followed at the public hearing.

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

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

24           Sec. 3. This act is effective upon ratification.