

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 993  
HOUSE BILL 2365

AN ACT TO PROVIDE FEE SETTING AUTHORITY AND TO IMPOSE TAXES AND FEES APPLICABLE TO LOW-LEVEL RADIOACTIVE WASTE AND HAZARDOUS WASTE, TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT SELECT COMMITTEE ON LOW-LEVEL RADIOACTIVE WASTE AND THE INTER-AGENCY COMMITTEE ON LOW-LEVEL RADIOACTIVE WASTE, TO MAKE RELATED CLARIFYING AND TECHNICAL AMENDMENTS, TO AUTHORIZE CERTAIN AGREEMENTS RELATING TO HAZARDOUS WASTE, TO RESTRICT THE ACTIVITIES OF THE HAZARDOUS WASTE TREATMENT COMMISSION, TO LIMIT ANNEXATION OF WASTE FACILITIES, AND TO MAKE CONFORMING CHANGES TO OTHER LAWS.

The General Assembly of North Carolina enacts:

Section. 1. G.S. 104G-4(2) reads as rewritten:

"(2) The legitimate concerns of nearby residents and affected municipalities can be expressed in a public forum, negotiated and, if need be, arbitrated with the applicant Authority in a fair manner and reduced to a written document that is legally binding; and".

Sec. 2. G.S. 104G-5(f) reads as rewritten:

"(f) **Meetings.** – The Authority shall meet at least quarterly or more frequently at such regular meeting time ~~as the Authority by rule may provide~~ and at any place within the State as the Authority may provide. The Authority shall meet upon the call of its Chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. ~~The members of the Authority shall be compensated for their services at the rate of one hundred fifty dollars (\$150.00) per day and shall receive travel expenses in accordance with G.S. 138-5; the members may not receive a subsistence allowance. Members of the Authority who are State employees shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Authority who are not State employees shall be reimbursed for their expenses in accordance with G.S. 138-5 except that the per diem rate as defined in G.S. 138-5(a)(1) shall be one hundred fifty dollars (\$150.00) per day of service.~~"

Sec. 3. G.S. 104G-6(a)(2) reads as rewritten:

"(2) Shall establish, consistent with the rules of the Commission, rules specifying the criteria and procedures for characterizing and evaluating alternative locations for a low-level radioactive waste disposal facility;".

Sec. 4. G.S. 104G-6(a)(10) reads as rewritten:

"(10) Shall develop ~~proposed and implement~~ schedules of fees and other charges, including user charges, penalties, and surcharges, applicable to the use and operation of low-level radioactive waste facilities under its ~~control, and shall supervise the enforcement of such schedules as may be authorized by the General Assembly;~~ control;"

Sec. 5. G.S. 104G-6(a)(12) reads as rewritten:

"(12) Shall reimburse, or assure that the licensee reimburses, the various State agencies or departments for the actual administrative costs of licensing, training of inspection and enforcement personnel, inspection, and enforcement which those agencies incur as a result of the establishment, operation, and closure of low-level radioactive waste facilities pursuant to the provisions of this Chapter;"

Sec. 6. G.S. 104G-6(a)(20) reads as rewritten:

"(20) May adopt bylaws for the regulation of its affairs and the conduct of its business and ~~to~~ prescribe rules, regulations and policies in connection with the performance of its functions and duties;"

Sec. 7. G.S. 104G-6(b) reads as rewritten:

"(b) Neither the Authority nor any contractor performing services on behalf of the Authority shall be subject to the following provisions of the General Statutes:

(1) Article 3 of Chapter 143 (Purchases and Contracts);

(1a) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);

(1b) Article 3D of Chapter 143 (Procurement of Architectural and Engineering Services);

(1c) Article 8 of Chapter 143 (Public Contracts);

(2) Article 8B of Chapter 143 (State Building Commission);

(3) ~~G.S. 143-128 (Separate specifications for building contracts);~~

(4) G.S. 143-341 (Powers and duties of the Department of Administration);

(5) Chapter 146 (State Lands); and

(6) Article 2 of Chapter 150B shall not apply to operator selection or technology selection pursuant to G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, operator selection or technology selection pursuant to G.S. 104G-9, 104G-10, and 104G-11."

Sec. 8. G.S. 104G-9(b) reads as rewritten:

"(b) No later than 1 May 1988, the Authority shall develop procedures and criteria for selecting a site for a low-level radioactive waste disposal facility. These procedures shall be developed with, and provide for, public participation; ~~shall be developed with the assistance of the Board;~~ shall be incorporated into rules; shall include a written justification for each criteria; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

- (1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, climate, and earthquake faults;
- (2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;
- (3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;
- (4) Local land uses;
- (5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
- (6) Aesthetic factors, including the visibility, appearance, and noise level of the facility."

Sec. 9. G.S. 104 -9(e) through G.S. 104G-9(g) reads as rewritten:

"(e) No later than 1 August 1989, the Authority shall select a minimum of two or three sites that are suitable for the location of a low-level radioactive disposal facility, for characterization. No site may be selected for the location of a low-level radioactive waste disposal facility without first having been characterized.

(f) No later than 1 August 1990, the Authority shall complete ~~characterization of two to three sites~~ all site characterizations.

(g) No later than 15 November 1990, the Authority shall select the preferred site for a low-level radioactive waste disposal facility and begin proceedings to purchase or if necessary, condemn property for such site(s) under the State's power of eminent domain. The procedure for condemnation by the Authority shall be as set out in Article 9 of Chapter 136 of the General Statutes, except that the Authority shall have the same rights, powers, duties, and responsibilities as are set out for the Department of Transportation. The General Assembly finds that the protection of public health, safety, and welfare, including protection of the environment, requires that facilities for the management and disposal of low-level radioactive waste be established. The acquisition of real property for the management and disposal of low-level radioactive waste is therefore declared to be for the use and benefit of the public, and to serve a public purpose. Pursuant to G.S. 104E-6.1, fee simple title to the ~~land~~ real property shall be vested in the Authority."

Sec. 10. Chapter 104G of the General Statutes is amended by adding a new section to read:

**"§ 104G-9.1. Annexation prohibited.** – From the time a site is selected for characterization pursuant to G.S. 104G-9(e) or from the time a county, by resolution of the board of county commissioners, proposes a specific site or area for a low-level radioactive waste facility, notwithstanding the provisions of Article 4A of Chapter 160A, no city may annex the site or area except upon a valid petition signed by the Authority. If a previously selected or proposed site or area is abandoned, then it shall once again be subject to annexation in accordance with Article 4A of Chapter 160A."

Sec.11. G.S. 104G-10(b) reads as rewritten:

"(b) ~~The Operator~~ operator shall meet the requirements of G.S. 104E-10.1."

Sec. 12. G.S. 104G-10(g) reads as rewritten:

"(g) The Authority may suspend or terminate its agreement with the operator of a low-level radioactive waste facility for any ~~breech~~ ~~[breach]~~ breach thereof. In the event of suspension or termination of the agreement, the Authority may select an interim or replacement operator, or may operate the facility itself, to ensure that the facility is properly maintained and operated in compliance with all applicable federal and State laws, including statutes, rules, and regulations."

Sec. 13. G.S. 104G-10(c) reads as rewritten:

"(c) The Authority shall select and employ an operator for a low-level radioactive waste disposal facility no later than ~~1 August 1988~~ 31 January 1989. If no private operator is employed by ~~1 August 1988~~ 31 January 1989, the Authority shall designate itself as the operator and shall do everything necessary to obtain all required licenses or permits to operate a low-level radioactive waste disposal facility."

Sec. 14. G.S. 104G-11(b) reads as rewritten:

"(b) The operator shall prepare and submit all applications for licenses and permits required for a low-level radioactive waste facility to the appropriate regulatory agencies. The operator shall also prepare an environmental impact report which shall become the basis of an environmental impact statement required for such facility under ~~G.S. 113-4~~ 113A-4."

Sec. 15. G.S. 104G-12(d) is repealed.

Sec. 16. G.S. 104G-15(b) reads as rewritten:

"(b) The Authority shall ~~develop proposed~~ establish, and revise as necessary, schedules of fees and other charges, including user charges, penalties, and surcharges to meet the following costs:

- (1) Establishment and operation of the Authority;
- (2) Reimbursement of State agencies for costs incurred on behalf of the Authority or in support of its activities, including the costs of any services performed pursuant to G.S. 104G-14;
- (3) Establishment and administration of the Long-Term Care Fund under G.S. 104G-16;
- (4) Compensation to the State and local government(s) as provided in G.S. 104G-18;
- (5) Repayment to the State with interest, as calculated and certified by the State Treasurer, of all funds expended from the General Fund to establish, maintain, and regulate a low-level radioactive waste disposal facility;
- (6) Funding for the Southeast Interstate Low-Level Radioactive Waste Management Compact pursuant to G.S. 104F-1, Article IV;
- (7) Compensation of operators, contractors, and consultants employed by the Authority;
- (8) Other expenses incurred by the Authority, the State or its agencies in furtherance of the purposes of this Chapter; and

- (9) Compensation of any property owner for any loss in value of property directly resulting from the siting or operation of a low-level radioactive waste disposal facility."

Sec. 17. G.S. 104G-17(a) reads as rewritten:

"(a) For purposes of this Chapter, an operator of a low-level radioactive waste disposal facility may serve as the collection agent for the Authority, in which case, ~~money—funds collected by the operator~~ shall be transferred to the Authority on a timely basis, and deposited with the State Treasurer, as established by the Authority."

Sec. 18. G.S. 104G-18(d) reads as rewritten:

"(d) The Authority shall collect and deposit with the State Treasurer, on behalf of local governments where a low-level radioactive waste disposal facility is located, a tax on the gross receipts tax of the facility in an amount of two and one-half percent (2.5%) to be determined by the General Assembly,—to be distributed to local governments as the General Assembly shall provide. The Authority shall develop and recommend to the General Assembly a proposed revenue package and gross receipts tax schedule and revenue distribution formula which the General Assembly shall consider in enacting taxes and fees under this Chapter providing for distribution of this tax and such other revenues as may be recommended."

Sec. 19. G.S. 104G-20(b)(8) reads as rewritten:

"(8) Develop and present recommendations concerning license conditions, operational requirements, compensation, and incentives related to the proposed facility; ~~and~~".

Sec. 20. G.S. 104G-20(c) reads as rewritten:

"(c) An applicant for a license to operate a low-level radioactive waste disposal facility shall pay a one-time local application fee ~~in an amount to be determined by the General Assembly of one hundred thousand dollars (\$100,000)~~ to the county ~~or counties~~ where the site of the proposed facility is located. If the site lies in more than one county, the local application fee will be distributed to the counties in which the site is located in equal amounts. If the board of commissioners appoints a preferred site local advisory committee the local application fee shall be used to support the work of the committee. No funds for local review shall be used to finance litigation expenses."

Sec. 21. Chapter 104G of the General Statutes is amended by adding a new section to read:

**"§ 104G-22. Inter-Agency Committee.** – (a) To assist the Authority in the performance of its responsibilities under this Chapter and to advise the General Assembly, there is created the Inter-Agency Committee on Low-Level Radioactive Waste (herein called the 'Committee') consisting of 11 members. The members shall be composed of: the Chairman of the Board; the Chairman of the Board's Technical Committee on Low-Level Radioactive Waste; the Chief of the North Carolina Radiation Protection Section; the Chairman of the Commission's Low-Level Radioactive Waste Management Committee; the Chairman of the Authority; the Chairman of the Authority's Technical Committee; three representatives of the Department of Natural Resources and Community Development with expertise in geology, groundwater, and air quality; and the two representatives of the Attorney General's office who provide

legal services to the Authority and the Commission. The Chairman of the Board shall serve as the Chairman of the Committee, and the Board shall provide professional and clerical support to the Committee.

(b) The purpose of the Committee is to share information and coordinate efforts in the siting, design, construction, operation, and licensure of a low-level radioactive waste disposal facility.

(c) The Committee shall report to the General Assembly and its General Research Division from time to time regarding any changes in the present law it may deem appropriate to expedite the resolution of issues regarding the siting, design, construction, operation, and licensure of a low-level radioactive waste disposal facility. Such reports shall not be subject to review by the departments, respective agencies, boards, commissions, or authorities from whose membership the Committee is drawn. Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation made by the Committee may be introduced and considered during any session of the General Assembly.

(d) Consistent with existing law, each agency, board, commission, or authority from whose membership the Committee is drawn shall be responsible for any expenses incident to the participation of its members in the work of the Committee, including per diem, travel, and subsistence, from funds otherwise appropriated to it. The Authority shall pay the costs of any study for which provision is not otherwise made in this section from funds otherwise appropriated to the Authority."

Sec. 22. In order to conform to the provisions of Section 23 of Article II of the Constitution of North Carolina, G.S. 104G-4, G.S. 104G-6, G.S. 104G-15, and G.S. 104G-18 as enacted by Section 1 of Chapter 850 of the 1987 Session Laws, and as amended by this act, are reenacted.

Sec. 23. Subsection (a) of Section 27 of Chapter 850 of the 1987 Session Laws is repealed.

Sec. 24. G.S. 104E-6.2 reads as rewritten:

**"§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to establish facility preempt local ordinance.** – (a) Notwithstanding any authority heretofore granted to counties, municipalities, or other local authorities to adopt local ordinances, (including but not limited to those imposing taxes, fees, charges, or regulating health, environment, and land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility which the Governor's Waste Management Board (herein called 'Board') has ~~approved~~ preempted pursuant to the procedures in subsections (b) through ~~(e)~~ (f) of this section, shall be invalid from 26 June 1981, but only to the extent necessary to effectuate the purposes of this Chapter and Chapter 104G of the General Statutes. For the purpose of this section, the ~~Governor's Waste Management Board~~ shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the governing body of the county in which the ~~proposed site facility is or is to be~~ located. If the ~~proposed site facility is or is to be~~ located in more than one county, or if the proposed site is located within the boundaries of a city, the governing ~~board~~ body of each city and county in which any portion of the ~~proposed site facility is or is to be~~ located

located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of written notice shall be deemed a vacancy in an unexpired term and shall be filled by appointment of a majority of the Board members. The terms of members appointed by local governing bodies shall end upon the final determination ~~made by~~ of the Board under this section, and such members shall serve as members of the Board only for the purposes of this section.

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

(c) When a petition described in subsection (b) of this section has been filed with the ~~Governor's Waste Management Board~~, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The ~~Authority Board~~ shall give notice of the public hearing at least 30 days prior to the date thereof by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks beginning, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Service by mail is complete upon placing the notice, enclosed in a wrapper addressed to the party to be served at his designated address with sufficient postage prepaid.

Any interested persons may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested person may submit written ~~material evidence~~ to the Board for its consideration. At least 20 days will be allowed for receipt of written comment following the hearing.

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

- (1) That there is a local ordinance applicable to the facility which would prohibit the establishment or operation of a low-level radioactive waste facility;

- ~~(1)~~(2) That the proposed facility is needed in order to establish adequate capability for the management of low-level radioactive waste and therefore serves the interest of the citizens of the State as a whole;
- ~~(2)~~(3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
- ~~(3)~~(4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
- ~~(4)~~(5) That the construction and operation of ~~a~~the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility ~~developer or operator, or North Carolina Low-Level Radioactive Waste Management Authority established pursuant to Chapter 104G of the General Statutes,~~ has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable local ordinances.

If the Board does not make all ~~four~~five findings set out above, the Board shall ~~disapprove the establishment or operation of the facility not preempt the challenged~~ local ordinance(s). The Board's decision shall be in writing and shall identify the ~~material evidence~~ submitted to the Board plus any additional ~~materials~~evidence used in arriving at the decision.

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

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



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

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

Sec. 25. G.S. 104E-9(8) reads as rewritten:

"(8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low-level radioactive waste ~~disposal~~ facilities pursuant to the provisions of this Chapter."

Sec. 26. G.S. 104E-19(a) reads as rewritten:

"(a) In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(c), ~~and~~ of enforcing and carrying out the inspection provisions in G.S. 104E-7(7) and 104E-11(a), of administering the licensing program in G.S. 104E-10.3, and of licensing low-level radioactive waste facilities operated pursuant to Chapter 104G of the General Statutes, the Department is authorized to charge and collect such reasonable fees as it may by rule or regulation establish."

Sec. 27. G.S. 120-123(54) reads as rewritten:

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

Sec. 28. G.S. 130A-293 is rewritten to read:

**"§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.** – (a) Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, (including but not limited to those imposing taxes, fees, charges, or regulating health, environment, and land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility which the Governor's Waste Management Board (herein called 'Board') has preempted pursuant to subsections (b) through (g) of this section, shall be invalid only to the extent necessary to effectuate the purposes of this Chapter and Part 11A of Article 10 of Chapter 143B of the General Statutes. For the purpose of this section, the Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body of the county in which the facility is or is to be located. If the facility is or is to be located in more than one county, or if the facility is or is to be located within the boundaries of a city, the governing body of each city and county in which any portion of the facility is or is to be located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of written notice shall be deemed a vacancy in an unexpired term and shall be filled by appointment of a majority of the Board members. The terms of the members appointed by the local governing body shall end upon the final determination of the Board under this section, and such members shall serve as members of the Board only for the purposes of this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the operator of the facility or the Hazardous Waste Treatment Commission may petition the Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

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

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Service by mail is complete upon placing the notice, enclosed in a wrapper addressed to the person to be served with sufficient postage prepaid and addressed to the party at his designated address.

Any interested persons may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested persons may submit written evidence to the Board for its consideration. At least 20 days will be allowed for receipt of written comment following the hearing.

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

- (1) That there is a local ordinance applicable to the facility which would prohibit the establishment or operation of a hazardous waste facility;
- (2) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in this State and therefore serves the interest of the citizens of the State as a whole;
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and

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

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

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

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

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

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

(g) The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules for the operation applicable to a hazardous waste landfill have been adopted by the appropriate State agencies."

Sec. 29. G.S. 143B-470.1 reads as rewritten:

"§ 143B-470.1. **Declaration of purposes; annexation prohibited.** – (a) It is the purpose of this Part to provide for the siting, construction and operation of comprehensive hazardous waste management facilities to the end that hazardous waste may be treated or disposed of in the most cost-effective manner, while protecting public health and safety and the environment. It is also the purpose of the General Assembly to create a Commission to site, finance, build, lease or operate, or oversee a

hazardous waste treatment facility if private enterprise fails to do so within a specified time. It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special local or private acts or resolutions, ordinances, property restrictions, zoning laws, rules and regulations, fire laws, rules and regulations, civil defense laws, rules and regulations, public health laws, rules and regulations, building codes, and otherwise.

(b) From the time a site is selected for a hazardous waste treatment facility pursuant to G.S. 143B-470.4(b) or from the time a county, by resolution of the board of commissioners, proposes a specific site or area for such a hazardous waste treatment facility, notwithstanding the provisions of Article 4A of Chapter 160A, no city may annex the site or area except upon a valid petition signed by the owner of the treatment facility's real property. If a previously selected site or area is abandoned, then it shall again be subject to annexation in accordance with Article 4A of Chapter 160A."

Sec. 30. Part 11A of Article 10 of Chapter 143B is amended by adding the following new section:

**"§ 143B-470.1A. Gross receipts tax.** – The Treatment Commission shall collect and deposit with State Treasurer, on behalf of local governments where a hazardous waste treatment facility is located pursuant to this Part, a gross receipts tax in the amount of two and one-half percent (2.5%) of the gross receipts of the treatment facility per annum, to be distributed to local governments as the General Assembly shall provide. The Treatment Commission shall develop and recommend to the General Assembly a proposed revenue package and revenue distribution formula which the General Assembly shall consider in providing for distribution of this tax and such other revenues as may be recommended."

Sec. 31. G.S. 143B-470.2 is amended by renumbering the present subdivision (1) as subdivision (1a) and adding a new subdivision (1) as follows:

"(1) 'CERCLA/SARA' means Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended."

Sec. 32. G.S. 143B-470.4 is amended by adding two new subsections immediately after subsection (b) as follows:

"(b1) Notwithstanding the provisions of subsection (b) of this section, until further authorization by the General Assembly, the Treatment Commission shall not site a hazardous waste treatment facility in any county in the State, nor enter into any activity leading to the siting of a facility, including negotiation for, optioning of, purchase of, or condemnation of any land, the preparation or filing of an environmental impact statement, or any other activity that might be precedent to the selection of a site for a hazardous waste treatment facility, except that the Treatment Commission may continue to seek a volunteer county willing to host the facility.

(b2) The Treatment Commission shall study the necessity and scope of the facility authorized by this section. The Treatment Commission shall lend assistance to and

work in cooperation with any study committee or commission authorized by the General Assembly to study the subject of hazardous waste."

Sec. 33. Part 11A of Article 10 of Chapter 143B is amended by adding a new section as follows:

"§ 143B-470.6. **Governor to contract for treatment and disposal.** – (a) Notwithstanding the provisions of G.S. 143B-470.4, the Governor is authorized to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State as permitted by CERCLA/SARA, and he shall make every reasonable effort to do so beginning as soon as possible after the effective date of this section. The Treatment Commission shall assist the Governor in this effort as directed by him.

(b) In the event the Governor is unable to enter into interstate agreements to provide for the treatment and disposal of the State's hazardous waste outside the State, he shall certify to the Treatment Commission that adequate capacity cannot be guaranteed through out-of-state contractual agreements and provide to it a report of his efforts to do so. Copies of the report shall also be sent to the Joint Legislative Commission on Governmental Operations and the General Research Division of the Legislative Services Commission."

Sec. 34. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1988.