

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 324

Short Title: Haz. Waste Management.

(Public)

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Sponsors: Senators Tally; Barker, Daughtry, Johnson of Wake, Marvin, Murphy, Odom, Shaw, Smith, Ward, and Winner.

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Referred to: Environment.

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February 28, 1989

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE FOR THE MANAGEMENT OF HAZARDOUS WASTE IN  
3 NORTH CAROLINA, TO CREATE THE NORTH CAROLINA INDUSTRIAL  
4 WASTE MANAGEMENT COMMISSION, TO ABOLISH THE NORTH  
5 CAROLINA HAZARDOUS WASTE TREATMENT COMMISSION AND  
6 TRANSFER ITS FUNCTIONS, POWERS, AND DUTIES TO THE NORTH  
7 CAROLINA INDUSTRIAL WASTE MANAGEMENT COMMISSION, TO  
8 AMEND VARIOUS STATUTES RELATING TO THE MANAGEMENT OF  
9 HAZARDOUS WASTE, AND TO MAKE CONFORMING CHANGES TO  
10 OTHER STATUTES.

11 The General Assembly of North Carolina enacts:

12 Section 1. A new Chapter is added to the General Statutes to read:

13 **“CHAPTER 130B.**

14 **“INDUSTRIAL WASTE MANAGEMENT COMMISSION.**

15 **“§ 130B-1. Title.**

16 This Chapter shall be known and may be cited as the ‘North Carolina Industrial  
17 Waste Management Commission Act of 1989’.

18 **“§ 130B-2. Definitions.**

19 (a) Unless a different meaning is required by the context, the definitions set out  
20 in G.S. 130A-290 shall apply throughout this Chapter.

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

- 1           (1) 'Authorized hazardous waste facility' means a hazardous waste facility  
2           approved by the Governor as provided in G.S. 130B-5(a).
- 3           (2) 'Board' means the Governor's Waste Management Board established  
4           pursuant to Part 27 of Article 3 of Chapter 143B of the General  
5           Statutes.
- 6           (3) 'Commission' means the North Carolina Industrial Waste Management  
7           Commission established pursuant to this Chapter, its governing board,  
8           or any successor thereto.

9 **"§ 130B-3. Legislative findings.**

10 The General Assembly of North Carolina hereby finds that the safe management of  
11 hazardous waste, and particularly the timely establishment of adequate facilities for the  
12 treatment and disposal of hazardous waste, is one of the most urgent problems facing  
13 North Carolina. The safe management of hazardous waste is essential to continued  
14 economic growth and to protect public health and safety and the environment.  
15 Consequently, cooperation and coordination among the private sector, the general  
16 public, the State, and local governments to assure the prevention of unnecessary waste  
17 and the establishment of a comprehensive and integrated system of adequate treatment  
18 and disposal facilities are essential.

19 The General Assembly of North Carolina finds that prevention, recycling,  
20 detoxification, and reduction of hazardous wastes should be encouraged and promoted.  
21 These alternatives reduce the quantity and toxicity of hazardous waste requiring  
22 treatment or disposal and thus lessen the risk posed by hazardous waste to human health  
23 and the environment. When these alternatives are not technologically or economically  
24 feasible, retrievable storage may be preferable to other means of disposal until  
25 appropriate methods for recycling or detoxification of the stored wastes are found.

26 Hazardous waste should be treated to the full extent technologically and  
27 economically feasible prior to long-term storage or disposal in North Carolina.  
28 Disposal of the residual or ash of treated hazardous waste should occur only when its  
29 toxicity is reduced to the point that there would be no significant risk to public health  
30 and safety or to the environment in the event of leakage from the disposal facility.  
31 Hazardous waste that cannot be detoxified, stabilized, or destroyed so as to present no  
32 significant risk to the public health or safety or to the environment should be placed in  
33 retrievable storage until satisfactory treatment processes become available. Hazardous  
34 waste in retrievable storage should be detoxified as soon as it is determined by a  
35 preponderance of the evidence that it is technologically possible to do so at a reasonable  
36 cost. Hazardous waste disposal facilities and polychlorinated biphenyl landfill facilities  
37 should be detoxified as soon as it is technologically and economically feasible to do so.

38 The General Assembly further finds that while the foregoing findings, which were  
39 articulated in similar form in legislation enacted in 1981 and 1984, continue to hold  
40 true, circumstances have changed since that time which require adjustments in the  
41 State's hazardous waste management policy. Specifically, the General Assembly finds  
42 that the most practical approach to hazardous waste management, including compliance  
43 with the CERCLA/SARA capacity assurance requirements, is through a regional  
44 approach. The General Assembly finds that the development of a full range of

1 comprehensive hazardous waste treatment and disposal facilities in this and every state  
2 is neither environmentally nor economically sound. The General Assembly finds that  
3 minimization, and wherever possible elimination, of hazardous waste generation, and  
4 hazardous waste reduction, recycling, and on-site treatment are preferable to off-site  
5 treatment and disposal.

6 The General Assembly of North Carolina finds that local governments have an  
7 important role in promoting public health and safety, encouraging planned and orderly  
8 land use development, and in providing services to meet the needs of educational and  
9 health institutions, business, and industry. The General Assembly of North Carolina  
10 further finds that the reasonable concerns and reasonable decisions of local authorities  
11 should be considered in the siting, permitting and operation of hazardous waste  
12 facilities.

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 or  
31 unwilling to undertake or accomplish. It is the purpose of this Chapter to authorize the  
32 Commission to site, design, finance, construct, operate, oversee, acquire, hold, sell,  
33 lease, or convey needed hazardous waste facilities to the extent that private enterprise  
34 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 place limitations upon the exercise by all units  
37 of local government in North Carolina of the power to regulate the management of  
38 hazardous waste by means of special local or private acts or resolutions, ordinances,  
39 property restrictions, zoning laws rules and regulations, fire laws rules and regulations,  
40 civil defense laws rules and regulations, public health laws rules and regulations,  
41 building codes, and otherwise.

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 **"§ 130B-5. Powers and duties of the Governor.**

10 (a) No hazardous waste facility shall be established pursuant to this Chapter  
11 unless the Governor determines that such facility is essential and is in the best interests  
12 of the State. Such determination shall be based on a periodic review of current and  
13 projected hazardous waste generation from all sources within the State, current and  
14 projected availability and adequacy of facilities for the management of hazardous waste  
15 within and outside the State, whether and to what extent private enterprise will provide  
16 needed hazardous waste facilities, capacity assurance requirements under  
17 CERCLA/SARA, the extent to which agreements can be negotiated for the management  
18 of hazardous waste outside the State, and the extent to which the State should obligate  
19 itself to provide facilities for the management of hazardous waste generated outside the  
20 State. Such determination shall be made in writing and shall specify the functions,  
21 technologies, and design capacities of the hazardous waste facilities to be established.

22 (b) With respect to each hazardous waste facility to be established pursuant to  
23 this Chapter the Governor shall:

- 24 (1) Authorize the establishment of the facility as provided in subsection  
25 (a) of this section;
- 26 (2) Approve and modify as necessary a schedule for selection of the  
27 preferred and alternate sites for the facility;
- 28 (3) Approve and modify as necessary a schedule for the development of  
29 the facility; and
- 30 (4) Approve the technology and design capacity of each component of the  
31 facility.

32 (c) The Governor is authorized to enter into interstate agreements for the  
33 management of hazardous waste. Such agreements should not result in an overall  
34 hazardous waste management burden in this State greater than that which would result  
35 if no hazardous wastes were imported into or exported from the State. The Governor  
36 shall submit any such agreement to the General Assembly for its approval, and no such  
37 agreement shall be effective until approved by the General Assembly.

38 **"§ 130B-6. Organization and administration of the Commission.**

39 (a) Creation. – The North Carolina Industrial Waste Management Commission is  
40 hereby created as follows:

- 41 (1) The Commission shall be located within the Department of  
42 Commerce. The Commission shall exercise all of its powers  
43 independently of the Secretary of Commerce and, notwithstanding any  
44 other provision of law, shall be subject to the direction and supervision

- 1                   of the Secretary of Commerce only with respect to the management  
2                   functions of coordinating and reporting.
- 3           (2)       The Commission shall continue until its existence shall be terminated  
4                   by law. Upon the termination of the existence of the Commission, all  
5                   of its rights and properties shall pass to and be vested in the State.
- 6           (3)       The Department of Commerce and the Department of Administration  
7                   shall provide such technical, clerical, and other support services and  
8                   personnel as the Commission may require in the performance of its  
9                   functions. The Commission shall reimburse the Departments for such  
10                   services from its revenues or from other funding sources.
- 11       (b)       Membership. – The Commission shall be governed by a board composed of  
12       nine members. Members of the General Assembly, the Board, the Health Services  
13       Commission, and members or employees of any State or federal agency, board, or  
14       commission which exercises regulatory authority with respect to any activity of the  
15       Commission shall be ineligible for appointment to membership on the Commission.
- 16       (c)       Appointments. – Appointments to the Commission shall be made as follows:
- 17           (1)       The Governor shall appoint five members.
- 18           (2)       The General Assembly shall appoint four members in accordance with  
19                   G.S. 120-121, two upon recommendation of the Speaker of the House  
20                   of Representatives and two upon recommendation of the President Pro  
21                   Tempore of the Senate.
- 22           (3)       Successors shall be appointed by the appointing authority making the  
23                   original appointment.
- 24           (4)       Vacancies in appointments shall be filled for the unexpired term.  
25                   Vacancies in appointments made by the General Assembly shall be  
26                   filled in accordance with G.S. 120-122.
- 27           (5)       Members of the Commission shall include persons with expertise in  
28                   the technical, legal, and financial aspects of hazardous waste  
29                   management and shall represent, insofar as practicable, the diverse  
30                   interests and geographic regions of the State.
- 31       (d)       Terms.
- 32           (1)       All appointments made by the Governor, other than initial  
33                   appointments, shall be for a term of four years. The Governor shall  
34                   have the power to remove, in accordance with G.S. 143B-13, any  
35                   member appointed by the Governor.
- 36           (2)       All appointments made by the General Assembly, other than initial  
37                   appointments, shall be for a term of two years. The General Assembly  
38                   shall have the power to remove, in accordance with G.S. 143B-13, any  
39                   member appointed by the General Assembly.
- 40           (3)       Terms shall expire on 30 June as provided by this subsection, except  
41                   that members of the Commission shall serve until their successors are  
42                   appointed and duly qualified as provided by G.S. 128-7.
- 43           (4)       Of the initial appointments made by the Governor, one term shall  
44                   expire 30 June 1990, one term shall expire 30 June 1991, one term

1                   shall expire 30 June 1992, and two terms shall expire 30 June 1993.  
2                   Successors shall be appointed to serve four-year terms.

- 3           (5)   Of the initial appointments made by the General Assembly on  
4           recommendation of the Speaker of the House of Representatives, one  
5           term shall expire 30 June 1991 and one term shall expire 30 June 1992.  
6           Of the initial appointments made by the General Assembly on  
7           recommendation of the President Pro Tempore of the Senate, one term  
8           shall expire 30 June 1991 and one term shall expire 30 June 1992.

9           (e)   Officers. – The Governor shall appoint from the members of the Commission  
10          the Chairman and Vice-Chairman of the Commission. The Executive Director of the  
11          Commission shall serve as Secretary of the Commission.

12          (f)   Meetings. – The Commission shall meet at least quarterly at such time and at  
13          any place within the State as the Commission may provide. The Commission shall meet  
14          upon the call of its Chairman or a majority of its members. A majority of its members  
15          shall constitute a quorum for the transaction of business. Members of the Commission  
16          who are State employees shall be reimbursed for their expenses in accordance with G.S.  
17          138-6. Members of the Commission who are not State employees shall be reimbursed  
18          for their expenses in accordance with G.S. 138-5 except that the per diem rate as  
19          defined in G.S. 138-5(a)(1) shall be one hundred fifty dollars (\$150.00) per day of  
20          service.

21          (g)   Executive Director and Staff. – The Commission shall be assisted by an  
22          Executive Director and staff who shall be subject to provisions of law applicable to  
23          State employees generally, including Chapters 126 and 135 of the General Statutes,  
24          except as such provisions are modified by this Chapter.

- 25           (1)   The Commission shall appoint an Executive Director, who shall report  
26           to the Commission and serve at its pleasure. The Executive Director  
27           shall be the chief administrative officer of the Commission. The  
28           Commission shall set, subject to consultation with the Advisory  
29           Budget Commission, and pay the compensation of the Executive  
30           Director.

- 31           (2)   The Executive Director shall be assisted by such senior professional  
32           staff members as may be necessary to carry out the provisions of this  
33           Chapter, who shall be appointed by the Commission on nomination of  
34           the Executive Director. The Commission shall set, subject to  
35           consultation with the Advisory Budget Commission, and pay the  
36           compensation of the staff members it appoints.

- 37           (3)   In addition, the Executive Director shall be assisted by such other  
38           employees as may be needed to carry out the provisions of this  
39           Chapter. The staff complement shall be established by the  
40           Commission on recommendation of the Executive Director. Such  
41           other employees shall be appointed by the Commission upon the  
42           recommendation of the Executive Director and shall be compensated  
43           by the Commission pursuant to the provisions of Chapter 126 of the  
44           General Statutes.

1 **"§ 130B-7. Powers and duties of the Commission.**

2 (a) To carry out the purposes of this Chapter, the Commission:

- 3 (1) Shall periodically review, with the assistance of the Board and the  
4 Solid Waste Management Section of the Division of Health Services  
5 of the Department of Human Resources, the current and projected  
6 availability and adequacy of facilities for the management of  
7 hazardous waste within and outside the State, determine whether  
8 additional facilities for the management of hazardous waste may be  
9 needed in this State, and make appropriate recommendations to the  
10 Governor and the General Assembly;
- 11 (2) Shall, at the request of the Governor and under his direction, assist  
12 with the negotiation of interstate agreements for the management of  
13 hazardous waste;
- 14 (3) Shall determine the sequence of tasks required to be accomplished in  
15 order to site, design, finance, construct, and place into operation each  
16 hazardous waste facility authorized by the Governor, determine the  
17 time likely to be required to accomplish those tasks, develop a  
18 proposed schedule for the development of each such facility and  
19 submit such schedule to the Governor for approval, and estimate the  
20 resources required to accomplish those tasks and submit such estimate  
21 to the Governor and the General Assembly;
- 22 (4) Shall site, design, finance, construct, and operate hazardous waste  
23 facilities which have been authorized by the Governor;
- 24 (5) Shall adopt, consistent with the rules of the Health Services  
25 Commission and pursuant to Chapter 150B of the General Statutes,  
26 rules specifying the criteria and procedures for evaluating alternative  
27 locations for, and siting of, hazardous waste facilities;
- 28 (6) May employ consultants and contractors to provide services including  
29 site selection, design, construction, operation, closure, and perpetual  
30 care of hazardous waste facilities, necessary, desirable, or convenient  
31 to carry out the purposes of this Chapter, and to fix and pay their  
32 compensation;
- 33 (7) May acquire by deed, purchase, lease, contract, gift, devise,  
34 condemnation, or otherwise, any real or personal property, structures,  
35 rights-of-way, franchises, easements, and other interests in land which  
36 is necessary and convenient for the construction or operation of  
37 hazardous waste facilities, upon such terms and conditions as it deems  
38 advisable, hold, and lease, sell, convey or otherwise dispose of the  
39 same in such manner as may be necessary or desirable to carry out the  
40 purposes of this Chapter;
- 41 (8) May exercise the powers of a body corporate, including the power to  
42 sue and be sued, and may adopt and use a common seal and alter the  
43 same as may be deemed expedient;

- 1           (9)   May make all necessary contracts and arrangements with other  
2           officials or agencies in this State and other states, including compact  
3           commissions, for any of the purposes of this Chapter;
- 4           (10)   Shall establish an office or offices for the transaction of its business at  
5           such place or places as, in the opinion of the Commission, shall be  
6           advisable or necessary in carrying out the purposes of this Chapter;
- 7           (11)   May create and operate any divisions it deems necessary or useful;
- 8           (12)   Shall pay all costs of the formation and organization of the  
9           Commission, and incident to its administration and operation, and may  
10          pay all other costs necessary in carrying out the purposes of this  
11          Chapter;
- 12          (13)   May develop and implement schedules of fees and other charges,  
13          including user charges, penalties, and surcharges applicable to  
14          hazardous waste facilities operated by the Commission;
- 15          (14)   Shall make recommendations to the Governor as to the technology,  
16          design capacity, operational features, and post-closure requirements of  
17          hazardous waste facilities, and shall implement such recommendations  
18          upon approval by the Governor;
- 19          (15)   Shall pay, or assure that permittees and operators pay, all applicable  
20          taxes and fees;
- 21          (16)   May apply for, accept, and expend loans and grants of money from  
22          any federal or State agency or any political subdivision thereof, from a  
23          compact commission, or from any other public or private source for  
24          any of the purposes authorized by this Chapter, and to give any  
25          evidences of indebtedness as may be required. Except as may  
26          hereafter be authorized by the General Assembly, no indebtedness of  
27          any kind incurred or created by the Commission shall constitute an  
28          indebtedness of the State or any of its political subdivisions, and no  
29          such indebtedness shall involve or be secured by the faith, credit, or  
30          taxing power of the State or any of its political subdivisions. At no  
31          time may the total outstanding indebtedness of the Commission,  
32          excluding bond indebtedness, exceed a total of five hundred thousand  
33          dollars (\$500,000) without prior approval of the Governor, after  
34          receiving the advice of the Advisory Budget Commission;
- 35          (17)   May issue revenue bonds from time to time pursuant to The State and  
36          Local Government Revenue Bond Act, Article 5 of Chapter 159 of the  
37          General Statutes, and such bonds may be sold at public or private sale  
38          pursuant to G.S. 159-123;
- 39          (18)   Shall, if it elects to issue bonds, select and retain, subject to approval  
40          of the Local Government Commission, financial consultants,  
41          underwriters, and bond attorneys to assist with the issuance of such  
42          bonds and to pay for services rendered;
- 43          (19)   May pledge revenues from hazardous waste facilities to the benefit of  
44          bondholders, or for other purposes necessary to secure financing;



- 1           (20) Shall make such plans, surveys, studies, and investigations as may be  
2           necessary or desirable with respect to the acquisition, development,  
3           and use of real property and the design, construction, operation,  
4           closure, and long-term care of hazardous waste facilities;
- 5           (21) Shall receive all field data, charts, maps, tracings, laboratory test data,  
6           soil and rock samples, and such other records as the Commission  
7           deems appropriate, collected or produced by its employees,  
8           contractors, or consultants pursuant to siting, operating, or closing of  
9           hazardous waste facilities. All such data and materials shall become  
10           the property of the State and shall not be disposed of except in  
11           accordance with G.S. 132-3 except that soil and rock samples may be  
12           subjected to tests and reduced in volume for purposes of storage in a  
13           manner approved by the Commission. The Commission may enter  
14           into agreements with other State agencies for the purpose of storage  
15           and preservation of data and materials;
- 16           (22) May procure and keep in force adequate insurance or otherwise  
17           provide for the indemnification of itself and its members, officers,  
18           agents, employees, and the general public against loss or liability  
19           resulting from any act or omission by or on behalf of the Commission,  
20           and for the protection of its property, provided that procurement of  
21           insurance by the Commission shall not be deemed a waiver of any  
22           immunity from liability otherwise available under any provision of  
23           law;
- 24           (23) May adopt bylaws for the regulation of its affairs and the conduct of its  
25           business and prescribe rules, regulations and policies in connection  
26           with the performance of its functions and duties; and
- 27           (24) May do anything else necessary to carry out the purposes of this  
28           Chapter not otherwise prohibited by law.

29 **"§ 130B-8. Commission may exempt itself from certain laws.**

30       (a) Neither the Commission nor any contractor performing services on behalf of  
31 the Commission shall be subject to the following provisions of the General Statutes:

- 32           (1) Article 3 of Chapter 143 (Purchases and Contracts);  
33           (2) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);  
34           (3) Article 3D of Chapter 143 (Procurement of Architectural and  
35           Engineering Services);  
36           (4) Article 8 of Chapter 143 (Public Contracts);  
37           (5) Article 8B of Chapter 143 (State Building Commission);  
38           (6) G.S. 143-341 (Powers and duties of the Department of  
39           Administration);  
40           (7) Chapter 146 (State Lands); and  
41           (8) Article 2 of Chapter 150B shall not apply to contractor selection or  
42           technology selection pursuant to G.S. 130B-13 and G.S. 130B-14.  
43           Articles 3 and 3A of Chapter 150B shall not apply to final decisions

1           regarding site selection, contractor selection or technology selection  
2           pursuant to G.S. 130B-11, 130B-13, and 130B-14.

3           (b) Subdivisions (1) through (7) of subsection (a) of this section shall apply only  
4 when the Commission determines that exemption from a particular provision of the  
5 General Statutes is in the best interest of the State. Each such determination by the  
6 Commission shall be set out in the official minutes of the Commission and shall state  
7 with particularity (i) the provision or provisions of the General Statutes from which the  
8 Commission exempts itself pursuant to this section, (ii) the action or activities covered  
9 by such exemption, and (iii) the justification for such exemption, taking into account the  
10 purposes of such provisions of the General Statutes and of this Chapter.

11 **"§ 130B-9. Compliance with laws and rules applicable to hazardous waste**  
12 **management.**

13           This Chapter shall not be construed as amending, repealing, or in any manner  
14 abridging or interfering with any law or rule relating to the management of hazardous  
15 waste or to protection of public health, safety, or the environment, nor shall the  
16 provisions of this Chapter be construed as being applicable to or in any way affecting  
17 the authority of State agencies and commissions to control hazardous waste or the  
18 discharge of environmental pollutants and wastes into the air, soil, or waters of the  
19 State. The Commission, its members, officers, employees, agents, contractors, and any  
20 person who operates any hazardous waste facility pursuant to this Chapter shall comply  
21 with all federal and State laws, including statutes, regulations, and rules, applicable to  
22 hazardous waste management and to protection of public health, safety, and the  
23 environment. The Commission shall be considered a State agency for purposes of the  
24 North Carolina Environmental Policy Act, G.S. 113A-1 et seq.

25 **"§ 130B-10. Liability, defense, and legal representation.**

26           (a) The provisions of Article 31 of Chapter 143 (Tort Claims Against State  
27 Departments and Agencies) shall apply to the Commission. No member, officer, or  
28 employee of the Commission, while acting within the scope of their authority, shall be  
29 subject to any personal liability or accountability by reason of any act or omission in  
30 connection with the exercise of any power or performance of any duty, whether express  
31 or implied, pursuant to this Chapter.

32           (b) The provisions of Article 31A of Chapter 143 of the General Statutes shall  
33 apply to current or former members, officers, agents, or employees of the Commission.

34           (c) The Attorney General shall be the legal representative of the Commission and  
35 shall provide legal advice and counsel to the Commission. The Commission and the  
36 Department of Justice shall enter into an appropriate contract or make other mutually  
37 satisfactory arrangements for legal services, including reimbursement of the Department  
38 of Justice for any costs incurred other than routine or minor costs. The Commission  
39 may employ or retain other legal counsel with the prior approval of the Attorney  
40 General.

41 **"§ 130B-11. Site selection.**

42           (a) The Commission shall actively seek communities interested in hosting  
43 hazardous waste facilities. The Commission shall give first priority to the evaluation of  
44 potential sites located in communities interested in hosting a hazardous waste facility.

1 Such potential sites shall meet all applicable hazardous waste facility permit  
2 requirements and all minimum technical and other requirements established by the  
3 Commission for facility siting. However, with respect to any potential site located in a  
4 county interested in volunteering to host a facility, the Commission may waive any site  
5 selection criteria only if such criteria relate solely to preferences in site location which  
6 are discretionary with the Commission, if such waiver would not have a significant  
7 impact on the economic viability of the facility, and if such waiver would not adversely  
8 affect public health or safety or the environment.

9 (b) The Commission shall develop procedures and criteria for selecting sites for  
10 hazardous waste facilities whenever it appears such facilities are needed. Site selection  
11 procedures and criteria shall be specifically adapted to take into account the  
12 technologies and design capacities of each hazardous waste facility which has been  
13 approved by the Governor. Site selection procedures and criteria shall be developed  
14 with, and provide for, public participation; shall be incorporated into rules; shall include  
15 a written justification for each criterion; shall be consistent with all applicable federal  
16 and State law, including statutes, regulations and rules; shall be developed and revised  
17 in light of the best available scientific data; and shall be based on consideration of at  
18 least the following factors:

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

34 (c) The Commission shall develop a proposed schedule for evaluation and  
35 selection of the preferred and alternate sites for each hazardous waste facility which is  
36 approved by the Governor. The proposed site selection schedule shall provide for  
37 public education regarding the proposed facility and for public involvement in the site  
38 selection process. The Commission shall submit proposed site selection schedules to  
39 the Governor for approval.

40 (d) The Commission shall select suitable sites for evaluation and shall select the  
41 preferred site for each authorized hazardous waste facility in accordance with the  
42 approved site selection schedule. Upon selection of a preferred site the Commission  
43 shall begin proceedings to purchase or if necessary, condemn property for the site under  
44 the State's power of eminent domain. The procedure for condemnation by the

1 Commission shall be as set out in Article 9 of Chapter 136 of the General Statutes,  
2 except that the Commission shall have the same rights, powers, duties, and  
3 responsibilities as are set out for the Department of Transportation. The General  
4 Assembly finds that the protection of public health, safety, and welfare, including  
5 protection of the environment, requires that facilities for the management of hazardous  
6 waste be established. The acquisition of real property for the management of hazardous  
7 waste is therefore declared to be for the use and benefit of the public, and to serve a  
8 public purpose. Fee simple title to real property shall be vested in the Commission.  
9 The Commission may substitute an alternate site for the preferred site in the event that it  
10 is determined that any permit or license necessary for the construction or operation of  
11 the proposed facility cannot be obtained if the facility is located at the preferred site.

12 (e) The Commission may request information and assistance from any State  
13 agency which has data or expertise which would assist the Commission in the  
14 identification of sites for hazardous waste facilities, provided that no agency which has  
15 authority to issue any license or permit required for the construction or operation of the  
16 facility shall participate in the site selection process in any way that would result in an  
17 actual or apparent conflict of interest.

18 (f) The Commission may in its discretion contract for the services of  
19 independent, qualified consultants to assist in the development and implementation of  
20 procedures and criteria for site screening and selection. Such consultants shall be  
21 eligible to subsequently design, construct, or operate a hazardous waste facility on  
22 behalf of the Commission.

23 **"§ 130B-12. Annexation prohibited.**

24 From the time a site is selected pursuant to G.S. 130B-11(d) or from the time a  
25 county, by resolution of the board of county commissioners, proposes a specific site or  
26 area for a hazardous waste facility, notwithstanding the provisions of Article 4A of  
27 Chapter 160A, no city may annex the site or area except upon a valid petition signed by  
28 the Commission. If a previously selected site or area is abandoned, then it shall once  
29 again be subject to annexation in accordance with Article 4A of Chapter 160A.

30 **"§ 130B-13. Facility construction and operation.**

31 (a) The Commission shall actively seek qualified private contractors to construct  
32 and operate hazardous waste facilities which have been authorized by the Governor. A  
33 contractor may both construct and operate a facility.

34 (b) The Commission shall select and employ qualified contractors to construct  
35 and operate each authorized hazardous waste facility, or shall construct the facility itself  
36 and/or designate itself as the operator.

37 (c) The Commission shall enter into and enforce an agreement with each  
38 contractor for each authorized hazardous waste facility which shall incorporate such  
39 terms and conditions as the Commission determines are necessary and consistent with  
40 the purposes of this Chapter. Such agreement shall contain adequate assurances of  
41 contractor performance through the use of bonds, insurance, and shall require  
42 substantial compliance with all applicable federal and State law, including statutes,  
43 regulations, and rules. The Commission shall provide for an independent annual audit  
44 of the collection of all fees and other charges.

1 (d) The Commission may, in its discretion, seek the advice and assistance of  
2 other State agencies or private consultants in selecting contractors.

3 (e) The Commission may suspend or terminate its agreement with any contractor  
4 for a hazardous waste facility for any breach thereof. In the event of suspension or  
5 termination of an agreement, the Commission may select an interim or replacement  
6 contractor, or may operate the facility itself, to ensure that the facility is properly  
7 maintained and operated in compliance with all applicable federal and State laws,  
8 including statutes, rules, and regulations.

9 (f) The Commission shall periodically review and amend its agreement with the  
10 operating contractor of each hazardous waste facility to reflect necessary changes in  
11 fees or other charges, new environmental requirements, additional bonding or insurance  
12 requirements, or other alterations deemed necessary or appropriate.

13 **"§ 130B-14. Technology, license application, and environmental impact statement.**

14 (a) The Commission shall, with the assistance of other State agencies or private  
15 consultants it deems appropriate, recommend to the Governor the technology and design  
16 capacity of each component of each hazardous waste facility to be operated pursuant to  
17 this Chapter. Upon approval of technologies and design capacities by the Governor, the  
18 Commission shall prepare, or direct the operator to prepare subject to approval by the  
19 Commission, detailed designs and specifications, operating procedures, safety plans,  
20 closure plans and other plans necessary for hazardous waste facilities operated pursuant  
21 to this Chapter.

22 (b) Each operator of a hazardous waste facility established pursuant to this  
23 Chapter shall, under the supervision of the Commission, prepare and submit  
24 applications for all permits and licenses required for the facility to the appropriate  
25 regulatory agencies.

26 (c) The Department of Human Resources is designated as the lead State agency  
27 for overall coordination of the review of the application process and ensuring that  
28 decisions by the affected State agencies are rendered in a timely manner.

29 **"§ 130B-15. Facility closure post-closure control.**

30 (a) The Commission shall enter into an agreement with the operator of each  
31 hazardous waste facility established under this Chapter for the safe and proper closure  
32 of the facility.

33 (b) The Commission shall, with the assistance of other State agencies and private  
34 consultants it deems necessary, approve the operator's site closure plan. The approval  
35 of the Commission under this section is in addition to the approval of the Department of  
36 Human Resources in accordance with the rules and regulations of the Health Services  
37 Commission. The Commission may employ an independent contractor to do anything  
38 necessary to properly close a hazardous waste facility and to ensure that the site is  
39 stabilized.

40 (c) The Commission shall provide for such post-closure physical surveillance  
41 and environmental monitoring of each hazardous waste facility or facility site operated  
42 pursuant to this Chapter as may be required by the Department of Human Resources or  
43 by agreement with the host community.

1       (d) The Commission shall reimburse, or assure that the operator reimburses,  
2 appropriate State agencies for the costs of physical surveillance and environmental  
3 monitoring or other post-closure services rendered.

4       (e) The Commission shall provide through its own personnel, private contractors,  
5 cooperative agreement with other governmental agencies, or any combination thereof,  
6 any active maintenance or remedial actions that may be required. Payment for the cost  
7 thereof shall be made from the Long-Term Care Fund established pursuant to G.S.  
8 130B-16.

9 **"§ 130B-16. Fees.**

10       (a) It is the intent of the General Assembly that all costs associated with the  
11 development of hazardous waste facilities pursuant to this Chapter be borne by the  
12 waste generators served by such facilities. The General Assembly recognizes that the  
13 extent to which costs can be passed to hazardous waste generators is determined in part  
14 by market forces, since hazardous waste facilities must operate in a competitive market.  
15 In establishing and revising schedules of fees, the Commission shall seek to secure the  
16 greatest possible revenue for the State and units of local government consistent with  
17 environmentally safe and economically sound facility operation. For facilities which it  
18 operates, the Commission shall establish, and revise as necessary, schedules of fees and  
19 other charges, including user charges, penalties, and surcharges. For facilities which are  
20 operated by private enterprise pursuant to this Chapter, the Commission shall establish,  
21 and revise as necessary, schedules of franchise fees. The terms and conditions under  
22 which facilities are operated by private enterprise pursuant to this Chapter shall be  
23 governed by appropriate contracts between the Commission and the private operators.  
24 Such contracts shall provide for the payment of franchise fees and for the periodic  
25 adjustment thereof.

26       (b) In establishing and revising schedules of fees, the Commission, shall  
27 consider, and shall seek to recover to the maximum extent possible, the following costs:

- 28           (1) Establishment and operation of the Commission;
- 29           (2) Reimbursement of State agencies for costs incurred on behalf of the  
30 Commission or in support of its activities, including the costs of any  
31 services performed pursuant to G.S. 130B-15;
- 32           (3) Establishment and administration of the Long-Term Care Fund under  
33 G.S. 130B-17;
- 34           (4) Compensation to the State and local government(s) as provided in G.S.  
35 130B-18;
- 36           (5) Repayment to the State with interest at rates which are equal to the  
37 lowest rates paid by or available to the State for the period between  
38 expenditure and repayment, as calculated and certified by the State  
39 Treasurer, of all funds expended from the General Fund to develop  
40 hazardous waste facilities pursuant to this Chapter;
- 41           (6) Funding of the State's share of the costs associated with any interstate  
42 compact for hazardous waste management to which the State may  
43 become a party;

- 1           (7) Compensation of contractors and consultants employed by the  
2           Commission;  
3           (8) Other expenses incurred by the Commission, the State or its agencies  
4           in furtherance of the purposes of this Chapter; and  
5           (9) Compensation of any property owner for any loss in value of property  
6           directly resulting from the siting or operation of a hazardous waste  
7           facility.

8           (c) In the event that revenues exceed all costs set out in subsection (b) of this  
9           section and all other costs and charges for which the Commission is liable, such excess  
10           funds shall be paid into the General Fund for appropriation by the General Assembly for  
11           the following purposes:

- 12           (1) Funding of a portion of the State's costs for remediation of inactive  
13           hazardous sites under Part 3 of Article 9 of Chapter 130A of the  
14           General Statutes; and  
15           (2) Funding of a portion of the cost of the Pollution Prevention Pays  
16           program, other programs which foster waste prevention, minimization,  
17           reuse, and recycling, and programs which provide assistance to small  
18           quantity generators.

19           (d) The Commission shall prepare, on a quarterly basis, a detailed financial  
20           statement showing its current fee schedules, income from all sources, indebtedness, and  
21           expenses for the quarter and fiscal year to date. This report, and any other information  
22           regarding the operation of the Commission which may be requested, shall be submitted  
23           to the chairmen of the House and Senate committees on Finance and Appropriations, the  
24           Joint Legislative Commission on Governmental Operations, the Research Division, and  
25           the Fiscal Research Division of the General Assembly.

26           (e) An operator of a hazardous waste facility may serve as the collection agent  
27           for the Commission, in which case, funds collected by the operator shall be transferred  
28           to the Commission on a timely basis, and deposited with the State Treasurer, as directed  
29           established by the Commission.

30           (f) All Commission accounts shall be audited on an annual basis.

31           **"§ 130B-17. Long-Term Care Fund.**

32           (a) For hazardous waste facilities owned or operated by the Commission, there is  
33           hereby established under the control and direction of the Commission a nonreverting  
34           Long-Term Care Fund, to be administered by the State Treasurer, which may be used  
35           for:

- 36           (1) Administration of the Fund;  
37           (2) Emergency response and decontamination at facilities operated by the  
38           Commission; or  
39           (3) Post-closure physical surveillance, environmental monitoring,  
40           maintenance, care, custody and remedial action at hazardous waste  
41           facility site(s) operated by the Commission.

42           (b) The Long-Term Care Fund shall be treated as a special trust fund and shall be  
43           credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-  
44           69.3.

1 (c) In addition to any money that may be appropriated or otherwise made  
2 available to it, the Fund may be maintained by fees and other charges including user  
3 charges, penalties, surcharges, or other money paid to or recovered by or on behalf of  
4 the Commission under the provisions of this Chapter. Fees and other charges shall at all  
5 times be sufficient to build and maintain the Fund balance at a level determined by the  
6 Commission, with the concurrence of the Health Services Commission, to be adequate  
7 for the purposes stated in this section.

8 (d) The establishment of this Fund shall in no way be construed to relieve or  
9 reduce the liability of any facility operator, contractor, or other person for damages  
10 resulting from the operation of a hazardous waste facility.

11 **"§ 130B-18. Taxes; other compensation to the State and local governments.**

12 (a) Hazardous waste facilities or portions of such facilities which are owned by  
13 the Commission shall be exempt from ad valorem property taxes; provided however,  
14 that the Commission shall, in lieu of such property taxes pay to any governmental body  
15 authorized to levy such property taxes the amount that would be assessed as taxes on  
16 real and personal property of such facilities if such facilities were otherwise subject to  
17 valuation and assessment by local taxing unit. In addition, the Commission shall  
18 reimburse the county, city, or other local taxing unit for the loss of ad valorem property  
19 tax revenues from any property that abutts the property upon which such facilities are  
20 located and which is shown to have diminished in value as the direct result of the siting  
21 and operation of such facilities. Such payments in lieu of taxes shall be due and shall  
22 bear interest if unpaid, as in the case of taxes on other property. Payments in lieu of  
23 taxes made hereunder shall be treated in the same manner as taxes for purposes of all  
24 procedural and substantive provisions of law. Administrative buildings, associated  
25 land, and other real and personal property owned by the Commission and not located at  
26 a hazardous waste facility shall be exempt from property taxes as provided in G.S. 105-  
27 278.1.

28 (b) Except as authorized in G.S. 153A-152.1, G.S. 160A-211.1 and this Chapter,  
29 no county, city, or other local taxing unit may impose any tax, fee, assessment, or levy  
30 of any kind or description upon the Commission or the operator of a hazardous waste  
31 facility or any portion thereof which is owned by the Commission. Any hazardous  
32 waste facility or portion thereof which is separately taxable and which is not owned by  
33 the Commission may be taxed on the same basis as any other property. To the extent  
34 that any law, ordinance, or portion thereof is in conflict with this subsection, such law,  
35 ordinance, or portion thereof is hereby invalidated.

36 (c) The Commission shall collect and deposit with the State Treasurer, on behalf  
37 of local governments where hazardous waste facilities are located pursuant to this  
38 Chapter, a tax on the gross receipts of each such facility in the amount of two and one-  
39 half percent (2.5%) of the gross receipts of such facility per annum, to be distributed to  
40 local governments as the General Assembly shall provide. The Commission shall  
41 develop and recommend to the General Assembly a proposed revenue package and  
42 revenue distribution formula which the General Assembly shall consider in providing  
43 for distribution of this tax and such other revenues as may be collected.

44 **"§ 130B-19. Site designation review committees.**



1       (a) The board of commissioners of each county in which there is located a site  
2 identified for evaluation pursuant to G.S. 130B-11(d) may appoint a site designation  
3 review committee for a hazardous waste facility. The committee shall consist of 11  
4 members representing, insofar as possible, local government, environmental, health,  
5 engineering, business and industry, academic, public interest, and emergency response  
6 groups. The committee shall elect a chairman, vice-chairman, and a secretary.  
7 Vacancies shall be filled by the county board of commissioners using the same criteria  
8 employed in the original appointment. Members shall be reimbursed by the committee  
9 for reasonable and necessary expenses incurred in connection with their duties. The  
10 county shall provide the committee with necessary support staff.

11       (b) The committee shall advise the county board of commissioners on matters  
12 relating to the siting of a hazardous waste facility.

13       (c) All site designation review committees shall terminate upon the designation  
14 of the preferred site by the Commission.

15       (d) Subject to appropriation by the General Assembly, the Board shall provide  
16 technical assistance grants of up to fifty thousand dollars (\$50,000) to each site  
17 designation review committee. In the event that a proposed site is located in more than  
18 one county, the Board may provide technical grants to a site designation review  
19 committee in each county, provided that the maximum amount the Board may grant to  
20 all site designation review committees for a particular site is seventy-five thousand  
21 dollars (\$75,000).

22       (e) Grant funds may be used by the committee to:

23           (1) Collect information on site suitability;

24           (2) Monitor the site evaluation and site selection process;

25           (3) Conduct socioeconomic and environmental assessments of the  
26 proposed facility;

27           (4) Participate in any meetings, hearings, or other events related to the site  
28 selection process;

29           (5) Study the cost and benefits of the facility being located at the site  
30 under consideration; and

31           (6) Reimburse members for their expenses as provided in subsection (a) of  
32 this section.

33       (f) Any reviews or studies funded with grant monies shall be completed prior to  
34 the date set by the Commission for nomination of a preferred site. No grant funds shall  
35 be used for litigation expenses. Each site designation review committee shall properly  
36 account for all funds. Unexpended funds shall revert to the Board.

37       (g) The Commission shall consider in its decision-making process  
38 recommendations or other information of the site designation review committee as may  
39 be transmitted to the Commission by the county board of commissioners.

40 **"§ 130B-20. Preferred site local advisory committees.**

41       (a) Upon designation of a preferred site for a hazardous waste facility pursuant to  
42 G.S. 130B-11(d) the board of commissioners of each county within whose jurisdiction  
43 the site is located may appoint a preferred site local advisory committee. The  
44 committee shall consist of 11 members representing insofar as possible local

1 government, environmental, health, engineering, business and industry, academic,  
2 public interest, and emergency response groups. The committee shall elect a chairman,  
3 vice-chairman, and a secretary. Vacancies shall be filled by the county board of  
4 commissioners using the same criteria employed in the original appointment. Members  
5 shall be reimbursed by the committee for reasonable and necessary expenses incurred in  
6 connection with their duties. The county shall provide the committee with necessary  
7 support staff.

8 (b) The preferred site local advisory committee shall:

- 9 (1) Study the costs and benefits associated with the proposed facility;
- 10 (2) Review all permit and license applications and related documents  
11 concerning the proposed facility;
- 12 (3) Hire program, technical, and legal consultants to assist in the review  
13 process;
- 14 (4) Collect and review information required for issuance of a special or  
15 conditional use zoning permit;
- 16 (5) Assess the potential local environmental and socioeconomic impacts  
17 of the proposed facility;
- 18 (6) Promote public education, information, and participation in the  
19 licensing process;
- 20 (7) Develop and propose agreements between the Commission, the  
21 hazardous waste facility operator, local governments, and other  
22 persons;
- 23 (8) Develop and present recommendations concerning license conditions,  
24 operational requirements, compensation, and incentives related to the  
25 proposed facility;
- 26 (9) Hire a mediator to facilitate negotiations among the Commission, the  
27 hazardous waste facility operator, local governments, and other  
28 persons; and
- 29 (10) Reimburse committee members for reasonable and necessary  
30 expenses.

31 (c) An applicant for a permit to operate a hazardous waste facility shall pay a  
32 one-time local application fee of one hundred thousand dollars (\$100,000) to the county  
33 where the site of the proposed facility is located. If the site lies in more than one  
34 county, the local application fee will be distributed to the counties in which the site is  
35 located in equal amounts. If the board of commissioners appoints a preferred site local  
36 advisory committee the local application fee shall be used to support the work of the  
37 committee. The preferred site local advisory committee shall properly account for all  
38 funds. Any unexpended funds shall revert to the Commission. No portion of local  
39 application fee shall be used to finance litigation expenses.

40 **"§ 130B-21. Negotiation and arbitration.**

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

- 44 (1) The need for the facility;

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

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

12           (c) Negotiations may be conducted with the assistance of a mediator if mediation  
13 is requested by both the Commission and a local government. The function of the  
14 mediator is to encourage a voluntary settlement of unresolved negotiable issues. The  
15 Board shall provide the Commission and the local government with the names and  
16 qualifications of persons willing to serve as mediators. If the Commission and a local  
17 government cannot agree on the selection of a mediator, the Commission and the local  
18 government may request the Board to appoint a mediator.

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

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

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

- 1           (1) Those issues excluded from negotiation under subsection (a) of this  
2 section;  
3           (2) Any issue relating to the imposition by the General Assembly of a tax,  
4 or the imposition of a fee not authorized by this Chapter; and  
5           (3) Any issue requiring an appropriation by the General Assembly.  
6       (f) The Board shall serve as the arbitrator of any issue submitted for arbitration  
7 under this section.

8 **"§ 130B-22. Inter-Agency Committee on Hazardous Waste.**

9       (a) To assist the Commission in the performance of its responsibilities under this  
10 Chapter and to advise the General Assembly, there is created the Inter-Agency  
11 Committee on Hazardous Waste (herein called the 'Committee'). The members shall  
12 be: the Chairman of the Board; the Chairman of the Board's Technical Committee on  
13 Hazardous Waste; the Head of the Solid Waste Management Section of the Division of  
14 Health Services of the Department of Human Resources or his designee; the Chief of  
15 the Hazardous Waste Management Branch of the Solid Waste Management Section or  
16 his designee; one additional representative of the Solid Waste Management Section with  
17 expertise in CERCLA/SARA capacity assurance requirements appointed by the Head of  
18 the Section, the Chairman of the Commission or his designee; one additional member of  
19 the Commission appointed by the Chairman of the Commission; the Executive Director  
20 of the Commission; the Director of the Pollution Prevention Pays program; four  
21 representatives of the Department of Natural Resources and Community Development  
22 with expertise in geology, groundwater, water quality, and air quality; and the two  
23 representatives of the Attorney General's office who provide legal services to the  
24 Commission and the Hazardous Waste Management Branch. The Chairman of the  
25 Commission shall serve as the Chairman of the Committee, and the Commission shall  
26 provide professional and clerical support to the Committee.

27       (b) The purpose of the Committee is to share information and coordinate efforts  
28 in the siting, design, financing, permitting, construction, and operation of hazardous  
29 waste facilities.

30       (c) The Committee shall report to the Governor, the General Assembly, and the  
31 Research and Fiscal Research Divisions of the General Assembly from time to time  
32 regarding any changes in the present law it may deem appropriate to expedite siting,  
33 design, financing, permitting, construction, and operation of hazardous waste facilities.  
34 Such reports shall not be subject to review by the departments, agencies, boards, or  
35 commissions from whose membership the Committee is drawn. Notwithstanding any  
36 rule or resolution to the contrary, proposed legislation to implement any  
37 recommendation made by the Committee may be introduced and considered during any  
38 session of the General Assembly.

39       (d) Consistent with existing law, each department, agency, board, or commission  
40 from whose membership the Committee is drawn shall be responsible for any expenses  
41 incident to the participation of its members in the work of the Committee, including per  
42 diem, travel, and subsistence, from funds otherwise appropriated to it."

43           Sec. 2. (a) Part 11A of Article 10 of Chapter 143B of the General Statutes is  
44 repealed.

1 (b) The Hazardous Waste Treatment Commission as established by Part 11A  
2 of Article 10 of Chapter 143B of the General Statutes is abolished. The Hazardous  
3 Waste Treatment Commission's records, personnel, property, unexpended balances of  
4 appropriations, allocations, and other funds, including the functions of budgeting and  
5 purchasing, are transferred to the Industrial Waste Management Commission  
6 established pursuant to this act. The rights and obligations of any contract to which the  
7 Hazardous Waste Treatment Commission is a party are transferred to the Industrial  
8 Waste Management Commission.

9 (c) Initial appointments pursuant to G.S. 130B-6(d) shall be made within 45  
10 days of the date this act becomes effective. The North Carolina Industrial Waste  
11 Management Commission shall begin operation upon the appointment of all of its  
12 members, provided that the Commission shall begin operation 45 days after the date this  
13 act becomes effective, notwithstanding the failure of any of the appointing authorities to  
14 make appointments.

15 (d) Subsections (a) and (b) of this section shall be effective on the day the  
16 North Carolina Industrial Waste Management Commission begins operation.

17 Sec. 3. G.S. 105-164.14(c) reads as rewritten:

18 "(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall  
19 make refunds annually to all governmental entities, as hereinafter defined, of sales and  
20 use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(c),  
21 by said governmental entities on direct purchases of tangible personal property. Sales  
22 and use tax liability indirectly incurred by such governmental entities on building  
23 materials, supplies, fixtures and equipment which shall become a part of or annexed to  
24 any building or structure being erected, altered or repaired which is owned or leased by  
25 such governmental entities shall be construed as sales or use tax liability incurred on  
26 direct purchases by such governmental entities, and such entities may obtain refunds of  
27 such taxes indirectly paid. The refund provisions contained in this subsection shall not  
28 apply to any governmental entities not specifically named herein. In order to receive the  
29 refund herein provided for, governmental entities shall file a written request for said  
30 refund within six months of the close of the fiscal year of the governmental entities  
31 seeking said refund, and such request for refund shall be substantiated by such records,  
32 receipts and information as the Secretary may require. No refunds shall be made on  
33 applications not filed within the time allowed by this section and in such manner as the  
34 Secretary may otherwise require. The term 'governmental entities,' for the purposes of  
35 this subsection, shall mean all counties, incorporated cities and towns, water and sewer  
36 authorities created and existing under the provisions of Chapter 162A of the General  
37 Statutes, lake authorities created by a board of county commissioners pursuant to an act  
38 of the General Assembly, sanitary districts, regional councils of governments created  
39 pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse  
40 authorities (other than single-county area authorities) established pursuant to Article 4  
41 of Chapter 122C of the General Statutes, district health departments, regional planning  
42 and economic development commissions created pursuant to G.S. 158-14, regional  
43 economic development commissions created pursuant to G.S. 158-8, regional planning  
44 commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and

1 metropolitan water districts in this State, the North Carolina Low-Level Radioactive  
2 Waste Management Authority created pursuant to Chapter 104G of the General  
3 Statutes, and the North Carolina Industrial Waste Management Commission created  
4 pursuant to Chapter 130B of the General Statutes."

5 Sec. 4. G.S. 130A-290 reads as rewritten:

6 **"§ 130A-290. Definitions.**

7 The following definitions shall apply throughout this Article:

8 ~~(1) 'Comprehensive hazardous waste treatment facility' means a facility~~  
9 ~~designated as such by the Governor's Waste Management Board,~~  
10 ~~meeting the following criteria:~~

- 11 a. ~~It is a commercial facility that accepts hazardous waste from the~~  
12 ~~general public for treatment;~~  
13 b. ~~It has the capacity and capability to treat and dispose of~~  
14 ~~hazardous waste on at least an intrastate regional basis; and~~  
15 e. ~~Its location will substantially facilitate treatment of hazardous~~  
16 ~~waste for the State of North Carolina.~~

17 ~~(1a) 'Disposal' means the discharge, deposit, injection, dumping, spilling,~~  
18 ~~leaking or placing of any solid waste into or on any land so that the~~  
19 ~~solid waste or any constituent part of the solid waste may enter the~~  
20 ~~environment or be emitted into the air or discharged into any waters,~~  
21 ~~including groundwaters.~~

22 (1) 'CERCLA/SARA' means the Comprehensive Environmental  
23 Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-  
24 510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the  
25 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.  
26 99-499, 100 Stat. 1613, as amended.

27 ~~(1b)(2)~~ (2) 'Commercial' when applied to a hazardous waste facility, means a  
28 hazardous waste facility that accepts hazardous waste from the general  
29 public or from another person for a fee.

30 ~~(2) 'Federal act' means the Resource Conservation and Recovery Act of~~  
31 ~~1976, P.L. 94-580, as amended.~~

32 (3) 'Disposal' means the discharge, deposit, injection, dumping, spilling,  
33 leaking or placing of any solid waste into or on any land so that the  
34 solid waste or any constituent part of the solid waste may enter the  
35 environment or be emitted into the air or discharged into any waters,  
36 including groundwaters.

37 ~~(3)(4)~~ (4) 'Garbage' means all putrescible wastes, including animal offal and  
38 carcasses, and recognizable industrial by-products, but excluding  
39 sewage and human waste.

40 ~~(4)(5)~~ (5) 'Hazardous waste' means a solid waste, or combination of solid  
41 wastes, which because of its quantity, concentration or physical,  
42 chemical or infectious characteristics may:

- 1 a. Cause or significantly contribute to an increase in mortality or  
2 an increase in serious irreversible or incapacitating reversible  
3 illness; or  
4 b. Pose a substantial present or potential hazard to human health  
5 or the environment when improperly treated, stored,  
6 transported, disposed of or otherwise managed.
- 7 ~~(5)(6)~~ 'Hazardous waste facility' means a facility for the ~~storage,~~ collection,  
8 storage, processing, treatment, recycling, ~~recovery~~ recovery, or disposal  
9 of hazardous waste.
- 10 ~~(6)(7)~~ 'Hazardous waste generation' means the act or process of producing  
11 hazardous waste.
- 12 ~~(7)(8)~~ 'Hazardous waste landfill facility' means any facility or any portion of  
13 a facility for disposal of hazardous waste on or in land in accordance  
14 with rules adopted under this Article.
- 15 ~~(7a)~~ 'Hazardous waste long term storage facility' means a facility as  
16 defined in G.S. 143B-470.2(5).
- 17 ~~(7b)~~ 'Hazardous waste management program' means the program and  
18 activities within the Department pursuant to Part 2 of this Article, for  
19 hazardous waste management.
- 20 ~~(8)(9)~~ 'Hazardous waste management' means the systematic control of  
21 the collection, source separation, storage, transportation,  
22 processing, treatment, recovery and disposal of hazardous  
23 wastes.
- 24 ~~(8a)~~ 'Hazardous waste treatment facility' means a facility as defined in G.S.  
25 143B-470.2(3).
- 26 (10) 'Hazardous waste management program' means the program  
27 and activities within the Department pursuant to Part 2 of this  
28 Article, for hazardous waste management.
- 29 ~~(8b)(11)~~ 'Landfill' means a disposal facility or part of a disposal facility  
30 where waste is placed in or on land and which is not a land treatment  
31 facility, a surface impoundment, an injection well, a hazardous waste  
32 long-term storage facility or a surface storage facility.
- 33 ~~(8c)~~ 'Long term retrievable storage' means ~~storage in closed containers in~~  
34 ~~facilities (either above or below ground) with (i) adequate lights, (ii)~~  
35 ~~impervious cement floors, (iii) strong visible shelves or platforms, (iv)~~  
36 ~~passageways to allow inspection at any time, (v) adequate ventilation~~  
37 ~~if underground or in closed buildings, (vi) protection from the weather,~~  
38 ~~(vii) accessible to monitoring with signs on both individual containers~~  
39 ~~and sections of storage facilities, and (viii) adequate safety and~~  
40 ~~security precautions for facility personnel, inspectors and invited or~~  
41 ~~permitted members of the community.~~
- 42 ~~(9)(12)~~ 'Manifest' means the form used for identifying the quantity,  
43 composition and the origin, routing and destination of hazardous waste

- 1 during its transportation from the point of generation to the point of  
2 disposal, treatment or storage.
- 3 ~~(10)~~(13) 'Natural resources' means all materials which have useful physical  
4 or chemical properties which exist, unused, in nature.
- 5 ~~(11)~~(14) 'Open dump' means a solid waste disposal site which is not a  
6 sanitary landfill.
- 7 ~~(12)~~(15) 'Person' means an individual, corporation, company, association,  
8 partnership, unit of local government, State agency, federal agency or  
9 other legal entity.
- 10 (16) 'RCRA' means the Resource Conservation and Recovery Act of 1976,  
11 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.
- 12 ~~(13)~~(17) 'Recycling' means the process by which recovered resources are  
13 transformed into new products so that the original products lose their  
14 identity.
- 15 ~~(14)~~(18) 'Refuse' means all nonputrescible waste.
- 16 ~~(15)~~(19) 'Resource recovery' means the process of obtaining material or  
17 energy resources from discarded solid waste which no longer has any  
18 useful life in its present form and preparing the solid waste for  
19 recycling.
- 20 ~~(15a)~~(20) 'Reuse' means a process by which resources are reused  
21 or rendered usable.
- 22 ~~(16)~~(21) 'Sanitary landfill' means a facility for disposal of solid waste on  
23 land in a sanitary manner in accordance with the rules concerning  
24 sanitary landfills adopted under this Article.
- 25 ~~(16a)~~(22) 'Septage' means solid waste that is a fluid mixture of  
26 untreated and partially treated sewage solids, liquids  
27 and sludge of human or domestic origin which is  
28 removed from a septic tank system.
- 29 ~~(16b)~~(23) 'Septage management firm' means a person engaged in  
30 the business of pumping, transporting, storing, treating  
31 or disposing septage. The term does not include public  
32 or community sanitary sewage systems that treat or  
33 dispose septage.
- 34 ~~(17)~~(24) 'Sludge' means any solid, semisolid or liquid waste  
35 generated from a municipal, commercial, institutional  
36 or industrial wastewater treatment plant, water supply  
37 treatment plant or air pollution control facility, or any  
38 other waste having similar characteristics and effects.
- 39 ~~(18)~~(25) 'Solid waste' means any hazardous or nonhazardous  
40 garbage, refuse or sludge from a waste treatment plant,  
41 water supply treatment plant or air pollution control  
42 facility, domestic sewage and sludges generated by the  
43 treatment thereof in sanitary sewage collection,  
44 treatment and disposal systems, and other material that



1 is either discarded or is being accumulated, stored or  
 2 treated prior to being discarded, or has served its  
 3 original intended use and is generally discarded,  
 4 including solid, liquid, semisolid or contained gaseous  
 5 material resulting from industrial, institutional,  
 6 commercial and agricultural operations, and from  
 7 community activities. The term does not include:

- 8 a. Fecal waste from fowls and animals other than humans;  
 9 b. Solid or dissolved material in:  
 10 1. Domestic sewage and sludges generated by treatment  
 11 thereof in sanitary sewage collection, treatment and  
 12 disposal systems which are designed to discharge  
 13 effluents to the surface waters;  
 14 2. Irrigation return flows; and  
 15 3. Wastewater discharges and the sludges incidental to and  
 16 generated by treatment which are point sources subject  
 17 to permits granted under Section 402 of the Federal  
 18 Water Pollution Control Act, as amended (P.L. 92-500),  
 19 and permits granted under G.S. 143-215.1 by the  
 20 Environmental Management Commission. However, any  
 21 sludges that meet the criteria for hazardous waste under  
 22 ~~the Federal Resource Conservation and Recovery Act (P.L.~~  
 23 ~~94-580), as amended, RCRA~~ shall also be a solid waste for  
 24 the purposes of this Article;  
 25 c. Oils and other liquid hydrocarbons controlled under Article  
 26 21A of Chapter 143 of the General Statutes. However, any oils  
 27 or other liquid hydrocarbons that meet the criteria for hazardous  
 28 waste under ~~the Federal Resource Conservation and Recovery Act~~  
 29 ~~(P.L. 94-580), as amended, RCRA~~ shall also be a solid waste for  
 30 the purposes of this Article;  
 31 d. Any source, special nuclear or byproduct material as defined by  
 32 the Atomic Energy Act of 1954, as amended (42 U.S.C. §  
 33 2011).  
 34 e. Mining refuse covered by the North Carolina Mining Act, G.S.  
 35 74-46 through 74-68 and regulated by the North Carolina  
 36 Mining Commission (as defined under G.S. 143B- 290).  
 37 However, any specific mining waste that meets the criteria for  
 38 hazardous waste under ~~the Federal Resource Conservation and~~  
 39 ~~Recovery Act (P.L. 94-580), as amended, RCRA~~ shall also be a  
 40 solid waste for the purposes of this Article.

41 (19)(26) 'Solid waste disposal site' means any place at which  
 42 solid wastes are disposed of by incineration, sanitary  
 43 landfill or any other method.



1 permits or approvals have been denied or withheld only because of the  
2 local ordinance(s);

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

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

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

16 Sec. 7. G.S. 130A-294(e) reads as rewritten:

17 "(e) The rules adopted under this section shall be no less stringent than the most  
18 recent regulations adopted under ~~the federal act~~ RCRA and may be amended."

19 Sec. 8. G.S. 130A-294(f) reads as rewritten:

20 "(f) Within ~~five~~ 10 days of receiving an application for a permit or for an  
21 amendment to an existing permit for a hazardous waste facility, the Department shall  
22 notify the clerk ~~to of the county~~ board of commissioners of the county or counties in  
23 which the facility is proposed to be located or is located and, or, if the facility is  
24 proposed to be located or is located within a city, the city clerk of the governing board  
25 of the city, where the facility is proposed to be located, that the application has been filed,  
26 and shall file a copy of the application with the clerk. Prior to the issuance of a permit  
27 or an amendment of an existing permit for a hazardous waste facility, the Department  
28 Secretary or his designee shall ~~issue public notice and conduct a public hearing in any the~~  
29 county, or in one of the counties in which a the hazardous waste facility is proposed to  
30 be located or is located. ~~Notice and public hearings shall be in accordance with the~~  
31 ~~appropriate federal regulations adopted pursuant to the federal act and with Chapter 150B of~~  
32 ~~the General Statutes.~~ The Secretary or his designee shall give notice of the hearing, and  
33 the public hearing shall be in accordance with applicable federal regulations adopted  
34 pursuant to RCRA and with Chapter 150B of the General Statutes. Where the  
35 provisions of the federal regulations and Chapter 150B of the General Statutes are  
36 inconsistent, the federal regulations shall apply.

37 (f1) Within 180 days after receiving a complete application for a permit or for an  
38 amendment to an existing permit for a ~~comprehensive~~ hazardous waste ~~treatment~~  
39 management facility, the Department shall approve or disapprove the application. In  
40 acting upon the application, the Department shall consider land use, zoning, buffer  
41 zones, utility availability, proximity to sources of waste, civil defense, fire safety,  
42 transportation and access, existing road network, general considerations of the public's  
43 health and safety, and any other objective factors reasonably related and relevant to the  
44 proper siting and operation of ~~the comprehensive~~ a hazardous waste ~~treatment~~

1 management facility. The Department may impose conditions in a permit in response to  
2 these factors. The Department's denial of an application shall be in writing, shall state  
3 the reasons for the denial, and shall inform the applicant of the right to appeal the  
4 denial."

5 Sec. 9. G.S. 105-275 is amended by adding a new subsection to read:

6 "(38) Real and personal property belonging to the North Carolina Industrial Waste  
7 Management Commission created under Chapter 130B of the General Statutes."

8 Sec. 10. G.S. 120-123 is amended by adding a new subsection to read:

9 "(56) The North Carolina Industrial Waste Management Commission, as  
10 established by G.S. 130B-6."

11 Sec. 11. G.S. 126-5(c1) reads as rewritten:

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

- 14 (1) Constitutional officers of the State.
- 15 (2) Officers and employees of the Judicial Department.
- 16 (3) Officers and employees of the General Assembly.
- 17 (4) Members of boards, committees, commissions, councils, and advisory  
18 councils compensated on a per diem basis.
- 19 (5) Officials or employees whose salaries are fixed by the General  
20 Assembly, or by the Governor, or by the Governor and Council of  
21 State, or by the Governor subject to the approval of the Council of  
22 State.
- 23 (6) Employees of the Office of the Governor that the Governor, at any  
24 time, in his discretion, exempts from the application of the provisions  
25 of this Chapter by means of a letter to the State Personnel Director  
26 designating these employees.
- 27 (7) Employees of the Office of the Lieutenant Governor, that the  
28 Lieutenant Governor, at any time, in his discretion, exempts from the  
29 application of the provisions of this Chapter by means of a letter to the  
30 State Personnel Director designating these employees.
- 31 (8) Instructional and research staff, physicians, and dentists of The  
32 University of North Carolina.
- 33 (9) Employees whose salaries are fixed under the authority vested in the  
34 Board of Governors of The University of North Carolina by the  
35 provisions of G.S. 116-11(4), 116-1(5) [116-11(5)], and 116-14.
- 36 (10) Employees of community colleges whose salaries are fixed in  
37 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.
- 38 (11) North Carolina School of Science and Mathematics' employees whose  
39 salaries are fixed in accordance with the provisions of G.S. 116-  
40 235(c)(1) and G.S. 116-235(c)(2).
- 41 (12) Employees of the North Carolina Low-Level Radioactive Waste  
42 Management Authority whose salaries are fixed pursuant to G.S.  
43 104G-5(g)(1) and G.S. 104G-5(g)(2).

1           (13) Employees of the North Carolina Industrial Waste Management  
2           Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)  
3           and G.S. 130B-6(g)(2)."

4           Sec. 12. G.S. 130A-294(h) is rewritten to read:

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

7           (1) ~~No hazardous waste landfill shall be established until at least one~~  
8           ~~comprehensive hazardous waste treatment facility is fully operational~~  
9           ~~in North Carolina.~~

10          (2) Hazardous waste shall be treated prior to disposal in North Carolina.  
11          Long-term storage or disposal shall be used for the storage or disposal  
12          of the residual or ashes of hazardous waste which has been treated so  
13          the toxicity is low enough to present no significant health or safety  
14          hazard in the event of leakage from the facility. Hazardous waste that  
15          cannot be reduced, stabilized or destroyed to the extent which renders  
16          it sufficiently low in toxicity as to present no significant health or  
17          safety hazard in the event of leakage shall be ~~stored in long term~~ placed  
18          in retrievable storage until such methods are found. Hazardous waste  
19          which has been placed in long term ~~retrievable storage~~ shall be  
20          detoxified as soon as the Commission for Health Services determines  
21          based upon a preponderance of the evidence that the technology is  
22          available at a reasonable cost. The Commission shall determine the  
23          extent of waste treatment required before hazardous waste can be  
24          disposed of in a hazardous waste landfill facility.

25          (3) Any hazardous waste landfill facility hereafter constructed in this State  
26          shall meet, at the minimum, the standards of construction imposed by  
27          federal regulations adopted under the ~~Federal Act~~ RCRA at the time  
28          the permit is issued.

29          (4) No hazardous waste landfill facility or polychlorinated biphenyl  
30          landfill facility shall be located within 25 miles of any other hazardous  
31          waste landfill facility or polychlorinated biphenyl landfill facility.

32          (5) No hazardous waste ~~landfill facility~~ operated pursuant to Chapter 130B  
33          of the General Statutes shall be located within 25 miles of a or  
34          polychlorinated biphenyl landfill facility ~~facility~~ shall be permitted  
35          ~~within 25 miles of a comprehensive hazardous waste treatment facility as~~  
36          ~~defined in G.S. 130A-290(1).~~

37          (6) The following will not be disposed of in a hazardous waste ~~landfill or~~  
38          ~~long term retrievable storage:~~ landfill: ignitables as defined in the  
39          ~~Federal Act, RCRA,~~ polyhalogenated biphenyls of 50 ppm or greater  
40          concentration, and free liquids whether or not containerized.

41          (7) The underground storage of either a hazardous waste landfill or long-  
42          term storage facility shall have at a minimum the following: a leachate  
43          collection and removal system above an artificial impervious liner of  
44          at least 30 mils in thickness, a minimum of five feet of clay or clay-

1 like liner with a maximum permeability of  $1.0 \times 10^{-7}$ – $10^{-10}$  centimeters  
2 per second (cm/sec) below said artificial liner, and a leachate detection  
3 system immediately below the clay or clay-like liner.

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

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

10 Sec. 13. G.S.130A-294(i) reads as rewritten:

11 "(i) ~~The Department shall submit to the General Assembly by February 1, 1985,~~  
12 ~~plans:~~

13 (1) ~~To monitor and regulate all generators of more than 100 kilograms per~~  
14 ~~month of hazardous waste; and~~

15 (2) ~~To locate, catalogue and monitor all existing hazardous waste~~  
16 ~~impoundments and surface impoundments, including inactive~~  
17 ~~hazardous waste disposal sites and "orphan dumps", including those~~  
18 ~~owned or operated by units of State and local government, and shall~~  
19 ~~submit to the General Assembly by February 1, 1985, a plan to bring~~  
20 ~~all of these under legal requirements in effect on February 1, 1985,~~  
21 ~~including a timetable for compliance. This plan shall include~~  
22 ~~recordation of each of these sites in the office of the Register of Deeds~~  
23 ~~in the county where it is located."~~

24 Sec. 14. G.S. 130A-295 reads as rewritten:

25 "**§ 130A-295. Additional requirements for hazardous waste facilities.**

26 (a) An applicant for a permit for a hazardous waste facility shall satisfy the  
27 Department that:

28 (1) Any hazardous waste facility constructed or operated by the applicant,  
29 or any parent or subsidiary corporation if the applicant is a  
30 corporation, has been operated in accordance, with sound waste  
31 management practices and in substantial compliance with federal and  
32 state laws, regulations and rules; and

33 (2) The applicant, or any parent or subsidiary corporation if the applicant  
34 is a corporation, is financially qualified to operate the proposed  
35 hazardous waste facility.

36 (a1) An applicant for a permit for a hazardous waste facility shall satisfy the  
37 Department that he has met the requirements of subsection (a) of this section before the  
38 Department is required to otherwise review the application. In order to continue to hold  
39 a permit under this Chapter, a permittee must remain financially qualified and must  
40 provide any information requested by the Department to demonstrate that he continues  
41 to be financially qualified.

42 (b) ~~The operator shall deposit in trust with the city or county government one~~  
43 ~~half of one percent (0.05%) of the income of the comprehensive hazardous waste~~  
44 ~~treatment facility, payable within 30 days of each calendar quarter, until the total shall~~

1 equal an amount of two hundred fifty thousand dollars (\$250,000). As used herein,  
2 income means gross operating revenues less refunds, rebates and allowances. This fund  
3 shall be available to the city or county in which the comprehensive hazardous waste  
4 treatment facility is located for the purpose of defraying the cost of any cleanup which  
5 might be required at the comprehensive hazardous waste treatment facility. The city or  
6 county may, in its discretion, use up to fifty thousand dollars (\$50,000) of this total to  
7 establish an Emergency Response Team, trained and equipped to handle hazardous  
8 waste spills and to respond to accidents at hazardous waste treatment facilities.  
9 Financial records shall be subject to the audit of the local government for two years  
10 after any fee is paid. Any errors in the payment shall be corrected by credit or debit in  
11 the next payment or payments by the operator of the hazardous waste facility. If the  
12 North Carolina Hazardous Waste Treatment Commission owns and operates the facility,  
13 the North Carolina Hazardous Waste Treatment Commission, consistent with the  
14 resources available, shall compensate the local government for expenses incurred due to  
15 location of the facility. This compensation shall not exceed the amount of ad valorem  
16 tax revenues the local government would have received if the facility were privately  
17 owned. Nothing herein shall be construed to limit in any way funds which might be  
18 available to local government from other sources.

19 (e) Although no one is required to use a comprehensive hazardous waste  
20 treatment facility, use by North Carolina industry shall be encouraged. Nothing in this  
21 act shall be construed to prevent any hazardous waste or other waste generated or  
22 located in North Carolina from being removed from the State for disposal, treatment or  
23 storage."

24 Sec. 15. G.S. 130A-299 reads as rewritten:

25 **"§130A-299. Single agency designation.**

26 The Department is designated as the single State agency for purposes of the federal  
27 act RCRA or any State or federal legislation enacted to promote the proper management  
28 of solid waste."

29 Sec. 16. G.S. 130A-308 reads as rewritten:

30 **"§130A-308. Continuing releases at permitted facilities.**

31 Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after  
32 November 8, 1984, shall require corrective action for all releases of hazardous waste or  
33 constituents from any solid waste management unit at a treatment, storage, or disposal  
34 facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste  
35 was placed in such unit. Permits issued under G.S. 130A-294(c) which implement  
36 Section 3005 of the Federal Act RCRA (42 U.S.C. § 6925) shall contain schedules of  
37 compliance for such corrective action (where such corrective action cannot be  
38 completed prior to issuance of the permit) and assurances of financial responsibility for  
39 completing such corrective action. Notwithstanding any other provision of this section,  
40 this section shall apply only to units, facilities, and permits that are covered by Section  
41 3004(u) of the Federal Act RCRA (42 U.S.C. Section § 6924) (u)). Notwithstanding the  
42 foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by  
43 this section."

44 Sec. 17. G.S. 130A-309 reads as rewritten:

**"§130A-309. Corrective actions beyond facility boundary.**

Standards adopted under G.S. 130A-294(c) shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Department that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such standards shall take effect upon adoption and shall apply to:

- (1) All facilities operating under permits issued under 130A-294(c); and
- (2) All landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending adoption of such rules, the Department shall issue corrective action orders for facilities referred to in (1) and (2), on a case-by-case basis, consistent with the purposes of this section. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(v) of the Federal Act RCRA (42 U.S.C. Section § 6924(v)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section."

Sec. 18. G.S. 143B-216.13 reads as rewritten:

**"§ 143B-216.13. Functions and powers of Board.**

The Board shall perform the functions and be empowered as follows:

- (1) The Board shall periodically evaluate and assess the volume, distribution, location, and physical and chemical characteristics of hazardous waste and low-level radioactive waste generated or disposed of in the State.
- (2) The Board shall periodically review the State's comprehensive waste management system and make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste and low-level radioactive waste which must be disposed of.
- (3) The Board shall study and make recommendations on policy issues including but not limited to liability and financial responsibilities within the waste management area. ~~On or before January 1, 1983, the Board shall prepare and present to the Governor and General Assembly a report concerning the desirability of establishing by statute a standard of strict liability for persons involved in storage, transportation, treatment, or disposal of hazardous or low-level radioactive waste in North Carolina.~~
- (4) The Board shall promote research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste and low-level radioactive waste. The Board is authorized to establish a waste information exchange for the State.



- 1 (5) The Board shall promote public education and public involvement in  
2 the decision making process for the siting and permitting of proposed  
3 waste management facilities.
- 4 (6) The Board Board, in conjunction with the Solid Waste Management  
5 Section of the Division of Health Services of the Department of  
6 Human Resources, shall assist the North Carolina Industrial Waste  
7 Management Commission with the periodic review of the current and  
8 projected availability and adequacy of facilities for the management of  
9 hazardous waste within and outside the State. shall periodically evaluate  
10 and assess the type and number of hazardous waste facilities, hazardous  
11 waste landfill facilities, low-level radioactive waste facilities and low-level  
12 radioactive waste landfill facilities in existence, under construction or  
13 planned in the State and multi-State region and promote the development of  
14 additional facilities particularly retrievable aboveground storage facilities if  
15 existing or planned facilities are deemed inadequate or unavailable.
- 16 (7) The Board shall prepare and file jointly with the Governor and the  
17 General Assembly an annual report describing the Board's activities  
18 and setting forth its recommendations for administrative or regulatory  
19 action required to improve the State's comprehensive waste  
20 management system or remedy noted defects in the system. ~~A special~~  
21 ~~report shall be filed in January of 1983 which shall include an evaluation on~~  
22 ~~the possible need to organize State agencies more efficiently to improve~~  
23 ~~overall performance of waste management functions. The report should give~~  
24 ~~consideration to the advantages and disadvantages of consolidating or~~  
25 ~~centralizing administration of programs that are now in separate agencies.~~  
26 The Board shall report to the Governor and the General Assembly at  
27 least once in each biennium on the effectiveness of the waste  
28 minimization programs in the State and shall make recommendations  
29 on ways to improve such programs.
- 30 ~~The Board shall provide a report to the General Assembly by February 1, 1985, to~~  
31 ~~include:~~
- 32 a. ~~An analysis of the size, type and number of hazardous waste~~  
33 ~~facilities needed in North Carolina and a plan to meet these~~  
34 ~~needs;~~
- 35 b. ~~An analysis of the system of collection of hazardous waste in~~  
36 ~~North Carolina, recommendations as to how that system might~~  
37 ~~be improved and a plan to implement these recommendations;~~  
38 ~~and~~
- 39 c. ~~An analysis of the cost incurred by local government because of~~  
40 ~~the presence of a hazardous waste facility, a hazardous waste~~  
41 ~~landfill facility or a comprehensive hazardous waste treatment~~  
42 ~~facility.~~
- 43 (8) The Board shall each year recommend to the Governor a recipient for  
44 a 'Governor's Award of Excellence' which the Governor shall award

- 1 for outstanding achievement by an industry or company in the area of  
2 hazardous waste or low-level radioactive waste management.
- 3 (9) The Board shall at the request of the Governor and under his  
4 direction, assist with the negotiation of interstate agreements for the  
5 management of hazardous waste. ~~promote and participate in discussion~~  
6 ~~with other states concerning development of regional hazardous waste and~~  
7 ~~low-level radioactive waste management agreements.~~
- 8 (10) The Board shall assist localities in which facilities are proposed in  
9 collecting and receiving information relating to the suitability of the  
10 proposed site. At the request of a local government in which facilities  
11 are proposed, the Board shall direct the appropriate agencies of State  
12 government to develop such relevant data as that locality shall  
13 reasonably request.
- 14 (11) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 14.1.
- 15 (12) The Board shall, in accordance with the procedures set forth in G.S.  
16 160A-211.1 and 153A-152.1, review upon appeal specific privilege  
17 license tax rates which localities may apply to waste management  
18 facilities in their jurisdiction.
- 19 (13) The Board may insure its members against personal liability for any  
20 actions they might take pursuant to the exercise of the functions and  
21 powers of the Board.
- 22 (14) The Board may adopt, modify, or revoke any rules necessary to carry  
23 out the functions and powers as set forth in this Part.
- 24 (15) The Board shall have any and all powers necessary or incidental to the  
25 exercise of the functions and powers enumerated herein.
- 26 (16) The Board shall study the development of retrievable, aboveground  
27 storage facilities for hazardous wastes.
- 28 (17) ~~The Board shall certify comprehensive hazardous waste treatment~~  
29 ~~facilities which meet the criteria prescribed in G.S. 130A-290(1)."~~
- 30 Sec. 19. G.S. 150B-1(d) reads as rewritten:
- 31 "(d) (1) The following are specifically exempted from the provisions of this  
32 Chapter:
- 33 a. ~~the~~ The Administrative Rules Review Commission, Commission;  
34 b. ~~the~~ The Employment Security Commission, Commission;  
35 c. ~~the~~ The Industrial Commission, Commission;  
36 d. ~~the~~ The Occupational Safety and Health Review Board in all  
37 actions that do not involve agricultural employers, employers;  
38 and  
39 f. ~~the~~ The Utilities Commission.
- 40 (2) The North Carolina National Guard is exempt from the provisions of  
41 this Chapter in exercising its court-martial jurisdiction.
- 42 (3) The Department of Human Resources is exempt from this Chapter in  
43 exercising its authority over the Camp Butner reservation granted in  
44 Article 6 of Chapter 122C of the General Statutes.

- 1           (4)    The Department of Correction is exempt from the provisions of this  
2           Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which  
3           shall apply.
- 4           (5)    Articles 2 and 3 of this Chapter shall not apply to the Department of  
5           Revenue.
- 6           (6)    Except as provided in Chapter 136 of the General Statutes, Articles 2  
7           and 3 of this Chapter do not apply to the Department of  
8           Transportation.
- 9           (7)    Article 4 of this Chapter, governing judicial review of final  
10          administrative decisions, shall apply to The University of North  
11          Carolina and its constituent or affiliated boards, agencies, and  
12          institutions, but The University of North Carolina and its constituent or  
13          affiliated boards, agencies, and institutions are specifically exempted  
14          from the remaining provisions of this Chapter.
- 15          (8)    Article 4 of this Chapter shall not apply to the State Banking  
16          Commission, the Commissioner of Banks, the Savings and Loan  
17          Division of the Department of Commerce, and the Credit Union  
18          Division of the Department of Commerce.
- 19          (9)    Article 3 of this Chapter shall not apply to agencies governed by the  
20          provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).
- 21          (10)   Articles 3 and 3A of this Chapter shall not apply to the Governor's  
22          Waste Management Board in administering the provisions of G.S.  
23          104E-6.2. and G.S. 130A-293.
- 24          (11)   Article 2 of this Chapter shall not apply to the North Carolina Low-  
25          Level Radioactive Waste Management Authority in administering the  
26          provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of  
27          this Chapter shall not apply to the North Carolina Low-Level  
28          Radioactive Waste Management Authority in administering the  
29          provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 30          (12)   Article 2 of this Chapter shall not apply to the North Carolina  
31          Industrial Waste Management Commission in administering the  
32          provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of  
33          this Chapter shall not apply to the North Carolina Industrial Waste  
34          Management Commission in administering the provisions of G.S.  
35          130B-11, G.S. 130B-13, and G.S. 130B-14."

36          Sec. 20. G.S. 104G-6(14) reads as rewritten:

37          "(14) May issue revenue bonds from time to time pursuant to The State and  
38          Local Government Revenue Bond Act, Article 5 of Chapter 159 of the  
39          General ~~Statutes~~; Statutes, and such bonds may be sold at public or  
40          private sale pursuant to G.S. 159-123;".

41          Sec. 21. G.S. 159-81(3) reads as rewritten:

42          "(3) 'Revenue bond project' means any undertaking for the acquisition,  
43          construction, reconstruction, improvement, enlargement, betterment,  
44          or extension of any one or combination of the following revenue-

- 1 producing utility or public service enterprise facilities or systems  
2 owned or leased as lessee by the issuing unit:
- 3 a. Water systems or facilities, including all plants, works,  
4 instrumentalities and properties used or useful in obtaining,  
5 conserving, treating, and distributing water for domestic or  
6 industrial use, irrigation, sanitation, fire protection, or any other  
7 public or private use.
  - 8 b. Sewage disposal systems or facilities, including all plants,  
9 works, instrumentalities, and properties used or useful in the  
10 collection, treatment, purification, or disposal of sewage.
  - 11 c. Systems or facilities for the generation, production,  
12 transmission, or distribution of gas (natural, artificial, or mixed)  
13 or electric energy for lighting, heating, or power for public and  
14 private uses, where gas systems shall include the purchase  
15 and/or lease of natural gas fields and natural gas reserves and  
16 the purchase of natural gas supplies, and where any parts of  
17 such gas systems may be located either within the State or  
18 without.
  - 19 d. Systems, facilities and equipment for the collection, treatment,  
20 or disposal of solid waste.
  - 21 e. Public transportation systems, facilities, or equipment,  
22 including but not limited to bus, truck, ferry, and railroad  
23 terminals, depots, trackages, vehicles, and ferries, and mass  
24 transit systems.
  - 25 f. Public parking lots, areas, garages, and other vehicular parking  
26 structures and facilities.
  - 27 g. Aeronautical facilities, including but not limited to airports,  
28 terminals, and hangars.
  - 29 h. Marine facilities, including but not limited to marinas, basins,  
30 docks, dry docks, piers, marine railways, wharves, harbors,  
31 warehouses, and terminals.
  - 32 i. Hospitals and other health-related facilities.
  - 33 j. Public auditoriums, gymnasiums, stadiums, and convention  
34 centers.
  - 35 k. Recreational facilities.
  - 36 l. ~~In addition to the foregoing, in the case of the State of North~~  
37 ~~Carolina, low-level radioactive waste facilities developed~~  
38 ~~pursuant to Chapter 104G of the General Statutes, hazardous~~  
39 ~~waste facilities developed pursuant to Chapter 130B of the~~  
40 ~~General Statutes, and any other~~ project authorized by the  
41 General Assembly.
  - 42 m. ~~(For applicability see note below)~~ Economic development  
43 projects, including the acquisition and development of  
44 industrial parks, the acquisition and resale of land suitable for

1 industrial or commercial purposes, and the construction and  
2 lease or sale of shell buildings in order to provide employment  
3 opportunities for citizens of the municipality. [For  
4 applicability, see note below.]

5 (n)n. Facilities for the use of any agency or agencies of the  
6 government of the United States of America.

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

15 Sec. 22. G.S. 159-83 is amended by adding a new subsection to read:

16 "(e) In the case of the State of North Carolina, any action to be taken by the  
17 Council of State pursuant to this section shall be taken (i) with respect to the issuance of  
18 revenue bonds by the North Carolina Low-Level Radioactive Waste Management  
19 Authority, by the governing board of the said Authority and (ii) with respect to the  
20 issuance of revenue bonds by the North Carolina Industrial Waste Management  
21 Commission, by the governing board of the said Commission, and not by the Council of  
22 State."

23 Sec. 23. G.S. 159-85 is amended by adding a new subsection to read:

24 "(d) In the case of the State of North Carolina, any action to be taken by the State  
25 Treasurer pursuant to this section shall be taken (i) with respect to the issuance of  
26 revenue bonds by the North Carolina Low-Level Radioactive Waste Management  
27 Authority, by the governing board of the said Authority and (ii) with respect to the  
28 issuance of revenue bonds by the North Carolina Industrial Waste Management  
29 Commission, by the governing board of the said Commission, and not by the State  
30 Treasurer."

31 Sec. 24. G.S. 159-88 is amended by adding a new subsection to read:

32 "(d) In the case of the State of North Carolina, any action to be taken by the  
33 Council of State pursuant to this section shall be taken (i) with respect to the issuance of  
34 revenue bonds by the North Carolina Low-Level Radioactive Waste Management  
35 Authority, by the governing board of the said Authority and (ii) with respect to the  
36 issuance of revenue bonds by the North Carolina Industrial Waste Management  
37 Commission, by the governing board of the said Commission, and not by the Council of  
38 State. Subsection (c) of this section shall not apply to the issuance of revenue bonds by  
39 North Carolina Low-Level Radioactive Waste Management Authority or by the North  
40 Carolina Industrial Waste Management Commission."

41 Sec. 25. The provisions of this act are severable, and if any provision of this  
42 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect  
43 other provisions of the act which can be given effect without the invalid provision.

44 Sec. 26. This act is effective upon ratification.