

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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1

HOUSE BILL 60

Short Title: Hazardous Waste Comm. Repealed.

(Public)

Sponsors: Representatives J. W. Crawford; and Church.

Referred to: Environment.

February 12, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE STATUTES CREATING THE NORTH CAROLINA
3 HAZARDOUS WASTE MANAGEMENT COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 130B reads as rewritten:
6

7 **"CHAPTER 130B.**

8 **HAZARDOUS WASTE ~~MANAGEMENT COMMISSION.~~ MANAGEMENT.**

9
10 **"§ 130B-1. ~~Title; applicability.~~ Applicability.**

11 (a) ~~This Chapter shall be known and may be cited as the "North Carolina~~
12 ~~Hazardous Waste Management Commission Act of 1989".~~

13 (b) The provisions of this Chapter shall not be construed to apply to any
14 hazardous waste facility other than hazardous waste facilities established pursuant to
15 this Chapter.

16 **"§ 130B-2. Definitions.**

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

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

21 (1) ~~"Authorized hazardous waste facility" means a hazardous waste~~
22 ~~facility authorized by the Governor as provided in G.S. 130B-5(a) and~~
23 ~~G.S. 130B-5(b)(1).~~

- 1 (2) 'Board' means the Governor's Waste Management Board
2 established pursuant to Part 4A of Article 7 of Chapter 143B of the
3 General Statutes.
- 4 (3) ~~" Commission" means the North Carolina Hazardous Waste~~
5 ~~Management Commission established pursuant to this Chapter or any~~
6 ~~sueccessor thereto.~~
- 7 (4) 'Department' means the Department of Environment, Health, and
8 Natural Resources.

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 North
13 Carolina. The safe management of hazardous waste is essential to protect public health
14 and safety and the environment and to continued economic growth. Consequently,
15 cooperation and coordination among the private sector, the general public, the State, and
16 local governments to assure the prevention of unnecessary waste and the establishment
17 of a comprehensive and integrated system of adequate treatment and disposal facilities
18 are essential.

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

37 The General Assembly further finds that while the foregoing findings, which were
38 articulated in similar form in legislation enacted in 1981 and 1984, continue to hold
39 true, circumstances have changed since that time which require adjustments in the
40 State's hazardous waste management policy. ~~Specifically, the General Assembly finds that~~
41 ~~the most practical approach to hazardous waste management, including compliance with the~~
42 ~~CERCLA/SARA capacity assurance requirements, is through a regional approach.~~ The
43 General Assembly finds that the development of a full range of comprehensive
44 hazardous waste treatment and disposal facilities in this and every state is neither

1 environmentally nor economically sound. The General Assembly finds that
2 minimization, and wherever possible elimination, of hazardous waste generation, and
3 hazardous waste reduction, recycling, and on-site treatment are preferable to off-site
4 treatment and disposal.

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

12 **"§ 130B-4. Purpose.**

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

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

40 Furthermore, it is the purpose of this Chapter to establish an effective and
41 comprehensive policy of negotiation and arbitration between the ~~Commission or other~~
42 applicant for a permit to operate a hazardous waste facility pursuant to this Chapter and
43 a committee representing the affected local government(s) to assure that:

- 44 (1) The legitimate concerns of nearby residents and affected
45 municipalities can be expressed in a public forum, negotiated and, if

1 need be, arbitrated ~~with the Commission~~ in a fair manner and reduced to
2 a written document that is legally binding; and
3 (2) Environmentally sound and economically viable hazardous waste
4 facilities will be established.

5 **"§ 130B-5. Powers and duties of the Governor. Need for facility to be determined.**

6 (a) No hazardous waste facility shall be established pursuant to this Chapter
7 unless ~~the Governor determines~~ it is determined that such facility is essential and is in the
8 best interests of the State. Such determination shall be based on a periodic review of
9 current and projected hazardous waste generation from all sources within the State, the
10 current and projected effect of efforts to minimize and reduce the generation of
11 hazardous waste, the potential for further reductions in the generation of hazardous
12 waste, current and projected availability and adequacy of facilities for the management
13 of hazardous waste within and outside the State, whether and to what extent private
14 enterprise will provide needed hazardous waste facilities, capacity assurance
15 requirements under CERCLA/SARA, the extent to which agreements can be negotiated
16 for the management of hazardous waste outside the State, and the extent to which the
17 State should obligate itself to provide facilities for the management of hazardous waste
18 generated outside the State. ~~The Governor shall take into consideration the comprehensive~~
19 ~~waste management plan developed pursuant to G.S. 130A-294(i)~~ shall be taken into
20 consideration in making any determination under this subsection. Such determination
21 shall be made in writing and shall specify the functions, technologies, and design
22 capacities of the hazardous waste facility to be established.

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

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

33 (c) ~~The Governor is authorized to enter into interstate agreements for the~~
34 ~~management of hazardous waste. Such agreements shall provide for access to suitable~~
35 ~~facilities for management of hazardous waste; encourage reductions in the volume or~~
36 ~~quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations~~
37 ~~of hazardous waste management equitably among the party states; and provide for~~
38 ~~protection of human health and the environment in a manner that is both ecologically~~
39 ~~and economically sound. In negotiating such agreements, the Governor may request~~
40 ~~such assistance as he deems appropriate from the Attorney General, the Solid Waste~~
41 ~~Management Division of the Department, the Governor's Waste Management Board,~~
42 ~~and the Commission.—The Governor shall submit any such agreement~~ interstate
43 agreements for the management of hazardous waste to the General Assembly for its

1 approval, and no such ~~agreement~~ interstate agreements for the management of
2 hazardous waste shall be effective until approved by the General Assembly.

3 **~~§ 130B-6. Organization and administration of the Commission.~~**

4 (a) ~~Creation.~~—The North Carolina Hazardous Waste Management Commission
5 is hereby created as follows:

6 (1) ~~The Commission shall be located within the Department of Economic~~
7 ~~and Community Development. The Commission shall exercise all of~~
8 ~~its powers independently of the Secretary of Economic and~~
9 ~~Community Development and, notwithstanding any other provision of~~
10 ~~law, shall be subject to the direction and supervision of the Secretary~~
11 ~~of Economic and Community Development only with respect to the~~
12 ~~management functions of coordinating and reporting.~~

13 (2) ~~The Commission shall continue until its existence shall be terminated~~
14 ~~by law. Upon the termination of the existence of the Commission, all~~
15 ~~of its rights and properties shall pass to and be vested in the State.~~

16 (3) ~~The Department of Economic and Community Development and the~~
17 ~~Department of Administration shall provide such technical, clerical,~~
18 ~~and other support services and personnel as the Commission may~~
19 ~~require in the performance of its functions. The Commission shall~~
20 ~~reimburse the Departments for such services from its revenues or from~~
21 ~~other funding sources.~~

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

27 (c) ~~Appointments.~~—Appointments to the Commission shall be made as follows:

28 (1) ~~The Governor shall appoint five members.~~

29 (2) ~~The General Assembly shall appoint four members in accordance with~~
30 ~~G.S. 120-121, two upon recommendation of the Speaker of the House~~
31 ~~of Representatives and two upon recommendation of the President Pro~~
32 ~~Tempore of the Senate.~~

33 (3) ~~Successors shall be appointed by the appointing authority making the~~
34 ~~original appointment.~~

35 (4) ~~Vacancies in appointments shall be filled for the unexpired term.~~
36 ~~Vacancies in appointments made by the General Assembly shall be~~
37 ~~filled in accordance with G.S. 120-122.~~

38 (5) ~~Members of the Commission shall include persons with expertise in~~
39 ~~the technical, legal, financial, and other aspects of hazardous waste~~
40 ~~management and shall represent, insofar as practicable, the diverse~~
41 ~~interests and geographic regions of the State. Not more than three~~
42 ~~members of the Commission may be persons who derive any~~
43 ~~significant portion of their income from persons who generate or~~
44 ~~transport hazardous waste or who operate hazardous waste facilities.~~

1 For purposes of this subdivision, faculty members and health care
2 professionals employed by a nonprofit institution and employees of
3 any governmental entity shall not be regarded as deriving a significant
4 portion of their income from a generator or transporter of hazardous
5 waste or from a hazardous waste facility operator by reason of such
6 employment. The Governor, the Speaker of the House of
7 Representatives, and the President Pro Tempore of the Senate shall
8 consult with one another to insure that the requirements of this
9 subdivision are met. Each appointing authority shall require adequate
10 disclosure of potential conflicts of interest by members of the
11 Commission.

12 (d) Terms.—

- 13 (1) All appointments made by the Governor, other than initial
14 appointments, shall be for a term of four years. The Governor shall
15 have the power to remove, in accordance with G.S. 143B-13, any
16 member appointed by the Governor.
- 17 (2) All appointments made by the General Assembly, other than initial
18 appointments, shall be for a term of two years. The General Assembly
19 shall have the power to remove, in accordance with G.S. 143B-13, any
20 member appointed by the General Assembly.
- 21 (3) Terms shall expire on 30 June as provided by this subsection, except
22 that members of the Commission shall serve until their successors are
23 appointed and duly qualified as provided by G.S. 128-7.
- 24 (4) Of the initial appointments made by the Governor, one term shall
25 expire 30 June 1990, one term shall expire 30 June 1991, one term
26 shall expire 30 June 1992, and two terms shall expire 30 June 1993.
27 Successors shall be appointed to serve four-year terms.
- 28 (5) Of the initial appointments made by the General Assembly on
29 recommendation of the Speaker of the House of Representatives, one
30 term shall expire 30 June 1991, and one term shall expire 30 June
31 1992. Of the initial appointments made by the General Assembly on
32 recommendation of the President Pro Tempore of the Senate, one term
33 shall expire 30 June 1991, and one term shall expire 30 June 1992.

34 (e) Officers.—The Governor shall appoint from the members of the Commission
35 the Chairman and Vice Chairman of the Commission. The Executive Director of the
36 Commission shall serve as Secretary of the Commission.

37 (f) Meetings.—The Commission shall meet at least quarterly at such time and at
38 any place within the State as the Commission may provide. The Commission shall meet
39 upon the call of its Chairman or a majority of its members. A majority of its members
40 shall constitute a quorum for the transaction of business. Members of the Commission
41 who are State employees shall be reimbursed for their expenses in accordance with G.S.
42 138-6. Members of the Commission who are not State employees shall be reimbursed
43 for their expenses in accordance with G.S. 138-5 except that the per diem rate as

1 defined in G.S. 138-5(a)(1) shall be one hundred fifty dollars (\$150.00) per day of
2 service.

3 (g) ~~Executive Director and Staff.~~—The Commission shall be assisted by an
4 Executive Director and staff who shall be subject to provisions of law applicable to
5 State employees generally, including Chapters 126 and 135 of the General Statutes,
6 except as such provisions are modified by this Chapter.

7 (1) The Commission shall appoint an Executive Director, who shall report
8 to the Commission and serve at its pleasure. The Executive Director
9 shall be the chief administrative officer of the Commission. The
10 Commission shall set, subject to consultation with the Advisory
11 Budget Commission, and pay the compensation of the Executive
12 Director.

13 (2) The Executive Director shall be assisted by such senior professional
14 staff members as may be necessary to carry out the provisions of this
15 Chapter, who shall be appointed by the Commission on nomination of
16 the Executive Director. The Commission shall set, subject to
17 consultation with the Advisory Budget Commission, and pay the
18 compensation of the staff members it appoints.

19 (3) In addition, the Executive Director shall be assisted by such other
20 employees as may be needed to carry out the provisions of this
21 Chapter. The staff complement shall be established by the
22 Commission on recommendation of the Executive Director. Such
23 other employees shall be appointed by the Commission upon the
24 recommendation of the Executive Director and shall be compensated
25 by the Commission pursuant to the provisions of Chapter 126 of the
26 General Statutes.

27 ~~§ 130B-7. Powers and duties of the Commission.~~

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

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

- 1 ~~(2) Shall, at the request of the Governor and under his direction, assist~~
2 ~~with the negotiation of interstate agreements for the management of~~
3 ~~hazardous waste;~~
- 4 ~~(3) Shall determine the sequence of tasks required to be accomplished in~~
5 ~~order to site, design, finance, construct, and place into operation each~~
6 ~~authorized hazardous waste facility, determine the time likely to be~~
7 ~~required to accomplish those tasks, develop a proposed schedule for~~
8 ~~the development of each such facility and submit such schedule to the~~
9 ~~Governor for approval, and estimate the resources required to~~
10 ~~accomplish those tasks and submit such estimate to the Governor and~~
11 ~~the General Assembly;~~
- 12 ~~(4) Shall site, design, finance, construct, and operate authorized hazardous~~
13 ~~waste facilities;~~
- 14 ~~(5) Shall adopt, consistent with the rules of the Commission for Health~~
15 ~~Services and pursuant to Chapter 150B of the General Statutes, rules~~
16 ~~specifying the criteria and procedures for evaluating alternative~~
17 ~~locations for, and siting of, hazardous waste facilities;~~
- 18 ~~(6) May employ consultants and contractors to provide services including~~
19 ~~site selection, design, construction, operation, closure, and perpetual~~
20 ~~care of hazardous waste facilities, necessary, desirable, or convenient~~
21 ~~to carry out the purposes of this Chapter, and to fix and pay their~~
22 ~~compensation;~~
- 23 ~~(7) May acquire by deed, purchase, lease, contract, gift, devise,~~
24 ~~condemnation, or otherwise, any real or personal property, structures,~~
25 ~~rights of way, franchises, easements, and other interests in land which~~
26 ~~is necessary and convenient for the construction or operation of~~
27 ~~hazardous waste facilities, upon such terms and conditions as it deems~~
28 ~~advisable, hold, mortgage, pledge, or otherwise encumber the same,~~
29 ~~and lease, sell, convey, or otherwise dispose of the same in such~~
30 ~~manner as may be necessary or desirable to carry out the purposes of~~
31 ~~this Chapter;~~
- 32 ~~(8) May exercise the powers of a body corporate, including the power to~~
33 ~~sue and be sued, and may adopt and use a common seal and alter the~~
34 ~~same as may be deemed expedient;~~
- 35 ~~(9) May make all necessary contracts and arrangements with other~~
36 ~~officials or agencies in this State and other states, including compact~~
37 ~~commissions, for any of the purposes of this Chapter;~~
- 38 ~~(10) Shall establish an office or offices for the transaction of its business at~~
39 ~~such place or places as, in the opinion of the Commission, shall be~~
40 ~~advisable or necessary in carrying out the purposes of this Chapter;~~
- 41 ~~(11) May create and operate any divisions it deems necessary or useful;~~
- 42 ~~(12) Shall pay all costs of the formation and organization of the~~
43 ~~Commission, and incident to its administration and operation, and may~~

- 1 pay all other costs necessary in carrying out the purposes of this
2 Chapter;
- 3 (13) May develop and implement schedules of fees and other charges,
4 including user charges, penalties, and surcharges applicable to
5 hazardous waste facilities operated by the Commission;
- 6 (14) Shall make recommendations to the Governor as to the technology,
7 design capacity, operational features, and post-closure requirements of
8 authorized hazardous waste facilities, and shall implement such
9 recommendations upon approval by the Governor;
- 10 (15) Shall pay, or assure that permittees and operators pay, all applicable
11 taxes and fees;
- 12 (16) May apply for, accept, and expend loans and grants of money from
13 any federal or State agency or any political subdivision thereof, from a
14 compact commission, or from any other public or private source for
15 any of the purposes authorized by this Chapter, and to give any
16 evidences of indebtedness as may be required. Except as may
17 hereafter be authorized by the General Assembly, no indebtedness of
18 any kind incurred or created by the Commission shall constitute an
19 indebtedness of the State or any of its political subdivisions, and no
20 such indebtedness shall involve or be secured by the faith, credit, or
21 taxing power of the State or any of its political subdivisions. At no
22 time may the total outstanding indebtedness of the Commission,
23 excluding bond indebtedness, exceed a total of five hundred thousand
24 dollars (\$500,000) without prior approval of the Governor, after
25 receiving the advice of the Advisory Budget Commission;
- 26 (17) May issue revenue bonds from time to time pursuant to The State and
27 Local Government Revenue Bond Act, Article 5 of Chapter 159 of the
28 General Statutes, and such bonds may be sold at public or private sale
29 pursuant to G.S. 159-123;
- 30 (18) Shall, if it elects to issue bonds, select and retain, subject to approval
31 of the Local Government Commission, financial consultants,
32 underwriters, and bond attorneys to assist with the issuance of such
33 bonds and to pay for services rendered;
- 34 (19) May pledge revenues from hazardous waste facilities to the benefit of
35 bondholders, or for other purposes necessary to secure financing;
- 36 (20) Shall make such plans, surveys, studies, and investigations as may be
37 necessary or desirable with respect to the acquisition, development,
38 and use of real property and the design, construction, operation,
39 closure, and long-term care of hazardous waste facilities;
- 40 (21) Shall receive all field data, charts, maps, tracings, laboratory test data,
41 soil and rock samples, and such other records as the Commission
42 deems appropriate, collected or produced by its employees,
43 contractors, or consultants pursuant to siting, operating, or closing of
44 hazardous waste facilities. All such data and materials shall become

1 the property of the State and shall not be disposed of except in
2 accordance with G.S. 132-3 except that soil and rock samples may be
3 subjected to tests and reduced in volume for purposes of storage in a
4 manner approved by the Commission. The Commission may enter
5 into agreements with other State agencies for the purpose of storage
6 and preservation of data and materials;

7 (22) May procure and keep in force adequate insurance or otherwise
8 provide for the indemnification of itself and its members, officers,
9 agents, employees, and the general public against loss or liability
10 resulting from any act or omission by or on behalf of the Commission,
11 and for the protection of its property, provided that procurement of
12 insurance by the Commission shall not be deemed a waiver of any
13 immunity from liability otherwise available under any provision of
14 law;

15 (23) May adopt bylaws for the regulation of its affairs and the conduct of its
16 business;

17 (24) May adopt rules, in accordance with the provisions of Chapter 150B of
18 the General Statutes, with respect to any of its powers and duties; and

19 (25) May do anything else necessary to carry out the purposes of this
20 Chapter not otherwise prohibited by law.

21 **"§ 130B-8. Commission may exempt itself from Facility not subject to certain laws.**

22 (a) Neither the Commission nor any ~~No~~ contractor performing services on behalf of
23 the Commission shall be subject to the following provisions of the General Statutes:

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

25 (2) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);

26 (3) Article 3D of Chapter 143 (Procurement of Architectural and
27 Engineering Services);

28 (4) Article 8 of Chapter 143 (Public Contracts);

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

30 (6) G.S. 143-341 (Powers and Duties of the Department of
31 Administration);

32 (7) Chapter 146 (State Lands); and

33 (8) Article 2 of Chapter 150B shall not apply to contractor selection or
34 technology selection pursuant to G.S. 130B-13 and G.S. 130B-14.
35 Articles 3 and 3A of Chapter 150B shall not apply to final decisions
36 regarding site selection, contractor selection or technology selection
37 pursuant to G.S. 130B-11, 130B-13, and 130B-14.

38 (b) Subdivisions (1) through (7) of subsection (a) of this section shall apply only
39 when the Commission determines that exemption from a particular provision of the
40 General Statutes is in the best interest of the State. Each such determination by the
41 Commission shall be set out in the official minutes of the Commission and shall state
42 with particularity (i) the provision or provisions of the General Statutes from which the
43 Commission exempts itself pursuant to this section, (ii) the action or activities covered

1 by such exemption, and (iii) the justification for such exemption, taking into account the
2 purposes of such provisions of the General Statutes and of this Chapter.

3 **"§ 130B-9. Compliance with laws and rules relating to hazardous waste**
4 **management and to protection of public health, safety, or the**
5 **environment.**

6 This Chapter shall not be construed as amending, repealing, or in any manner
7 abridging or interfering with any law or rule relating to the management of hazardous
8 waste or to protection of public health, safety, or the environment, nor shall the
9 provisions of this Chapter be construed as being applicable to or in any way affecting
10 the authority of State agencies and commissions to control hazardous waste or the
11 discharge of environmental pollutants and wastes into the air, soil, or waters of the
12 State. ~~The Commission, its members, officers, employees, agents, contractors, and any~~ Any
13 person who operates any hazardous waste facility pursuant to this Chapter shall comply
14 with all federal and State laws, including statutes, regulations, and rules, applicable to
15 hazardous waste management and to protection of public health, safety, and the
16 environment. ~~The Commission shall be considered a State agency for purposes of the North~~
17 ~~Carolina Environmental Policy Act, G.S. 113A-1 et seq.~~ To the extent that an application
18 for a permit for a hazardous waste facility and the review thereof provides the functional
19 equivalent of the statement required by G.S. 113A-4(2), a separate statement under G.S.
20 113A-4(2) is not required.

21 **~~"§ 130B-10. Liability, defense, and legal representation.~~**

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

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

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

37 **"§ 130B-11. Site selection.**

38 ~~(a) The Commission shall actively seek communities~~ Communities ~~interested in~~
39 ~~hosting hazardous waste facilities.~~ facilities shall be actively sought. ~~The Commission~~
40 ~~shall give first~~ First ~~priority shall be given~~ to the evaluation of potential sites located in
41 communities interested in hosting a hazardous waste facility. Potential sites shall meet
42 all applicable hazardous waste facility permit requirements and all minimum technical
43 and other established ~~requirements established by the Commission~~ for facility siting.
44 However, with respect to any potential site located in a county interested in volunteering

1 to host a facility, ~~the Commission may waive any site selection criteria~~ may be waived
2 only if such criteria relate solely to preferences in site location which are ~~discretionary~~
3 ~~with the Commission, discretionary,~~ if such waiver would not have a significant impact
4 on the economic viability of the facility, and if such waiver would not adversely affect
5 public health or safety or the environment.

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

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

33 (c) ~~In addition to any other site selection criteria adopted by the Commission, the~~ The
34 following criteria shall apply to the selection of sites for hazardous waste treatment
35 facilities:

- 36 (1) A site shall be accessible to the Interstate Highway System by a
37 highway having not less than two travel lanes in each direction (four-
38 lane highway).
- 39 (2) In evaluating potential sites, ~~the Commission shall give preference~~
40 preference shall be given to those sites which minimize the travel
41 distance between the site and the Interstate Highway System.
- 42 (3) A site shall not be located in or on wetlands, existing State or national
43 parks or forests, existing historical sites, and existing wildlife refuges.

1 (4) A site shall not be located in or on land on which a fish hatchery is
2 located, ~~or on Indian reservations, or federal military reservations, or on~~
3 ~~land on which a hospital is located.~~

4 (c1) With respect to any potential site located in a county interested in
5 volunteering to host a facility, the site selection criteria set out in subdivisions (1) and
6 (2) of subsection (c) of this section are discretionary ~~with the Commission~~ in that they
7 may be waived as provided in subsection (a) of this section.

8 (d) ~~The Commission shall develop a~~ A proposed schedule for evaluation and
9 selection of the preferred and alternate sites for each authorized hazardous waste ~~facility.~~
10 ~~shall be developed.~~ The proposed site selection schedule shall provide for public
11 education regarding the proposed facility and for public involvement in the site
12 selection process. ~~The Commission shall submit proposed site~~ Site selection schedules
13 ~~shall be submitted to the Governor for approval.~~

14 (e) ~~The Commission shall select suitable~~ Suitable sites for evaluation and ~~shall select~~
15 ~~shall be selected and~~ the preferred site for each hazardous waste facility ~~shall be~~
16 ~~selected~~ in accordance with ~~a~~ an adopted site selection schedule ~~adopted by the~~
17 ~~Commission.~~ schedule. Upon selection of a preferred site the Commission shall begin
18 ~~proceedings.~~ Proceedings to purchase or if necessary, condemn property for the site under
19 the State's power of eminent ~~domain.~~ domain shall be begun when a preferred site has
20 been selected. The procedure for condemnation ~~by the Commission~~ shall be as set out in
21 Article 9 of Chapter 136 of the General Statutes, except that the ~~Commission~~ condemnor
22 shall have the same rights, powers, duties, and responsibilities as are set out for the
23 Department of Transportation. The General Assembly finds that the protection of
24 public health, safety, and welfare, including protection of the environment, requires that
25 facilities for the management of hazardous waste be established. The acquisition of real
26 property for the management of hazardous waste is therefore declared to be for the use
27 and benefit of the public, and to serve a public purpose. Fee simple title to real property
28 shall be vested in the ~~Commission.~~ condemnor. ~~The Commission~~ condemnor may
29 substitute an alternate site for the preferred site in the event that it is determined that any
30 permit or license necessary for the construction or operation of the proposed facility
31 cannot be obtained if the facility is located at the preferred site.

32 (f) ~~The Commission may request information and assistance from any State~~
33 ~~agency which has data or expertise which would assist the Commission in the~~
34 ~~identification of sites for hazardous waste facilities, provided that no~~ No agency which
35 has authority to issue any license or permit required for the construction or operation of
36 the facility shall participate in the site selection process in any way that would result in
37 an actual or apparent conflict of interest.

38 (g) ~~The Commission~~ Department may in its discretion contract for the services of
39 independent, qualified consultants to assist in the development and implementation of
40 procedures and criteria for site screening and selection. Such consultants shall be
41 eligible to subsequently design, construct, or operate a hazardous waste facility on
42 behalf of the ~~Commission.~~ State.

43 **"§ 130B-12. Annexation prohibited.**

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

7 **"§ 130B-13. Facility construction and operation.**

8 (a) ~~The Commission shall actively seek qualified~~ Qualified private contractors to
9 construct and operate authorized hazardous waste ~~facilities~~ shall be actively sought. A
10 contractor may both construct and operate a facility.

11 (b) ~~The Commission shall select and employ qualified~~ Qualified contractors to
12 construct and operate each hazardous waste ~~facility~~ facility shall be selected and
13 employed, or the State shall construct the facility itself and/or designate itself as the
14 operator.

15 (c) ~~The Commission shall enter into and enforce an~~ An agreement with each
16 contractor for each hazardous waste facility shall be entered into and enforced which
17 shall incorporate such terms and conditions as ~~the Commission determines are~~ are
18 determined to be necessary and consistent with the purposes of this Chapter. Such
19 agreement shall contain adequate assurances of contractor performance through the use
20 of bonds, insurance, and shall require substantial compliance with all applicable federal
21 and State law, including statutes, regulations, and rules. ~~The Commission shall provide for~~
22 an An independent annual audit of the collection of all fees and other ~~charges~~ charges
23 shall be conducted.

24 (d) ~~The Commission may, in its discretion, seek the advice~~ Advice and assistance of
25 other State agencies or private consultants may be sought in selecting contractors.

26 (e) ~~The Commission may suspend or terminate its agreement~~ Agreements with any
27 contractor for a hazardous waste facility may be suspended or terminated for any breach
28 thereof. In the event of suspension or termination of an agreement, ~~the Commission may~~
29 select an interim or replacement contractor, contractor may be selected, or the State may
30 operate the facility itself, to ensure that the facility is properly maintained and operated
31 in compliance with all applicable federal and State laws, including statutes, rules, and
32 regulations.

33 (f) ~~The Commission shall periodically review and amend its~~ Any agreement with the
34 operating contractor of each hazardous waste facility shall be periodically reviewed and
35 amended to reflect necessary changes in fees or other charges, new environmental
36 requirements, additional bonding or insurance requirements, or other alterations deemed
37 necessary or appropriate.

38 **"§ 130B-14. Technology, design capacity, and license application.**

39 (a) ~~The Commission shall, with the assistance of other State agencies or private~~
40 ~~consultants it deems appropriate, recommend to the Governor the technology and design~~
41 ~~capacity of each component of each hazardous waste facility to be operated pursuant to~~
42 ~~this Chapter.~~ Upon approval of technologies and design capacities by the Governor, ~~the~~
43 Commission Department, in consultation with the applicable site designation review
44 committee, the Department shall prepare, or direct the operator to prepare subject to its

1 ~~approval by the Commission,~~ approval, detailed designs and specifications, operating
2 procedures, safety plans, closure plans and other plans necessary for hazardous waste
3 facilities operated pursuant to this Chapter.

4 (b) Each operator of a hazardous waste facility established pursuant to this
5 Chapter ~~shall, under the supervision of the Commission,~~ shall prepare and submit
6 applications for all permits and licenses required for the facility to the appropriate
7 regulatory agencies.

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

11 **"§ 130B-15. Facility closure; post-closure control.**

12 (a) ~~The Commission~~ Department shall enter into an agreement with the operator
13 of each hazardous waste facility established under this Chapter for the safe and proper
14 closure of the facility.

15 (b) ~~The Commission~~ Department shall, with the assistance of other State agencies
16 and private consultants it deems necessary, approve the operator's site closure plan. ~~The~~
17 ~~approval of the Commission under this section is in addition to the approval of the Department~~
18 ~~in accordance with the rules and regulations of the Commission for Health Services. The~~
19 ~~Commission~~ The Department may employ an independent contractor to do anything
20 necessary to properly close a hazardous waste facility and to ensure that the site is
21 stabilized.

22 (c) ~~The Commission~~ Department shall provide for such post-closure physical
23 surveillance and environmental monitoring of each hazardous waste facility or facility
24 site operated pursuant to this Chapter as may be required by ~~the Department or~~ by
25 agreement with the host community.

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

29 (e) ~~The Commission~~ Department shall provide through its own personnel, private
30 contractors, cooperative agreement with other governmental agencies, or any
31 combination thereof, any active maintenance or remedial actions that may be required.
32 Payment for the cost thereof shall be made from the Long-Term Care Fund established
33 pursuant to G.S. 130B-16 [130B-17].

34 **"§ 130B-16. Fees.**

35 (a) It is the intent of the General Assembly that all costs associated with the
36 development of hazardous waste facilities pursuant to this Chapter be borne by the
37 waste generators served by such facilities. The General Assembly recognizes that the
38 extent to which costs can be passed to hazardous waste generators is determined in part
39 by market forces, since hazardous waste facilities must operate in a competitive market.
40 In establishing and revising schedules of fees, ~~the Commission~~ Department shall seek to
41 secure the greatest possible revenue for the State and units of local government
42 consistent with environmentally safe and economically sound facility operation. In
43 establishing and revising schedules of fees, ~~the Commission~~ Department may seek to
44 encourage reductions in the volume or quantity and toxicity of hazardous waste. For

1 facilities which it operates, the ~~Commission~~Department shall establish, and revise as
2 necessary, schedules of fees and other charges, including user charges, penalties, and
3 surcharges. For facilities which are operated by private enterprise pursuant to this
4 Chapter, the ~~Commission~~Department shall establish, and revise as necessary, schedules
5 of franchise fees. The terms and conditions under which facilities are operated by
6 private enterprise pursuant to this Chapter shall be governed by appropriate contracts
7 between the ~~Commission~~Department and the private operators. Such contracts shall
8 provide for the payment of franchise fees and for the periodic adjustment thereof.

9 (b) In establishing and revising schedules of fees the ~~Commission~~Department
10 shall consider and shall seek to recover to the maximum extent possible, the following
11 costs:

- 12 (1) ~~Establishment and operation of the Commission;~~
- 13 (2) Reimbursement of State agencies for costs incurred ~~on behalf of the~~
14 ~~Commission or in support of its activities,~~ including the costs of any
15 services performed pursuant to G.S. 130B-15;
- 16 (3) Establishment and administration of the Long-Term Care Fund under
17 G.S. 130B-17;
- 18 (4) Repayment to the State with interest at rates which are equal to those
19 set by the State Treasurer with respect to savings certificates and
20 certificates of deposit, at the varying rates applicable for the period
21 between expenditures and repayment, of all funds expended from the
22 General Fund to develop hazardous waste facilities pursuant to this
23 Chapter;
- 24 (5) Funding of the State's share of the costs associated with any interstate
25 agreement or compact for hazardous waste management to which the
26 State may become a party;
- 27 (6) Compensation of contractors and consultants employed by the
28 ~~Commission~~Department;
- 29 (7) Other expenses incurred by ~~the Commission,~~ the State or its agencies in
30 furtherance of the purposes of this Chapter; and
- 31 (8) Compensation of any property owner for any loss in value of property
32 directly resulting from the siting or operation of a hazardous waste
33 facility.

34 (c) In the event that revenues exceed all costs set out in subsection (b) of this
35 section and all other costs and charges ~~for which the Commission is liable,~~ such excess
36 funds shall be paid into the General Fund. It is the intent of the General Assembly that
37 such excess funds be appropriated for the following purposes:

- 38 (1) Funding of a portion of the State's share of the costs for remediation of
39 inactive hazardous sites under Part 3 of Article 9 of Chapter 130A of
40 the General Statutes and under CERCLA/SARA; and
- 41 (2) Funding of a portion of the cost of the Pollution Prevention Pays
42 Program, the waste minimization program administered by the
43 Technical Assistance and Support Unit of the Solid Waste
44 Management Division of the Department, other programs which foster

1 multimedia waste prevention, reduction, reuse, and recycling, and
2 programs which provide assistance to small quantity generators.

3 (d) ~~The Commission-Department~~ shall prepare, on a quarterly basis, a detailed
4 financial statement showing its current fee schedules, income from all sources,
5 indebtedness, and expenses for the quarter and fiscal year to date. This statement,~~and~~
6 ~~any other information regarding the operation or activities of the Commission which may be~~
7 ~~requested,~~ shall be submitted to the chairmen of the House and Senate committees on
8 Finance and Appropriations, the Joint Legislative Commission on Governmental
9 Operations, the Environmental Review Commission, the Research Division, and the
10 Fiscal Research Division of the General Assembly.

11 (e) An operator of a hazardous waste facility may serve as the collection agent
12 for the ~~Commission~~State, in which case, funds collected by the operator shall be
13 transferred ~~to the Commission~~ on a timely basis, ~~and deposited with~~ basis to the State
14 ~~Treasurer, as directed by the Commission.~~ Treasurer.

15 (f) All ~~Commission~~ accounts shall be audited pursuant to the provisions of Article
16 5A of Chapter 147 of the General Statutes.

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

18 (a) For hazardous waste facilities owned or operated ~~by the Commission, in this~~
19 State, there is hereby established ~~under the control and direction of the Commission~~ a
20 nonreverting Long-Term Care Fund, to be administered by the State Treasurer, which
21 may be used for:

- 22 (1) Administration of the Fund;
- 23 (2) Emergency response and decontamination at hazardous waste facilities
24 ~~operated by the Commission; facilities; or~~
- 25 (3) Post-closure physical surveillance, environmental monitoring,
26 maintenance, care, custody, and remedial action at hazardous waste
27 facility ~~site(s) operated by the Commission.~~ site(s).

28 (b) The Long-Term Care Fund shall be treated as a special trust fund and shall be
29 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
30 69.3.

31 (c) In addition to any money that may be appropriated or otherwise made
32 available to it, the Fund may be maintained by fees and other charges including user
33 charges, penalties, surcharges, or other money paid to or recovered by or on behalf of
34 the ~~Commission-Department~~ under the provisions of this Chapter. Fees and other
35 charges shall at all times be sufficient to build and maintain the Fund balance at a level
36 determined by the ~~Commission, Department,~~ with the concurrence of the Commission
37 for Health Services, to be adequate for the purposes stated in this section.

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

41 **"§ 130B-18. Taxes; other compensation to the State and local governments.**

42 (a) Hazardous waste facilities or portions of such facilities ~~which are owned by the~~
43 ~~Commission~~ shall be exempt from ad valorem property taxes; provided however, that ~~the~~
44 ~~Commission shall,~~ in lieu of such property taxes the operator shall pay to any

1 governmental body authorized to levy such property taxes the amount that would be
2 assessed as taxes on real and personal property of such facilities if such facilities were
3 otherwise subject to valuation and assessment by local taxing unit. In addition, the
4 ~~Commission-operator~~ shall reimburse the county, city, or other local taxing unit for the
5 loss of ad valorem property tax revenues from any property located on any parcel or
6 tract that abuts the property upon which such facilities are located and which is shown
7 to have diminished in value as the direct result of the siting and operation of such
8 facilities. Such payments in lieu of taxes shall be due and shall bear interest if unpaid,
9 as in the case of taxes on other property. Payments in lieu of taxes made hereunder
10 shall be treated in the same manner as taxes for purposes of all procedural and
11 substantive provisions of law. ~~Administrative buildings, associated land, and other real and~~
12 ~~personal property owned by the Commission and not located at a hazardous waste facility shall~~
13 ~~be exempt from property taxes as provided in G.S. 105-278.1.~~

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

22 (c) The ~~Commission-Department~~ shall collect and deposit with the State
23 Treasurer, on behalf of local governments where hazardous waste facilities are located
24 pursuant to this Chapter, a tax on the gross receipts of each such facility in the amount
25 of two and one-half percent (2.5%) of the gross receipts of such facility per annum, to
26 be distributed to local governments as the General Assembly shall provide. The
27 ~~Commission-Department~~ shall develop and recommend to the General Assembly a
28 proposed revenue package and revenue distribution formula which the General
29 Assembly shall consider in providing for distribution of this tax and such other revenues
30 as may be collected.

31 **"§ 130B-19. Site designation review committees.**

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

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

1 (c) All site designation review committees shall terminate upon the designation
2 of the preferred ~~site by the Commission~~ site.

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

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

12 (1) Collect information on site suitability;

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

14 (3) Conduct socioeconomic and environmental assessments of the
15 proposed facility;

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

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

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

22 (f) Any reviews or studies funded with grant monies shall be completed prior to
23 the date set by the ~~Commission~~ Department for nomination of a preferred site.

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

27 (h) A site designation review committee may also be appointed as provided by
28 this section by the board of commissioners of any county whenever the board of
29 commissioners determines that the county may be affected by the siting of a hazardous
30 waste facility in another county.

31 (i) No grant funds shall be used for litigation expenses. Each site designation
32 review committee shall properly account for all funds. Unexpended funds shall revert
33 to the Board, and at the end of the biennium shall revert to the General Fund.

34 **"§ 130B-20. Preferred site local advisory committees.**

35 (a) Upon designation of a preferred site for a hazardous waste facility pursuant to
36 G.S. 130B-11(d) the board of commissioners of each county within whose jurisdiction
37 the site is located may appoint a preferred site local advisory committee. The
38 committee shall consist of 11 members representing insofar as possible local
39 government, environmental, health, engineering, business and industry, academic,
40 public interest, and emergency response groups. The committee shall elect a chairman,
41 vice-chairman, and a secretary. Vacancies shall be filled by the county board of
42 commissioners using the same criteria employed in the original appointment. Members
43 shall be reimbursed by the committee for reasonable and necessary expenses incurred in

1 connection with their duties. The county shall provide the committee with necessary
2 support staff.

3 (b) The preferred site local advisory committee may:

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

26 (c) An applicant for a permit to operate a hazardous waste facility pursuant to
27 this Chapter shall pay a one-time local application fee of one hundred thousand dollars
28 (\$100,000) to the Board. The Board shall distribute not less than sixty-five thousand
29 dollars (\$65,000) of the local application fee to the county or counties where the site of
30 the proposed facility is located. If the site lies in more than one county, the local
31 application fee will be distributed to the counties in which the site is located in equal
32 amounts. If the board of commissioners appoints a preferred site local advisory
33 committee the local application fee shall be used to support the work of the committee.

34 (d) A preferred site local advisory committee may also be appointed as provided
35 by this section by the board of commissioners of any county whenever the board of
36 commissioners determines that the county may be affected by the siting of a hazardous
37 waste facility in another county. If a preferred site local advisory committee is
38 appointed pursuant to this subsection, the committee may apply to the Board for a
39 portion of the local application fee to support the work of the committee. The Board
40 may allocate up to twenty-five thousand dollars (\$25,000) to each preferred site local
41 advisory committee appointed pursuant to this subsection, provided that the maximum
42 amount that the Board may allocate to all preferred site local advisory committees
43 appointed pursuant to this subsection for a particular site is thirty-five thousand dollars
44 (\$35,000). The Board shall base allocations under this subsection on the likelihood that

1 the proposed hazardous waste facility will have a significant effect in the county, taking
2 distance to the facility and other factors into account. Decisions of the Board regarding
3 allocations under this subsection are final. Any portion of the local application fee
4 which is not allocated by the Board under this subsection shall be distributed by the
5 Board to the county or counties where the site of the proposed facility is located as
6 provided in subsection (c) of this section.

7 (e) Each preferred site local advisory committee shall properly account for all
8 funds. Any unexpended funds shall revert to the general fund of the county which
9 appointed the preferred site local advisory committee. No portion of the local
10 application fee shall be used to finance litigation expenses.

11 **"§ 130B-21. Negotiation, mediation, and arbitration.**

12 (a) Any local government in the county or counties where a hazardous waste
13 facility is proposed to be located pursuant to this Chapter may negotiate with the
14 ~~Commission-Department~~ with respect to any issue relating to the facility except:

- 15 (1) The need for the facility;
- 16 (2) Any proposal to reduce the duties of the ~~Commission-Department~~ under
17 this Chapter or under any permit or license issued for the facility;
- 18 (3) Any proposal to reduce the duties of the Commission for
19 Health Services or the Department, or to make less stringent any rule
20 of the Commission for Health Services;
- 21 (4) Any proposal to reduce the duties of the Board, or;
- 22 (5) ~~Any act or decision of the Governor pursuant to G.S. 130B-5; or~~
- 23 (6) Any decision of the ~~Commission~~ regarding site selection,
24 contractor selection, or technology pursuant to G.S. 130B-11, 130B-
25 13, and 130B-14.

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

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

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

- 41 (1) Compensation to any local government for substantial economic
42 impacts which are a direct result of the siting and operation of a
43 hazardous waste facility and for which adequate compensation is not
44 otherwise provided;

- 1 (2) Reimbursement of reasonable costs incurred by the local government
- 2 relating to negotiation, mediation and arbitration activities under this
- 3 section;
- 4 (3) Screening, fencing, and other matters related to the appearance of a
- 5 facility;
- 6 (4) Operational concerns other than design capacity and regulatory issues;
- 7 (5) Traffic flows and patterns which result from the operation of a facility;
- 8 (6) Uses of the site where a facility is located after the facility is closed;
- 9 (7) The applicability or nonapplicability of any local ordinance;
- 10 (8) Emergency response capabilities, including training and resources;
- 11 (9) Access to facility records and monitoring data; and
- 12 (10) Ongoing health surveys of persons living in the area around the
- 13 facility.

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

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

22 (f) The Board shall serve as the arbitrator of any issue submitted for arbitration
23 under this section.

24 **"§ 130B-22. Inter-Agency Committee on Hazardous Waste.**

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

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

4 (c) The Committee shall report to the Governor, the General Assembly, and the
5 Research and Fiscal Research Divisions of the General Assembly from time to time
6 regarding any changes in the present law it may deem appropriate to expedite siting,
7 design, financing, permitting, construction, and operation of hazardous waste facilities.
8 Such reports shall not be subject to review by the departments, agencies, boards, or
9 commissions from whose membership the Committee is drawn. Notwithstanding any
10 rule or resolution to the contrary, proposed legislation to implement any
11 recommendation made by the Committee may be introduced and considered during any
12 session of the General Assembly.

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

17 **"§ 130B-23. Volunteer host counties.**

18 (a) A county which wishes to volunteer to host a hazardous waste facility to be
19 operated pursuant to this Chapter may propose to do so by the adoption of a resolution
20 by a majority vote of the board of commissioners. The ~~Commission~~Department shall
21 determine the adequacy of any proposal to voluntarily host a hazardous waste facility
22 and must accept such proposal before any funds which may be appropriated for the
23 benefit of volunteer host counties may be disbursed. Once a proposal to volunteer to
24 host a hazardous waste facility has been accepted by the ~~Commission~~Department, the
25 resolution making such proposal may not be rescinded by the board of commissioners.

26 (b) A board of commissioners shall hold a minimum of two public hearings
27 regarding any proposal to volunteer to host a hazardous waste facility pursuant to this
28 Chapter. The last such hearing shall be held not less than 30 days following the first
29 such hearing. Notice of each hearing shall be given as provided in G.S. 143-
30 318.12(b)(2).

31 **"§ 130B-24. Approval of Entry into Expanded SARA Capacity Assurance
32 Regional Agreement.**

33 (a) As used in this section, the terms 'hazardous waste' and 'CERCLA/SARA'
34 have the same meaning as set out in G.S. 130A-290.

35 (b) Pursuant to the provisions of G.S. 130B-5(c), the General Assembly hereby
36 approves entry by the Governor into an interstate agreement for the management of
37 hazardous waste as set out in the document entitled 'Expansion of the SARA Capacity
38 Assurance Regional Agreement' and attachments as filed with the Department of the
39 Secretary of State on 5 December 1989, which document and attachments are
40 incorporated into this section by reference."

41 Sec. 2. All rights and properties formerly attributed to the Commission shall
42 pass to and be vested in the State.

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