

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 976  
Committee Substitute Favorable 6/2/93

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

(Public)

Sponsors:

Referred to:

April 19, 1993

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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 Part 4A of Article 7 of Chapter 143B of the General Statutes is repealed.

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

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

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

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

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

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

2 **"§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities**  
3 **invalid; petition to preempt local ordinance.**

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

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

40 No special, local, or private acts or resolutions enacted or taking effect hereafter may be  
41 construed to modify, amend, or repeal any portion of this Chapter or Chapter 104G of  
42 the General Statutes unless it expressly provides for such by specific references to the  
43 appropriate section of this Chapter or Chapter 104G of the General Statutes. Further to  
44 this end, all provisions of local ordinances, including those regulating land use, adopted  
45 by counties, municipalities, or other local authorities are invalidated which prohibit or

1 have the effect of prohibiting the establishment or operation of a low-level radioactive  
2 waste facility approved pursuant to this Chapter or Chapter 104G of the General  
3 Statutes.

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

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

- 18 (1) Publication in a newspaper or newspapers having general circulation in  
19 the county or counties where the facility is or is to be located or  
20 operated, once a week for three consecutive weeks, the first notice  
21 appearing at least 30 days prior to the scheduled date of the hearing;  
22 and
- 23 (2) First class mail to persons who have requested such notice. ~~The Board~~  
24 Secretary shall maintain a mailing list of persons who request notice in  
25 advance of the hearing pursuant to this section. Notice by mail shall  
26 be complete upon deposit of a copy of the notice in a post-paid  
27 wrapper addressed to the person to be notified at the address which  
28 appears on the mailing list maintained by the ~~Board, Secretary,~~  
29 in a post office or official depository under the exclusive care and custody  
30 of the United States Postal Service.

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

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

- 39 (1) That there is a local ordinance which would prohibit or have the effect  
40 of prohibiting the establishment or operation of a low-level radioactive  
41 waste facility;
- 42 (2) That the proposed facility is needed in order to establish adequate  
43 capability to meet the current or projected low-level radioactive waste  
44 management needs of this State or to comply with the terms of any

1 interstate agreement for the management of low-level radioactive  
2 waste to which the State is a party and therefore serves the interests of  
3 the citizens of the State as a whole;

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

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

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

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

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

33 (1) In violation of constitutional provisions; ~~or~~

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

35 (3) Made upon unlawful procedure; ~~or~~

36 (4) Affected by other error of law; ~~or~~

37 (5) Unsupported by substantial evidence admissible under G.S. 150B-  
38 29(a) or G.S. 150B-30 in view of the entire record as submitted; or

39 (6) Arbitrary or capricious.

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

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

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

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

- 4           (1) To advise, consult and cooperate with other public agencies and with  
5 affected groups and industries;
- 6           (2) To encourage, participate in, or conduct studies, investigations, public  
7 hearings, training, research, and demonstrations relating to the control  
8 of sources of radiation, the measurement of radiation, the effect upon  
9 public health and safety of exposure to radiation and related problems;
- 10          (3) To require the submission of plans, specifications, and reports for new  
11 construction and material alterations on (i) the design and protective  
12 shielding of installations for radioactive material and radiation  
13 machines and (ii) systems for the disposal of radioactive waste  
14 materials, for the determination of any radiation hazard and may  
15 render opinions, approve or disapprove such plans and specifications;
- 16          (4) To collect and disseminate information relating to the sources of  
17 radiation, including but not limited to: (i) maintenance of a record of  
18 all license applications, issuances, denials, amendments, transfers,  
19 renewals, modifications, suspensions, and revocations; and (ii)  
20 maintenance of a record of registrants and licensees possessing sources  
21 of radiation requiring registration or licensure under the provisions of  
22 this Chapter, and regulations hereunder, and any administrative or  
23 judicial action pertaining thereto; and to develop and implement a  
24 responsible data management program for the purpose of collecting  
25 and analyzing statistical information necessary to protect the public  
26 health and safety. The Department may refuse to make public  
27 dissemination of information relating to the source of radiation within  
28 this State after the Department first determines that the disclosure of  
29 such information will contravene the stated policy and purposes of this  
30 Chapter and such disclosure would be against the health, welfare and  
31 safety of the public.
- 32          (5) To respond to any emergency which involves possible or actual release  
33 of radioactive material; and to perform or supervise decontamination  
34 and otherwise protect the public health and safety in any manner  
35 deemed necessary. This section does not in any way alter or change the  
36 provisions of Chapter 166 of the North Carolina General Statutes  
37 concerning response during an emergency by the Department of  
38 Military and Veterans Affairs or its successor.
- 39          (6) To develop and maintain a statewide environmental radiation program  
40 for monitoring the radioactivity levels in air, water, soil, vegetation,  
41 animal life, milk, and food as necessary to ensure protection of the  
42 public and the environment from radiation hazards.
- 43          (7) To implement the provisions of this Chapter and the regulations duly  
44 promulgated under the Chapter.

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

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

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

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

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

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

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

42 "**§ 104G-21. Negotiation and arbitration.**

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

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

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

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

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

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

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

- 5 (1) Those issues excluded from negotiation under subsection (a) of this  
6 section;
- 7 (2) Any issue relating to the imposition by the General Assembly of a tax,  
8 or fee not authorized by this Chapter; and
- 9 (3) Any issue requiring an appropriation by the General Assembly.

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

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

13 "(a) To assist the Authority in the performance of its responsibilities under this  
14 Chapter and to advise the General Assembly, there is created the Inter-Agency  
15 Committee on Low-Level Radioactive Waste (herein called the 'Committee') consisting  
16 of ~~11~~10 members. The members shall be composed of: ~~the Chairman of the Board; the~~  
17 ~~Chairman of the Board's Technical Committee on Low-Level Radioactive Waste; the~~  
18 Secretary or the Secretary's designee; the Chief of the North Carolina Radiation  
19 Protection Section; the Chairman of the Commission's Low-Level Radioactive Waste  
20 Management Committee; the Chairman of the Authority; the Chairman of the  
21 Authority's Technical Committee; three representatives of the Department of  
22 Environment, Health, and Natural Resources with expertise in geology, groundwater,  
23 and air quality; and the two representatives of the Attorney General's office who provide  
24 legal services to the Authority and the Commission. ~~The Chairman of the Board~~The  
25 Secretary or the Secretary's designee shall serve as the Chairman of the Committee, and  
26 ~~the Board~~Radiation Protection Division of the Department shall provide professional  
27 and clerical support to the Committee."

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

29 **"§ 113-8.01. Pollution Prevention Pays Programs.**

30 There is established within the Department a non-regulatory technical assistance  
31 program to be known as the Pollution Prevention Pays Program. The purpose of this  
32 program is to encourage voluntary waste and pollution reduction efforts through  
33 research and by providing information, technical assistance, and matching grants to  
34 businesses and industries interested in establishing or enhancing activities to prevent,  
35 reduce, or recycle waste. The Pollution Prevention Pays Program shall coordinate its  
36 activities with the appropriate regulatory agencies ~~and with the Governor's Waste~~  
37 ~~Management Board agencies."~~

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

39 **"§ 120-70.33. Powers and duties.**

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

- 41 (1) To study alternatives available to the State for dealing with low-level  
42 radioactive waste and the ramifications of each of those alternatives;

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

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

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

34 **"§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid;  
 35 petition to preempt local ordinance.**

- 36 (a) It is the intent of the General Assembly to maintain a uniform system for the  
 37 management of hazardous waste and to place limitations upon the exercise by all units  
 38 of local government in North Carolina of the power to regulate the management of  
 39 hazardous waste by means of special, local, or private acts or resolutions, ordinances,  
 40 property restrictions, zoning regulations, or otherwise. Notwithstanding any authority  
 41 granted to counties, municipalities, or other local authorities to adopt local ordinances  
 42 (including but not limited to those imposing taxes, fees, or charges or regulating health,  
 43 environment, or land use), any local ordinance ~~which that~~ prohibits or has the effect of  
 44 prohibiting the establishment or operation of a hazardous waste facility ~~which the~~

1 ~~Governor's Waste Management Board (hereinafter "the Board" ) has preempted pursuant to~~  
2 ~~subsections (b) through (f) of this section, shall be invalid to the extent necessary to~~  
3 ~~effectuate the purposes of this Chapter or Chapter 130B of the General Statutes. For the~~  
4 ~~purpose of this section, the Board shall include, in addition to the members enumerated in G.S.~~  
5 ~~143B-285.12(a), two members appointed by the board of commissioners of the county in which~~  
6 ~~the facility is or is to be located. If the facility is or is to be located in more than one county, or~~  
7 ~~if the facility is or is to be located within the boundaries of a city, the governing body of each~~  
8 ~~city and county in which any portion of the facility is or is to be located shall have one~~  
9 ~~appointment. Failure of a local governing body to make an appointment within 30 days after~~  
10 ~~receipt of written notice from the Board to do so shall be deemed a vacancy in an unexpired~~  
11 ~~term and shall be filled by appointment by the Board. The terms of the members appointed by~~  
12 ~~local governing bodies shall end upon the final determination of the Board under this section,~~  
13 ~~and such members shall serve as members of the Board only for the purpose of this section. To~~  
14 ~~this end, all provisions of special, local, or private acts or resolutions are repealed~~  
15 ~~which:~~

- 16 (1) Prohibit the transportation, treatment, storage, or disposal of hazardous  
17 waste within any county, city, or other political subdivision;
- 18 (2) Prohibit the siting of a hazardous waste facility within any county,  
19 city, or other political subdivision;
- 20 (3) Place any restriction or condition not placed by Article 9 of Chapter  
21 130A or Chapter 130B of the General Statutes upon the transportation,  
22 treatment, storage, or disposal of hazardous waste, or upon the siting  
23 of a hazardous waste facility within any county, city, or other political  
24 subdivision; or
- 25 (4) In any manner are in conflict or inconsistent with the provisions of  
26 Article 9 of Chapter 130A or Chapter 130B of the General Statutes.

27 No special, local, or private acts or resolutions enacted or taking effect hereafter may be  
28 construed to modify, amend, or repeal any portion of Article 9 of Chapter 130A or  
29 Chapter 130B of the General Statutes unless it expressly provides for such by specific  
30 references to the appropriate section of this Part. Further to this end, all provisions of  
31 local ordinances, including those regulating land use, adopted by counties,  
32 municipalities, or other local authorities are invalidated which prohibit or have the  
33 effect of prohibiting the establishment or operation of a hazardous waste facility  
34 approved pursuant to Article 9 of Chapter 130A or Chapter 130B of the General  
35 Statutes.

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

44 (c) When a petition described in subsection (b) of this section has been filed with  
45 the ~~Board, the Board~~ Secretary, the Secretary shall hold a public hearing to consider the

1 petition. Such hearing shall be held in the affected locality within 60 days after receipt  
2 of the petition by the ~~Board~~. ~~The Board~~ Secretary. The Secretary shall give notice of the  
3 public hearing by:

- 4 (1) Publication in a newspaper or newspapers having general circulation in  
5 the county or counties where the facility is or is to be located or  
6 operated, once a week for three consecutive weeks, the first notice  
7 appearing at least 30 days prior to the scheduled date of the hearing;  
8 and
- 9 (2) First class mail to persons who have requested such notice. ~~The Board~~  
10 Secretary shall maintain a mailing list of persons who request notice in  
11 advance of the hearing pursuant to this section. Notice by mail shall  
12 be complete upon deposit of a copy of the notice in a post-paid  
13 wrapper addressed to the person to be notified at the address which  
14 appears on the mailing list maintained by the Board, in a post office or  
15 official depository under the exclusive care and custody of the United  
16 States Postal Service.

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

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

- 25 (1) That there is a local ordinance which would prohibit or have the effect  
26 of prohibiting the establishment or operation of a hazardous waste  
27 facility;
- 28 (2) That the proposed facility is needed in order to establish adequate  
29 capability to meet the current or projected hazardous waste  
30 management needs of this State or to comply with the terms of any  
31 interstate agreement for the management of hazardous waste to which  
32 the State is a party and therefore serves the interests of the citizens of  
33 the State as a whole;
- 34 (3) That all legally required State and federal permits or approvals have  
35 been issued by the appropriate State and federal agencies or that all  
36 State and federal permit requirements have been satisfied and that the  
37 permits or approvals have been denied or withheld only because of the  
38 local ordinance(s);
- 39 (4) That local citizens and elected officials have had adequate opportunity  
40 to participate in the siting process; and
- 41 (5) That the construction and operation of the facility will not pose an  
42 unreasonable health or environmental risk to the surrounding locality  
43 and that the facility operator or the Commission has taken or consented  
44 to take reasonable measures to avoid or manage foreseeable risks and

1 to comply to the maximum feasible extent with any applicable local  
2 ordinance(s).

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

7 (e) The decision of the ~~Board~~Secretary shall be final unless a party to the action  
8 shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S.  
9 7A-29 and this section, files a written appeal within 30 days of the date of such  
10 decision. The record on appeal shall consist of all materials and information submitted  
11 to or considered by the ~~Board, the Board's~~Secretary, the Secretary's written decision, a  
12 complete transcript of the hearing, all written material presented to the ~~Board~~Secretary  
13 regarding the location of the facility, the specific findings required by subsection (d) of  
14 this section, and any minority positions on the specific findings required by subsection  
15 (d) of this section. The scope of judicial review shall be that the court may affirm the  
16 decision of the ~~Board, Secretary,~~ or may remand the matter for further proceedings, or  
17 may reverse or modify the decision if the substantial rights of the parties may have been  
18 prejudiced because the agency findings, inferences, conclusions, or decisions are:

- 19 (1) In violation of constitutional provisions; or
- 20 (2) In excess of the statutory authority or jurisdiction of the agency; or
- 21 (3) Made upon unlawful procedure; or
- 22 (4) Affected by other error of law; or
- 23 (5) Unsupported by substantial evidence admissible under G.S. 150B-  
24 29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- 25 (6) Arbitrary or capricious.

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

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

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

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

33 **"§ 130A-294. Solid waste management program.**

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

- 38 (1) Develop a comprehensive program for implementation of safe and  
39 sanitary practices for management of solid waste;
- 40 (2) Advise, consult, cooperate and contract with other State agencies, units  
41 of local government, the federal government, industries and  
42 individuals in the formulation and carrying out of a solid waste  
43 management program;

1 (3) Develop and adopt rules to establish standards for qualification as a  
2 waste 'recycling, reduction or resource recovering facility' or as waste  
3 'recycling, reduction or resource recovering equipment' for the purpose  
4 of special tax classifications or treatment, and to certify as qualifying  
5 those applicants which meet the established standards. The standards  
6 shall be developed to qualify only those facilities and equipment  
7 exclusively used in the actual waste recycling, reduction or resource  
8 recovering process and shall exclude any incidental or supportive  
9 facilities and equipment;

10 (4) Develop a permit system governing the establishment and operation of  
11 solid waste management facilities. No permit shall be granted for a  
12 sanitary landfill, excluding demolition landfills as defined in the rules  
13 of the Commission for Health Services, without the Department  
14 receiving the prior approval for such permit from the county where it  
15 is to be located, except if it is to be located within the corporate limits  
16 or extraterritorial jurisdiction under Article 19 of Chapter 160A of the  
17 General Statutes, of a city as defined in G.S. 160A-1(2), from the city  
18 where it is to be located or whose jurisdiction it is in. No permit shall  
19 be granted for a solid waste management facility having discharges  
20 which are point sources until the Department has referred the complete  
21 plans and specifications to the Environmental Management  
22 Commission and has received advice in writing that the plans and  
23 specifications are approved in accordance with the provisions of G.S.  
24 143-215.1. In any case where the Department denies a permit for a  
25 solid waste management facility, it shall state in writing the reason for  
26 denial and shall also state its estimate of the changes in the applicant's  
27 proposed activities or plans which will be required for the applicant to  
28 obtain a permit.

29 The issuance of permits for sanitary landfills operated by local  
30 governments is exempt from the environmental impact statements  
31 required by Article 1 of Chapter 113A of the General Statutes, entitled  
32 the North Carolina Environmental Policy Act of 1971. All sanitary  
33 landfill permits issued to local governments prior to July 1, 1984, are  
34 hereby validated notwithstanding any failure to provide environmental  
35 impact statements pursuant to the North Carolina Environmental  
36 Policy Act of 1971;

37 (4a) No permit shall be granted for any public or private sanitary landfill to  
38 receive solid non-radioactive waste generated outside the boundaries  
39 of North Carolina to be deposited, unless such waste has previously  
40 been inspected by the solid waste regulatory agency of that nation,  
41 state or territory, characterized in detail as to its contents and certified  
42 by that agency to be non-injurious to health and safety. The  
43 Commission shall adopt rules to implement this subsection.

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

- 1 (5a) Designate a geographic area within which the collection,  
2 transportation, storage and disposal of all solid waste generated within  
3 said area shall be accomplished in accordance with a solid waste  
4 management plan. Such designation may be made only after the  
5 Department has received a request from the unit or units of local  
6 government having jurisdiction within said geographic area that such  
7 designation be made and after receipt by the Department of a solid  
8 waste management plan which shall include:  
9 a. The existing and projected population for such area;  
10 b. The quantities of solid waste generated and estimated to be  
11 generated in such area;  
12 c. The availability of sanitary landfill sites and the environmental  
13 impact of continued landfill of solid waste on surface and  
14 subsurface waters;  
15 d. The method of solid waste disposal to be utilized and the energy  
16 or material which shall be recovered from the waste; and  
17 e. Such other data that the Department may reasonably require.
- 18 (5b) Authorize units of local government to require by ordinance, that all  
19 solid waste generated within the designated geographic area that is  
20 placed in the waste stream for disposal be collected, transported, stored  
21 and disposed of at a permitted solid waste management facility or  
22 facilities serving such area. The provisions of such ordinance shall not  
23 be construed to prohibit the source separation of materials from solid  
24 waste prior to collection of such solid waste for disposal, or prohibit  
25 collectors of solid waste from recycling materials or limit access to  
26 such materials as an incident to collection of such solid waste;  
27 provided such prohibitions do not authorize the construction and  
28 operation of a resource recovery facility unless specifically permitted  
29 pursuant to an approved solid waste management plan. If a private  
30 solid waste landfill shall be substantially affected by such ordinance  
31 then the unit of local government adopting the ordinance shall be  
32 required to give the operator of the affected landfill at least two years  
33 written notice prior to the effective date of the proposed ordinance.
- 34 (5c) Except for the authority to designate a geographic area to be serviced  
35 by a solid waste management facility, delegate authority and  
36 responsibility to units of local government to perform all or a portion  
37 of a solid waste management program within the jurisdictional area of  
38 the unit of local government; provided that no authority over or control  
39 of the operations or properties of one local government shall be  
40 delegated to any other local government.
- 41 (5d) Require that an annual report of the implementation of the solid waste  
42 management plan within the designated geographic area be filed with  
43 the Department.

1           (6) The Department is authorized to charge and collect fees from operators  
2 of hazardous waste disposal facilities. The fees shall be used to  
3 establish a fund sufficient for each individual facility to defray the  
4 anticipated costs to the State for monitoring and care of the facility  
5 after the termination of the period during which the facility operator is  
6 required by applicable State and federal statutes, regulations or rules to  
7 remain responsible for post-closure monitoring and care. In  
8 establishing the fees, consideration shall be given to the size of the  
9 facility, the nature of the hazardous waste and the projected life of the  
10 facility.

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

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

27           The Commission may adopt rules for financial responsibility to ensure the  
28 availability of sufficient funds for closure and post-closure maintenance and monitoring  
29 at solid waste management facilities, and for any corrective action the Department may  
30 require during the active life of a facility or during the closure and post-closure periods.  
31 The rules may permit demonstration of financial responsibility through the use of a  
32 letter of credit, insurance, surety, trust agreement, financial test, or guarantee by  
33 corporate parents or third parties who can pass the financial test. Financial  
34 responsibility rules shall not apply to solid waste management facilities operated by  
35 local government.

36           (c) The Commission shall adopt and the Department shall enforce rules  
37 concerning the management of hazardous waste. These rules shall establish a complete  
38 and integrated regulatory scheme in the area of hazardous waste management and shall  
39 provide for:

40           (1) Establishing criteria for hazardous waste, identifying the  
41 characteristics of hazardous waste and listing particular hazardous  
42 waste;

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

1 the operation of the facility. The ~~Board~~ Department shall determine  
2 what constitutes an adequate amount of insurance;

3 (17) The bottom of a hazardous waste disposal facility shall be at least 10  
4 feet above the seasonal high water table and more when necessary to  
5 protect the public health and the environment; and

6 (18) The operator of a hazardous waste disposal facility shall make monthly  
7 reports to ~~the Governor's Waste Management Board and to the board of~~  
8 county commissioners of the county in which the facility is located on  
9 the kinds and amounts of hazardous wastes in the facility.

10 (d) The Commission is authorized to adopt and the Department is authorized to  
11 enforce rules where appropriate for public participation in the consideration,  
12 development, revision, implementation and enforcement of any permit rule, guideline,  
13 information or program under this Article.

14 (e) Rules adopted under this section may incorporate standards and restrictions  
15 which exceed and are more comprehensive than comparable federal regulations.

16 (f) Within 10 days of receiving an application for a permit or for an amendment  
17 to an existing permit for a hazardous waste facility, the Department shall notify the  
18 clerk of the board of commissioners of the county or counties in which the facility is  
19 proposed to be located or is located and, if the facility is proposed to be located or is  
20 located within a city, the clerk of the governing board of the city, that the application  
21 has been filed, and shall file a copy of the application with the clerk. Prior to the  
22 issuance of a permit or an amendment of an existing permit the Secretary or his  
23 designee shall conduct a public hearing in the county, or in one of the counties in which  
24 the hazardous waste facility is proposed to be located or is located. The Secretary or his  
25 designee shall give notice of the hearing, and the public hearing shall be in accordance  
26 with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B  
27 of the General Statutes. Where the provisions of the federal regulations and Chapter  
28 150B of the General Statutes are inconsistent, the federal regulations shall apply.

29 (g) The Commission shall develop and adopt standards for permitting of  
30 hazardous waste facilities. Such standards shall be developed with, and provide for,  
31 public participation; shall be incorporated into rules; shall be consistent with all  
32 applicable federal and State law, including statutes, regulations and rules; shall be  
33 developed and revised in light of the best available scientific data; and shall be based on  
34 consideration of at least the following factors:

35 (1) Hydrological and geological factors, including flood plains, depth to  
36 water table, groundwater travel time, soil pH, soil cation exchange  
37 capacity, soil composition and permeability, cavernous bedrock,  
38 seismic activity, slope, mines, and climate;

39 (2) Environmental and public health factors, including air quality, quality  
40 of surface and groundwater, and proximity to public water supply  
41 watersheds;

42 (3) Natural and cultural resources, including wetlands, gamelands,  
43 endangered species habitats, proximity to parks, forests, wilderness  
44 areas, nature preserves, and historic sites;

- 1 (4) Local land uses;
- 2 (5) Transportation factors, including proximity to waste generators, route
- 3 safety, and method of transportation;
- 4 (6) Aesthetic factors, including the visibility, appearance, and noise level
- 5 of the facility;
- 6 (7) Availability and reliability of public utilities; and
- 7 (8) Availability of emergency response personnel and equipment.
- 8 (h) Rules adopted by the Commission shall be subject to the following
- 9 requirements:
- 10 (1) Repealed by Session Laws 1989, c. 168, s. 20.
- 11 (2) Hazardous waste shall be treated prior to disposal in North Carolina.
- 12 The Commission shall determine the extent of waste treatment
- 13 required before hazardous waste can be disposed of in a hazardous
- 14 waste disposal facility.
- 15 (3) Any hazardous waste disposal facility hereafter constructed in this
- 16 State shall meet, at the minimum, the standards of construction
- 17 imposed by federal regulations adopted under the RCRA at the time
- 18 the permit is issued.
- 19 (4) No hazardous waste disposal facility or polychlorinated biphenyl
- 20 disposal facility shall be located within 25 miles of any other
- 21 hazardous waste disposal facility or polychlorinated biphenyl disposal
- 22 facility.
- 23 (5) No hazardous waste facility operated pursuant to Chapter 130B of the
- 24 General Statutes shall be located within 25 miles of a polychlorinated
- 25 biphenyl landfill facility.
- 26 (6) The following ~~will~~shall not be disposed of in a hazardous waste
- 27 disposal facility: ignitables as defined in the RCRA, polyhalogenated
- 28 biphenyls of 50 ppm or greater concentration, and free liquids whether
- 29 or not containerized.
- 30 (7) Facilities for disposal or long-term storage of hazardous waste shall
- 31 have at a minimum the following: a leachate collection and removal
- 32 system above an artificial impervious liner of at least 30 mils in
- 33 thickness, a minimum of five feet of clay or clay-like liner with a
- 34 maximum permeability of  $1.0 \times 10^{-7}$  centimeters per second (cm/sec)
- 35 below said artificial liner, and a leachate detection system immediately
- 36 below the clay or clay-like liner.
- 37 (8) Hazardous waste shall not be stored at a hazardous waste treatment
- 38 facility for over 90 days prior to treatment or disposal.
- 39 (9) The Commission shall consider any hazardous waste treatment process
- 40 proposed to it, if the process lessens treatment cost or improves
- 41 treatment over then current methods or standards required by the
- 42 Commission.
- 43 (10) Prevention, reduction, recycling, and detoxification of hazardous
- 44 wastes should be encouraged and promoted. Hazardous waste disposal

1 facilities and polychlorinated biphenyl disposal facilities shall be  
2 detoxified as soon as technology which is economically feasible is  
3 available and sufficient money is available without additional  
4 appropriation.

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

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

31 (k) Each person who generates hazardous waste who is required to pay a fee  
32 under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which  
33 treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall  
34 submit to the Department at the time such fees are due, a written description of any  
35 program to minimize or reduce the volume and quantity or toxicity of such waste.

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

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

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

4       (o) The Department shall promote public education and public involvement in  
5 the decision-making process for the siting and permitting of proposed hazardous waste  
6 facilities. The Department shall assist localities in which facilities are proposed in  
7 collecting and receiving information relating to the suitability of the proposed site. At  
8 the request of a local government in which facilities are proposed, the Department shall  
9 direct the appropriate agencies of State government to develop such relevant data as that  
10 locality shall reasonably request.

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

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

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

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

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

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

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

34       (1) 'Authorized hazardous waste facility' means a hazardous waste facility  
35 authorized by the Governor as provided in G.S. 130B-5(a) and G.S.  
36 130B-5(b)(1).

37       (2) ~~'Board' means the Governor's Waste Management Board established~~  
38 ~~pursuant to Part 4A of Article 7 of Chapter 143B of the General~~  
39 ~~Statutes.~~

40       (3) 'Commission' means the North Carolina Hazardous Waste  
41 Management Commission established pursuant to this Chapter or any  
42 successor thereto.

43       (4) 'Department' means the Department of Environment, Health, and  
44 Natural Resources."

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

2   **"§ 130B-4. Purpose.**

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

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

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

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

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

42       "(c) The Governor is authorized to enter into interstate agreements for the  
43 management of hazardous waste. Such agreements shall provide for access to suitable  
44 facilities for management of hazardous waste; encourage reductions in the volume or

1 quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations  
2 of hazardous waste management equitably among the party states; and provide for  
3 protection of human health and the environment in a manner that is both ecologically  
4 and economically sound. In negotiating such agreements, the Governor may request  
5 such assistance as he deems appropriate from the Attorney General, the Solid Waste  
6 Management Division of the Department, ~~the Governor's Waste Management Board,~~ and  
7 the Commission. The Governor shall submit any such agreement to the General  
8 Assembly for its approval, and no such agreement shall be effective until approved by  
9 the General Assembly."

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

11 "(b) Membership. – The Commission shall be ~~composed~~ comprised of nine  
12 members. Members of the General Assembly, ~~the Board,~~ the Commission for Health  
13 Services, 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 Sec. 20. G.S. 130B-7(a)(1) reads as rewritten:

17 "(1) Shall (i) with the assistance of ~~the Board and~~ the Solid Waste  
18 Management Division of the Department, periodically review current  
19 and projected hazardous waste generation from all sources within the  
20 State, the current and projected effect of efforts to minimize and  
21 reduce the generation of hazardous waste, the potential for further  
22 reductions in the generation of hazardous waste, current and projected  
23 availability and adequacy of facilities for the management of  
24 hazardous waste within and outside the State, whether and to what  
25 extent private enterprise will provide needed hazardous waste  
26 facilities, and capacity assurance requirements under CERCLA/SARA,  
27 (ii) determine whether additional facilities for the management of  
28 hazardous waste may be needed in this State, and (iii) make  
29 appropriate recommendations to the Governor and the General  
30 Assembly;"

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

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

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

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

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

2           "(c) An applicant for a permit to operate a hazardous waste facility pursuant to  
3 this Chapter shall pay a one-time local application fee of one hundred thousand dollars  
4 (\$100,000) to the ~~Board~~. ~~The Board~~ Department. The Department shall distribute not  
5 less than sixty-five thousand dollars (\$65,000) of the local application fee to the county  
6 or counties where the site of the proposed facility is located. If the site lies in more than  
7 one county, the local application fee will be distributed to the counties in which the site  
8 is located in equal amounts. If the board of commissioners appoints a preferred site  
9 local advisory committee the local application fee shall be used to support the work of  
10 the committee."

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

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

30           ◆ Sec. 25. G.S. 130B-21 reads as rewritten:

31           "**§ 130B-21. Negotiation, mediation, and arbitration.**

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

- 35           (1) The need for the facility;
- 36           (2) Any proposal to reduce the duties of the Commission under this  
37 Chapter or under any permit or license issued for the facility;
- 38           (3) Any proposal to reduce the duties of the Commission for Health  
39 Services or the Department, or to make less stringent any rule of the  
40 Commission for Health Services;
- 41           (4) ~~Any proposal to reduce the duties of the Board;~~
- 42           (5) Any act or decision of the Governor pursuant to G.S. 130B-5; or

1           (6) Any decision of the Commission regarding site selection, contractor  
2           selection, or technology pursuant to G.S. 130B-11, 130B-13, and  
3           130B-14.

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

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

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

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

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

- 39           (1) Those issues excluded from negotiation under subsection (a) of this  
40           section;
- 41           (2) Any issue relating to the imposition by the General Assembly of a tax,  
42           or the imposition of a fee not authorized by this Chapter; and
- 43           (3) Any issue requiring an appropriation by the General Assembly.

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

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

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

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

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

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

29               **"§ 143B-285.20. Short title.**

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

31               **"§ 143B-285.21. Declaration of purpose.**

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

35               **"§ 143B-285.22. Creation.**

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

39               **"§ 143B-285.23. Powers and duties of the Secretary of Environment, Health, and**  
40 **Natural Resources.**

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

42               (1) Establish an Office of Environmental Education to:

43               a. Serve as a clearinghouse of environmental information for the  
44 State.

- b. Plan for the Department's future needs for environmental education materials and programs.
  - c. Maintain a computerized database of existing education materials and programs within the Department.
  - d. Maintain a speaker's bureau of environmental specialists to address environmental concerns and issues in communities across the State.
  - e. Evaluate opportunities for establishing regional environmental education centers.
  - f. Administer the Project Tomorrow Award Program to encourage school children to discover and explore ways to protect the environment.
  - g. Assist the Department of Public Instruction in integrating environmental education into course curricula.
  - h. Develop and implement a grants and award program for environmental education projects in schools and communities.
- (2) Coordinate, through technical assistance and staff support and with participation of the Department of Public Instruction and other relevant agencies, institutions, and citizens, the planning and implementation of a statewide program of environmental education.
  - (3) Be responsible for such matters as the purchase of educational equipment, materials, and supplies; the construction or modification of facilities; and the employment of consultants and other personnel necessary to carry out the provisions of this Part.
  - (4) Encourage coordination between the various State and federal agencies, citizens groups, and the business and industrial community, in the dissemination of environmental information and education.
  - (5) Utilize existing programs, educational materials, or facilities, both public and private, wherever feasible.

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

The objective of grants and awards made under the provisions of this Part shall be to promote the further development of local and regional environmental education and information dissemination to aid especially, but not be limited to, school-age children. The Office shall recommend each year to the Governor recipients for the Project Tomorrow Award, which the Governor shall award for outstanding environmental projects by elementary schools in North Carolina.

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

There is hereby created an environmental education liaison position within the Science Section of the Department of Public Instruction to:

- (1) Coordinate environmental education within the State curriculum and among the Department and other State agencies.
- (2) Conduct teacher training in environmental education topics in conjunction with Department and other State agencies.

- 1           (3)    Coordinate and integrate topics within the various curriculum areas of  
2           the standard course of study.
- 3           (4)    Promote awareness of environmental issues to the public and to the  
4           school communities, including students, teachers, and administrators.
- 5           (5)    Establish a repository of environmental education instructional  
6           materials and disseminate information on the availability of these  
7           materials to schools.
- 8           (6)    Promote and facilitate the sharing of information through electronic  
9           networks to all schools."

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

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

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

- 13           (1)    The Secretary of Environment, Health, and Natural Resources or the  
14           Secretary's designee.
- 15           (2)    The Secretary of Commerce or the Secretary's designee.
- 16           (3)    Four members appointed by the Governor as follows: one  
17           representative of industry; one representative of small business; one  
18           representative of the environmental and conservation community; and  
19           one citizen representative.
- 20           (4)    Four members appointed by the President Pro Tempore of the Senate  
21           as follows: one member of the Environmental Review Commission;  
22           one representative of industry; one representative of the environmental  
23           and conservation community; and one representative of county  
24           government.
- 25           (5)    Four members appointed by the Speaker of the House of  
26           Representatives as follows: one member of the Environmental Review  
27           Commission; one representative of industry; one representative of the  
28           environmental and conservation community; and one representative of  
29           city government.
- 30           (6)    One member appointed by the Lieutenant Governor from the general  
31           public.

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

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

- 38           (1)    The regulation of hazardous waste generation and management in  
39           North Carolina;
- 40           (2)    The potential to promote greater reduction of waste generation through  
41           new and existing programs and policies; and
- 42           (3)    The hazardous waste management capacity needs of North Carolina  
43           business and industry.

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

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

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

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

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

18 (i) The Council shall hold public meetings in at least three locations to  
19 receive public comments. The Council may prepare separate reports on issues it selects.  
20 The Council shall make an interim report to the Governor, the Secretary of  
21 Environment, Health, and Natural Resources, the Secretary of Commerce, and the  
22 Environmental Review Commission of the General Assembly on or before March 1,  
23 1994. The Council shall make its final written report to the same bodies on or before  
24 October 1, 1994. Upon making its final written report, the Council shall terminate.

25 Sec. 31. All positions, property, unexpended balances of appropriations,  
26 allocations, and other refunds, including the functions of budgeting and purchasing, are  
27 transferred from the Governor's Waste Management Board to the Office of  
28 Environmental Education.

29 Sec. 32. This act becomes effective July 1, 1993.