

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 6
Judiciary I (Civil) Committee Substitute Adopted 4/4/07
House Committee Substitute Favorable 8/1/07

Short Title: Amend Solid Waste Management Act of 2007.

(Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO (1) CLARIFY THE APPLICATION OF CERTAIN SETBACK REQUIREMENTS FOR DISPOSAL UNITS OF SANITARY LANDFILLS; (2) REVISE THE DISTRIBUTION OF THE PROCEEDS OF THE SOLID WASTE DISPOSAL TAX; AND (3) PROVIDE REIMBURSEMENT OF CERTAIN COSTS INCURRED IN CONNECTION WITH APPLICATIONS FOR PERMITS FOR SANITARY LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) If Senate Bill 1492 becomes law, then G.S. 130A-295.6(d), as enacted by Section 9(a) of Senate Bill 1492, reads as rewritten:

"(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, ~~at the time the application is determined to be complete under G.S. 130A-295.8(e),~~ at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

- (1) Five miles of the outermost boundary of a National Wildlife Refuge.
- (2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306.
- (3) Two miles of the outermost boundary of a component of the State Parks System."

SECTION 1.(b) If Senate Bill 1492 becomes law, then Section 9(b) of Senate Bill 1492, reads as rewritten:

"**SECTION 9.(b)** This section becomes effective 1 August 2007 and applies to any application for a permit for a solid waste management facility that is pending on that ~~date~~ date, except that G.S. 130A-295.6(d), as enacted by this section, becomes effective

1 1 August 2007 and applies to any application for a permit for a solid waste management
2 facility that is submitted on or after that date. G.S. 130A-295.6(d) applies to any
3 application for a permit for a solid waste management facility that is pending on 1
4 August 2007 on the basis of the boundaries of the lands described in subdivisions (1),
5 (2), and (3) of G.S. 130A-295.6(d) as of 1 August 2007. To the extent that
6 G.S. 130A-295.6, as enacted by this section, imposes requirements that are more
7 stringent than those in effect prior to 1 August 2007, the more stringent requirements do
8 not apply to:

- 9 (1) An amendment, modification, or other change to a permit for a landfill
10 issued on or before 1 June 2006.
- 11 (2) A permit for a horizontal or vertical expansion of the landfill permitted
12 on or before 1 June 2006.
- 13 (3) A permit to construct a new landfill within the facility boundary
14 identified in the facility plan of a landfill permitted on or before 1 June
15 2006.
- 16 (4) A permit to operate a new landfill if a permit to construct the new
17 landfill was issued on or before 1 June 2006.
- 18 (5) A permit for a sanitary landfill used only to dispose of waste generated
19 by a coal-fired generating unit that is owned or operated by an
20 investor-owned utility subject to the requirements of
21 G.S. 143-215.107D.
- 22 (6) A permit for a sanitary landfill determined to be necessary by the
23 Secretary of Environment and Natural Resources in order to respond to
24 an imminent hazard to public health or a natural disaster."

25 **SECTION 1.(c)** If Senate Bill 1492 becomes law, Senate Bill 1492 is
26 amended by adding a new section to read:

27 "**SECTION 9.(c)** This section does not apply to landfills for the disposal of land
28 clearing and inert debris or to Type I or Type II compost facilities."

29 **SECTION 2.** If Senate Bill 1492 becomes law, then G.S. 105-187.63, as
30 enacted by Section 14(a) of Senate Bill 1492, reads as rewritten:

31 "**§ 105-187.63. Use of tax proceeds.**

32 From the taxes received pursuant to this Article, the Secretary may retain the costs
33 of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year,
34 as reimbursement to the Department. The Secretary shall credit or distribute taxes
35 received pursuant to this Article, less the cost of collection, as follows:

- 36 (1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund
37 established by G.S. 130A-310.11.
- 38 (2) ~~Thirty seven and one half percent (37.5%) to units of local~~
39 ~~government that provide solid waste management services directly to~~
40 ~~residents within the political boundaries of the unit of local~~
41 ~~government as determined by the Department of Environment and~~
42 ~~Natural Resources, distributed on a per capita basis as described in~~
43 ~~G.S. 105-472(b)(1). Funds distributed under this subdivision shall be~~
44 ~~used by a unit of local government solely for solid waste management~~

1 ~~programs and services. As used in this subdivision, "unit of local~~
2 ~~government" includes a regional solid waste management authority~~
3 ~~established under Article 22 of Chapter 153A of the General Statutes.~~
4 Eighteen and seventy-five one hundredths percent (18.75%) to cities in
5 the State on a per capita basis and eighteen and seventy-five one
6 hundredths percent (18.75%) to counties in the State on a per capita
7 basis. For purposes of this subdivision, persons who reside within a
8 city shall not be counted in the population of the county or counties in
9 which the city is located. Funds distributed under this subdivision shall
10 be used by a unit of local government solely for solid waste
11 management programs and services.

- 12 (3) Twelve and one-half percent (12.5%) to the Solid Waste Management
13 Trust Fund established by G.S. 130A-309.12."

14 **SECTION 3.(a)** Declaration of Purpose and Intent. – Notwithstanding that
15 an applicant for a permit does not have a reasonable expectation that the law governing
16 the permit will remain unchanged and that the applicant acquires no vested right by
17 virtue of having made an application, the General Assembly finds that it is in the public
18 interest to provide for the potential compensation of certain applicants who submitted an
19 application for a permit for a solid waste management facility prior to 1 August 2006
20 and whose application would be denied under G.S. 130A-295.6(d).

21 **SECTION 3.(b)** Reimbursement of Application Costs. – An applicant for a
22 permit for a sanitary landfill may request reimbursement for the reasonable costs for
23 preparation of the permit application incurred prior to 1 August 2006 if the permit
24 would be denied under G.S. 130A-295.6(d).

25 **SECTION 3.(c)** Eligibility for Reimbursement. – To be eligible for
26 reimbursement under this section, the request for reimbursement shall demonstrate all of
27 the following:

- 28 (1) The application for a permit to construct a sanitary landfill was
29 submitted to the Department on or before 1 August 2006.
30 (2) The applicant obtained a landfill franchise from the local government
31 with jurisdiction over the site of the proposed landfill on or before 1
32 August 2006.
33 (3) The Department did not grant the permit application in whole or in
34 part.
35 (4) The Department did not deny the permit application before 1 August
36 2007.
37 (5) The applicant did not withdraw the permit application before 1 August
38 2007.
39 (6) That the applicant had a reasonable expectation that the application for
40 a permit would have been approved but for the enactment of
41 G.S. 130A-295.6(d).

42 **SECTION 3.(d)** Costs Eligible for Reimbursement. – Costs that are
43 necessary for the preparation of the permit application and that are reasonably incurred
44 are eligible for reimbursement under this section. These costs may include site studies,

1 facility plans, construction and engineering plans, construction quality assurance plans,
2 geologic and hydrologic investigations, operation plans, wildlife or wildlife
3 management studies, closure and post-closure plans, information required by the
4 Department to satisfy financial assurance and financial responsibility requirements, and
5 other information required by the Department in the permit review. These costs may
6 also include the reasonable fees of environmental consultants, engineers, geologists,
7 other professionals whose services were necessary to prepare the permit application or
8 to respond to information requests from the Department, and legal costs to obtain a
9 landfill franchise or other approval from the local government with jurisdiction over the
10 site of the proposed sanitary landfill.

11 **SECTION 3.(e)** Costs Not Eligible for Reimbursement. – None of the
12 following costs incurred by or on behalf of the applicant is eligible for reimbursement:

13 (1) The costs of acquiring interests in land for construction of the
14 proposed sanitary landfill.

15 (2) Legal or lobbying costs incurred in attempting to influence an
16 administrative or legislative body.

17 **SECTION 3.(f)** Request for Reimbursement. – The request for
18 reimbursement shall be submitted to the Department no later than 31 December 2007
19 with information necessary to document the reasonable and necessary costs eligible for
20 reimbursement under this section. The Department shall review the request for
21 reimbursement and notify the applicant and the Secretary of Revenue of the costs
22 approved for reimbursement under this section. The Secretary of Revenue shall
23 reimburse the approved costs from the proceeds of the tax imposed under
24 G.S. 105-187.61 subject to availability of funds. Approved reimbursement costs shall be
25 paid from the proceeds of the tax prior to crediting or distributing the proceeds of the
26 tax as provided in G.S. 105-187.63.

27 **SECTION 3.(g)** Waiver and Covenant Not to Sue. – An applicant for a
28 permit for a sanitary landfill who accepts reimbursement of costs under this section
29 waives the right to seek reimbursement of those costs under any other provision of law.
30 Prior to receiving any reimbursement under this section, the applicant shall execute a
31 covenant not to sue the State of North Carolina or any political subdivision of the State
32 for any costs described in subsections (d) and (e) of this section.

33 **SECTION 4.** If any section or provision of this act is declared
34 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
35 provision does not affect the validity of this act as a whole or any part of this act other
36 than the part declared to be unconstitutional or invalid.

37 **SECTION 5.** Sections 1, 4, and 5 of this act become effective when this act
38 becomes law. If Senate Bill 1492 becomes law, Section 3 of this act becomes effective
39 when this act becomes law. Section 2 of this act becomes effective 1 July 2008.