

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 795
HOUSE BILL 322

AN ACT AUTHORIZING THE DEPARTMENT OF HUMAN RESOURCES TO DESIGNATE GEOGRAPHIC AREAS WITHIN WHICH A SOLID WASTE MANAGEMENT PLAN WILL PROVIDE FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE; REQUIRING WASTE GENERATED WITHIN SAID AREAS TO BE DISPOSED OF AT PERMITTED SOLID WASTE MANAGEMENT FACILITIES; AUTHORIZING CITIES AND COUNTIES TO EVALUATE PROPOSALS AND NEGOTIATE CONTRACTS ON THE BASIS OF FACTORS OTHER THAN PRICE ALONE; AND EXPANDING THE POWERS OF MUNICIPALITIES WITH RESPECT TO THE ISSUANCE OF REVENUE BONDS FOR SYSTEMS, FACILITIES AND EQUIPMENT FOR THE COLLECTION, TREATMENT OR DISPOSAL OF SOLID WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130-166.16 is amended by adding a new subdivision to read:

"(23) 'Unit of local government' means a county, city, town or incorporated village."

Sec. 2. G.S. 130-166.17 is rewritten to read:

"§ 130-166.17. Solid Waste Unit in Department of Human Resources.—(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department of Human Resources shall maintain an appropriate administrative unit to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain such qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish the statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department of Human Resources, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of said purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within said area, and a unit of local government may, by ordinance, require that all solid waste generated within said area and placed in the waste stream for

disposal, shall be delivered to the permitted solid waste management facility or facilities serving such geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within said geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules or regulations adopted pursuant to the authority granted herein."

Sec. 3. G.S. 130-166.18(a) is amended by deleting subdivision (5) and inserting the following new subdivisions in its place:

"(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

- a. The existing and projected population for such area;
- b. The quantities of solid waste generated and estimated to be generated in such area;
- c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
- d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
- e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department."

Sec. 4. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.2. Construction, design and operation of solid waste management facilities.—(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. 130-166.16.

(b) To acknowledge the highly complex and innovative nature of solid waste management technology for processing mixed solid waste, the relatively limited availability of existing and proven proprietary technology involving solid waste management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article 8, or any other general, special or local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall include:

- (1) information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;
- (2) a proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of such proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of such proposal;

- (3) such other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to such request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon such other factors and information as the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, such determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article 8, or any other general, local or special law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

- (1) a contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain such a solid waste management facility, upon such terms and conditions for such consideration and for such term or duration, not to exceed 40 years, as may be agreed upon by the unit of local government and such person;
- (2) payment by the unit of local government of a fee or other charge to such person for acceptance, processing, recycling, management and disposal of solid waste;
- (3) an obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste management facility guaranteed quantities of solid wastes; and
- (4) the sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste management facility.

(f) The construction work for any facility or structure which is ancillary to the solid waste management facility and which does not involve storage and processing of solid waste or the separation, extraction and recovery of useful or marketable forms of energy and materials from solid waste at the solid waste management facility, shall be procured through competitive bidding procedures described by G.S. 143-128 through G.S. 143-129.1. Such ancillary facilities shall include but shall not necessarily be

limited to the following: roads, water and sewer lines to the facility limits, transfer stations, scale house, administration buildings and residue and bypass disposal sites."

Sec. 5. G.S. 159-96 is amended by rewriting the last sentence to read:

"Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality where the municipality finds that the system, facilities or equipment so financed would benefit the municipality."

Sec. 6. G.S. 159-97(g)(1) is rewritten to read:

"(1) A 'revenue bond project' is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, (ii) hospitals and other health-related facilities, and (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste within the meaning of said G.S. 159- 81,".

Sec. 7. Sections 5 and 6 of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

Sec. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 8.1. If Senate Bill 141 is enacted by the 1983 General Assembly, then effective January 1, 1984:

(1) G.S. 130-166.16(23) as enacted by Section 1 of this act is recodified as G.S. 130A-290(25);

(2) The amendments made by Section 2 of this act are made to G.S. 130A-291;

(3) The amendments made by Section 3 of this act are made to G.S. 130A-294;

(4) G.S. 143-129.2(a) as enacted by Section 4 of this act is amended by deleting "G.S. 130-166.16", and inserting in lieu thereof "G.S. 130A-290".

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1983.