

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-244
SENATE BILL 353**

AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF NEW LANDFILLS IN THE STATE FOR A PERIOD BEGINNING ON 1 AUGUST 2006 AND ENDING ON 1 AUGUST 2007, SUBJECT ONLY TO THE FOLLOWING EXCEPTIONS: (I) AN AMENDMENT, MODIFICATION, OR OTHER CHANGE TO A PERMIT FOR A LANDFILL ISSUED ON OR BEFORE 1 JUNE 2006; (II) A PERMIT FOR A HORIZONTAL OR VERTICAL EXPANSION OF THE LANDFILL PERMITTED ON OR BEFORE 1 JUNE 2006; (III) A PERMIT TO CONSTRUCT A NEW LANDFILL WITHIN THE FACILITY BOUNDARY IDENTIFIED IN THE FACILITY PLAN OF A LANDFILL PERMITTED ON OR BEFORE 1 JUNE 2006; (IV) A PERMIT TO OPERATE A NEW LANDFILL IF A PERMIT TO CONSTRUCT THE NEW LANDFILL WAS ISSUED ON OR BEFORE 1 JUNE 2006; (V) A PERMIT FOR A SANITARY LANDFILL USED ONLY TO DISPOSE OF WASTE GENERATED BY A COAL-FIRED GENERATING UNIT THAT IS OWNED OR OPERATED BY AN INVESTOR-OWNED UTILITY SUBJECT TO THE REQUIREMENTS OF G.S. 143-215.107D; AND (VI) A PERMIT FOR A SANITARY LANDFILL DETERMINED TO BE NECESSARY BY THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES IN ORDER TO RESPOND TO AN IMMINENT HAZARD TO PUBLIC HEALTH OR A NATURAL DISASTER; TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO SOLID WASTE DISPOSAL IN ORDER TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT; AND TO CREATE THE JOINT SELECT COMMITTEE ON ENVIRONMENTAL JUSTICE.

Whereas, North Carolina has experienced severe problems from widespread flooding during the past five years; and

Whereas, large areas of the State have also experienced severe drought conditions during the past five years; and

Whereas, groundwater is the source of drinking water for approximately half the population of the State; and

Whereas, depletion of certain large groundwater aquifers in the State has been documented in recent years; and

Whereas, protection and enhancement of water quality in the State's rivers and coastal estuaries is the declared public policy of the State; and

Whereas, North Carolina is home to many rare and endangered species of plants and animals; and

Whereas, the State has established many parks, natural areas, and wildlife refuges to protect habitats for migrating birds and other species; and

Whereas, many fragile ecosystems exist in the State which are in need of further study and protection; and

Whereas, the State recognizes that ecosystems transcend state borders, and that changes affecting the State's water, air, natural habitats, and scenic resources also have impacts outside the State; and

Whereas, it is the policy of the State to ensure the continued public enjoyment of the natural attractions of the State; and

Whereas, improperly sited, designed, or operated landfills have the potential to cause serious environmental damage, including groundwater contamination; and

Whereas, it is essential that the State study the siting, design, and operational requirements for landfills for the disposal of solid waste in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas in order to protect public health and the environment; and

Whereas, it is critical to the protection of public health and the environment to adequately staff the State solid waste program to review permit applications, ensure compliance with State solid waste management laws and rules, and provide technical assistance on solid waste management issues; and

Whereas, economic and other factors may cause landfills to be concentrated in minority and low-income communities in the State; and

Whereas, minority and low-income communities may be at particularly high risk for potential threats to human health and the environment from the siting of landfills in these areas; and

Whereas, it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The definitions set forth in G.S. 130A-290 apply throughout this act.

SECTION 2. Moratorium Established. – There is hereby established a moratorium on consideration of applications for a permit and on the issuance of permits for new landfills in the State. The purposes of this moratorium are to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a new landfill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste for a period beginning on 1 August 2006 and ending on 1 August 2007.

SECTION 3. Exceptions. – The moratorium established by Section 2 of this act shall not prohibit consideration of an application for or issuance of:

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

SECTION 4.(a) Study. – The Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment and Natural Resources, shall study issues related to solid waste. The Commission shall specifically study measures concerning:

- (1) Financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies

and other business entity structures of applicants seeking solid waste landfill permits.

- (2) Application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval.
- (3) Siting, design, and operational requirements for landfills for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste that are proposed in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas.
- (4) Formation of dangerous chemicals and gases in flood-prone landfill environments.
- (5) Traffic considerations for proposed landfills.
- (6) Regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks.
- (7) Compliance with statutory prohibitions on disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills.
- (8) Ways to reduce the amount of solid waste disposed of within North Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities.

SECTION 4.(b) Subcommittee. – In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of solid waste management, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 4.(c) Report. – The Commission shall report its findings, together with any recommended legislation, to the 2007 Regular Session of the General Assembly upon its convening.

SECTION 5.(a) Committee Established. – The Joint Select Committee on Environmental Justice is hereby established.

SECTION 5.(b) Membership. – The Committee shall consist of 12 members as follows:

- (1) Four members appointed by the President Pro Tempore of the Senate.
- (2) Four members appointed by the Speaker of the House of Representatives.
- (3) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.
- (4) The President of the North Carolina Conference of the NAACP, or the President's designee.
- (5) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.
- (6) The Executive Director of the North Carolina League of Municipalities, or the Director's designee.

SECTION 5.(c) Cochairs. – The Committee shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

SECTION 5.(d) Quorum. – A quorum of the Committee shall consist of seven members.

SECTION 5.(e) Vacancies. – Any vacancy on the Committee shall be filled by the original appointing authority.

SECTION 5.(f) Purpose and Duties. – The Committee shall study:

- (1) The location of landfills in the State, with historical and current demographic information, including health statistics of the surrounding population of each site where available. The Committee shall identify landfills located in proximity to minority and low-income communities.
- (2) The impacts that landfills located in proximity to minority and low-income communities have on these communities with regard to human health, the environment, and economic development.
- (3) Factors, including economic factors, that may have caused landfills to be concentrated in minority and low-income communities in the State.
- (4) Past enforcement actions taken by the U.S. Environmental Protection Agency or the Department of Environment and Natural Resources for violations affecting human health or the environment at any landfill in the State in order to assess whether enforcement practices for violations at these sites have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve minority and low-income communities.
- (5) Statutes, rules, and policies used by State, regional, and local governments, and a review of the role played by these entities to influence or make siting and land-use decisions concerning landfills in the State.
- (6) Data and methodologies by which State, regional, and local governments might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health and the environment from the siting of landfills.
- (7) Approaches to ensure consideration of environmental justice and equity issues when formulating and implementing policies, procedures, and legislation within governmental agencies and other institutions.

SECTION 5.(g) Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1.

SECTION 5.(h) Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

SECTION 5.(i) Consultants. – The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 5.(j) Meetings. – The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Committee.

SECTION 5.(k) Report. – The Committee shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Committee shall terminate.

SECTION 5.(l) Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 6. Effective Date. – This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 27th day of
July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:45 a.m. this 14th day of August, 2006