

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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**SENATE BILL 328
PROPOSED COMMITTEE SUBSTITUTE S328-PCS35361-RIF-20**

Short Title: Solid Waste Management Reform Act of 2013.

(Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

1 AN ACT TO (1) EXTEND THE DURATION OF PERMITS FOR SANITARY LANDFILLS
2 AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE"); (2) MODIFY
3 THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES'
4 AUTHORITY TO ISSUE AND TRANSFER PERMITS FOR SOLID WASTE
5 MANAGEMENT FACILITIES; (3) MODIFY CERTAIN REQUIREMENTS
6 GOVERNING SANITARY LANDFILLS, INCLUDING CONDUCT OF
7 ENVIRONMENTAL IMPACTS STUDIES, APPLICABLE BUFFERS, CLEANING AND
8 INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY
9 COVER, AND LANDFILL GAS TO ENERGY FEASIBILITY STUDY; (4) MODIFY
10 REQUIREMENTS FOR FINANCIAL RESPONSIBILITY APPLICABLE TO
11 APPLICANTS AND PERMIT HOLDERS FOR SOLID WASTE MANAGEMENT
12 FACILITIES; (5) SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT
13 REQUIRED WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS;
14 (6) LIMIT THE FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS; (7)
15 AMEND THE RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID
16 WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER
17 THAN "LEAK-PROOF"; (8) AMEND RULES GOVERNING CONTROL OF
18 LEACHATE TO CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES
19 LEAVING SANITARY LANDFILLS OR LIQUID GENERATED DURING THE
20 TRANSPORT OF SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF
21 LEACHATE CONTROL REQUIREMENTS; (9) CITIES AND COUNTIES THAT
22 ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A
23 SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND TO
24 MAKE APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE
25 FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S
26 GENERAL FUND UPON CERTAIN FINDINGS; AND (10) MAKE RELATED
27 CLARIFYING, CONFORMING, AND TECHNICAL CHANGES.
28

29 Whereas, the provision of effectively managed solid waste services is of vital
30 importance to North Carolina's economy and environment; and

31 Whereas, previous changes to the statutes and rules of the State that govern solid
32 waste matters have significantly and negatively impacted the ability of providers of solid waste
33 disposal services to site landfills within the State, have raised the cost of waste disposal for the
34 State's citizens, and have put North Carolina at a competitive disadvantage in the recruitment of
35 industry; Now, therefore,

36 The General Assembly of North Carolina enacts:



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1
2 **PART I. EXTENSION OF DURATION OF PERMITS FOR SANITARY LANDFILLS**
3 **AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE") AND**
4 **CONFORMING CHANGES**

5 **SECTION 1.(a)** G.S. 130A-294 is amended by adding a new subsection to read:

6 "(a2) Permits for sanitary landfills and transfer stations shall be issued for a design and
7 operation phase of 30 years, unless revoked as otherwise provided under this Article or upon
8 the expiration of any local government franchise required for the facility pursuant to subsection
9 (b1) of this section. Each permit shall have a limited review of the permit five years after
10 issuance of the initial permit and at five-year intervals thereafter until expiration of the permit."

11 **SECTION 1.(b)** No later than July 1, 2014, the Commission for Public Health
12 shall adopt rules to allow applicants for permits for sanitary landfills to apply for a permit to
13 construct and operate a 30-year phase of landfill development. No later than July 1, 2014, the
14 Commission shall also adopt rules to allow applicants for permits for transfer stations to apply
15 for a permit with a 30-year duration to construct and operate a transfer station.

16 **SECTION 1.(c)** G.S. 130A-295.8 reads as rewritten:

17 **"§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

18 (a) The Solid Waste Management Account is established as a nonreverting account
19 within the Department. All fees collected under this section shall be credited to the Account
20 and shall be used to support the solid waste management program established pursuant to
21 G.S. 130A-294.

22 (b) As used in this section:

23 (1) "New permit" means any of the following:

- 24 a. An application for a permit for a solid waste management facility
25 that has not been previously permitted by the Department. The term
26 includes one site suitability review, the initial permit to construct,
27 and one permit to operate the constructed portion of a phase included
28 in the permit to construct.
- 29 b. An application that proposes to expand the boundary of a permitted
30 waste management facility for the purpose of expanding the
31 permitted activity.
- 32 c. An application that includes a proposed expansion to the boundary of
33 a waste disposal unit within a permitted solid waste management
34 facility.
- 35 d. An application for a substantial amendment to a solid waste permit,
36 as defined in G.S. 130A-294.

37 (2) "Permit amendment" means any of the following:

- 38 a. An application for a permit to construct and one permit to operate for
39 the second and subsequent phases of landfill development described
40 in the approved facility plan for a permitted solid waste management
41 facility.
- 42 b. An application for the five-year renewal of a permit for a permitted
43 solid waste management facility or for a permit review of a permitted
44 solid waste management facility.
- 45 c. Any application that proposes a change in ownership or corporate
46 structure of a permitted solid waste management facility.

47 (3) "Permit modification" means any of the following:

- 48 a. An application for any change to the plans approved in a permit for a
49 solid waste management facility that does not constitute a "permit
50 amendment" or a "new permit".

- 1 b. A second or subsequent permit to operate for a constructed portion of
2 a phase included in the permit to construct.
- 3 c. An application for a five-year limited review of a 30-year permit, as
4 required by G.S. 130A-294(a2), including review of the operations
5 plan, closure plan, post-closure plan, financial assurance cost
6 estimates, environmental monitoring plans, and any other applicable
7 plans for the facility.

- 8 (4) "Major permit modification" means an application for any change to the
9 approved engineering plans for a sanitary landfill or transfer station
10 permitted for a 30-year design capacity that does not constitute a "permit
11 amendment," "new permit," or "permit modification."

12 (c) An applicant for a permit shall pay an application fee to the Department. For
13 applications for facilities set forth in subdivisions (1) through (21) and (25) through (27), fifty
14 percent (50%) of the applicable fee shall be paid upon submission of the application,
15 twenty-five percent (25%) shall be paid at 10 years after issuance of the permit, and twenty-five
16 percent (25%) shall be paid at 20 years after issuance of the permit. For applications for
17 facilities set forth in subdivisions (22) through (24) and (28) through (36), the applicable fee
18 shall be paid upon submission of an application—application. As of July 1, 2014, fees are
19 applicable according to the following schedule:

- 20 (1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of
21 solid waste, New Permit – ~~\$25,000.~~\$150,000.
- 22 (2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of
23 solid waste, Amendment – ~~\$15,000.~~\$90,000.
- 24 (3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of
25 solid waste, Modification – ~~\$1,500.~~\$9,000.
- 26 (4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid
27 waste, New Permit – ~~\$50,000.~~\$300,000.
- 28 (5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid
29 waste, Amendment – ~~\$30,000.~~\$180,000.
- 30 (6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid
31 waste, Modification – ~~\$3,000.~~\$18,000.
- 32 (7) Construction and Demolition Landfill accepting less than 100,000 tons/year
33 of solid waste, New Permit – ~~\$15,000.~~\$90,000.
- 34 (8) Construction and Demolition Landfill accepting less than 100,000 tons/year
35 of solid waste, Amendment – ~~\$9,000.~~\$54,000.
- 36 (9) Construction and Demolition Landfill accepting less than 100,000 tons/year
37 of solid waste, Modification – ~~\$1,500.~~\$9,000.
- 38 (10) Construction and Demolition Landfill accepting 100,000 tons/year or more
39 of solid waste, New Permit – ~~\$30,000.~~\$180,000.
- 40 (11) Construction and Demolition Landfill accepting 100,000 tons/year or more
41 of solid waste, Amendment – ~~\$18,500.~~\$111,000.
- 42 (12) Construction and Demolition Landfill accepting 100,000 tons/year or more
43 of solid waste, Modification – ~~\$2,500.~~\$15,000.
- 44 (13) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New
45 Permit – ~~\$15,000.~~\$90,000.
- 46 (14) Industrial Landfill accepting less than 100,000 tons/year of solid waste,
47 Amendment – ~~\$9,000.~~\$54,000.
- 48 (15) Industrial Landfill accepting less than 100,000 tons/year of solid waste,
49 Modification – ~~\$1,500.~~\$9,000.
- 50 (16) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New
51 Permit – ~~\$30,000.~~\$180,000.

- 1 (17) Industrial Landfill accepting 100,000 tons/year or more of solid waste,
2 Amendment – ~~\$18,500.~~\$111,000.
- 3 (18) Industrial Landfill accepting 100,000 tons/year or more of solid waste,
4 Modification – ~~\$2,500.~~\$15,000.
- 5 (19) Tire Monofill, New Permit – ~~\$1,750.~~\$10,500.
- 6 (20) Tire Monofill, Amendment – ~~\$1,250.~~\$7,500.
- 7 (21) Tire Monofill, Modification – ~~\$500.~~\$3,000.
- 8 (22) Treatment and Processing, New Permit – \$1,750.
- 9 (23) Treatment and Processing, Amendment – \$1,250.
- 10 (24) Treatment and Processing, Modification – \$500.
- 11 (25) Transfer Station, New Permit – ~~\$5,000.~~\$30,000.
- 12 (26) Transfer Station, Amendment – ~~\$3,000.~~\$18,000.
- 13 (27) Transfer Station, Modification – ~~\$500.~~\$3,000.
- 14 (28) Incinerator, New Permit – \$1,750.
- 15 (29) Incinerator, Amendment – \$1,250.
- 16 (30) Incinerator, Modification – \$500.
- 17 (31) Large Compost Facility, New Permit – \$1,750.
- 18 (32) Large Compost Facility, Amendment – \$1,250.
- 19 (33) Large Compost Facility, Modification – \$500.
- 20 (34) Land Clearing and Inert, New Permit – \$1,000.
- 21 (35) Land Clearing and Inert, Amendment – \$500.
- 22 (36) Land Clearing and Inert, Modification – \$250.

23 (c1) On January 1 of each year, the Department shall adjust the fees set forth in
 24 subsection (c) of this section for inflation, calculated by the ratio of the Consumer Price Index
 25 to the Index one year earlier to the nearest tenth of one percent (1/10th of 1%).

26 (d) A permitted solid waste management facility shall pay an annual permit fee on or
 27 before ~~1 August~~ August 1 of each year according to the following schedule:

- 28 (1) Municipal Solid Waste Landfill – ~~\$3,500.~~\$10,500.
- 29 (2) Post-Closure Municipal Solid Waste Landfill – ~~\$1,000.~~\$3,000.
- 30 (3) Construction and Demolition Landfill – \$2,750.
- 31 (4) Post-Closure Construction and Demolition Landfill – \$500.
- 32 (5) Industrial Landfill – \$2,750.
- 33 (6) Post-Closure Industrial Landfill – \$500.
- 34 (7) Transfer Station – ~~\$750.~~\$2,250.
- 35 (8) Treatment and Processing Facility – ~~\$500.~~\$1,500.
- 36 (9) Tire Monofill – \$500.
- 37 (10) Incinerator – ~~\$500.~~\$1,500.
- 38 (11) Large Compost Facility – \$500.
- 39 (12) Land Clearing and Inert Debris Landfill – \$500.

40"

41 **SECTION 1.(d)** G.S. 130A-295.3 reads as rewritten:

42 **"§ 130A-295.3. Environmental compliance review requirements for applicants and**
 43 **permit holders.**

44 ...

45 (b) The Department shall conduct an environmental compliance review of each
 46 applicant for a new ~~permit, permit renewal, permit~~ and permit amendment under this Article.
 47 The environmental compliance review shall evaluate the environmental compliance history of
 48 the applicant for a period of five years prior to the date of the application and may cover a
 49 longer period at the discretion of the Department. The environmental compliance review of an
 50 applicant may include consideration of the environmental compliance history of the parents,
 51 subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any

1 business entity or joint venturer with a direct or indirect interest in the applicant, and other
2 facilities owned or operated by any of them. The Department shall determine the scope of the
3 review of the environmental compliance history of the applicant, parents, subsidiaries, or other
4 affiliates of the applicant or parent, including any business entity or joint venturer with a direct
5 or indirect interest in the applicant, and of other facilities owned or operated by any of them.
6 An applicant for a permit shall provide environmental compliance history information for each
7 facility, business entity, joint venture, or other undertaking in which any of the persons listed in
8 this subsection is or has been an owner, operator, officer, director, manager, member, or
9 partner, or in which any of the persons listed in this subsection has had a direct or indirect
10 interest as requested by the Department.

11"

12 **SECTION 1.(e)** Section 15.1 of S.L. 2012-187 is repealed.

13 **SECTION 1.(f)** S.L. 2013-25 is repealed.

14 **SECTION 1.(g)** If House Bill 135, 2013 Regular Session, becomes law, it is
15 repealed when it becomes law.

16 **SECTION 1.(h)** If Senate Bill 380, 2013 Regular Session, becomes law, it is
17 repealed when it becomes law.

18 **SECTION 1.(i)** This section becomes effective August 1, 2013, except that
19 G.S. 130A-294(a2), as enacted by Section 1(a) of this act, and G.S. 130A-295.8, as amended by
20 Section 1(b) of this act, apply only to applications for new permits submitted on or after July 1,
21 2014.

22
23 **PART II. MISCELLANEOUS MODIFICATIONS TO THE DEPARTMENT OF**
24 **ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE AND**
25 **TRANSFER PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES AND**
26 **CONFORMING CHANGES**

27 **SECTION 2.** G.S. 130A-294 reads as rewritten:

28 "**§ 130A-294. Solid waste management program.**

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

32 ...

- 33 (4) a. Develop a permit system governing the establishment and operation
34 of solid waste management facilities. A landfill with a disposal area
35 of 1/2 acre or less for the on-site disposal of land clearing and inert
36 debris is exempt from the permit requirement of this section and shall
37 be governed by G.S. 130A-301.1. Demolition debris from the
38 decommissioning of manufacturing buildings, including electric
39 generating stations, that is disposed of on the same site as the
40 decommissioned buildings, is exempt from the permit requirement of
41 this section and rules adopted pursuant to this section and shall be
42 governed by G.S. 130A-301.3. The Department shall not approve an
43 application for a new permit ~~permit, the renewal of a permit,~~ or a
44 substantial amendment to a permit for a sanitary landfill, excluding
45 demolition landfills as defined in the rules of the Commission, except
46 as provided in subdivisions (3) and (4) of subsection (b1) of this
47 section. No permit shall be granted for a solid waste management
48 facility having discharges that are point sources until the Department
49 has referred the complete plans and specifications to the
50 Environmental Management Commission and has received advice in
51 writing that the plans and specifications are approved in accordance

1 with the provisions of G.S. 143-215.1. If the applicant is a unit of
2 local government, and has not submitted a solid waste management
3 plan that has been approved by the Department pursuant to
4 G.S. 130A-309.09A(b), the Department may deny a permit for a
5 sanitary landfill or a facility that disposes of solid waste incineration,
6 unless the Commission has not adopted rules pursuant to
7 G.S. 130A-309.29 for local solid waste management plans. In any
8 case where the Department denies a permit for a solid waste
9 management facility, it shall state in writing the reason for denial and
10 shall also state its estimate of the changes in the applicant's proposed
11 activities or plans that will be required for the applicant to obtain a
12 permit.

13 b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1,
14 2007.

15 c. The Department shall deny an application for a permit for a solid
16 waste management facility if the Department finds that:

- 17 1. Construction or operation of the proposed facility would ~~be~~
18 ~~inconsistent with or violate~~ this Article or rules adopted by
19 ~~the Commission.~~Commission pursuant to this Article.
- 20 2. Construction or operation of the proposed facility would
21 result in a violation of water quality standards adopted by the
22 Environmental Management Commission pursuant to
23 G.S. 143-214.1 for waters, as defined in G.S. 143-213.
- 24 3. ~~Construction or operation of the facility would result in~~
25 ~~significant damage to ecological systems, natural resources,~~
26 ~~cultural sites, recreation areas, or historic sites of more than~~
27 ~~local significance. These areas include, but are not limited to,~~
28 ~~national or State parks or forests; wilderness areas; historic~~
29 ~~sites; recreation areas; segments of the natural and scenic~~
30 ~~rivers system; wildlife refuges, preserves, and management~~
31 ~~areas; areas that provide habitat for threatened or endangered~~
32 ~~species; primary nursery areas and critical fisheries habitat~~
33 ~~designated by the Marine Fisheries Commission; and~~
34 ~~Outstanding Resource Waters designated by the~~
35 ~~Environmental Management Commission.~~
- 36 4. Construction or operation of the proposed facility would
37 substantially limit ~~or threaten~~ access to ~~or use of~~ public trust
38 waters or public lands.
- 39 5. The proposed facility would be located in a natural hazard
40 area, including ~~a floodplain,~~ a landslide hazard area, or an
41 area subject to storm surge or excessive seismic activity, such
42 that the facility will present a significant risk to public health
43 or safety.
- 44 6. ~~There is a practical alternative that would accomplish the~~
45 ~~purposes of the proposed facility with less adverse impact on~~
46 ~~public resources, considering engineering requirements and~~
47 ~~economic costs.~~
- 48 7. ~~The cumulative impacts of the proposed facility and other~~
49 ~~facilities in the area of the proposed facility would violate the~~
50 ~~criteria set forth in sub-sub-subdivisions 2. through 5. of this~~
51 ~~sub-subdivision.~~

1 8. Construction or operation of the proposed facility would be
 2 ~~inconsistent with~~ violate the State solid waste management
 3 policy and goals as set out in G.S. 130A-309.04 and with the
 4 State solid waste management plan developed as provided in
 5 G.S. 130A-309.07.

6 9. The cumulative impact of the proposed facility, when
 7 considered in relation to other similar impacts of facilities
 8 located or proposed in the community, would have a
 9 disproportionate adverse impact on a minority or low-income
 10 community protected by Title VI of the federal Civil Rights
 11 Act of 1964. This subdivision shall apply only to the extent
 12 required by federal law.

13 ...

14 (a1) A permit for a solid waste management facility may be transferred ~~only with the~~
 15 ~~approval of the Department upon 30 days' written notice to the Department to include such~~
 16 ~~information as the Department may reasonably require to complete the Department's review~~
 17 ~~pursuant to subsection (b2) of this section, G.S. 130A-295.2, and G.S. 130A-295.3.~~

18 ...

19 (b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this
 20 section, a "substantial amendment" means either:

21 a. An increase of ten percent (10%) or more in:

22 1. The population of the geographic area to be served by the
 23 sanitary landfill;

24 2. The quantity of solid waste to be disposed of in the sanitary
 25 landfill; or

26 3. The geographic area to be served by the sanitary landfill.

27 b. A change in the categories of solid waste to be disposed of in the
 28 sanitary ~~landfill~~ ~~landfill~~ ~~or any other change to the application for a~~
 29 ~~permit or to the permit for a sanitary landfill that the Commission or~~
 30 ~~the Department determines to be substantial.~~

31 (2) A person who intends to apply for a new ~~permit~~ ~~permit~~, ~~the renewal of a~~
 32 ~~permit~~, or a substantial amendment to a permit for a sanitary landfill shall
 33 obtain, prior to applying for a permit, a franchise for the operation of the
 34 sanitary landfill from each local government then having jurisdiction over
 35 any part of the land on which the sanitary landfill and its appurtenances are
 36 located or to be located. A local government may adopt a franchise
 37 ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a
 38 sanitary landfill shall include all of the following:

39 a. A statement of the population to be served, including a description of
 40 the geographic area.

41 b. A description of the volume and characteristics of the waste stream.

42 c. A projection of the useful life of the sanitary landfill.

43 d. An explanation of how the franchise will be consistent with the
 44 jurisdiction's solid waste management plan required under
 45 G.S. 130A-309.09A, including provisions for waste reduction, reuse,
 46 and recycling.

47 e. The procedures to be followed for governmental oversight and
 48 regulation of the fees and rates to be charged by facilities subject to
 49 the franchise for waste generated in the jurisdiction of the franchising
 50 entity.

1 f. A facility plan for the sanitary landfill that shall include the
2 boundaries of the proposed facility, proposed development of the
3 facility site in five-year operational phases, the boundaries of all
4 waste disposal units, final elevations and capacity of all waste
5 disposal units, the amount of waste to be received per day in tons, the
6 total waste disposal capacity of the sanitary landfill in tons, a
7 description of environmental controls, and a description of any other
8 waste management activities to be conducted at the facility. In
9 addition, the facility plan shall show the proposed location of soil
10 borrow areas, leachate facilities, and all other facilities and
11 infrastructure, including ingress and egress to the facility.

12 ...
13 (4)

14 An applicant for a new permit ~~permit, the renewal of a permit,~~ or a
15 substantial amendment to a permit for a sanitary landfill shall request each
16 local government having jurisdiction over any part of the land on which the
17 sanitary landfill and its appurtenances are located or to be located to issue a
18 determination as to whether the local government has in effect a franchise,
19 zoning, subdivision, or land-use planning ordinance applicable to the
20 sanitary landfill and whether the proposed sanitary landfill, or the existing
21 sanitary landfill as it would be operated under the ~~renewed or~~ substantially
22 amended permit, would be consistent with the applicable ordinances. The
23 request to the local government shall be accompanied by a copy of the
24 permit application and shall be delivered to the clerk of the local government
25 personally or by certified mail. In order to serve as a basis for a
26 determination that an application for a new permit ~~permit, the renewal of a~~
27 ~~permit,~~ or a substantial amendment to a permit for a sanitary landfill is
28 consistent with a zoning, subdivision, or land-use planning ordinance, an
29 ordinance or zoning classification applicable to the real property designated
30 in the permit application shall have been in effect not less than 90 days prior
31 to the date the request for a determination of consistency is delivered to the
32 clerk of the local government. The determination shall be verified or
33 supported by affidavit signed by the chief administrative officer, the chief
34 administrative officer's designee, clerk, or other official designated by the
35 local government to make the determination and, if the local government
36 states that the sanitary landfill as it would be operated under the new ~~new,~~
37 ~~renewed,~~ or substantially amended permit is inconsistent with a franchise,
38 zoning, subdivision, or land-use planning ordinance, shall include a copy of
39 the ordinance and the specific reasons for the determination of
40 inconsistency. A copy of the determination shall be provided to the applicant
41 when the determination is submitted to the Department. The Department
42 shall not act upon an application for a permit under this section until it has
43 received a determination from each local government requested to make a
44 determination by the applicant; provided that if a local government fails to
45 submit a determination to the Department as provided by this subsection
46 within 15 days after receipt of the request, the Department shall proceed to
47 consider the permit application without regard to a franchise, local zoning,
48 subdivision, and land-use planning ordinances. Unless the local government
49 makes a subsequent determination of consistency with all ordinances cited in
50 the determination or the sanitary landfill as it would be operated under the
51 ~~new, renewed,~~ new or substantially amended permit is determined by a court
of competent jurisdiction to be consistent with the cited ordinances, the

1 Department shall attach as a condition of the permit a requirement that the
 2 applicant, prior to construction or operation of the sanitary landfill under the
 3 permit, comply with all lawfully adopted local ordinances cited in the
 4 determination that apply to the sanitary landfill. This subsection shall not be
 5 construed to affect the validity of any lawfully adopted franchise, local
 6 zoning, subdivision, or land-use planning ordinance or to affect the
 7 responsibility of any person to comply with any lawfully adopted franchise,
 8 local zoning, subdivision, or land-use planning ordinance. This subsection
 9 shall not be construed to limit any opportunity a local government may have
 10 to comment on a permit application under any other law or rule. This
 11 subsection shall not apply to any facility with respect to which local
 12 ordinances are subject to review under either G.S. 104E-6.2 or
 13 G.S. 130A-293.

- 14 (5) As used in this subdivision, "coal-fired generating unit" and "investor-owned
 15 public utility" have the same meaning as in G.S. 143-215.107D(a).
 16 Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no
 17 franchise shall be required for a sanitary landfill used only to dispose of
 18 waste generated by a coal-fired generating unit that is owned or operated by
 19 an investor-owned utility subject to the requirements of G.S. 143-215.107D.

20"

21
 22 **PART III. MODIFICATIONS TO CERTAIN REQUIREMENTS GOVERNING**
 23 **SANITARY LANDFILLS INCLUDING ENVIRONMENTAL IMPACTS STUDY,**
 24 **APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE**
 25 **COLLECTION LINES, ALTERNATIVE DAILY COVER, AND LANDFILL GAS TO**
 26 **ENERGY FEASIBILITY STUDY**

27 SECTION 3.(a) G.S. 130A-295.6 reads as rewritten:

28 "**§ 130A-295.6. Additional requirements for sanitary landfills.**

29 (a) ~~The Department shall conduct a study of the environmental impacts of any proposed~~
 30 ~~sanitary landfill. The study shall meet all of the requirements set forth in G.S. 113A 4 and rules~~
 31 ~~adopted pursuant to G.S. 113A 4. If an environmental impact statement is required, the~~
 32 ~~Department shall publish notice of the draft environmental impact statement and shall hold a~~
 33 ~~public hearing in the county where the landfill will be located no sooner than 30 days following~~
 34 ~~the public notice. The Department shall consider the study of environmental impacts and any~~
 35 ~~mitigation measures proposed by the applicant in deciding whether to issue or deny a permit.~~
 36 ~~An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department~~
 37 ~~to comply with this subsection including the costs of any special studies that may be required.~~

38 (b) The Department shall require a buffer between any ~~perennial surface water~~
 39 impoundment or any stream or wetland with continuous flow and the nearest waste disposal unit
 40 of a sanitary landfill of at least 200 feet. The Department may approve a buffer of less than 200
 41 feet, but in no case less than 100 feet, if it finds all of the following:

- 42 (1) The proposed sanitary landfill or expansion of the sanitary landfill will serve
 43 a critical need in the community.
- 44 (2) There is no feasible alternative location that would allow siting or expansion
 45 of the sanitary landfill with 200-foot buffers.

46 (c) A waste disposal unit of a sanitary landfill shall not be constructed within:

- 47 (1) A 100-year floodplain, as shown on the current floodplain maps prepared
 48 pursuant to the National Flood Insurance Program, floodplain or land
 49 removed from a 100-year floodplain designation pursuant to 44 Code of
 50 Federal Regulations Part 72 (1 October 2006 Edition) as a result of
 51 man-made alterations within the floodplain such as the placement of fill,

1 except as authorized by variance granted under G.S. 143-215.54A(b).This
 2 subdivision ~~does not apply to land removed from a 100-year floodplain~~
 3 ~~designation (i) as a result of floodplain map corrections or updates not~~
 4 ~~resulting from man made alterations of the affected areas within the~~
 5 ~~floodplain, or (ii) pursuant to 44 Code of Federal Regulations Part 70 (1~~
 6 ~~October 2006 Edition) by a letter of map amendment.~~

7 (2) Wetlands classified as waters of the United States, except in compliance
 8 with applicable federal and State laws.~~A wetland, unless the applicant or~~
 9 ~~permit holder can show all of the following, as to the waste disposal unit:~~

10 a. ~~Where applicable under section 404 of the federal Clean Water Act~~
 11 ~~or applicable State wetlands laws, the presumption that a practicable~~
 12 ~~alternative to the proposed waste disposal unit is available which~~
 13 ~~does not involve wetlands is clearly rebutted;~~

14 b. ~~Construction of the waste disposal unit will not do any of the~~
 15 ~~following:~~

16 1. ~~Cause or contribute to violations of any applicable State~~
 17 ~~water quality standard.~~

18 2. ~~Violate any applicable toxic effluent standard or prohibition~~
 19 ~~under section 307 of the federal Clean Water Act.~~

20 3. ~~Jeopardize the continued existence of endangered or~~
 21 ~~threatened species or result in the destruction or adverse~~
 22 ~~modification of a critical habitat, protected under the federal~~
 23 ~~Endangered Species Act of 1973.~~

24 4. ~~Violate any requirement under the federal Marine Protection,~~
 25 ~~Research, and Sanctuaries Act of 1972.~~

26 e. ~~Construction of the waste disposal unit will not cause or contribute to~~
 27 ~~significant degradation of wetlands.~~

28 d. ~~To the extent required under section 404 of the federal Clean Water~~
 29 ~~Act or applicable State wetlands laws, any unavoidable wetlands~~
 30 ~~impacts will be mitigated.~~

31 (d) The Department shall not issue a permit to construct any disposal unit of a sanitary
 32 landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of
 33 an option to purchase the land on which the waste disposal unit will be located, (ii) the
 34 application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the
 35 application for a permit, any portion of the proposed waste disposal unit would be located
 36 within:

37 (1) ~~Five miles of the outermost boundary of a National Wildlife Refuge.~~

38 (2) ~~One mile of the outermost boundary of a State gameland owned, leased, or~~
 39 ~~managed by the Wildlife Resources Commission pursuant to G.S. 113-306.~~

40 (3) ~~Two miles of the outermost boundary of a component of the State Parks~~
 41 ~~System.~~

42 (4) Designated critical habitat for a threatened or endangered species.

43 (5) Historically or archaeologically sensitive sites of more than local
 44 significance.

45 (6) Fifteen hundred feet of a national or State park, forest, wilderness area,
 46 recreation area, segment of the Natural and Scenic Rivers System, National
 47 Wildlife Refuge, preserve or management area, critical fisheries habitat
 48 designated by the Marine Fisheries' Commission, or Outstanding Resource
 49 Waters designated by the Environmental Management Commission.

1 (h) The following requirements apply to any sanitary landfill for which a liner is
2 required:

- 3 (1) A geomembrane base liner system shall be tested for leaks and damage by
4 methods approved by the Department that ensure that the entire liner is
5 evaluated.
- 6 (2) A leachate collection system shall be designed to return the head of the liner
7 to 30 centimeters or less within 72 hours. The design shall be based on the
8 precipitation that would fall on an empty cell of the sanitary landfill as a
9 result of a 25-year-24-hour storm event. The leachate collection system shall
10 maintain a head of less than 30 centimeters at all times during leachate
11 recirculation. The Department may require the operator to monitor the head
12 of the liner to demonstrate that the head is being maintained in accordance
13 with this subdivision and any applicable rules.
- 14 (3) All leachate collection lines shall be designed and constructed to
15 permanently allow cleaning and remote camera inspection. ~~All leachate
16 collection lines shall be cleaned at least once a year, except that the
17 Department may allow leachate collection lines to be cleaned once every
18 two years if: (i) the facility has continuous flow monitoring; and (ii) the
19 permit holder demonstrates to the Department that the leachate collection
20 lines are clear and functional based on at least three consecutive annual
21 cleanings. Remote camera inspections of the leachate collection lines shall
22 occur upon completion of construction, at least once every five years
23 thereafter, and following the clearing of blockages.~~
- 24 (4) Any pipes used to transmit leachate shall provide dual containment outside
25 of the disposal unit. The bottom liner of a sanitary landfill shall be
26 constructed without pipe penetrations.

27 (h1) With respect to requirements for daily cover at sanitary landfills, once the
28 Department has approved use of an alternative method of daily cover for use at any sanitary
29 landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills
30 located within the State.

31 (h2) Studies and research and development pertaining to alternative disposal techniques
32 and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:

- 33 (1) The owner or operator of any sanitary landfill permitted to receive more than
34 240,000 tons of waste per year shall research the development of alternative
35 disposal technologies. In addition, the owner or operator shall allow access
36 to nonproprietary information and provide site resources for individual
37 research and development projects related to alternative disposal techniques
38 for the purpose of studies that may be conducted by local community or
39 State colleges and universities or other third-party developers or consultants.
40 The owner or operator shall report on research and development activities
41 conducted pursuant to this subdivision, and any results of these activities, to
42 the Department annually on or before July 1.
- 43 (2) The owner or operator of any sanitary landfill permitted to receive more than
44 240,000 tons of waste per year shall perform a feasibility study of landfill
45 gas-to-energy, or other waste-to-energy technology, to determine
46 opportunities for production of renewable energy from landfills in order to
47 promote economic development and job creation in the State. The owner or
48 operator shall initiate the study when sufficient waste is in place at the
49 landfill to produce gas, as determined by the United States Environmental
50 Protection Agency's Landfill Gas Emissions Model (LandGEM), and may
51 consult and coordinate with other entities to facilitate conduct of the study,

1 including local and State government agencies, economic development
2 organizations, consultants, and third-party developers. The study shall
3 specifically examine opportunities for returning a portion of the benefits
4 derived from energy produced from the landfill to the jurisdiction within
5 which the landfill is located in the form of direct supply of energy to the
6 local government and its citizens, or through revenue sharing with the local
7 government from sale of the energy, with revenues owing to the local
8 government credited to a fund specifically designated for economic
9 development within the jurisdiction. The owner or operator shall report on
10 its activities associated with the study, and any results of the study, to the
11 Department annually on or before July 1.

12 (i) The Department shall not issue a permit for a sanitary landfill that authorizes:

13 (1) A capacity of more than 55 million cubic yards of waste.

14 (2) A disposal area of more than 350 acres.

15 (3) A maximum height, including the cap and cover vegetation, of more than
16 250-300 feet above the mean natural elevation of the disposal area. The
17 Department shall include a condition for enhanced closure requirements
18 concerning vegetative cover and reclamation of the property, in any permit
19 issued for a sanitary landfill that authorizes a maximum height, including the
20 cap and cover vegetation, between 101 feet and 300 feet above the mean
21 natural elevation of the disposal area.

22 (j) This section does not apply to landfills for the disposal of land clearing and inert
23 debris or to Type I or Type II compost facilities."

24 **SECTION 3.(b)** This section becomes effective August 1, 2013, except that (i) the
25 repeal of G.S. 130A-295.6(d)(2), as enacted by Section 3(a) of this act, applies retroactively to
26 applications for permits submitted on or after January 1, 2013; and (ii) G.S. 130A-295.6(h2), as
27 enacted by Section 3(a) of this act, applies to landfills for which a permit is issued on or after
28 August 1, 2013.

29 30 **PART IV. MODIFICATIONS TO REQUIREMENTS FOR FINANCIAL** 31 **RESPONSIBILITY APPLICABLE TO APPLICANTS AND PERMIT HOLDERS FOR** 32 **SOLID WASTE MANAGEMENT FACILITIES**

33 **SECTION 4.** G.S. 130A-295.2 reads as rewritten:

34 **"§ 130A-295.2. Financial responsibility requirements for applicants and permit holders**
35 **for solid waste management facilities.**

36 ...

37 ~~(h) To meet the financial assurance requirements of this section, the owner or operator~~
38 ~~of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of two~~
39 ~~million dollars (\$2,000,000) in costs for potential assessment and corrective action at the~~
40 ~~facility. The Department may require financial assurance in a higher amount and may increase~~
41 ~~the amount of financial assurance required of a permit holder at any time based upon the types~~
42 ~~of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill,~~
43 ~~the location of the landfill, potential receptors of releases from the landfill, and inflation. The~~
44 ~~financial assurance requirements of this subsection are in addition to the other financial~~
45 ~~responsibility requirements set out in this section.~~

46 ...

47 (j) In addition to the other methods by which financial assurance may be established as
48 set forth in subsection (f) of this section, the Department may allow the owner or operator of a
49 sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance
50 requirement set forth in subsection (h) of this section by establishing a trust fund which
51 conforms to the following minimum requirements:

- 1 (1) The trustee shall be an entity which has the authority to act as a trustee and
2 whose trust operations are regulated and examined by a State or federal
3 agency.
- 4 (2) A copy of the trust agreement shall be placed in the facility's operating
5 record.
- 6 (3) Payments into the trust fund shall be made annually by the owner or operator
7 over a period not to exceed five years. This period is referred to as the pay-in
8 period.
- 9 (4) Payments into the fund shall be made in equal annual installments in
10 amounts calculated by dividing the current cost estimate for potential
11 assessment and corrective action at the facility ~~facility, which shall not be~~
12 ~~less than two million dollars (\$2,000,000) in accordance with subsection (h)~~
13 ~~of this section,~~ by the number of years in the pay-in period.
- 14 (5) The trust fund may be terminated by the owner or operator only if the owner
15 or operator establishes financial assurance by another method or
16 combination of methods allowed under subsection (f) of this section.
- 17 (6) The trust agreement shall be accompanied by a formal certification of
18 acknowledgement."

19
20 **PART V. SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT REQUIRED**
21 **WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS**

22 SECTION 5. G.S. 130A-310.68 is amended by adding a new subsection to read:

23 "**§ 130A-310.68. Remediation standards.**

24 ...

25 (c) Notwithstanding any other requirement of this Article, with respect to sanitary
26 landfills, a permit holder shall not be required to take assessment or corrective action to address
27 leachate unless the leachate has reached the compliance boundary of the facility."

28
29 **PART VI. LIMIT FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS**

30 SECTION 6. G.S. 143-214.1 reads as rewritten:

31 "**§ 143-214.1. Water; water quality standards and classifications; duties of Commission.**

32 (a) Development and Adoption of Classifications and Standards. – The Commission is
33 hereby directed and empowered, as rapidly as possible within the limits of funds and facilities
34 available to it, and subject to the procedural requirements of this Article:

- 35 (1) To develop and adopt, after proper study, a series of classifications and the
36 standards applicable to each such classification, which will be appropriate
37 for the purpose of classifying each of the waters of the State in such a way as
38 to promote the policy and purposes of this Article most effectively;
- 39 (2) To survey all the waters of the State and to separately identify all such
40 waters as the Commission believes ought to be classified separately in order
41 to promote the policy and purposes of this Article, omitting only such
42 waters, as in the opinion of the Commission, are insufficiently important to
43 justify classification or control under this Article; and
- 44 (3) To assign to each identified water of the State such classification, from the
45 series adopted as specified above, as the Commission deems proper in order
46 to promote the policy and purposes of this Article most effectively.

47 (a1) Limitation on Development of Groundwater Standards. – Notwithstanding any
48 requirement of this section, the Commission shall not adopt and the Department shall not
49 enforce rules providing for a review of groundwater standards more frequently than on a
50 five-year basis.

1 (b) Criteria for Classification. – In developing and adopting classifications, and the
2 standards applicable to each, the Commission shall recognize that a number of different
3 classifications should be provided for (with different standards applicable to each) so as to give
4 effect to the need for balancing conflicting considerations as to usage and other variable
5 factors; that different classifications with different standards applicable thereto may frequently
6 be appropriate for different segments of the same water; and that each classification and the
7 standards applicable thereto should be adopted with primary reference to the best usage to be
8 made of the waters to which such classification will be assigned.

9 (c) Criteria for Standards. – In establishing the standards applicable to each
10 classification, the Commission shall consider and the standards when finally adopted and
11 published shall state: the extent to which any physical, chemical, or biological properties
12 should be prescribed as essential to the contemplated best usage.

13 (d) Criteria for Assignment of Classifications. – In assigning to each identified water
14 the appropriate classifications (with its accompanying standards), the Commission shall
15 consider, and the decision of the Commission when finally adopted and published shall contain
16 its conclusions with respect to the following factors as related to such identified waters:

- 17 (1) The size, depth, surface area covered, volume, direction and rate of flow,
18 stream gradient and temperature of the water;
- 19 (2) The character of the district bordering said water, including any peculiar
20 suitability such district may have or any dominant economic interest or
21 development which has become established in relation to or by reason of any
22 particular use of such water;
- 23 (3) The uses and extent thereof which have been made, are being made, or may
24 in the future be made, of such water for domestic consumption, bathing, fish
25 or wildlife and their culture, industrial consumption, transportation, fire
26 prevention, power generation, scientific or research uses, the disposal of
27 sewage, industrial wastes and other wastes, or any other uses;
- 28 (4) In revising existing or adopting new water quality classifications or
29 standards, the Commission shall consider the use and value of State waters
30 for public water supply, propagation of fish and wildlife, recreation,
31 agriculture, industrial and other purposes, use and value for navigation, and
32 shall take into consideration, among other things, an estimate as prepared
33 under section 305(b)(1) of the Federal Water Pollution Control Act
34 amendments of 1972 of the environmental impact, the economic and social
35 costs necessary to achieve the proposed standards, the economic and social
36 benefits of such achievement and an estimate of the date of such
37 achievement;
- 38 (5) With regard to the groundwaters, the factors to be considered shall include
39 the natural quality of the water below land surface and the condition of
40 occurrences, recharge, movement and discharge, the vulnerability to
41 pollution from wastewaters and other substances, and the potential for
42 improvement of the quality and quantity of the water.

43 (e) Chapter 150B of the General Statutes governs the adoption and publication of rules
44 under this Article.

45 (f), (g) Repealed by Session Laws 1987, c. 827, s. 156."
46

47 **PART VII. AMEND RULE GOVERNING COLLECTION AND TRANSPORT OF**
48 **SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT"**
49 **RATHER THAN "LEAK-PROOF"**

1 **SECTION 7.(a)** Definitions. – "Collection and Transport Rule" means 15A NCAC
2 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section and its
3 implementation.

4 **SECTION 7.(b)** Collection and Transport Rule. – Until the effective date of the
5 revised permanent rule that the Commission for Public Health is required to adopt pursuant to
6 Section 7(d) of this act, the Commission and the Department of Environment and Natural
7 Resources shall implement the Collection and Transport Rule, as provided in Section 7(c) of
8 this act.

9 **SECTION 7.(c)** Implementation. – Notwithstanding any provision of the
10 Collection and Transport Rule, the Commission shall not require vehicles or containers used for
11 the collection and transportation of solid waste to be leak-proof; however, they may require
12 design of these containers to be leak-resistant in accordance with industry standards.

13 **SECTION 7.(d)** Additional Rule-Making Authority. – The Commission shall
14 adopt a rule to replace the Collection and Transport Rule. Notwithstanding G.S. 150B-19(4),
15 the rule adopted by the Commission pursuant to this section shall be substantively identical to
16 the provisions of Section 7(c) of this act. Rules adopted pursuant to this section are not subject
17 to G.S. 150B-21.9 through G.S. 150B-21.14. The rule adopted pursuant to this section shall
18 become effective, as provided in G.S. 150B-21.3(b1), as though 10 or more written objections
19 had been received, as provided by G.S. 150B-21.3(b2).

20 **SECTION 7.(e)** Effective Date. – Section 7(c) of this act expires when permanent
21 rules to replace Section 7(c) of this act have become effective, as provided by Section 7(d) of
22 this act.

23
24 **PART VIII. AMEND RULES GOVERNING CONTROL OF LEACHATE TO**
25 **CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES LEAVING**
26 **SANITARY LANDFILLS OR LIQUID GENERATED DURING THE TRANSPORT OF**
27 **SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF LEACHATE**
28 **CONTROL REQUIREMENTS**

29 **SECTION 8.(a)** G.S. 130A-290 is amended by adding a new subdivision to read:

30 "(16a) "Leachate" means a liquid that has passed through or emerged from solid
31 waste and contains soluble, suspended, or miscible materials removed from
32 such waste. The term "leachate" does not include liquid adhering to tires of
33 vehicles leaving a sanitary landfill or liquids that are generated during the
34 transportation of solid waste."

35 **SECTION 8.(b)** Definitions. – "Leachate Storage Requirements Rule" means 15A
36 NCAC 13B .1680 (Leachate Storage Requirements) for purposes of this section and its
37 implementation.

38 **SECTION 8.(c)** Leachate Storage Requirements Rule. – Until the effective date of
39 the revised permanent rule that the Commission for Public Health is required to adopt pursuant
40 to Section 8(e) of this act, the Commission and the Department of Environment and Natural
41 Resources shall implement the Leachate Storage Requirements Rule and any other rule
42 governing control of leachate under Chapter 13 of Title 15A of the North Carolina
43 Administrative Code, as provided in Section 8(d) of this act.

44 **SECTION 8.(d)** Implementation. – Notwithstanding any provision of the Leachate
45 Storage Requirements Rule, or any other rule governing control of leachate under Chapter 13
46 of Title 15A of the North Carolina Administrative Code, liquid adhering to tires of vehicles
47 leaving a sanitary landfill or liquid generated during the transportation of solid waste shall not
48 be treated by the Commission or the Department as a violation of any leachate control
49 requirements under the Administrative Code.

50 **SECTION 8.(e)** Additional Rule-Making Authority. – The Commission shall adopt
51 a rule to replace the Leachate Storage Requirements Rule and any other rule governing control

1 of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code.
2 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
3 shall be substantively identical to the provisions of Section 8(d) of this act. Rules adopted
4 pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule
5 adopted pursuant to this section shall become effective, as provided in G.S. 150B-21.3(b1), as
6 though 10 or more written objections had been received, as provided by G.S. 150B-21.3(b2).

7 **SECTION 8.(f)** Effective Date. – Section 8(d) of this act expires when permanent
8 rules to replace Section 8(d) of this act have become effective, as provided by Section 8(e) of
9 this act.

10
11 **PART IX. AUTHORIZE: CITIES AND COUNTIES THAT ACCEPT SOLID WASTE**
12 **FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR**
13 **USE OF THEIR DISPOSAL FACILITIES, AND TO MAKE APPROPRIATIONS**
14 **FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR**
15 **OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND UPON**
16 **CERTAIN FINDINGS**

17 **SECTION 9.(a)** G.S. 153A-292(b) reads as rewritten:

18 "(b) The board of county commissioners may impose a fee for the collection of solid
19 waste. The fee may not exceed the costs of collection.

20 The board of county commissioners may impose a fee for the use of a disposal facility
21 provided by the county. ~~The~~ Except as provided in this subsection, the fee for use may not
22 exceed the cost of operating the ~~facility and may be imposed only on those who use the~~ facility.
23 The fee may exceed those costs if the county enters into a contract with another county or city
24 to accept the other entity's solid waste and the county by ordinance levies a surcharge on the fee
25 which may be used for any purpose for which the county may appropriate funds. A fee under
26 this paragraph may be imposed only on those who use the facility. The fee for use may vary
27 based on the amount, characteristics, and form of recyclable materials present in solid waste
28 brought to the facility for disposal. A county may not impose a fee for the use of a disposal
29 facility on a city located in the county or a contractor or resident of the city unless the fee is
30 based on a schedule that applies uniformly throughout the county.

31 The board of county commissioners may impose a fee for the availability of a disposal
32 facility provided by the county. A fee for availability may not exceed the cost of providing the
33 facility and may be imposed on all improved property in the county that benefits from the
34 availability of the facility. A county may not impose an availability fee on property whose solid
35 waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a
36 county, a city, or a private contractor for the collection of solid waste includes a charge for the
37 availability and use of a disposal facility provided by the county. Property served by a private
38 contractor who disposes of solid waste collected from the property in a disposal facility
39 provided by a private contractor that provides the same services as those provided by the
40 county disposal facility is not considered to benefit from a disposal facility provided by the
41 county and is not subject to a fee imposed by the county for the availability of a disposal
42 facility provided by the county. To the extent that the services provided by the county disposal
43 facility differ from the services provided by the disposal facility provided by a private
44 contractor in the same county, the county may charge an availability fee to cover the costs of
45 the additional services provided by the county disposal facility.

46 In determining the costs of providing and operating a disposal facility, a county may
47 consider solid waste management costs incidental to a county's handling and disposal of solid
48 waste at its disposal facility, including the costs of the methods of solid waste management
49 specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the
50 availability or use of a disposal facility may be based on the combined costs of the different
51 disposal facilities provided by the county."

1 **SECTION 9.(b)** G.S. 159-13(b)(14) reads as rewritten:

2 "(b) The following directions and limitations shall bind the governing board in adopting
3 the budget ordinance:

4 ...

5 (14) No appropriation may be made from a utility or public service enterprise
6 fund to any other fund than the appropriate debt service fund unless the total
7 of all other appropriations in the fund equal or exceed the amount that will
8 be required during the fiscal year, as shown by the budget ordinance, to meet
9 operating expenses, capital outlay, and debt service on outstanding utility or
10 enterprise bonds or notes. A county may, upon a finding that a fund balance
11 in a utility or public service enterprise fund used for operation of a landfill
12 exceeds the requirements for funding the operation of that fund, including
13 closure and post-closure expenditures, transfer excess funds to be used to
14 support the other services supported by the county's general fund."

15 **SECTION 9.(c)** G.S. 160A-314.1 reads as rewritten:

16 "**§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid**
17 **waste fees.**

18 (a) A city may impose a fee for the collection of solid waste. The fee may not exceed
19 the costs of collection.

20 A city may impose a fee for the use of a disposal facility provided by the city. Except as
21 provided in this subsection, the fee for use may not exceed the cost of operating the facility.
22 The fee may exceed those costs if the city enters into a contract with another county or city to
23 accept the other entity's solid waste and the city by ordinance levies a surcharge on the fee
24 which may be used for any purpose for which the city may appropriate funds. A fee under this
25 paragraph may be imposed only on those who use the facility. The fee for use may vary based
26 on the amount, characteristics, and form of recyclable materials present in solid waste brought
27 to the facility for disposal.

28 (a1) In addition to a fee that a city may impose for collecting solid waste or for using a
29 disposal facility, a city may impose a fee for the availability of a disposal facility provided by
30 the city. A fee for availability may not exceed the cost of providing the facility and may be
31 imposed on all improved property in the city that benefits from the availability of the facility. A
32 city may not impose an availability fee on property whose solid waste is collected by a county,
33 a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private
34 contractor for the collection of solid waste includes a charge for the availability and use of a
35 disposal facility provided by the city. Property served by a private contractor who disposes of
36 solid waste collected from the property in a disposal facility provided by a private contractor
37 that provides the same services as those provided by the city disposal facility is not considered
38 to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the
39 city for the availability of a disposal facility provided by the city. To the extent that the services
40 provided by the city disposal facility differ from the services provided by the disposal facility
41 provided by a private contractor in the same city, the city may charge an availability fee to
42 cover the costs of the additional services provided by the city disposal facility.

43 In determining the costs of providing and operating a disposal facility, a city may consider
44 solid waste management costs incidental to a city's handling and disposal of solid waste at its
45 disposal facility. A fee for the availability or use of a disposal facility may be based on the
46 combined costs of the different disposal facilities provided by the city.

47 (b) A city may adopt an ordinance providing that any fee imposed under subsection (a)
48 or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property
49 taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment,
50 may be collected in any manner by which delinquent personal or real property taxes can be
51 collected. If an ordinance states that delinquent fees can be collected in the same manner as

1 delinquent real property taxes, the fees are a lien on the real property described on the bill that
2 includes the fee."

3 **SECTION 9.(d)** G.S. 160A-314(a2) reads as rewritten:

4 "**§ 160A-314. Authority to fix and enforce rates.**

5 (a2) A fee for the use of a disposal facility provided by the city may vary based on the
6 amount, characteristics, and form of recyclable materials present in solid waste brought to the
7 facility for disposal. This section does not prohibit a city from providing aid to low-income
8 persons to pay all or part of the cost of solid waste management services for those persons. A
9 city may, upon a finding that a fund balance in a utility or public service enterprise fund used
10 for operation of a landfill exceeds the requirements for funding the operation of that fund,
11 including closure and post-closure expenditures, transfer excess funds to be used to support the
12 other services supported by the city's general fund."

13 **SECTION 9.(e)** G.S. 130A-294(b1) is amended by adding a new subdivision to
14 read:

15 "(2b) A local government may elect to include as part of a franchise agreement a
16 surcharge on waste disposed of in its jurisdiction by other local governments
17 located within the State."

18 **SECTION 9.(f)** This section is effective August 1, 2013, and Section 9(e) is
19 applicable to franchise agreements executed on or after that date.

20 **PART X. SEVERABILITY AND EFFECTIVE DATE**

21 **SECTION 10.(a)** If any section or provision of this act is declared unconstitutional
22 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
23 than the part so declared to be unconstitutional or invalid.

24 **SECTION 10.(b)** Except as otherwise provided, this act is effective when it
25 becomes law.
26