

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 163

Short Title: Solid Waste Amendments. (Public)
Sponsors: Senators Wade, Brock, and Brown (Primary Sponsors).
Referred to: Rules and Operations of the Senate

March 2, 2017

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CLARIFYING AND AMENDATORY CHANGES TO THE
SOLID WASTE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 4.9(a) of S.L. 2015-286 reads as rewritten:

"**SECTION 4.9.(a)** Section 14.20(a) of S.L. 2015-241 ~~reads as rewritten:~~ is rewritten to read:
...."

SECTION 1.(b) Section 4.9(b) of S.L. 2015-286 reads as rewritten:

"**SECTION 4.9.(b)** Section ~~14.20(a)~~ 14.20(c) of S.L. 2015-241 ~~reads as rewritten:~~ is rewritten to read:
...."

SECTION 1.(c) Section 4.9(c) of S.L. 2015-286 reads as rewritten:

"**SECTION 4.9.(c)** Section 14.20(d) of S.L. 2015-241 ~~reads as rewritten:~~ is rewritten to read:
...."

SECTION 1.(d) Section 14.20(e) of S.L. 2015-241 reads as rewritten:

"**SECTION 14.20.(e)** After July 1, 2016, the annual fee due pursuant to ~~G.S. 130A-295.8A(d1), G.S. 130A-295.8(d1),~~ as enacted by Section 14.20(c) of this act, for existing sanitary landfills and transfer stations with a valid permit issued before the date this act becomes effective is equal to the applicable annual fee for the facility as set forth in ~~G.S. 130A-295.8A(d1), G.S. 130A-295.8(d1),~~ as enacted by Section 14.20(c) of this act, less a permittee fee credit. A permittee fee credit exists when the life-of-site permit fee amount is greater than the time-limited permit fee amount. The amount of the permittee fee credit shall be calculated by (i) subtracting the time-limited permit fee amount from the life-of-site permit fee amount due for the same period of time and (ii) multiplying the difference by a fraction, the numerator of which is the number of years remaining in the facility's time-limited permit and the denominator of which is the total number of years covered by the facility's time-limited permit. The amount of the permittee fee credit shall be allocated in equal annual installments over the number of years that constitute the facility's remaining life-of-site, as determined by the Department, unless the Department accelerates, in its sole discretion, the use of the credit over a shorter period of time. For purposes of this subsection, the following definitions apply:

- (1) Life-of-site permit fee amount. – The amount equal to the sum of all annual fees that would be due under the fee structure set forth in ~~G.S. 130A-295.8A(d1), G.S. 130A-295.8(d1),~~ as enacted by Section 14.20(c) of this act, during the cycle of the facility's permit in effect on July 1, 2016.
- (2) Time-limited permit fee amount. – The amount equal to the sum of the application fee or renewal fee, whichever is applicable, and all annual fees paid



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or to be paid pursuant to subsections (c) and (d) of G.S. 130A-295.8A, G.S. 130A-295.8, as repealed by Section 14.20(c) of this act, during the cycle of the facility's permit in effect on July 1, 2016.

The Department shall adopt rules to implement this subsection."

SECTION 2.(a) Section 14.20(f) of S.L. 2015-241, as amended by Section 4.9(d) of S.L. 2015-286, reads as rewritten:

"SECTION 14.20.(f) This section becomes effective October 1, 2015. G.S. 130A-294(b1)(2), as amended by subsection (a) of this section, applies to franchise ~~agreements~~ agreements (i) executed on or after October 1, 2015, and (ii) executed on or before October 1, 2015, only if all parties to a valid and operative franchise agreement consent to modify the agreement for the purpose of extending the agreement's duration to the life-of-site of the landfill for which the agreement was executed. The remainder of G.S. 130A-294, as amended by subsection (a) of this section, and G.S. 130A-295.8, as amended by subsection (c) of this section, apply to (i) existing sanitary landfills and transfer stations, with a valid permit issued before the date this act becomes effective, on July 1, 2016, at which point a permittee may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the facility when the facility's permit is next subject to renewal after July 1, 2016, (ii) new sanitary landfills and transfer stations, for applications submitted on or after July 1, 2016, and (iii) applications for sanitary landfills or transfer stations submitted before July 1, 2015, and pending on the date this act becomes law shall be evaluated by the Department based on the applicable laws that were in effect on July 1, 2015, and the Department shall not delay in processing such permit applications in consideration of changes made by this act, but such landfills and transfer stations shall be eligible for issuance of life-of-site permits pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, on July 1, 2016, at which point a permittee may choose to apply for a life-of-site permit pursuant to G.S. 130A-294(a2), as amended by Section 14.20(b) of this act, or may choose to apply for a life-of-site permit for the facility when the facility's permit is next subject to renewal after July 1, 2016."

SECTION 2.(b) G.S. 130A-294(b1) reads as rewritten:

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

...

(2) A person who intends to apply for a new permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill ~~shall~~ shall (i) be granted for the life-of-site of the landfill and shall landfill, but for a period not to exceed 60 years, and (ii) include all of the following:

- a. A statement of the population to be served, including a description of the geographic area.
- b. A description of the volume and characteristics of the waste stream.
- c. A projection of the useful life of the sanitary landfill.
- d. Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.
- e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
- f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site, the

boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

- (3) Prior to the award of a franchise for the construction or operation of a sanitary landfill, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide at least 30 days' notice to the public of the public hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public. The requirements of this subdivision shall not apply to franchises amended by agreement of the parties to extend the duration of the franchise to the life-of-site of the landfill, but for a period not to exceed 60 years.

...."

SECTION 2.(c) G.S. 160A-319(a) reads as rewritten:

"§ 160A-319. Utility franchises.

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, ~~except including a franchise granted to a sanitary landfill for the life-of-site of the landfill pursuant to G.S. 130A-294(b1); provided, however, that a franchise for solid waste collection or disposal systems and facilities-facilities, other than sanitary landfills,~~ shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 2.(d) G.S. 153A-136 reads as rewritten:

"§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

- (3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, ~~except that no franchise may be granted for a period exceeding 30 years, nor may any franchise; provided, however, no franchise shall be granted for a period of more than 30 years, except for a franchise granted to a sanitary landfill for the life-of-site of the landfill pursuant to G.S. 130A-294(b1), which may not exceed 60 years. No franchise by its terms~~

1 may impair the authority of the board of commissioners to regulate fees as
2 authorized by this section.

3 "

4 **SECTION 2.(e)** Subsection (a) of this section applies to franchise agreements (i)
5 executed on or after October 1, 2015, and (ii) executed on or before October 1, 2015, only if all
6 parties to a valid and operative agreement consent to modify the agreement for the purpose of
7 extending the agreement's duration of the life-of-site of the landfill for which the agreement was
8 executed.

9 **SECTION 3.** The Division of Waste Management of the Department of
10 Environmental Quality shall examine whether solid waste management activities in the State are
11 being conducted in a manner most beneficial to the citizens of the State in terms of efficiency and
12 cost-effectiveness, with a focus on solid waste disposal capacity across the State, particularly areas
13 of the State that have insufficient disposal capacity, as well as areas of the State with disposal
14 capacity that is underutilized, resulting in transport of waste to other jurisdictions. The Department
15 shall develop economic estimates of the short- and long-term costs of waste transport in these
16 situations versus full utilization of capacity, or expansion of capacity, in the originating
17 jurisdiction. The Department shall also provide information on landfill capacity that is permitted
18 but not yet constructed and expansion opportunities for future landfill capacity. The Department
19 shall submit a report, including any legislative recommendations, to the Environmental Review
20 Commission no later than March 1, 2018.

21 **SECTION 4.** Except as otherwise provided, Sections 1 and 2 of this act are effective
22 retroactively to July 1, 2015. The remainder of this act is effective when it becomes law.