

1 HB29
2 113548-1
3 By Representative Mitchell
4 RFD: Commerce
5 First Read: 12-JAN-10
6 PFD: 09/23/2009

2
3
4
5
6
7
8 SYNOPSIS: Currently, there is no specific provision
9 requiring the Alabama Department of Environmental
10 Management to perform a statewide risk assessment
11 of counties to reduce the amount of toxic waste in
12 environmental high impact areas.

13 This bill would require the department to
14 identify environmental high impact areas on a
15 county basis and compile data regarding toxic
16 pollutants released into the environment, and
17 publish for public comment certain assessment
18 methods and calculations for releases of toxic
19 chemicals.

20 The bill would require the State Health
21 Officer to issue a public report on the incidences
22 of diseases, based on counties, which assesses
23 health risks posed by releases of toxic substances.

24 The director of the department would provide
25 grants to monitor and respond to adverse health
26 risks identified by the county assessment, and
27 would be authorized to hold public hearings.

1 The department would be required to adopt
2 regulations to require the preparation of community
3 impact statements by independent contractors as a
4 part of the permitting process for any new or
5 expanded facility that handles toxic pollutants and
6 set certain criteria for community impact
7 statements regarding types of chemicals, projected
8 negative effects, alternatives for mitigating
9 negative health impact, and community demographics.

10 The bill would create the Community-Based
11 Environmental Cleanup, Health Testing and
12 Remediation Trust Fund and a special loan program
13 for remediation projects.

14 The bill would authorize community
15 environmental resource centers and local programs
16 of independent experts to conduct monitoring of
17 local facilities to insure compliance with state
18 and federal laws.

19 The bill would prohibit the permitting of
20 any new facility handling toxic pollutants within
21 10 miles of any such existing facility, unless
22 waived based on certain local considerations.

23 The bill would provide for a moratorium
24 against new facilities in high impact areas, unless
25 waived.

26 Community impact study grants and special
27 insurance programs would be available for high

1 impact areas. The department would be required to
2 assist local communities to enter clawback
3 agreements to reimburse incentives under certain
4 conditions.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 Relating to the environment; providing for the
11 reduction of toxic waste in environmental high impact areas;
12 requiring risk assessments by the Alabama Department of
13 Environmental Management; providing for technical assistance
14 and authorizing rulemaking; requiring the State Health Officer
15 to issue a report, based on counties, of serious documented
16 diseases, assessments of health risks posed by toxic
17 substances and acceptable reduced levels of such substances;
18 creating certain funds, programs, grants and assistance by the
19 department to help high-risk areas remediate health hazards;
20 prohibiting new facilities in certain areas; establishing
21 community impact statements by independent contracts;
22 authorizing local resource centers and programs for monitoring
23 local facilities for compliance; prohibiting certain new
24 facilities handling toxic substances; and assisting local
25 entities to enter reimbursement of incentive agreements.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) Not later than June 30, 2012, the
2 Director of the Alabama Department of Environmental
3 Management, hereinafter referred to as the director and the
4 department, shall assess the degree of risk to human health
5 posed by releases of toxic substances in each county.

6 (b) For each county, the director shall calculate
7 and compile the total weight of toxic pollutants released into
8 the ambient environment, broken down by releases into each
9 environmental media, air, water, land, and by each toxic
10 pollutant.

11 (c) In compiling the data described in subsection
12 (b), the director shall disregard toxic pollutants which are
13 in a contained, controlled environment such as barrels,
14 factories, warehouses, or lined landfills.

15 (d) Not later than December 31, 2010, the director
16 shall publish for public comment, the methods to be used to
17 calculate the total weight of toxic chemicals in each county
18 and the methods to be used to assess the degree of risk posed
19 by releases of toxic chemicals, as well as the basis for the
20 threshold level of risk determined by the director to be
21 substantial pursuant to Section 2.

22 Section 2. (a) Not later than December 31, 2012, and
23 every two years thereafter, the director shall designate any
24 county as an environmental high impact area if the degree of
25 risk to human health posed by releases of toxic pollutants in
26 that county meets a threshold level of substantial risk. The
27 director shall establish the threshold level and publish a

1 list of all counties falling below the threshold level of
2 risk.

3 (b) To ensure that the facilities with the highest
4 potential for releases of toxic pollutants are operating in
5 compliance with all applicable environmental health and safety
6 laws and applicable permits, the director shall conduct
7 inspections of all facilities that handle toxic pollutants in
8 environmental high impact areas.

9 Section 3. Not later than December 31, 2012, the
10 State Health Officer shall issue a report, which shall be made
11 available for public review, on environmental high impact
12 areas on a county by county basis. The report shall:

13 (1) Document incidences of cancer, birth
14 deformities, infant mortality rates, and respiratory diseases,
15 and compare the incidence of health impacts in environmental
16 high impact areas with state and demographic averages.

17 (2) Assess the health risks posed by releases of
18 toxic chemicals by individual chemical and cumulatively.

19 (3) Determine the levels to which releases of toxic
20 pollutants, individually and cumulatively, must be reduced so
21 that a county may no longer be designated as an environmental
22 high impact area.

23 (4) Determine the impact of releases not regulated
24 by law and releases in violation of current law.

25 Section 4. The director shall provide any available
26 grants to community-based health facilities in environmental
27 high impact areas to enable them to establish special programs

1 to monitor and respond to adverse health effects on the
2 residents of the community.

3 Section 5. (a) The director shall hold public
4 hearings to investigate issues concerning possible inequities
5 and discrimination in state enforcement of environmental laws.
6 The director shall establish citizen advisory committees to
7 ensure direct citizen participation in the hearings. The
8 director shall file a report with the Legislature which
9 summarizes the hearings, evaluates any concerns voiced by the
10 citizens, and recommends remedies for any existing inequities
11 or discrimination in enforcement.

12 (b) Additional public hearings shall be held if the
13 director so determines, based upon a review of a citizen
14 petition. The director shall file a report, as described in
15 subsection (a), whenever an additional hearing occurs.

16 Section 6. (a) The department shall adopt rules to
17 require the preparation of a community impact statement as
18 part of the permitting process for any new facility that
19 handles toxic pollutants and for any expansion of an existing
20 facility.

21 (b) Each community impact statement shall be made
22 available for public review, following its release to the
23 local community's elected officials.

24 (c) In regard to the permitting process, the
25 department shall do all the following:

1 (1) Give great weight to the community impact
2 statement when making any final decision regarding the
3 issuance of a permit.

4 (2) Deny an applicant its permit if the statement
5 identifies any current unabated violation of any other permit
6 held by the applicant. In addition, even if an applicant has
7 no unabated violation, but is deemed a "bad actor" because of
8 repeat past violations, the department shall deny the
9 applicant its permit.

10 (3) Hold a public hearing at which time members of
11 the community where the site would be located may provide
12 public comment on the community impact statement and other
13 issues relating to the permitting of a facility in their
14 community. The statement and comment made at the public
15 hearing shall be part of the record on which the permitting
16 decision is based.

17 (d) The community impact statement shall be prepared
18 by an independent contractor, who shall possess certain
19 qualifications to be defined by the director. The independent
20 contractor shall be selected by the community's chief elected
21 official, following consultation with community members and
22 the permit applicant.

23 (e) There shall be a fee for each permit application
24 for which a community impact statement is required, as
25 established by the department. The fee shall cover the costs
26 of preparing the community impact statement.

1 (f) A community impact statement shall identify and
2 describe each of the following items:

3 (1) The types of chemical releases expected from the
4 facility.

5 (2) The projected effects of the facility on the
6 health, environment, and economy of the community where the
7 site would be located.

8 (3) The options or alternatives for mitigating any
9 negative impacts on the health, environment, and economy of
10 the affected community.

11 (4) The demographic characteristics of the community
12 where the facility would be located.

13 (5) The presence in the affected community of any
14 other existing toxic chemical facilities and hazardous waste
15 sites.

16 (6) The applicant's record of compliance with state
17 and federal environmental laws, including the record of
18 compliance of any firm affiliated with the applicant.

19 (g) When a community impact statement identifies a
20 likely significant adverse effect on the local economy and
21 employment level of the community where the facility will be
22 located, the department shall take actions to mitigate the
23 effects. The department shall identify significant adverse
24 effects, and may attempt to mitigate these effects by
25 supporting community programs relating to employment and
26 economic development, including any of the following items:

27 (1) Job training and placement programs.

1 (2) Community development corporations.

2 (3) Micro loan programs for local businesses.

3 (4) Day care centers for low-income working parents.

4 (5) Adult educational programs.

5 (h) A community impact statement shall be completed
6 by an independent contractor within three months from the date
7 on which the application is filed, unless the time is extended
8 by the director.

9 Section 7. The Community-Based Environmental
10 Cleanup, Health Testing, and Health Remediation Trust Fund is
11 established in the State Treasury. The trust fund shall be
12 funded through mechanisms such as user fees to be determined
13 by the department pursuant to the adoption of rules and
14 regulations, and expansion of community reinvestment acts, to
15 the extent available for purposes of this act.

16 Section 8. (a) A special loans program is
17 established in the State Treasury to provide resources for
18 community-based environmental cleanup, health testing, and
19 health remediation. The loans shall be financed from income
20 earned by the trust fund described in Section 7.

21 (b) Citizen groups may obtain loans in order to fund
22 communitywide environmental cleanup, health testing, and
23 health remediation activities.

24 (c) To receive a loan under this program, an
25 applicant shall submit a detailed proposal outlining how the
26 funds will be used and how the cleanup, testing, or
27 remediation will be achieved.

1 (d) Loans shall be forgiven upon satisfactory
2 completion of the proposed cleanup, testing, or remediation.

3 Section 9. The director shall establish for
4 communities located in environmental high impact areas the
5 following programs, centers, services, and assistance:

6 (1) A program enabling communities to hire
7 independent experts to conduct both on-site and off-site
8 monitoring of local facilities to ensure that the facilities
9 are complying with their permits, and state and federal laws.

10 (2) Community environmental resource centers located
11 within existing community service facilities and institutions,
12 staffed by an environmental expert, that shall provide public
13 awareness training, provide education to citizens about state
14 and federal "right-to-know" provisions, and serve as a
15 clearinghouse for environmental information.

16 (3) A program which facilitates contact between
17 citizens of an affected community and environmental groups,
18 health experts, and legal advisors who are willing to
19 volunteer their services to promote environmental justice.

20 Section 10. (a) The permitting of the construction
21 or operation of any new facility that handles toxic pollutants
22 within 10 miles of any existing facility that handles toxic
23 pollutants is prohibited.

24 (b) The prohibition set out in subsection (a) may be
25 waived if, based on public comment from the community where
26 the site would be located, the local unit of government makes
27 either of the following decisions:

1 (1) It decides that pressing local environment needs
2 require a new facility.

3 (2) It decides to accept the siting of a new
4 facility in exchange for incentives offered by the operators
5 of the facility to the community. Such incentives may include,
6 but are not limited to the following items:

7 a. Increased employment.

8 b. Direct payments to the local government.

9 c. Contributions by the facility to the community
10 infrastructure.

11 d. Compensation to individual landowners for any
12 assessed decrease in property values.

13 e. Subsidization of community services.

14 Section 11. (a) If a county is designated an
15 environmental high impact area, there shall be a moratorium in
16 that county on the siting or permitting of any new facility
17 that handles toxic pollutants or any expansion of an existing
18 facility. A new facility or an expansion may be sited or
19 permitted in the county during the moratorium only if either
20 of the following circumstances apply:

21 (1) The appropriate local government demonstrates to
22 the department that there is a pressing environmental need for
23 the new facility or expansion.

24 (2) The facility demonstrates to the department that
25 it will minimize any releases that threaten public health and
26 maintain a comprehensive pollution prevention program.

1 (b) The moratorium shall continue in effect until
2 the director determines that the county is no longer
3 designated an environmental high impact area. This
4 determination shall be based on a reassessment of the degree
5 of risk to human health posed by releases of toxic pollutants
6 in each county.

7 Section 12. (a) The director shall establish a grant
8 program to be funded by user fees levied upon operators of
9 facilities that handle toxic pollutants for the purpose of
10 awarding community impact study grants.

11 (b) Community impact study grants shall be used to
12 enable individuals, citizens groups, and local governments to
13 obtain an independent study of the impact of existing
14 facilities that handle toxic pollutants in the area which were
15 sited prior to the requirement of community impact statements.
16 The study shall detail the effects on the local economy, the
17 environment, and public health.

18 (c) To receive a grant pursuant to this section, an
19 applicant shall present evidence to the director that the
20 community experiences any of the following significant
21 negative effects:

22 (1) Economic depression.

23 (2) Environmental hazards.

24 (3) Public health problems.

25 Section 13. (a) The department shall create a
26 program to assist communities and individuals in purchasing
27 special insurance policies to cover the risk of a future

1 decrease in property values attributable to the siting or
2 operation of a toxic chemical facility.

3 (b) The department may provide available matching
4 funds for insurance purchases to communities that demonstrate
5 exceptional need or risk of a severe fiscal crisis in the
6 event of reduced property values.

7 (c) The department shall assist communities entering
8 into "clawback" agreements with the operators of any new
9 facility that handles toxic pollutants. If the local
10 government decides to offer incentives to the operators of a
11 facility to locate in the community in exchange for promises
12 of economic development and increased employment, the local
13 government may institute a "clawback" agreement. The
14 "clawback" agreement shall ensure that if a facility does not
15 satisfy its promises, a portion of the incentives offered by
16 the local government shall be reimbursed.

17 Section 14. The director shall adopt rules necessary
18 to enforce the provisions of this act.

19 Section 15. This act shall become effective
20 immediately upon its passage and approval by the Governor, or
21 its otherwise becoming law.