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3 HOUSE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE SUBSTITUTE FOR
4 HB328

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9 SYNOPSIS: Under existing law, a local governing body
10 must approve the siting of a new or modification of
11 an existing solid waste management facility located
12 within the jurisdiction of the governing body.

13 This bill would alter the approval process
14 by a local governing body for local approval of a
15 new solid waste management facility.

16 This bill would provide that an approval of
17 a new facility by a local governing body would be
18 reviewed by the circuit court.

19 This bill would also remove a requirement
20 that a proposed new solid waste management facility
21 or a modification of a permit for an existing
22 facility be evaluated by the regional planning and
23 development commission.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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Relating to the siting of solid waste management facilities; to amend Section 22-27-48, Code of Alabama 1975; to add Section 22-27-48.1 to the Code of Alabama 1975; to alter the approval process by a local governing body for the siting of a new solid waste management facility; to provide that an approval of a new facility by a local governing body would be reviewed by the circuit court; and to remove a requirement that a proposed new solid waste management facility or a modification of a permit for an existing facility be evaluated by a regional planning and development commission.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 22-27-48 of the Code of Alabama 1975, is amended to read as follows:

"§22-27-48.

"(a) In addition to any regulatory bodies, the governing body of a county or municipality has a responsibility for and the authority to assure the proper management of solid wastes generated within its jurisdiction in accord with its solid waste management plan. A governing body may assign territories and approve or disapprove disposal sites in its jurisdiction in accord with the plan approved for its jurisdiction. Such approval or disapproval of services or activities described in the local plan shall be in addition to any other approvals required from other regulatory authorities and shall be made prior to any other approvals necessary for

1 the provision of such services, the development of a proposed
2 facility or the modification of permits for existing
3 facilities.

4 "(b) The department may not consider an application
5 for a new ~~or modified permit for a~~ facility unless ~~such the~~
6 application has received approval pursuant to Section
7 22-27-48.1 by the affected ~~unit of local government having an~~
8 ~~approved plan~~ local governing body. The department may not
9 consider an application for a modified permit for a facility
10 unless such application has received approval pursuant to this
11 section by the affected local governing body.

12 "(c) In determining whether to recommend approval of
13 the proposed issuance of or modification of a new or existing
14 solid waste management site, the governing body shall consider
15 each of the following criteria:

16 "(1) The consistency of the proposal with the
17 jurisdiction's solid waste management need as identified in
18 its plan;

19 "(2) The relationship of the proposal to local
20 planned or existing development or the absence thereof, to
21 major transportation arteries and to existing state primary
22 and secondary roads;

23 "(3) The location of a proposed facility in
24 relationship to existing industries in the state that generate
25 large volumes of solid waste, or the relationship to the areas
26 projected for development of industries that will generate
27 solid waste;

1 "(4) Costs and availability of public services,
2 facilities and improvements required to support a proposed
3 facility and protect public health, safety, and the
4 environment;

5 "(5) The impact of a proposed facility on public
6 safety and provisions made to minimize the impact on public
7 health and safety; and

8 "(6) The social and economic impacts of a proposed
9 facility on the affected community, including changes in
10 property values, and social or community perception.

11 "(d) The application of the plan for local approval
12 shall be accompanied by an application fee payable to the
13 local governing body in an amount equal to 20 percent of the
14 application or permit fee required by the department, but
15 local approval shall not apply to simple renewals of a permit
16 which is to be otherwise unchanged. Further, there shall be no
17 requirement for local review and approval of permit
18 modifications for the limited purposes of changing liner and
19 leachate collection design, changes in waste streams from
20 within the facility's designated service area, changes in
21 sequence of fill, changes to incorporate new technology, and
22 changes intended to bring a facility into compliance with
23 statutes and regulations. A renewed application for local
24 approval submitted within 18 months of an application being
25 denied or rejected by the local governing body shall be
26 accompanied by an application fee payable to the local

1 governing body in an amount equal to 50 percent of the
2 application or permit fee required by the department.

3 "(e) Any ~~determination decision~~ by the local
4 governing body of ~~the proposed issuance of or a proposed~~
5 modification of a permit for ~~a new or an~~ existing solid waste
6 management site or the proposal to contract for any services
7 described in the solid waste management plan, shall be made in
8 a public meeting only after public notice of such application
9 or proposal and an opportunity for public comment is provided.

10 "(f) In providing public notice of any ~~application~~
11 ~~or proposal regarding any services described in the solid~~
12 ~~waste management plan~~ proposed modification, the local
13 government shall at a minimum hold at least one public hearing
14 thereon, notice of the time and place of which shall be given
15 by one publication in a newspaper of general circulation in
16 the municipality and in the official gazette, if any, of the
17 jurisdiction. Furthermore, ~~such~~ the notice shall be given at
18 least 30 days but not more than 45 days prior to the proposed
19 date of the hearing. Each notice published in compliance with
20 this section shall contain at a minimum a description of the
21 proposed action to be considered, its relevance to and
22 consistency with the local solid waste management plan, and
23 shall identify a contact person from whom interested persons
24 can obtain additional information and can review copies of
25 both the local plan and the ~~application or~~ proposal to be
26 considered. All pertinent documents shall be available for
27 inspection during normal business hours at a location readily

1 accessible to the public. Within 90 days of receiving an
2 ~~application or a~~ proposal, the local governing body shall
3 either approve ~~the application~~ or deny the ~~application~~
4 modification setting forth the reasons therefor. The failure
5 of the local governing body to act on the proposal within 90
6 days of receiving the ~~application~~ modification shall
7 constitute approval by the local governing body.

8 "(g) Any decision by the local governing body to
9 approve or disapprove the siting of a new solid waste
10 management facility shall be made in accordance with Section
11 27-22-48.1.

12 ~~"(b) Following local review and approval of any~~
13 ~~proposal regarding services or activities described in the~~
14 ~~local solid waste management plan, the applicant shall obtain~~
15 ~~a statement of consistency from the regional planning and~~
16 ~~development commission. Therein, the commission shall evaluate~~
17 ~~the proposal using the provisions of the current regional~~
18 ~~solid waste management needs assessment. In particular, the~~
19 ~~regional commission shall evaluate the proposal as it relates~~
20 ~~to available existing capacity within the region and the~~
21 ~~projected lifetime of such capacity. The evaluation shall also~~
22 ~~identify any proposed capacity which is in excess of expected~~
23 ~~regional needs. No statement of consistency shall be required~~
24 ~~for contracts exclusively for the collection or transportation~~
25 ~~of solid wastes.~~

1 "~~(c) Plans required by this~~ (h) This section shall
2 not apply to industrial ~~landfills~~ facilities receiving wastes
3 generated on site only or by the permittee."

4 Section 2. Section 22-27-48.1 is added to the Code
5 of Alabama 1975, to read as follows:

6 §22-27-48.1.

7 (a) This section applies to the siting of any new
8 solid waste management facility, as defined in Section
9 22-27-2.

10 (b) The governing body of a county or municipality
11 shall make a discretionary decision to approve or disapprove
12 the siting of a new solid waste management facility in
13 accordance with this section.

14 (c) Any person or entity seeking approval from the
15 governing body of a county or municipality for the siting of a
16 new solid waste management facility shall also submit to the
17 governing body as part of its application, the application fee
18 required under subsection (d) of Section 22-27-48 and all of
19 the following information:

20 (1) A written document addressing each of the
21 criteria described in subsection (c) of Section 22-27-48.

22 (2) The applicant's experience of owning or
23 operating other solid waste facilities.

24 (3) Information relating to the applicant's
25 financial resources, including, but not limited to, any
26 investors or corporate affiliates of the applicant.

1 (4) Any pending and past civil or criminal actions
2 taken by a governmental entity against the applicant or its
3 owners or operators, investors, or affiliates.

4 (5) Any other information the applicant deems
5 relevant or that may assist the governing body in making a
6 decision whether to approve or disapprove the application.

7 (d) After an applicant has submitted a complete
8 application, including the items required in subsection (c),
9 to the governing body of a county or municipality in which the
10 proposed facility is to be located, the local governing body
11 shall formally receive the application at its next regularly
12 scheduled meeting. At this time, the public comment period
13 begins.

14 (e) (1) Not more than 10 days after the formal
15 receipt of an application, the local governing body, at the
16 expense of the applicant, shall provide the following notice
17 that an application for local approval of a new solid waste
18 management facility has been received:

19 a. Notice to each owner whose property is adjacent
20 to a proposed site, sent by certified mail.

21 b. Notice to the general public provided by all of
22 the following means:

23 1. Publishing a notice in a newspaper having general
24 circulation, if one exists, within the affected community one
25 day per week for a two-week period.

1 2. Broadcasting public service announcements
2 submitted to a radio station that has general broadcast
3 coverage within the affected community.

4 3. Displaying a notice on the local governing body's
5 website, if available.

6 (2) Any printed notice by letter, newspaper, or
7 electronically on a website, shall contain at a minimum the
8 following:

9 a. A description of the application and approval
10 process as provided in this chapter.

11 b. A description of the criteria the governing body
12 will consider, as provided in subsection (c) of Section
13 22-27-48, in determining whether to approve or disapprove the
14 site.

15 c. A contact person from whom interested persons can
16 obtain additional information and can review copies of both
17 the local solid waste management plan and the application.

18 d. A description of the location where interested
19 persons can obtain or can review copies of both the local
20 solid waste management plan and the application, and the time
21 frame for public hearings and involvement.

22 e. A description of how the public may submit
23 written comments to the governing body.

24 (f) (1) Not more than 45 days after the local
25 governing body formally receives an application, the applicant
26 shall conduct a public awareness session in the county or
27 municipality in which the proposed facility is to be located,

1 during which the applicant shall provide general information
2 on the design and operation of the proposed facility and
3 address questions and concerns voiced by members of the
4 affected community. The time, date, and location of the public
5 awareness session must be approved by the local governing
6 body. The applicant, at its own expense, shall provide notice
7 of the public awareness session by both printed and broadcast
8 media beginning at least 30 days prior to the session. Printed
9 notification shall include publication in at least one
10 newspaper having general circulation within the affected
11 community one day per week for a two-week period. Broadcast
12 notification shall include public service announcements on a
13 radio station that has general broadcast coverage within the
14 affected community. At least one representative of the local
15 governing body shall attend each public awareness session. If
16 any written comment or question germane to the proposed
17 application is submitted to the applicant at the public
18 awareness session, the applicant shall respond if practicable,
19 in writing within 14 days to the member of the public with a
20 copy provided to the local governing body.

21 (2) The applicant is solely responsible for carrying
22 out the requirements of subdivision (1). A public awareness
23 session is independent of and separate from a public hearing.

24 (g) Not more than 45 days after the date of the
25 public awareness session, the local governing body shall hold
26 at least one public hearing. Notice of the time and place of
27 any public hearing shall be given by publication in at least

1 one newspaper of general circulation within the affected
2 community at least 30 days, but not more than 45 days, prior
3 to the proposed date of the hearing. Content of the notice
4 shall be consistent with the notice requirements in subsection
5 (e). All pertinent documents shall be available for inspection
6 during normal business hours at a location readily accessible
7 to the public. The public may submit written comments to the
8 local governing body at any time up to the conclusion of the
9 last public hearing.

10 (h) The local governing body shall have 30 days
11 after the public hearing to hold a meeting for consideration
12 of the application. At the meeting, action on the application
13 shall be on the agenda and, if approved by a majority of the
14 members present and voting, shall be subject to court review
15 as provided in subsection (i). Should the application fail to
16 gain such approval, the applicant may submit a new application
17 under subsection (c). A new application shall be subject to
18 the fees in subsection (d) of Section 22-27-48 such that a
19 renewed application for local approval submitted within 18
20 months of an application being denied or rejected by the local
21 governing body shall be accompanied by an application fee
22 payable to the local governing body in an amount equal to 50
23 percent of the application or permit fee required by the
24 department.

25 (i) After the local governing body has granted
26 approval of the application, the applicant shall petition the
27 appropriate circuit court pursuant to Rule 57 of the Alabama

1 Rules of Civil Procedure for a determination of each of the
2 following:

3 (1) Whether the local governing body complied with
4 the public comment requirements and time frames required under
5 this section.

6 (2) Whether the local governing body's approval of
7 the application is consistent with the local solid waste
8 management plan in place pursuant to Section 22-27-47.

9 (3) Whether the local governing body considered the
10 criteria provided in subsection (c) of Section 22-27-48 as
11 presented to the body by the applicant in its application
12 pursuant to subdivision (c)(1).

13 (j) The applicant shall bear all court costs, and
14 his or her own legal expenses, relating to the filing of the
15 petition under subsection (i).

16 (k) Unless the court with which a petition is filed
17 needs additional information from the local governing body,
18 the court shall issue a ruling not more than 60 days after the
19 initial petition is filed; provided, however, the court may
20 extend this date not more than 30 additional days if the court
21 seeks additional information from the governing body.

22 (l) If the circuit court issues a declaratory
23 judgment determining that the local governing body met the
24 criteria set out in subsection (i), the applicant may seek
25 approval by other regulatory authorities as required by law.
26 If the circuit court issues a declaratory judgment determining
27 that the criteria set out in subsection (i) has not been met,

1 the matter shall be remanded to the local governing body for
2 further consideration consistent with the requirements of this
3 section. The local governing body or applicant shall be
4 afforded the opportunity to mitigate any discrepancies the
5 court finds, provided the period during which the governing
6 body or applicant must respond may not extend more than 90
7 days.

8 (m) This section shall not apply to industrial
9 facilities receiving wastes generated on site only or by the
10 permittee.

11 Section 3. Section 22-27-48, Code of Alabama 1975,
12 as amended by this act shall not apply to an application
13 received by a local governing body prior to the effective date
14 of this act, for a modification of an existing permitted solid
15 waste management facility, or for a proposed new solid waste
16 management facility.

17 Section 4. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.