

1 HB328
2 183960-4
3 By Representatives Baker, McMillan, Shiver and Faust
4 RFD: County and Municipal Government
5 First Read: 28-FEB-17

1 body may assign territories and approve or disapprove disposal
2 sites in its jurisdiction in accord with the plan approved for
3 its jurisdiction. Such approval or disapproval of services or
4 activities described in the local plan shall be in addition to
5 any other approvals required from other regulatory authorities
6 and shall be made prior to any other approvals necessary for
7 the provision of such services, the development of a proposed
8 facility or the modification of permits for existing
9 facilities.

10 "(b) The department may not consider an application
11 for a new ~~or modified permit for a~~ facility unless ~~such the~~
12 application has received approval pursuant to Section
13 22-27-48.1 by the affected ~~unit of local government having an~~
14 ~~approved plan~~ local governing body. The department may not
15 consider an application for a modified permit for a facility
16 unless such application has received approval pursuant to this
17 section by the affected local governing body.

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

22 "(1) The consistency of the proposal with the
23 jurisdiction's solid waste management need as identified in
24 its plan;

25 "(2) The relationship of the proposal to local
26 planned or existing development or the absence thereof, to

1 major transportation arteries and to existing state primary
2 and secondary roads;

3 "(3) The location of a proposed facility in
4 relationship to existing industries in the state that generate
5 large volumes of solid waste, or the relationship to the areas
6 projected for development of industries that will generate
7 solid waste;

8 "(4) Costs and availability of public services,
9 facilities and improvements required to support a proposed
10 facility and protect public health, safety, and the
11 environment;

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

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

18 "(d) The application of the plan for local approval
19 shall be accompanied by an application fee payable to the
20 local governing body in an amount equal to 20 percent of the
21 application or permit fee required by the department, but
22 local approval shall not apply to simple renewals of a permit
23 which is to be otherwise unchanged. Further, there shall be no
24 requirement for local review and approval of permit
25 modifications for the limited purposes of changing liner and
26 leachate collection design, changes in waste streams from
27 within the facility's designated service area, changes in

1 sequence of fill, changes to incorporate new technology, and
2 changes intended to bring a facility into compliance with
3 statutes and regulations. A renewed application for local
4 approval submitted within 18 months of an application being
5 denied or rejected by the local governing body shall be
6 accompanied by an application fee payable to the local
7 governing body in an amount equal to 50 percent of the
8 application or permit fee required by the department.

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

16 "(f) In providing public notice of any ~~application~~
17 ~~or proposal regarding any services described in the solid~~
18 ~~waste management plan~~ proposed modification, the local
19 government shall at a minimum hold at least one public hearing
20 thereon, notice of the time and place of which shall be given
21 by one publication in a newspaper of general circulation in
22 the municipality and in the official gazette, if any, of the
23 jurisdiction. Furthermore, ~~such~~ the notice shall be given at
24 least 30 days but not more than 45 days prior to the proposed
25 date of the hearing. Each notice published in compliance with
26 this section shall contain at a minimum a description of the
27 proposed action to be considered, its relevance to and

1 consistency with the local solid waste management plan, and
2 shall identify a contact person from whom interested persons
3 can obtain additional information and can review copies of
4 both the local plan and the ~~application or~~ proposal to be
5 considered. All pertinent documents shall be available for
6 inspection during normal business hours at a location readily
7 accessible to the public. Within 90 days of receiving ~~an~~
8 ~~application or~~ a proposal, the local governing body shall
9 either approve ~~the application~~ or deny the ~~application~~
10 modification setting forth the reasons therefor. The failure
11 of the local governing body to act on the proposal within 90
12 days of receiving the ~~application~~ modification shall
13 constitute approval by the local governing body.

14 "(g) Any decision by the local governing body to
15 approve or disapprove the siting of a new solid waste
16 management facility shall be made in accordance with Section
17 27-22-48.1.

18 ~~"(b) Following local review and approval of any~~
19 ~~proposal regarding services or activities described in the~~
20 ~~local solid waste management plan, the applicant shall obtain~~
21 ~~a statement of consistency from the regional planning and~~
22 ~~development commission. Therein, the commission shall evaluate~~
23 ~~the proposal using the provisions of the current regional~~
24 ~~solid waste management needs assessment. In particular, the~~
25 ~~regional commission shall evaluate the proposal as it relates~~
26 ~~to available existing capacity within the region and the~~
27 ~~projected lifetime of such capacity. The evaluation shall also~~

1 identify any proposed capacity which is in excess of expected
2 regional needs. No statement of consistency shall be required
3 for contracts exclusively for the collection or transportation
4 of solid wastes.

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

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

10 §22-27-48.1.

11 (a) This section applies to the siting of any new
12 solid waste management facility, as defined in Section
13 22-27-2.

14 (b) The governing body of a county or municipality
15 shall make a discretionary decision to approve or disapprove
16 the siting of a new solid waste management facility in
17 accordance with this section.

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

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

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

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

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

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

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

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

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

24 b. Notice to the general public provided by all of
25 the following means:

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

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

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

9 (2) Any printed notice by letter, newspaper, or
10 electronically on a website, shall contain at a minimum the
11 following:

12 a. A description of the application and approval
13 process as provided in this chapter.

14 b. A description of the criteria the governing body
15 will consider, as provided in subsection (c) of Section
16 22-27-48, in determining whether to approve or disapprove the
17 site.

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

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

25 e. A description of how the public may submit
26 written comments to the governing body.

1 (f) (1) Not more than 45 days after the local
2 governing body formally receives an application, the applicant
3 shall conduct a public awareness session in the county or
4 municipality in which the proposed facility is to be located,
5 during which the applicant shall provide general information
6 on the design and operation of the proposed facility and
7 address questions and concerns voiced by members of the
8 affected community. The time, date, and location of the public
9 awareness session must be approved by the local governing
10 body. The applicant, at its own expense, shall provide notice
11 of the public awareness session by both printed and broadcast
12 media beginning at least 30 days prior to the session. Printed
13 notification shall include publication in at least one
14 newspaper having general circulation within the affected
15 community one day per week for a two-week period. Broadcast
16 notification shall include public service announcements on a
17 radio station that has general broadcast coverage within the
18 affected community. At least one representative of the local
19 governing body shall attend each public awareness session. If
20 any written comment or question germane to the proposed
21 application is submitted to the applicant at the public
22 awareness session, the applicant shall respond if practicable,
23 in writing within 14 days to the member of the public with a
24 copy provided to the local governing body.

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

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

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

1 ~~percent of the application or permit fee required by the~~
2 ~~department.~~

3 (h) The local governing body shall have 30 days
4 after the public hearing to complete its review of the local
5 solid waste management plan and, giving consideration to the
6 criteria provided in subsection (c) of Section 22-27-48, to
7 public input, and to other information gathered from the
8 applicant pursuant to subsection (c), shall make a decision to
9 approve or disapprove the siting of a new solid waste
10 management facility. If disapproved by the governing body, the
11 applicant may submit a new application under subsection (c).

12 (i) After the local governing body has granted
13 approval of the application, the applicant shall petition the
14 appropriate circuit court pursuant to Rule 57 of the Alabama
15 Rules of Civil Procedure for a determination of each of the
16 following:

17 (1) Whether the local governing body complied with
18 the public comment requirements and time frames required under
19 this section.

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

23 (3) Whether the local governing body considered the
24 criteria provided in subsection (c) of Section 22-27-48 as
25 presented to the body by the applicant in its application
26 pursuant to subdivision (c)(1).

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

4 (k) Unless the court with which a petition is filed
5 needs additional information from the local governing body,
6 the court shall issue a ruling not more than 60 days after the
7 initial petition is filed; provided, however, the court may
8 extend this date not more than 30 additional days if the court
9 seeks additional information from the governing body.

10 (l) If the circuit court issues a declaratory
11 judgment determining that the local governing body met the
12 criteria set out in subsection (i), the applicant may seek
13 approval by other regulatory authorities as required by law.
14 If the circuit court issues a declaratory judgment determining
15 that the criteria set out in subsection (i) has not been met,
16 the matter shall be remanded to the local governing body for
17 further consideration consistent with the requirements of this
18 section. The local governing body or applicant shall be
19 afforded the opportunity to mitigate any discrepancies the
20 court finds, provided the period during which the governing
21 body or applicant must respond may not extend more than 90
22 days.

23 (m) This section shall not apply to industrial
24 facilities receiving wastes generated on site only or by the
25 permittee.

26 Section 3. Section 22-27-48, Code of Alabama 1975,
27 as amended by this act shall not apply to an application

1 received by a local governing body prior to the effective date
2 of this act, for a modification of an existing permitted solid
3 waste management facility, or for a proposed new solid waste
4 management facility.

5 Section 4. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on County and Mu-
nicipal Government..... 28-FEB-17

Read for the second time and placed
on the calendar with 1 substitute
and 1 amendment..... 15-MAR-17

Read for the third time and passed
as amended..... 04-APR-17

Yeas 102, Nays 0, Abstains 1

Jeff Woodard
Clerk