

1 HB328
2 181753-1
3 By Representatives Baker, McMillan, Shiver and Faust
4 RFD: County and Municipal Government
5 First Read: 28-FEB-17

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

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

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

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
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1 Relating to the siting of solid waste management
2 facilities; to amend Section 22-27-48, Code of Alabama 1975;
3 to add Section 22-27-48.1 to the Code of Alabama 1975; to
4 alter the approval process by a local governing body for the
5 siting of a new solid waste management facility; to provide
6 that an approval of a new facility by a local governing body
7 would be reviewed by the circuit court; and to remove a
8 requirement that a proposed new solid waste management
9 facility or a modification of a permit for an existing
10 facility be evaluated by a regional planning and development
11 commission.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 "§22-27-48.

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

1 facility or the modification of permits for existing
2 facilities.

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

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

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

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

22 "(3) The location of a proposed facility in
23 relationship to existing industries in the state that generate
24 large volumes of solid waste, or the relationship to the areas
25 projected for development of industries that will generate
26 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 notice shall be given at least
18 30 days but not more than 45 days prior to the proposed date
19 of the hearing. Each notice published in compliance with this
20 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 the
11 provisions in Section 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)~~ (h) ~~Plans required by this~~ 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 decision to approve or disapprove the siting of a
12 new solid waste management facility in accordance with this
13 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 submit to the
17 governing body all of the following information in its
18 application for local approval:

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

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

23 (3) Information relating to the applicant's
24 financial resources, including, but not limited to, any
25 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 may assist the governing body in making a decision
6 whether to approve or disapprove the application.

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

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

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

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

22 i. Publishing a notice in a newspaper having general
23 circulation within the affected community one day per week for
24 a two-week period.

25 ii. Broadcasting public service announcements on a
26 radio station that has general broadcast coverage within the
27 affected community.

1 iii. Displaying a notice in a prominent manner on
2 the local governing body's website, if available.

3 (2) Any printed notice by letter, newspaper, or
4 electronically on a website, shall contain at a minimum the
5 following:

6 a. A description of the proposed action to be
7 considered.

8 b. A description of the criteria the governing body
9 will consider, as provided in subsection (c) of Section
10 22-27-48, in determining whether to approve or disapprove the
11 site.

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

15 d. A description of the approval or disapproval
16 process under this section, including timeframes and
17 opportunities for the public to comment.

18 e. A description of how the public may submit
19 written comments to the governing body.

20 (f) (1) Not more than 45 days after the local
21 governing body formally receives an application, the applicant
22 shall conduct a public awareness session in the county or
23 municipality in which the proposed facility is to be located,
24 during which the applicant shall provide general information
25 on the design and operation of the proposed facility and
26 address questions and concerns voiced by members of the
27 affected community. The time, date, and location of the public

1 awareness session must be approved by the local governing
2 body. The applicant, at its own expense, shall provide notice
3 of the public awareness session by both printed and broadcast
4 media beginning at least 30 days prior to the session. Printed
5 notification shall include publication in at least one
6 newspaper having general circulation within the affected
7 community one day per week for a two-week period. Broadcast
8 notification shall include public service announcements on a
9 radio station that has general broadcast coverage within the
10 affected community. At least one representative of the local
11 governing body shall attend each public awareness session. If
12 any written comment or question germane to the proposed
13 application is submitted to the applicant at the public
14 awareness session, the applicant shall respond if practicable,
15 in writing within 14 days to the member of the public with a
16 copy provided to the local governing body. The applicant shall
17 forward to the governing body any written question or comment
18 to which the applicant does not respond.

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

22 (g) Not more than 45 days after the public awareness
23 session takes place, the local governing body shall hold one
24 or more public hearings. Notice of the time and place of a
25 public hearing shall be given by publication in at least one
26 newspaper of general circulation within the affected community
27 at least 30 days but not more than 45 days prior to the

1 proposed date of the hearing. Notice shall contain at a
2 minimum a description of the proposed action to be considered,
3 its relevance to and consistency with the local solid waste
4 management plan and a contact person from whom interested
5 persons can obtain additional information and can review
6 copies of both the local plan and the application to be
7 considered. All pertinent documents shall be available for
8 inspection during normal business hours at a location readily
9 accessible to the public. The written comment period shall end
10 on the date of the last public hearing.

11 (h) The local governing body shall have 30 days
12 after the public hearing to complete its review of the local
13 solid waste management plan and, giving consideration to the
14 criteria provided in subsection (c) of Section 22-27-48, to
15 public input, and to other information gathered from the
16 applicant pursuant to subsection (c), shall make a decision to
17 approve or disapprove the siting of a new solid waste
18 management facility. If disapproved by the governing body, the
19 applicant may submit a new application under subsection (c).

20 (i) After the local governing body has completed the
21 review described in subsection (h) and with an affirmative
22 vote to approve the application, the applicant shall petition
23 the appropriate circuit court pursuant to Rule 57 of the
24 Alabama Rules of Civil Procedure for a determination of
25 whether the governing body did the following:

26 (1) Complied with the public comment requirements
27 and time frames required under this section.

1 (2) Reviewed the consistency of the application with
2 respect to the local solid waste management plan.

3 (3) Considered the criteria provided in subsection
4 (c) of Section 22-27-48.

5 (j) The applicant shall bear all court costs
6 relating to the filing of the petition under subsection (i).

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

13 (l) If the circuit court issues a declaratory
14 judgment confirming the governing body's approval of the
15 application, the applicant may seek approval by other
16 regulatory authorities, as required by law. If the circuit
17 court issues a declaratory judgment rejecting the governing
18 body's approval because the court finds the governing body did
19 not properly consider all the information before it or the
20 application is inconsistent with the local solid waste
21 management plan, the local governing body or applicant shall
22 be afforded the opportunity to mitigate any discrepancies the
23 court finds, provided the period during which the governing
24 body or applicant must respond may not extend more than 90
25 days.

1 (m) This section shall not apply to industrial
2 facilities receiving wastes generated on site only or by the
3 permittee.

4 Section 3. The amendatory language of this act shall
5 not apply to an application received by a local governing body
6 prior to the effective date of this act, for a modification of
7 an existing permitted solid waste management facility or for a
8 proposed new solid waste management facility.

9 Section 4. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.