

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

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ENROLLED, An Act,

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

1 activities described in the local plan shall be in addition to
2 any other approvals required from other regulatory authorities
3 and shall be made prior to any other approvals necessary for
4 the provision of such services, the development of a proposed
5 facility or the modification of permits for existing
6 facilities.

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

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

19 "(1) The consistency of the proposal with the
20 jurisdiction's solid waste management need as identified in
21 its plan;

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

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

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

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

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

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

1 this section shall contain at a minimum a description of the
2 proposed action to be considered, its relevance to and
3 consistency with the local solid waste management plan, and
4 shall identify a contact person from whom interested persons
5 can obtain additional information and can review copies of
6 both the local plan and the ~~application or~~ proposal 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. Within 90 days of receiving ~~an~~
10 ~~application or~~ a proposal, the local governing body shall
11 either approve ~~the application~~ or deny the ~~application~~
12 modification setting forth the reasons therefor. The failure
13 of the local governing body to act on the proposal within 90
14 days of receiving the ~~application~~ modification shall
15 constitute approval by the local governing body.

16 "(g) Any decision by the local governing body to
17 approve or disapprove the siting of a new solid waste
18 management facility shall be made in accordance with Section
19 27-22-48.1.

20 ~~"(b) Following local review and approval of any~~
21 ~~proposal regarding services or activities described in the~~
22 ~~local solid waste management plan, the applicant shall obtain~~
23 ~~a statement of consistency from the regional planning and~~
24 ~~development commission. Therein, the commission shall evaluate~~
25 ~~the proposal using the provisions of the current regional~~

1 ~~solid waste management needs assessment. In particular, the~~
2 ~~regional commission shall evaluate the proposal as it relates~~
3 ~~to available existing capacity within the region and the~~
4 ~~projected lifetime of such capacity. The evaluation shall also~~
5 ~~identify any proposed capacity which is in excess of expected~~
6 ~~regional needs. No statement of consistency shall be required~~
7 ~~for contracts exclusively for the collection or transportation~~
8 ~~of solid wastes.~~

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

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

14 §22-27-48.1.

15 (a) This section applies to the siting of any new
16 solid waste management facility, as defined in Section
17 22-27-2.

18 (b) The governing body of a county or municipality
19 shall make a discretionary decision to approve or disapprove
20 the siting of a new solid waste management facility in
21 accordance with this section.

22 (c) Any person or entity seeking approval from the
23 governing body of a county or municipality for the siting of a
24 new solid waste management facility shall also submit to the
25 governing body as part of its application, the application fee

1 required under subsection (d) of Section 22-27-48 and all of
2 the following information:

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

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

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

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

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

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

23 (e) (1) Not more than 10 days after the formal
24 receipt of an application, the local governing body, at the
25 expense of the applicant, shall provide the following notice

1 that an application for local approval of a new solid waste
2 management facility has been received:

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

5 b. Notice to the general public provided by all of
6 the following means:

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

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

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

15 (2) Any printed notice by letter, newspaper, or
16 electronically on a website, shall contain at a minimum the
17 following:

18 a. A description of the application and approval
19 process as provided in this chapter.

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

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

4 d. A description of the location where interested
5 persons can obtain or can review copies of both the local
6 solid waste management plan and the application, and the time
7 frame for public hearings and involvement.

8 e. A description of how the public may submit
9 written comments to the governing body.

10 (f) (1) Not more than 45 days after the local
11 governing body formally receives an application, the applicant
12 shall conduct a public awareness session in the county or
13 municipality in which the proposed facility is to be located,
14 during which the applicant shall provide general information
15 on the design and operation of the proposed facility and
16 address questions and concerns voiced by members of the
17 affected community. The time, date, and location of the public
18 awareness session must be approved by the local governing
19 body. The applicant, at its own expense, shall provide notice
20 of the public awareness session by both printed and broadcast
21 media beginning at least 30 days prior to the session. Printed
22 notification shall include publication in at least one
23 newspaper having general circulation within the affected
24 community one day per week for a two-week period. Broadcast
25 notification shall include public service announcements on a

1 radio station that has general broadcast coverage within the
2 affected community. At least one representative of the local
3 governing body shall attend each public awareness session. If
4 any written comment or question germane to the proposed
5 application is submitted to the applicant at the public
6 awareness session, the applicant shall respond if practicable,
7 in writing within 14 days to the member of the public with a
8 copy provided to the local governing body.

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

12 (g) Not more than 45 days after the date of the
13 public awareness session, the local governing body shall hold
14 at least one public hearing. Notice of the time and place of
15 any public hearing shall be given by publication in at least
16 one newspaper of general circulation within the affected
17 community at least 30 days, but not more than 45 days, prior
18 to the proposed date of the hearing. Content of the notice
19 shall be consistent with the notice requirements in subsection
20 (e). All pertinent documents shall be available for inspection
21 during normal business hours at a location readily accessible
22 to the public. The public may submit written comments to the
23 local governing body at any time up to the conclusion of the
24 last public hearing.

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

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

1 (i) After the local governing body has granted
2 approval of the application, the applicant shall petition the
3 appropriate circuit court pursuant to Rule 57 of the Alabama
4 Rules of Civil Procedure for a determination of each of the
5 following:

6 (1) Whether the local governing body complied with
7 the public comment requirements and time frames required under
8 this section.

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

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

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

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

1 (1) If the circuit court issues a declaratory
2 judgment determining that the local governing body met the
3 criteria set out in subsection (i), the applicant may seek
4 approval by other regulatory authorities as required by law.
5 If the circuit court issues a declaratory judgment determining
6 that the criteria set out in subsection (i) has not been met,
7 the matter shall be remanded to the local governing body for
8 further consideration consistent with the requirements of this
9 section. The local governing body or applicant shall be
10 afforded the opportunity to mitigate any discrepancies the
11 court finds, provided the period during which the governing
12 body or applicant must respond may not extend more than 90
13 days.

14 (m) This section shall not apply to industrial
15 facilities receiving wastes generated on site only or by the
16 permittee.

17 Section 3. Section 22-27-48, Code of Alabama 1975,
18 as amended by this act shall not apply to an application
19 received by a local governing body prior to the effective date
20 of this act, for a modification of an existing permitted solid
21 waste management facility, or for a proposed new solid waste
22 management facility.

23 Section 4. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 04-APR-17, as amended.

Jeff Woodard
Clerk

Senate 17-MAY-17 Passed