

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 580

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/15/13

Short Title: Expedite Cleanup of Orphan Landfill Sites.

(Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA CONTAMINATION SOURCE
REMOVAL AND DISPOSAL BOARD, AND TO DIRECT THE BOARD AND THE
DIVISION OF WASTE MANAGEMENT OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES TO STUDY DEVELOPMENT AND
IMPLEMENTATION OF A PILOT PROGRAM TO ALLOW A PUBLIC-PRIVATE
PARTNERSHIP FOR THE SAFE AND EXPEDITED REMEDIATION OF PRE-1983
LANDFILLS AT LITTLE OR NO COST TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly makes the following findings regarding the remediation of pre-1983 landfills:

- (1) Despite a dedicated source of revenue and a considerable fund balance, little progress has been made in active cleanup of these landfill sites.
- (2) Qualified private firms should be given the opportunity to demonstrate they can remediate pre-1983 landfill sites under the oversight of the Department of Environment and Natural Resources more quickly and less expensively than a traditional remedial action developed and conducted by the Department.
- (3) Implementation of a pilot program to allow a public-private partnership for the safe and expedited remediation of pre-1983 landfills at little or no cost to the State may result in multiple benefits to the State and its citizenry, including (i) eliminating environmental hazards that are associated with the many sites across the State that have yet to be remediated; (ii) decreasing the State's economic liability for these sites; and (iii) promoting economic growth through job creation associated with returning these sites to beneficial and productive use due to jobs that may be expected from active remediation activities at these sites, and jobs that may be expected after these sites have been returned to developable commercial and other uses.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 9. North Carolina Contamination Source Removal and Disposal Board.

"§ 130A-310.80. North Carolina Contamination Source Removal and Disposal Board – creation; powers and duties.

(a) Creation. – There is hereby created the North Carolina Contamination Source Removal and Disposal Board of the Department of Environment and Natural Resources.



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1 **(b) Purpose.** – The purposes and functions of the Contamination Source Removal and
2 Disposal Board are to identify, evaluate, and facilitate innovative processes and mechanisms
3 for safe and more expeditious and cost-effective cleanup of pre-1983 landfills, as that term is
4 defined under G.S. 130A-290(a)(22a), to return these sites to beneficial and productive use for
5 the good of the State and its citizens.

6 **(c) Authority.** – To achieve its purposes, the Board shall have all of the following
7 powers and duties:

8 **(1)** To pursue efforts directed at the expeditious and cost-effective cleanup of
9 pre-1983 landfills.

10 **(2)** To develop rules and procedures for the conduct of its business or as may be
11 necessary to perform its duties and carry out its objectives, including, but not
12 limited to, calling meetings and establishing voting procedures. Rules and
13 procedures developed pursuant to this subsection shall be effective upon an
14 affirmative vote by a majority of the Board members.

15 **(3)** To establish standing and ad hoc committees. The Board shall determine the
16 purpose of each standing or ad hoc committee.

17 **(4)** To seek, apply for, and accept grants from public or private sources. The
18 Board may accept or expend funds only after an affirmative vote by a
19 majority of the members of the Board.

20 **(5)** To exercise the powers of a body corporate, including the power to sue and
21 be sued, and adopt and use a common seal and alter the same.

22 **(6)** To enter into contracts and execute all instruments necessary or appropriate
23 to achieve the purposes of the Board.

24 **(7)** To designate a fiscal agent.

25 **(8)** To perform any lawful acts necessary or appropriate to achieve the purposes
26 of the Board.

27 **(d) Membership.** – The Board shall consist of seven members as follows:

28 **(1)** The Secretary of Environment and Natural Resources or the Secretary's
29 designee, ex officio.

30 **(2)** One appointed by the Governor with extensive private sector experience in
31 waste handling, removal, transportation, and disposal.

32 **(3)** One appointed by the Governor representing a local government with a
33 pre-1983 landfill located within its jurisdiction.

34 **(4)** One appointed by the General Assembly upon recommendation of the
35 President Pro Tempore of the Senate who shall be a licensed private sector
36 environmental engineer with experience in contamination source removal,
37 transportation, and disposal.

38 **(5)** One appointed by the General Assembly upon recommendation of the
39 President Pro Tempore of the Senate who shall be a private sector manager
40 with extensive experience in industrial wastes, environmental restoration,
41 remediation, and mitigation of contamination resulting from industrial
42 activities.

43 **(6)** One appointed by the General Assembly upon recommendation of the
44 Speaker of the House of Representatives who shall be a licensed private
45 sector attorney with experience in legal matters associated with
46 contamination removal, transportation, and disposal.

47 **(7)** One appointed by the General Assembly upon recommendation of the
48 Speaker of the House of Representatives who is a member of the
49 Commission for Public Health and knowledgeable in the principles of waste
50 management.

1 (e) Terms. – The term of office of members of the Board is three years. A member may
2 be reappointed to no more than two consecutive three-year terms. The term of a member who
3 no longer meets the qualifications of their respective appointment, as set forth in subsection (d)
4 of this section, shall terminate but the member may continue to serve until a new member who
5 meets the qualifications is appointed. The terms of members appointed under subdivisions (2),
6 (4), and (6) of subsection (d) of this section shall expire on June 30 of years evenly divisible by
7 three. The terms of members appointed under subdivisions (3), (5), and (7) of subsection (d) of
8 this section shall expire on June 30 of years that precede by one year those years that are evenly
9 divisible by three.

10 (f) Vacancies; Removal from Office. –

11 (1) Any appointment by the Governor to fill a vacancy on the Board created by
12 the resignation, dismissal, death, or disability of a member shall be for the
13 balance of the unexpired term. The Governor shall have the power to remove
14 any member of the Board from office for misfeasance, malfeasance, or
15 nonfeasance in accordance with the provisions of G.S. 143B-13 of the
16 Executive Organization Act of 1973.

17 (2) Members appointed by the President Pro Tempore of the Senate and the
18 Speaker of the House of Representatives shall be made in accordance with
19 G.S. 120-121, and vacancies in those appointments shall be filled in
20 accordance with G.S. 120-122. In accordance with Section 10 of Article VI
21 of the North Carolina Constitution, a member may continue to serve until a
22 successor is duly appointed.

23 (g) Compensation. – The members of the Board shall receive per diem and necessary
24 traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

25 (h) Quorum. – A majority of the Board shall constitute a quorum for the transaction of
26 business.

27 (i) Officers. – The Governor shall appoint a chair and vice-chair, and any other officers
28 the Governor considers necessary, and shall determine the length of the term of office of each
29 officer.

30 (j) Staff. – All staff support required by the Board shall be supplied by the Division of
31 Waste Management of the Department of Environment and Natural Resources.

32 (k) Reports. – The Board shall submit quarterly written reports as to its operation,
33 activities, programs, and progress to the Environmental Review Commission. The Board shall
34 supplement the written reports required by this subsection with additional written and oral
35 reports as may be requested by the Environmental Review Commission. The Board shall
36 submit the written reports required by this subsection whether or not the General Assembly is
37 in session at the time the report is due.

38 (l) Meetings. – The Board shall meet at least quarterly and may hold special meetings
39 at any time and place within the State at the call of the chair or upon the written request of at
40 least four members.

41 (m) Advisory role. – The role of the Board is advisory in nature, and in no way shall the
42 Board be construed to have regulatory authority. No action of the Board supercedes any
43 decision of the Division of Waste Management or the Department of Environment and Natural
44 Resources.

45 **SECTION 3.(a)** The North Carolina Contamination Source Removal and Disposal
46 Board and the Division of Waste Management of the Department of Environment and Natural
47 Resources shall study development and implementation of a pilot program to be primarily
48 administered under the Board's oversight that allows cleanup of pre-1983 landfill sites using a
49 public-private partnership for the expedited and safe remediation of pre-1983 landfills to return
50 those sites to safe and beneficial and productive use, at little or no cost to the State. At a
51 minimum, the study shall include all of the following:

- 1 (1) Identification of no less than nine pre-1983 landfills suitable for inclusion in
2 a pilot program (pilot sites), which are representative of the types of sites
3 included within the Department's list of pre-1983 landfills. For purposes of
4 this subdivision, "representative" means that if all landfill sites identified
5 were sorted into a matrix of nine categories with the degree of risk to
6 groundwater and human receptors (grouped into categories of low, medium,
7 and high) being three columns and size of site (grouped into categories of
8 small, medium, and large) being three rows, the nine sites chosen for the
9 pilot program would include one site in each category.
- 10 (2) Evaluation of the feasibility of contracting with private entities for
11 remediation of the pilot sites identified at little or no cost to the State, with
12 all or most of the compensation given from the State to the private entities
13 for the remediation performed resulting from the private entities' recovery of
14 recyclable and reusable materials from the pilot sites.
- 15 (3) Evaluation of contracts with private entities that may be executed as
16 proposed under the principles of the pilot program in terms of compatibility
17 with and adherence to the laws of the State governing public contracting
18 requirements under Article 3 of Chapter 143 of the General Statutes.
- 19 (4) Evaluation of allowing use of remediation requirements for the pilot sites in
20 accordance with those set forth in the Department's rules for "Voluntary
21 Remedial Action Oversight by Registered Environmental Consultants,"
22 codified at 15A NCAC 13C .0300, or other requirements that will allow the
23 pilot sites to return to safe and beneficial and productive use in the most
24 cost-effective manner.
- 25 (5) Requirements for periodic monitoring of pilot sites to ensure remediation is
26 safely performed for subsequent use of the properties and completed to the
27 satisfaction of the Department.
- 28 (6) Review and evaluation of other states' requirements, programs, and policies
29 for remediation of sites similar to those classified as "pre-1983 landfills" as
30 defined by the State of North Carolina, with a focus on other states that may
31 have implemented requirements, programs, and policies that are resulting in
32 safe remediation of such sites, which are performed in a more cost-effective
33 and expeditious manner than that performed in North Carolina under
34 traditional remediation requirements, programs, and policies.

35 **SECTION 3.(b)** In the conduct of the study, the Department shall seek United
36 States Environmental Protection Agency approval for implementation of all elements of a pilot
37 program proposed pursuant to this study. On or before December 31, 2013, the Department of
38 Environment shall develop and submit any Memoranda of Agreement, delineations of
39 programmatic responsibility, procedure for coordination, and other information that the United
40 States Environmental Protection Agency may require in order to effectuate the elements of a
41 pilot program proposed pursuant to this study.

42 **SECTION 3.(c)** The Board and the Department shall report their findings and
43 recommendations, including any legislative proposals, to the Environmental Review
44 Commission and the Joint Legislative Commission on Governmental Operations on or before
45 January 15, 2014.

46 **SECTION 4.** This act is effective when it becomes law.