

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 621
HOUSE BILL 1109

AN ACT TO IMPROVE THE MANAGEMENT OF NONHAZARDOUS SOLID WASTE, TO REDEFINE THE STATE SOLID WASTE MANAGEMENT GOALS, AND TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO THE SOLID WASTE MANAGEMENT LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 is amended by adding four new subdivisions to read:

"(18a) 'Municipal solid waste' means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, or solid waste from mining or agricultural operations.

(18b) 'Municipal solid waste management facility' means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(28a) 'Refuse-derived fuel' means a form of fuel derived from a municipal solid waste by a processing system in which recyclable and noncombustible materials are removed and the remaining combustible material is converted for use as a fuel.

(41a) 'Tire-derived fuel' means a form of fuel derived from scrap tires."

Sec. 2. G.S. 130A-309.04 reads as rewritten:

"§ 130A-309.04. State solid waste management policy and goals.

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

- (1) Waste ~~volume~~ reduction at the source;
- (2) Recycling and reuse;
- (3) Composting;
- (4) Incineration with energy production;
- (5) Incineration for volume reduction;
- (6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State ~~that at least twenty-five percent (25%) of the total waste stream be recycled by 1 January 1993.~~ to reduce the municipal solid waste stream through source reduction, reuse, recycling, and composting, on a per capita basis, on the following schedule:

(1) Twenty-five percent (25%) by 30 June 1993.

(2) Forty percent (40%) by 30 June 2001.

(c1) To measure progress toward the municipal solid waste reduction goals in a given year, comparison shall be made between the amount by weight of the municipal solid waste that, during the baseline year and the given year, is received at municipal solid waste management facilities and is:

(1) Disposed of in a landfill;

(2) Incinerated;

(3) Converted to tire-derived fuel; or

(4) Converted to refuse-derived fuel.

(c2) Comparison shall be between baseline and given years beginning on 1 July and ending on 30 June of the following year. The baseline year shall be the year beginning 1 July 1991 and ending 30 June 1992. However, a unit of local government may use an earlier baseline year if it demonstrates to the satisfaction of the Department that it has sufficient data to support the use of the earlier baseline year.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan ~~for any waste which it generates~~ which is consistent with the solid waste management policy of the State.

(e) Each county, either individually or in cooperation with others, shall, in cooperation with its municipalities, develop a comprehensive county solid waste management plan and submit the plan to the Department for approval. County solid waste management plans shall be updated and submitted for approval at least once every two years. A county solid waste management plan shall be consistent with the State's comprehensive solid waste plan. In counties where a municipality operates the major solid waste disposal facility, the comprehensive solid waste plan may be prepared by the municipality, with the approval of the county and in cooperation with the other municipalities. Each county's comprehensive solid waste management plan shall include provisions which address the State's ~~recycling goal.~~ waste reduction goals. Each county's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This section shall be construed to encourage the involvement and participation of private enterprise in solid waste management. The Department shall develop a form designed to elicit pertinent information regarding a county's solid waste management plan. The Department shall provide assistance in the preparation of county plans upon request.

(f) Any unit of local government that does not participate in a county solid waste management plan shall prepare a plan in accordance with the provisions of subsection (e) of this section."

Sec. 3. G.S. 130A-309.06(a) reads as rewritten:

"(a) In addition to other powers and duties set forth in this Part, the Department shall:

- (1) Develop a comprehensive solid waste management plan consistent with this Part by 1 March 1991. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.
- (2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.
- (3) Encourage coordinated local activity for solid waste management within a common geographical area.
- (4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.
- (5) Cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this Part.
- (6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs which preserve and enhance the quality of the air, water, and other natural resources of the State.
- (7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.
- (8) Manage a program of grants for programs for recycling and special waste management, and for programs which provide for the safe and proper management of solid waste.
- (9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.
- (10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.
- (11) Conduct at least one workshop each year in each region served by a council of governments.
- (12) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal."

Sec. 4. G.S. 130A-309.06(c) reads as rewritten:

"(c) The Department shall prepare by 1 ~~March~~May 1991, and every year thereafter, a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

- (1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.
- (2) The total amounts of solid waste generated, recycled, and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.
- (3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.
- (4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. ~~130A-309.09(d)~~130A-309.04.
- (5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.
- (6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for such materials.
- (7) Recommendations to the Governor and the General Assembly to improve the management and recycling of solid waste in the State."

Sec. 5. G.S. 130A-309.07(3) reads as rewritten:

"(3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. ~~130A-309.09(d)~~130A-309.04."

Sec. 6. G.S. 130A-309.08(d) reads as rewritten:

"(d) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of G.S. ~~130A-309.09~~130A-309.09B, a county or a municipality which owns or operates a solid waste management facility may charge solid waste disposal fees which may vary based on a number of factors, including the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal."

Sec. 7. Subsections (a), (f), (g), and (r) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09A and read as rewritten:

"§ ~~130A-309.09~~130A-309.09A. Local government solid waste responsibilities.

(a) The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility. Pursuant to this section and notwithstanding any other provision of this Chapter, designated local governments

may adopt ordinances governing the disposal in facilities which they operate of solid waste generated outside of the area designated to be served by such facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of a designated local government. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by the municipality or county, any other municipality or county, or by any other person. Counties and municipalities may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities without facilities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in G.S. 130A-309.08(d). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided throughout the county.

(b) Each unit of local government, either individually or in cooperation with one or more other units of local government, shall participate in the development and implementation of a solid waste management plan designed to meet the waste reduction goals set out in G.S. 130A-309.04 within the geographic area covered by the plan.

~~(c)~~ (c) The Department may reduce or modify the municipal solid waste reduction goal that a ~~designated unit of~~ local government is required to attempt to achieve pursuant to subsection ~~(d)-(b)~~ of this section if the ~~designated unit of~~ local government demonstrates to the Department that:

- (1) The achievement of the goal ~~set forth in subsection (d)~~ would have an adverse effect on the financial obligations of a ~~designated the unit of~~ local government incurred prior to ~~the effective date of this section~~ 1 October 1989 that are directly related to a waste-to-energy facility owned or operated by or on behalf of ~~the designated a unit of~~ local government; and
- (2) The ~~designated unit of~~ local government cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility permitted prior to 1 July 1991 because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal ~~shall~~ may not be waived entirely and may ~~only~~ be reduced or modified only to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a ~~designated unit of~~ local government's waste-to-energy facility. Nothing in this subsection shall exempt a ~~designated unit of~~ local government from developing and implementing a recycling program pursuant to this Part.

~~(g)(d)~~ (d) In order to assess the progress in meeting the ~~goal established in subsection (d) of this section~~, goals set out in G.S. 130A-309.04, each ~~designated local government county, either individually or in cooperation with one or more other counties~~, shall, by 1 October 1990, December 1991 and each year thereafter, report to the Department ~~its annual on the solid waste management program programs and recycling activities.~~ activities within the county or the geographic area covered by the county's solid waste

management plan. The This report by the designated local government county must include:

- (1) A description of ~~its~~ public education program programs on recycling;
- (2) The amount of solid waste ~~disposed of at~~ received at municipal solid waste disposal management facilities, by type of ~~waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;~~ solid waste;
- (3) The amount and type of materials from the solid waste stream that were recycled;
- (4) The percentage of the population participating in various types of recycling activities instituted;
- (5) The ~~percent reduction each year~~ annual reduction in municipal solid waste ~~disposed of at solid waste disposal facilities;~~ waste, measured as provided in G.S. 130A-309.04;
- (6) A description of the recycling activities attempted, their success rates, the perceived reasons for failure or success, and the recycling activities which are ongoing and most successful; and
- (7) In its first report, a description of any recycling activities implemented prior to 1 July 1991.

(e) Any municipality that does not participate in the preparation of a county report shall prepare its own report in accordance with the provisions of subsection (d) of this section.

~~(f)~~ (f) On and after 1 July 1991, each operator of a municipal solid waste management facility owned or operated by or on behalf of a county or municipality, except existing facilities which will not be in use one year after the effective date of this section, shall weigh all solid waste when it is received."

Sec. 8. Subsections (b), (c), (i), (j), (k), (l), and (m) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09B and read as rewritten:

"§ 130A-309.09B. Local government recycling programs.

~~(b)~~ (a) Each designated local government shall initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. The following requirements shall apply:

- (1) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.
- (2) ~~At a minimum, a majority of marketable materials identified pursuant to G.S. 130A-309.14(b) must be separated from the solid waste stream prior to final disposal at a solid waste disposal facility and must be offered for recycling if the separation and collection of these materials is economically feasible and markets for such materials exist in such proximity as to make transportation of such materials to such markets economically feasible.~~

- (3) Units of local government are encouraged to separate ~~all marketable~~ plastics, ~~glass~~, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other ~~mechanically treated organic~~ solid waste into compost available for agricultural and other acceptable uses.

~~(e)(b)~~ Each designated local government shall ensure, ~~to~~ To the maximum extent possible, ~~that municipalities within its boundaries practicable, units of local government should participate in the preparation and implementation of joint recycling and solid waste management programs programs, whether through joint agencies established pursuant to G.S. 153A-421, G.S. 160A-462-160A-462, or any other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.~~

~~(c)~~ In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and the franchisee fail to reach an agreement within 60 days from the initiation of negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposals, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of any franchise agreement for the collection of solid waste within a service area of the county or municipality.

~~(d)~~ In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on either a for-profit or nonprofit basis. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Part.

~~(e)~~ A county or county and the municipalities within the county's or counties' boundaries may jointly develop a recycling program, provided that the county and each municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goals for municipal solid waste reduction are being achieved.

~~(f)~~ ~~It is the policy of the State that a~~ A county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 153A-421 or G.S. 160A-462 ~~or by requesting the passage of special legislation,~~

160A-462, which local governmental agency shall administer a solid waste management or recycling program.

~~(m)(g)~~ The designated A unit of local government that enters into an agreement with one or more other units of local government to develop and operate a recycling program shall provide written notice to all units of local government within the designated local government when recycling program development begins and shall provide periodic written progress reports to the units of local government concerning the preparation implementation of the recycling program."

Sec. 9. Subsections (h), (n), (o), (p), (q), (s), and (t) of G.S. 130A-309.09 are recodified as G.S. 130A-309.09C and read as rewritten:

"§ 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.

~~(e)~~(a) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

- (1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.
- (2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.
- (3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

~~(h)~~(b) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this ~~section~~ Part.

~~(n)~~(c) Nothing in this ~~section~~ Part shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.

~~(e)~~(d) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a ~~designated local government~~

unit of local government, a region, or a special district the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

~~(p)~~(e) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

~~(s)~~(f) In the event ~~the power to manage solid waste has been granted to a special district a region, special district, or other entity by special act or joint agency, has been established to manage solid waste,~~ any duty or responsibility or penalty imposed under this Part on a ~~county or municipality~~ unit of local government shall apply to such region, special district ~~district,~~ or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such region, special district ~~district,~~ or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

~~(t)~~(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of ~~subsections (b) and (d)~~ G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the Department may notify the State Treasurer to withhold payment of all or a portion of funds payable to the unit of local government by the Department from the General Fund or by the Department from any other State fund, to the extent not pledged to retire bonded indebtedness, unless the unit of local government demonstrates that good faith efforts to meet the requirements of ~~subsections (b) and (d)~~ G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries."

Sec. 10. Subsections (d) and (e) of G.S. 130A-309.09 are repealed.

Sec. 11. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.09D. Responsibilities of owners and operators of privately owned municipal solid waste management facilities.

(a) The owner or operator of a privately owned municipal solid waste management facility shall operate the facility in a manner which is consistent with the State solid waste management plan and with the solid waste management plans that have been adopted by those units of local government served by the facility and approved by the Department.

(b) On or before 1 August 1992 and each year thereafter, the owner or operator of a privately owned municipal solid waste management facility shall report to the Department, for the previous year beginning 1 July and ending 30 June, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, such reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which solid waste originated."

Sec. 12. Part 2A of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.29. Adoption of rules.

The Commission may adopt rules to implement the provisions of this Part pursuant to Article 2 of Chapter 150B of the General Statutes."

Sec. 13. (a) The Environmental Review Commission shall study the management of nonhazardous solid waste in the State. The study shall include, but is not limited to:

- (1) Issues relating to control of the nonhazardous solid waste stream.
- (2) The relation between State and local solid waste management plans required by G.S. 130A-309.07 and G.S. 130A-309.04(e) and the issuance of permits for nonhazardous solid waste management facilities.

(b) The Environmental Review Commission may request any appropriate committee, commission, or State agency to conduct all or any part of the study authorized by this section and to report its findings and recommendations either to the Environmental Review Commission or directly to the General Assembly. If the committee, commission, or State agency agrees to conduct the study, the committee, commission, or State agency shall do so using funds already appropriated or otherwise available to it.

(c) The Environmental Review Commission may report its findings, together with any recommended legislation, to either the 1992 Regular Session of the 1991 General Assembly or to the 1993 General Assembly by filing copies of its report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 14. G.S. 14-399.2(b), as amended by Chapter 236 of the 1991 Session Laws, reads as rewritten:

"(b) No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic that is neither degradable nor recyclable. No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic that is recyclable but that is not degradable unless such device does not have an orifice larger than one and ~~one-half~~ three-fourths inches. The manufacturer of a degradable yoke or ring type holding device shall emboss or mark the device with a nationally recognized symbol indicating that the device is degradable. The manufacturer of a recyclable yoke or ring type holding device shall emboss or mark the device with a symbol of the type specified in G.S. 130A-309.10(e) indicating the plastic resin used to produce the device and that the device is recyclable. The manufacturer shall register the symbol with the Secretary of State with a sample of the device."

Sec. 15. This act is effective upon ratification except that Section 14 of this act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives