**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3615**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Lucas, J.M. Neal, Long and Delleney

Document Path: l:\council\bills\nbd\11187ac11.docx

Introduced in the House on February 8, 2011

Currently residing in the House Committee on **Agriculture, Natural Resources and Environmental Affairs**

Summary: Municipal solid waste disposal facility

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/8/2011 House Introduced and read first time ([House Journal‑page 50](file:///h:\hj%20archive\2011\02-08-11.docx))

2/8/2011 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 50](file:///h:\hj%20archive\2011\02-08-11.docx))

**VERSIONS OF THIS BILL**

[2/8/2011](file:///p:\pprever\2011-12\3615_20110208.docx)

**A** **BILL**

TO AMEND SECTION 44-96-470, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NEGOTIATION PROCESS FOR FACILITY ISSUES WHEN A MUNICIPAL SOLID WASTE DISPOSAL FACILITY PERMIT HAS BEEN FILED, SO AS TO PROVIDE THAT BEFORE A PERMIT APPLICATION FOR A MUNICIPAL SOLID WASTE DISPOSAL FACILITY IS SUBMITTED TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, THE PERMIT APPLICANT AND THE HOST GOVERNMENT SHALL EXECUTE A HOST AGREEMENT WHICH MUST BE APPROVED BY THE HOST GOVERNMENT BY ORDINANCE; BEFORE EACH READING OF THE ORDINANCE, PUBLIC NOTICE MUST BE GIVEN THAT THE HOST GOVERNMENT WILL BE CONSIDERING THE PERMIT APPLICATION; THE AGENDA FOR A MEETING AT WHICH THE HOST GOVERNMENT WILL CONSIDER THE HOST AGREEMENT MUST CLEARLY STATE THAT THE HOST AGREEMENT WILL BE CONSIDERED; WHEN ENTERING INTO A HOST AGREEMENT, THE PERMIT APPLICANT AND HOST GOVERNMENT MUST BE REPRESENTED BY SEPARATE, INDEPENDENT LEGAL COUNSEL AND IF NOT, THE ATTORNEY GENERAL MUST REPRESENT THE HOST GOVERNMENT; THE HOST AGREEMENT MUST NOT BE CONSIDERED FOR APPROVAL BY THE HOST GOVERNMENT BODY UNTIL THE PERMIT APPLICANT AND HOST GOVERNMENT HAVE COMPLIED WITH THE HOST AGREEMENT REQUIREMENTS; AND THE DEPARTMENT OF HEALTH AND ENVIRONMENT CONTROL MUST NOT APPROVE A PERMIT APPLICATION UNTIL THE HOST AGREEMENT REQUIREMENTS ARE COMPLIED WITH.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑96‑470 of the 1976 Code is amended to read:

“Section 44‑96‑470. (A) Before submitting a permit application to the department for a municipal solid waste disposal facility, the permit applicant and the host government, if different from the permit applicant, shall execute a host agreement. The host government shall approve the host agreement by ordinance.

(B) Before each reading of the ordinance approving the host agreement by the host government, public notice must be published in a newspaper of general circulation serving the host county, and each local government in the host county must be notified in writing that the host government will be considering an ordinance approving the host agreement.

(C) Any agenda issued by the host government for a meeting during which the host agreement will be considered must clearly and explicitly set forth that a host agreement between the permit applicant and the host government will be considered.

(D) When entering into a host agreement according to subsection (A), the permit applicant and the host government must have separate, independent legal representation and may not be represented by the same attorney. However, if the permit applicant and host government are represented by the same attorney, the Attorney General must assume representation of the host government.

(E) The host agreement must not be considered for final approval by the host government body until the permit applicant and the host government have complied with all requirements of subsections (A) through(D). Additionally, the department must not approve any permit application until the requirements of subsections (A) through (D) have been complied with.

(F) Upon the submission of a permit application to the department for a municipal solid waste disposal facility, the permit applicant shall within fifteen days of the date of submission of the application publicize the submission by public notice and in writing as follows:

(1) If the application is for a facility serving no more than one county, the public notice must be published in a newspaper of general circulation serving the host county, and each local government in the county shall be notified further in writing of the permit application.

(2) If the application is for a facility serving more than one county, the public notice must be published in a newspaper of general circulation serving each affected county, and each local government within such counties shall be notified in writing of the permit application. For the purpose of this item, “affected county” includes the host county, each county under contract with the proposed facility, and all counties contiguous to the host county.

(3) The public notice must be prominently displayed in the courthouse of each notified county. and

(4) The initial public notice and all other public notices required under this section, at a minimum, shall contain:

(a) the name and address of the applicant;

(b) the nature of the proposed facility;

(c) a description of the proposed site;

(d) a locational map showing the proposed site; and

(e) such other information as is necessary to fully inform the public to be determined by regulations to be promulgated by the department.

~~(B)~~(G) The department shall review the application and supporting data and make a determination whether the permit application is administratively complete. The department shall notify, in writing, the applicant, the host local government, if different from the applicant, and any other person who has made a written request for notification to the department of this determination.

~~(C)~~(H) Upon receipt from the department of notice that the permit application is administratively complete, the host local government for the proposed site, within forty‑five days of receipt of such notification from the department, as outlined in items (1), (2), (3), and (4) of subsection (A), shall advertise and hold a public meeting to inform affected residents and landowners in the area of the proposed site and of the opportunity to engage in a facility issues negotiation process.

~~(D)~~(I) Following notification that the permit application is administratively complete, the department shall continue to review the applicant’s permit application, but the department shall not take any action with respect to permit issuance or denial until such time as the local notification and negotiation processes described in this section have been exhausted.

~~(E)~~(J) The department shall not be a party to the negotiation process described in this section, nor shall technical environmental issues which are required by law and by regulation to be addressed in the permitting process be considered negotiable items by parties to the negotiation process.

~~(F)~~(K) Within thirty days following a public meeting held in accordance with subsection (C), a facility issues negotiation process shall be initiated by the host local government upon receipt of a written petition by at least twenty‑five affected persons, at least twenty of whom shall be registered voters of or landowners in the host jurisdiction. Multiple petitions may be consolidated into a single negotiating process. For the purposes of this subsection, the term “affected person” means a registered voter of the host local government or of a county contiguous to such host local government or a landowner within the jurisdiction of the host local government. To be valid, signatures shall be accompanied by the following information:

(1) for a registered voter: home address and voter registration number; and

(2) for a landowner: home or business address and the county in which the property lies, together with its tax map number.

~~(G)~~(L) Within fifteen days following receipt of such written petition, the host local government shall validate the petition to ensure that the petitioners meet the requirements of this section.

~~(H)~~(M) Within fifteen days following the validation of the written petition, the host local government shall:

(1) set a date, time, and location for a petitioner’s meeting to choose a citizens’ facility issues committee and a date, time, and location for a meeting with the citizens’ facility issues committee, the host local government, and the permit applicant not later than thirty days following validation of such written petition to negotiate;

(2) notify the petitioners by publication as provided in items (1), (2), (3), and (4) of subsection (A) that the facility issues negotiation process is being initiated and the date, time, and location of the first negotiation meeting; and

(3) notify the permit applicant, if different from the host local government, and the department that the facility issues negotiation process is being initiated and the date, time, and location of the first negotiation meeting.

~~(I)~~(N) The host local government shall organize the petitioners meeting. The majority of the petitioning persons in attendance shall select up to ten members, at least eighty percent of whom shall be registered voters or landowners in the host local government, to serve on a citizens” facility issues committee to represent the petitioning persons in the negotiation process. The membership of the citizens” facility issues committee shall be chosen within fifteen days following the validation of such written petition pursuant to this section.

~~(J)~~(O) The negotiation process shall be overseen by a facilitator named by the host local government, after consultation with the citizens” facility issues committee, from a list provided by the department. The function of the facilitator shall be to assist the petitioners, the host local government, and the permit applicant, if different from the host local government, through the negotiation process. The cost, if any, of the facilitator shall be borne by the permit applicant.

~~(K)~~(P) Beginning with the date of the first negotiation meeting called in accordance with subsection (H), there shall be no fewer than three negotiation meetings within forty‑five days unless waived by consent of the applicant and a majority of the facility issues committee. Such negotiation meetings shall be presided over by the facilitator named in subsection (J) and shall be for the purpose of assisting the petitioners, the host local government, and the permit applicant, if different from the host local government, to engage in nonbinding negotiation.

~~(L)~~(Q) Minutes of each meeting and a record of the negotiation process shall be kept by the host local government.

~~(M)~~(R) All issues except those which apply to environmental permit conditions are negotiable. Environmental permit conditions are not negotiable. Issues which may be negotiated include, but are not limited to:

(1) operational issues, such as hours of operation;

(2) recycling efforts that may be implemented;

(3) protection of property values;

(4) traffic routing and road maintenance; and

(5) establishment of local advisory committees.

~~(N)~~(S) At the end of the forty‑five‑day period following the first negotiation meeting, the facilitator shall publish a notice of the results, if any, of the negotiation process in the same manner as provided in items (1), (2), (3), and (4) of subsection (A) and shall include the date, time, and place as determined by the facilitator of a public meeting, to be held within ten days after publication, with the permit applicant, host local government, and facility issues committee, at which the input of persons not represented by the citizens” facility issues committee may be received.

~~(O)~~(T) The negotiated concessions reached by agreement of all the negotiating parties shall be reduced to writing and executed by the chairman of the citizens’ facility issues committee and the chief elected official of the host local government and must be certified by resolution of the host local government.

~~(P)~~(U) If the negotiating parties fail to reach consensus on an issue, the permit applicant may proceed to seek a permit from the department. The facilitator shall notify the department in writing that the negotiating parties have failed to reach consensus and the nature of the disputed issues.

~~(Q)~~(V) If the negotiating parties reach consensus on negotiated issues, the permit applicant may proceed to seek a permit from the department. The facilitator shall notify the department in writing that the negotiating parties have reached consensus.

~~(R)~~(W) Negotiated concessions shall not be construed as environmental permit conditions. However, they may be enforced by any negotiating party in a civil proceeding.

~~(S)~~(X) Upon receipt of a written notification from the facilitator that the parties to negotiation have reached consensus or have failed to reach consensus on negotiated issues, and upon written notification from the permit applicant that he wishes to pursue permitting of the solid waste disposal facility for which an application has been filed, the department shall proceed to process the permit.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑