COMMITTEE REPORT

March 24, 2009

**S. 324**

Introduced by Senators Malloy, Leventis, Lourie, Bryant, Courson, Scott, Williams, Davis and Cleary

S. Printed 3/24/09--S.

Read the first time January 27, 2009.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Joint Resolution (S. 324) to impose a moratorium on the consideration of permit applications, requests to expand or replace existing landfills, and the issuance of permits for the construction of new landfills, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution as and if amended, beginning on page 3, by striking SECTION 1 and SECTION 2 in their entirety and inserting:

/ SECTION 1. (A) The definitions set forth in Section 44‑96‑250 and Regulation 61-107.19 of the 1976 Code apply throughout this resolution.

(B) There is hereby established, unless otherwise provided in Sections (C), (D) and (E) below, a moratorium on the consideration of applications for a permit, the issuance of a permit, and any intermediate approval required as part of the permitting process, for new Class 3 Municipal Solid Waste landfills that are not onsite landfills and for the expansion or replacement of existing Class 3 Municipal Solid Waste landfills that are not onsite landfills in the State. The moratorium remains in effect until Regulation 61-107.17 is revised to include the recommendation of the Landfill Capacity Work Group established by the board of the Department of Health and Environmental Control on August 14, 2008, regarding the annual disposal rate at municipal solid waste landfills; and the regulation is approved by the General Assembly and published in the State Register or until December 31, 2010 whichever is earlier.

(C) The moratorium established in Section (B) does not apply to any administratively complete permit application for an expansion of an existing Class 3 landfill which is pending at the Department of Health and Environmental Control and which does not include a request to increase the permitted annual disposal rate of the landfill.

(D) The moratorium established in Section (B) does not apply to permit applications for, or intermediate approvals required for, expansions of existing Class 3 Municipal Solid Waste landfills in this State.

(E) No approval for increasing the permitted annual disposal rate at a Class 3 Municipal Solid Waste landfill that is not an onsite landfill may be issued until after the expiration date of this moratorium.

SECTION 2. This joint resolution takes effect upon approval of the Governor. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **JOINT RESOLUTION**

TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT APPLICATIONS, REQUESTS TO EXPAND OR REPLACE EXISTING LANDFILLS, AND THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF NEW LANDFILLS IN THE STATE UNTIL DECEMBER 31, 2010.

Whereas, currently in South Carolina annual tonnage rates of intake for municipal solid waste have been established for the State’s existing municipal solid waste landfills, which allow for combined intake of more than double the amount of municipal solid waste produced in the State each year; and

Whereas, currently in South Carolina annual tonnage rates of intake for construction and demolition waste have been established for South Carolina’s existing construction and demolition landfills, which allow for combined intake of vastly more than the amount of waste produced in the State each year; and

Whereas, the current demonstration of need regulation would potentially allow more than eight times the tonnage of municipal solid waste produced in the State annually, if the landfills currently permitted in the State were to maximize available tonnage; and

Whereas, a pending proposed demonstration of need regulation, to be considered by the General Assembly in 2009, would potentially allow approximately six times the tonnage of municipal solid waste produced in the State annually; and

Whereas, the Board of the South Carolina Department of Health and Environmental Control, at its regular meeting on August 14, 2008, directed the department’s staff to consider new methods of determining need for waste intake into South Carolina’s landfills, and to report proposals and recommendations by August 2009, and to consider the amount of waste produced in the State; and

Whereas, the board at its regular meeting on August 14, 2008, also specifically instructed its staff to add into existing regulations more specific notice provisions to persons and entities likely affected by the issuance of new waste permits and waste disposal activities, which must be drafted and finally approved; and

Whereas, any new proposals and recommendations for determination of need presented to the board by August 2009 would not likely be considered by the General Assembly until the 2010 session; and

Whereas, it is important to the State’s economy and environment to have sufficient but not excessive landfill capacity and intake; and

Whereas, it is critical to economic development and to the protection of public health and the environment to adequately plan for appropriate disposal of waste in the State; and

Whereas, there is currently an important need for public debate and legislative consideration of regulations concerning landfill siting and permitting in this State, including methodology and development of an appropriate determination of need regulation; and

Whereas, excessive waste intake into the State’s landfills has significant potential for detriment to the State’s economic development, public health, and environment; and

Whereas excessive or inappropriate siting of landfills has significant potential for detriment to the State’s economic development, public health, and environment; and

Whereas, economic and other factors may cause landfills to be concentrated in minority and low‑income communities in the State; and

Whereas, it must be the policy of the State to better promote alternative methods of solid waste management in addition to disposal in landfills. Now, therefore,

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

SECTION 1. (A) The definitions set forth in Section 44‑96‑40 of the 1976 Code apply throughout this resolution.

(B) There is hereby established a moratorium on the consideration of applications for a permit, the issuance of a permit, and any intermediate approval required as part of the permitting process, for new landfills and for the expansion or replacement of existing landfills in the State. The purpose of this moratorium is to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Health and Environmental Control shall not consider a permit application nor issue a permit for a new landfill or the replacement or expansion of an existing land fill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste until December 31, 2010.

(C) The department shall study issues related to solid waste and specifically study measures concerning:

(1) appropriate methodology for determining the need for waste disposal facilities and capacity and disposal of waste in this State;

(2) development of an appropriate demonstration of need regulation for this State;

(3) financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies and other business entity structures of applicants seeking solid waste landfill permits;

(4) application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval;

(5) traffic considerations for proposed landfills;

(6) regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks;

(7) compliance with statutory prohibitions on the disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills; and

(8) methods to reduce the amount of solid waste disposed of within South Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities.

(D) The department shall also investigate and study environmental justice issues related to the siting of solid waste facilities, including, but not limited to:

(1) the location of landfills in the State, with historical and current demographic information, including health statistics of the surrounding population of each site where available. The board shall identify landfills located in proximity to minority and low‑income communities;

(2) the impacts that landfills located in proximity to minority and low‑income communities have on these communities with regard to human health, the environment, and economic development;

(3) factors, including economic factors, that may have caused landfills to be concentrated in minority and low‑income communities in the State;

(4) past enforcement actions taken by the U.S. Environmental Protection Agency or the department for violations affecting human health or the environment at any landfill in the State in order to assess whether enforcement practices for violations at these sites have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve minority and low‑income communities;

(5) statutes, rules, and policies used by the State, regional, and local governments, and a review of the role played by these entities to influence or make sitting and land‑use decisions concerning landfills in the State;

(6) data and methodologies by which State, regional, and local governments or agencies might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health and the environment from the siting of landfills;

(7) approaches to ensure consideration of environmental justice and equity issues when formulating and implementing policies, procedures, and legislation within governmental agencies and other institutions.

(E) The department shall report its findings, together with any recommended additions or changes to laws or regulations to the General Assembly prior to January 15, 2010.

SECTION 2. This joint resolution takes effect upon approval of the Governor and applies to all permit applications pending on or after the effective date.

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