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SYNOPSIS: Under existing law, local governing bodies with approved solid waste management plans are allowed 90 days from the submission of an application for the siting of a solid waste management facility to approve or disapprove the application. Also under existing law, the failure of a local governing body to act on the application within 90 days constitutes approval of the application. Also under existing law, the public is provided between 30 and 45 days' notice of a public hearing on the application or proposal. This bill would enlarge the time for local governing bodies to approve or disapprove the application to 180 days; would eliminate the automatic approval of the application if the local governing body fails to approve or disapprove the application; would authorize the applicant to commence an action for a writ of mandamus to compel the local governing body to act on the application if it has failed to act within 180 days; and would provide for at least 120 days' notice of a public hearing.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 22-27-48, Code of Alabama 1975, to require that local governing bodies approve or disapprove applications for the siting of solid waste management facilities within 180 days; to eliminate the automatic approval of applications if the local governing body fails to approve or disapprove the application; to authorize an applicant to commence an action for a writ

1 of mandamus to compel the local governing body to act on the application if it has failed to act
2 within 180 days; and to provide for at least 120 days' notice of a public hearing on an application
3 or proposal.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 22-27-48 of the Code of Alabama 1975, is amended to read as
6 follows:

7 “§ 22-27-48.

8 “(a) In addition to any regulatory bodies, the governing body of a county or
9 municipality has a responsibility for and the authority to assure the proper management of solid
10 wastes generated within its jurisdiction in accord with its solid waste management plan. A
11 governing body may assign territories and approve or disapprove disposal sites in its jurisdiction
12 in accord with the plan approved for its jurisdiction. Such approval or disapproval of services or
13 activities described in the local plan shall be in addition to any other approvals required from
14 other regulatory authorities and shall be made prior to any other approvals necessary for the
15 provision of such services, the development of a proposed facility or the modification of permits
16 for existing facilities. The department may not consider an application for a new or modified
17 permit for a facility unless such application has received approval by the affected unit of local
18 government having an approved plan.

19 “In determining whether to recommend approval of the proposed issuance of or
20 modification of a new or existing solid waste management site, the governing body shall
21 consider each of the following:

22 “(1) The consistency of the proposal with the jurisdiction's solid waste
23 management need as identified in its plan;

1 “(2) The relationship of the proposal to local planned or existing development or
2 the absence thereof, to major transportation arteries and to existing state primary and secondary
3 roads;

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

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

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

11 “(6) The social and economic impacts of a proposed facility on the affected
12 community, including changes in property values, and social or community perception.

13 “The application of the plan for local approval shall be accompanied by an
14 application fee payable to the local governing body in an amount equal to 20 percent of the
15 application or permit fee required by the department, but local approval shall not apply to simple
16 renewals of a permit which is to be otherwise unchanged. Further, there shall be no requirement
17 for local review and approval of permit modifications for the limited purposes of changing liner
18 and leachate collection design, changes in waste streams from within the facility's designated
19 service area, changes in sequence of fill, changes to incorporate new technology and changes
20 intended to bring a facility into compliance with statutes and regulations. A renewed application
21 for local approval submitted within 18 months of an application being denied or rejected by the
22 local governing body shall be accompanied by an application fee payable to the local governing

1 body in an amount equal to 50 percent of the application or permit fee required by the
2 department.

3 “Any determination by the local governing body of the proposed issuance of or
4 modification of a permit for a new or existing solid waste management site or the proposal to
5 contract for any services described in the solid waste management plan, shall be made in a public
6 meeting only after public notice of such application or proposal and an opportunity for public
7 comment is provided.

8 “In providing public notice of any application or proposal regarding any services
9 described in the solid waste management plan, the local government shall at a minimum hold at
10 least one public hearing thereon, notice of the time and place of which shall be given by one
11 publication in a newspaper of general circulation in the municipality and in the official gazette, if
12 any, of the jurisdiction. Furthermore, such notice shall be given at least ~~30~~ 120 days ~~but not~~
13 ~~more than 45 days~~ prior to the proposed date of the hearing. Each notice published in
14 compliance with this section shall contain at a minimum a description of the proposed action to
15 be considered, its relevance to and consistency with the local solid waste management plan and
16 shall identify a contact person from whom interested persons can obtain additional information
17 and can review copies of both the local plan and the application or proposal to be considered.
18 All pertinent documents shall be available for inspection during normal business hours at a
19 location readily accessible to the public. Within ~~90~~ 180 days of receiving an application or
20 proposal, the local governing body shall either approve the application or deny the application
21 setting forth the reasons therefor. The failure of the local governing body to act on the proposal
22 within ~~90~~ 180 days of receiving the application shall not constitute approval or denial of the
23 application by the local governing body. If the local governing body fails to approve or deny the

1 application within the 180-day period, the applicant may petition for a writ of mandamus to
2 compel the local governing body to act.

3 “(b) Following local review and approval of any proposal regarding services or
4 activities described in the local solid waste management plan, the applicant shall obtain a
5 statement of consistency from the regional planning and development commission. Therein, the
6 commission shall evaluate the proposal using the provisions of the current regional solid waste
7 management needs assessment. In particular, the regional commission shall evaluate the
8 proposal as it relates to available existing capacity within the region and the projected lifetime of
9 such capacity. The evaluation shall also identify any proposed capacity which is in excess of
10 expected regional needs. No statement of consistency shall be required for contracts exclusively
11 for the collection or transportation of solid wastes.

12 “(c) Plans required by this section shall not apply to industrial landfills receiving
13 wastes generated on site only or by the permittee.”

14 Section 2. This act shall become effective immediately following its passage and
15 approval by the Governor, or its otherwise becoming law.