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## HOUSE BILL NO. 2923

Offered January 21, 2005

A BILL to amend and reenact §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia, relating to siting of landfills.

Patron—Morgan

Referred to Committee on Agriculture, Chesapeake and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-1408.4. Landfill siting review.

A. Before granting a permit which approves site suitability for a new municipal solid waste landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of such a landfill. In making his determination, the Director shall consider and address, in addition to such others as he deems appropriate, the following factors:

1. Based on a written, site-specific report prepared by the Virginia Department of Transportation, the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on local traffic volume, road congestion, and highway safety;

2. The potential impact of the proposed landfill on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism; and

3. The geologic suitability of the proposed site, including proximity to areas of seismic activity and karst topography.

The applicant shall provide such information on these factors as the Director may request.

B. In addition to such other types of locations as may be determined by the Board, no new municipal solid waste landfill shall be constructed:

1. In a 100-year flood plain;

2. In any tidal wetland or nontidal wetland contiguous to any surface water body, *except in accordance with § 10.1-1408.5*;

3. Within five miles upgradient of any existing surface or groundwater public water supply intake or reservoir; ~~however in.~~ *However, a new municipal solid waste landfill may be constructed within a closer distance but no closer than one mile from any existing surface or groundwater public water supply intake or reservoir if: (i) the proposed landfill would meet all of the other requirements of this chapter and subtitle D of the federal Resource Conservation and Recovery Act; (ii) the permit requires that groundwater protection standards be established and approved by the Director prior to the receipt of waste; (iii) the permit requires (a) installation of at least two synthetic liners under the waste disposal areas, (b) the area between these liners be monitored, and (c) implementation of specific measures to respond if monitoring results indicate leachate has reached the monitoring zone between the liners; (iv) the permit requires all groundwater monitoring wells between the landfill and water supply intake to be sampled quarterly and the results reported to the Department within 30 days; and (v) any other conditions deemed necessary by the Director to protect against groundwater and surface water contamination are met.* In the Counties of Mecklenburg and Halifax, a new municipal solid waste landfill may be exempt from the provisions of this subdivision and may be constructed within a shorter distance from an existing surface or groundwater public water supply intake or reservoir if the Director determines that such distance would not be detrimental to human health and the environment;

4. In any area vulnerable to flooding resulting from dam failures;

5. Over a sinkhole or less than 100 feet above a solution cavern associated with karst topography;

6. In any park or recreational area, wildlife management area or area designated by any federal or state agency as the critical habitat of any endangered species; or

7. Over an active fault.

C. *There shall be no additional exemptions granted from this section unless the proponent has submitted to the Department an assessment of the potential impacts to public water supplies, the need for the exemption, and the alternatives considered and the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.*

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this

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59 subsection shall not apply to *subsection B* or the (i) expansion of an existing municipal solid waste  
60 landfill located in a city with a population between 41,000 and 52,500 when the owner or operator of  
61 the landfill is an authority created pursuant to § 15.2-5102 ~~which~~ *that* has applied for a permit under  
62 § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a  
63 permit under § 404 of the federal Clean Water Act and § 62.1-44.15:5 of this Code, or (ii) construction  
64 of a new municipal solid waste landfill in any county with a population between 29,200 and 30,000,  
65 according to the 1990 United States Census, and provided that the municipal solid waste landfills  
66 covered under clauses (i) and (ii) have complied with all other applicable federal and state  
67 environmental laws and regulations. It is expressly understood that while the provisions of this section  
68 provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing  
69 to express an opinion on whether or not the project should receive the necessary environmental and  
70 regulatory permits to proceed.

71 *B. The Director may issue a solid waste permit for a new municipal solid waste landfill or the*  
72 *expansion of a municipal solid waste landfill located in a wetland only if the following conditions are*  
73 *met: (i) the proposed landfill site is at least one mile from any surface water body or tidal wetland; and*  
74 *(ii) the Director determines, based upon the existing condition of the wetland system, including, but not*  
75 *limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to roads or other*  
76 *structures, that the construction or restoration of a wetland system in another location in accordance*  
77 *with a Virginia Water Protection Permit approved by the State Water Control Board would provide*  
78 *enhanced wetlands value or function. This subsection shall not apply to the exemptions provided in*  
79 *clauses (i) and (ii) of subsection A.*

80 *C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any*  
81 *existing solid waste management landfill, accepting municipal solid waste, that was constructed on a*  
82 *wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids*  
83 *from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent*  
84 *monitoring is necessary. This provision shall not limit the authority of the Board or the Director to*  
85 *require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts*  
86 *only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is*  
87 *required by the Board or the Director. All results shall be reported to the Department of Environmental*  
88 *Quality.*

89 *C. This section shall not apply to landfills which impact less than 1.25 acres of nontidal wetlands.*

90 *D. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to*  
91 *any tidal wetland or surface water body.*

92 *E. There shall be no additional exemptions granted from this section unless the proponent has*  
93 *submitted an assessment of the potential impacts to wetlands, the need for the exemption, and the*  
94 *alternatives considered to the Department and the Department has made the information available for*  
95 *public review for at least 60 days prior to the first day of the Regular Session of the General Assembly.*