

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0446.02 Kate Meyer x4348

SENATE BILL 13-057

SENATE SPONSORSHIP

King,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PROCESS FOR APPLYING TO OPERATE A SOLID
102 WASTES DISPOSAL SITE AND FACILITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In order to apply for a certificate of designation to own or operate a solid wastes disposal site and facility, an applicant must submit an engineered design and operations plan (plan) that assesses whether the proposed site and facility complies with regulations of the Colorado department of public health and environment (CDPHE). Currently,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

CDPHE or, at the applicant's election if given the option by CDPHE, a private contractor, reviews such plans. The bill divests CDPHE of the authority to review these plans, and instead requires applicants to utilize independent private parties to both prepare and review the plans. Completed plans are forwarded to CDPHE and the local governmental body to which the certificate of designation application is made.

The bill also shifts the duty to solicit and accept public comments on a plan in an application for a solid wastes disposal site and facility from CDPHE to the governing body having jurisdiction over the application.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 30-20-101, **add** (2.2)
3 and (3.6) as follows:

4 **30-20-101. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (2.2) "ENGINEERED DESIGN AND OPERATIONS PLAN" MEANS THAT
7 PORTION OF AN APPLICATION FOR A CERTIFICATE OF DESIGNATION TO OWN
8 OR OPERATE A SOLID WASTES DISPOSAL SITE AND FACILITY THAT
9 ADDRESSES THE TECHNICAL ASPECTS OF FACILITY DESIGN AND OPERATION
10 IN ORDER TO ASSESS COMPLIANCE WITH DEPARTMENT REGULATIONS,
11 INCLUDING ANY RELEVANT CRITERIA ESTABLISHED BY THE SOLID AND
12 HAZARDOUS WASTE COMMISSION, THE WATER QUALITY CONTROL
13 COMMISSION, AND THE AIR QUALITY CONTROL COMMISSION.

14 (3.6) "PROFESSIONAL ENGINEER" MEANS AN ENGINEER LICENSED
15 IN ACCORDANCE WITH PART 1 OF ARTICLE 25 OF TITLE 12, C.R.S. THE
16 TERM INCLUDES ANY FIRM OF LICENSED PROFESSIONAL ENGINEERS.

17 **SECTION 2.** In Colorado Revised Statutes, **add** 30-20-102.7 and
18 30-20-102.8 as follows:

19 **30-20-102.7. Optional preapplication conference.** (1) (a) PRIOR
20 TO SUBMITTING AN APPLICATION FOR A CERTIFICATE OF DESIGNATION

1 PURSUANT TO SECTION 30-20-103, A PERSON DESIRING TO OWN OR
2 OPERATE A SOLID WASTES DISPOSAL SITE AND FACILITY MAY CONFERENCE
3 WITH THE DEPARTMENT TO DISCUSS THE SCOPE OF THE PROJECT AND THE
4 PROCEDURE FOR PROCURING A CERTIFICATE OF DESIGNATION. AT THE
5 CONFERENCE, THE DEPARTMENT, TO THE EXTENT THAT IT IS ABLE, SHALL
6 PROVIDE PRELIMINARY FEEDBACK REGARDING THE PROPOSED SOLID
7 WASTES SITE AND FACILITY.

8 (b) AT THE PERSON'S REQUEST, AND UNLESS THE DEPARTMENT
9 REASONABLY DETERMINES THAT THE SCOPE OR COMPLEXITY OF THE
10 PROJECT REQUIRES AN IN-PERSON CONFERENCE, THE PREAPPLICATION
11 CONFERENCE MAY BE CONDUCTED ELECTRONICALLY OR TELEPHONICALLY.

12 (c) A PREAPPLICATION CONFERENCE CONDUCTED UNDER THIS
13 SECTION SHALL BE PROVIDED AT NO COST TO THE PERSON REQUESTING THE
14 CONFERENCE.

15 (2) (a) AT, OR IN CONNECTION WITH, A PREAPPLICATION
16 CONFERENCE CONDUCTED UNDER SUBSECTION (1) OF THIS SECTION, THE
17 DEPARTMENT SHALL PROVIDE THE PERSON WITH, AND EXPLAIN EACH
18 COMPONENT OF, A CHECKLIST SUMMARIZING THE DOCUMENTS AND DATA
19 NECESSARY FOR A COMPLETE ENGINEERED DESIGN AND OPERATIONS PLAN
20 REQUIRED TO OBTAIN A CERTIFICATE OF DESIGNATION ISSUED UNDER
21 SECTION 30-20-103. THE CHECKLIST MUST CONTAIN, AS APPROPRIATE,
22 INFORMATION DESCRIBING OR PERTAINING TO:

23 (I) A NARRATIVE DESCRIPTION OF THE OPERATIONS OF THE
24 PROPOSED SOLID WASTES DISPOSAL SITE AND FACILITY;

25 (II) A SUMMARY OF THE LOCATION AND CHARACTERISTICS OF THE
26 PROPOSED SITE;

27 (III) A GEOLOGIC ASSESSMENT;

1 (IV) A HYDROLOGIC ASSESSMENT;

2 (V) AN OPERATIONS PLAN SUMMARIZING HOW THE OPERATIONS
3 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) WILL BE
4 CARRIED OUT;

5 (VI) COMPLIANCE MONITORING;

6 (VII) CLOSURE AND POST-CLOSURE CARE, IN ACCORDANCE WITH
7 SECTION 30-20-104.5;

8 (VIII) REQUIRED GRAPHICS, SUCH AS DIAGRAMS, MAPS, OR IMAGES
9 SHOWING LOCATION, GEOLOGY, TOPOGRAPHY, SITE PLAN, CONSTRUCTION
10 DETAILS, AND CROSS SECTIONS;

11 (IX) A TECHNICAL REVIEW OF THE POTENTIAL ENVIRONMENTAL
12 AND PUBLIC HEALTH ISSUES PROVIDED IN SECTION 30-20-110 RAISED BY
13 THE PROPOSED SITE AND FACILITY; AND

14 (X) ANY OTHER ENGINEERING, GEOLOGICAL, HYDROLOGICAL, AND
15 OPERATIONAL DATA AS MAY BE REQUIRED BY THE DEPARTMENT BY RULE.

16 (b) THE CHECKLIST PROVIDED UNDER THIS SUBSECTION (2) MUST
17 ALSO IDENTIFY THE PERSONS RESPONSIBLE FOR CERTIFYING EACH
18 COMPONENT OF THE CHECKLIST.

19 **30-20-102.8. Engineered design and operations plan - process**
20 **- review - submission.** (1) A PERSON DESIRING TO OWN OR OPERATE A
21 SOLID WASTES DISPOSAL SITE AND FACILITY MUST CONTRACT WITH
22 PROFESSIONAL ENGINEERS FOR BOTH THE PREPARATION AND THE REVIEW
23 OF THE ENGINEERED DESIGN AND OPERATIONS PLAN REQUIRED TO BE
24 SUBMITTED WITH THE APPLICATION FOR CERTIFICATE OF DESIGNATION
25 UNDER SECTION 30-20-103 (1).

26 (2) A PERSON APPLYING TO OWN OR OPERATE A SOLID WASTES
27 DISPOSAL SITE AND FACILITY UNDER SECTION 30-20-103 SHALL PREPARE,

1 UNDER THE DIRECTION OF AND SEALED BY A PROFESSIONAL ENGINEER
2 ENGAGED BY THE PERSON, AN ENGINEERED DESIGN AND OPERATIONS PLAN
3 FOR THE PROPOSED PROJECT.

4 (3) (a) (I) (A) UPON COMPLETION OF THE ENGINEERED DESIGN AND
5 OPERATIONS PLAN, THE PERSON APPLYING FOR THE SOLID WASTES
6 DISPOSAL SITE AND FACILITY CERTIFICATE OF DESIGNATION MUST HIRE AN
7 INDEPENDENT PROFESSIONAL ENGINEER TO REVIEW THE PLAN. THE
8 PROFESSIONAL ENGINEER MUST ENSURE THAT THE PLAN IS BOTH
9 COMPLETE AND AFFORDS COMPLIANCE WITH APPLICABLE DEPARTMENT
10 RULES.

11 (B) THE REVIEW OF AN APPLICATION FOR A SOLID WASTES
12 DISPOSAL SITE AND FACILITY BY AN INDEPENDENT PROFESSIONAL
13 ENGINEER MUST BE BASED UPON THE SAME CRITERIA AS USED BY THE
14 DEPARTMENT UNDER SECTION 30-20-103.

15 (II) PRIOR TO CONDUCTING THE REVIEW, THE INDEPENDENT
16 PROFESSIONAL ENGINEER MUST PROVIDE TO THE PERSON A WRITTEN
17 STATEMENT THAT THE ENGINEER IS QUALIFIED TO PERFORM THE REVIEW
18 AND THAT NO CONFLICTS OF INTEREST EXIST FOR THE ENGINEER TO
19 REVIEW THE PROPOSED PROJECT. THE ENGINEER WITH WHOM THE PERSON
20 CONTRACTS MUST ALSO PROVIDE PROOF OF PROFESSIONAL LIABILITY
21 INSURANCE, DEBT INSTRUMENT, OR SOME OTHER METHOD OF FINANCIAL
22 ASSURANCE IN THE CASE OF ANY NEGLIGENT ACTS OR OMISSIONS.

23 (b) (I) IF THE INDEPENDENT PROFESSIONAL ENGINEER DETERMINES
24 THAT THE APPLICATION OR THE ENGINEERED DESIGN AND OPERATIONS
25 PLAN IS EITHER INCOMPLETE OR NONCOMPLIANT WITH THE DEPARTMENT
26 LAWS AND REGULATIONS, HE OR SHE SHALL SO NOTIFY THE APPLICANT
27 AND OFFER THE APPLICANT AN OPPORTUNITY TO PROVIDE SUCH

1 MATERIALS OR EXPLANATIONS AS THE INDEPENDENT PROFESSIONAL
2 ENGINEER DETERMINES ARE NECESSARY TO COMPLETE REVIEW OF THE
3 APPLICATION OR TO MAKE NECESSARY AMENDMENTS TO THE APPLICATION.

4 (II) ONCE THE INDEPENDENT PROFESSIONAL ENGINEER
5 DETERMINES THAT THE APPLICATION IS COMPLETE AND COMPLIANT WITH
6 DEPARTMENT REGULATIONS, THE INDEPENDENT PROFESSIONAL ENGINEER
7 SHALL TRANSMIT TO THE DEPARTMENT THE COMPLETED AND CERTIFIED
8 PLAN ALONG WITH THE ENGINEER'S VERIFICATION OF COMPLETION AND
9 COMPLIANCE.

10 (4) NO LATER THAN FIVE DAYS AFTER THE DATE THAT THE
11 DEPARTMENT RECEIVES THE INDEPENDENT REVIEW COMPLETION AND
12 COMPLIANCE VERIFICATION, THE DEPARTMENT SHALL MAKE A RECORD OF
13 THE APPLICATION AND FORWARD THE ENGINEERED DESIGN AND
14 OPERATIONS PLAN AND INDEPENDENT REVIEW COMPLETION AND
15 COMPLIANCE VERIFICATION TO THE GOVERNING BODY HAVING
16 JURISDICTION OVER THE APPLICATION FOR CERTIFICATE OF DESIGNATION
17 RECORDS.

18 **SECTION 3.** In Colorado Revised Statutes, **amend** 30-20-103 as
19 follows:

20 **30-20-103. Application for certificate.** (1) (a) Any person
21 desiring to own or operate a solid wastes disposal site and facility ~~shall~~
22 ~~make application~~ MUST APPLY to the governing body having jurisdiction
23 over the area in which ~~such~~ THE site and facility is or is proposed to be
24 located for a certificate of designation. ~~Such~~ THE PERSON MUST INCLUDE
25 WITH THE application ~~shall be accompanied by~~ a NONREFUNDABLE fee, ~~to~~
26 ~~be~~ IN AN AMOUNT established by the governing body having jurisdiction
27 ~~which fee shall be~~ THAT IS based on the anticipated costs that may be

1 incurred by ~~such~~ THE governing board in the application review and
2 approval process. ~~and shall not be refundable.~~ The application ~~shall~~ MUST
3 set forth the location of the site and facility; the type of site and facility;
4 the type of processing to be used, such as sanitary landfill, composting,
5 or incineration; the hours of operation; the method of supervision; the
6 rates to be charged, if any; and such other information as may be required
7 by the governing body having jurisdiction over the area.

8 (b) The application shall also ~~contain~~ BE ACCOMPANIED BY AN
9 ENGINEERED DESIGN AND OPERATIONS PLAN, FORWARDED BY THE
10 DEPARTMENT UNDER SECTION 30-20-102.8, THAT CONTAINS such
11 engineering, geological, hydrological, and operational data as may be
12 required by the department by rule. ~~All such applications shall be referred~~
13 ~~to the department for review and for recommendation as to approval or~~
14 ~~disapproval, which shall be based upon criteria established by the solid~~
15 ~~and hazardous waste commission, the water quality control commission,~~
16 ~~and the air quality control commission. Such review and recommendation~~
17 ~~of an application by the department shall include a technical review of the~~
18 ~~environmental and public health issues provided in section 30-20-110 that~~
19 ~~are raised by the proposed site and facility. As a part of the department's~~
20 ~~review of an application for a solid wastes site and facility, the~~
21 ~~department shall provide a period of not less than thirty days during~~
22 ~~which members of the public may review and make comments concerning~~
23 ~~such application.~~

24 (2) ~~Upon receiving an application for a solid wastes disposal site~~
25 ~~and facility, the department shall perform an initial examination to~~
26 ~~establish the completeness of the information submitted. Such initial~~
27 ~~examination shall be completed within thirty days after the department~~

1 receives such application. The department shall mail written notification
2 to the applicant within such time period of the department's decision
3 either to begin its review of such application or to reject such application
4 because of incompleteness. AS A PART OF THE PROCESS OF ACCEPTING
5 AND REVIEWING APPLICATIONS FOR CERTIFICATES OF DESIGNATION, A
6 GOVERNING BODY HAVING JURISDICTION SHALL PROVIDE A PERIOD OF NOT
7 LESS THAN THIRTY DAYS DURING WHICH MEMBERS OF THE PUBLIC MAY
8 REVIEW AND MAKE COMMENTS CONCERNING THE APPLICATION. THE
9 PUBLIC COMMENT PERIOD MUST BE HELD PRIOR TO THE PUBLIC HEARING
10 CONDUCTED UNDER SECTION 30-20-104 (3) (a) AND MAY COINCIDE WITH
11 THE PERIOD DURING WHICH NOTICE IS POSTED PURSUANT TO THAT
12 SECTION.

13 (3) ~~After the initial approval of an application pursuant to the~~
14 ~~provisions of subsection (2) of this section, the department shall~~
15 ~~determine whether it shall complete the review of the application or~~
16 ~~whether it shall offer the applicant the option of having such application~~
17 ~~reviewed by a private contractor. Such determination shall be made~~
18 ~~pursuant to the provisions of section 30-20-103.7 (1). If the department~~
19 ~~reviews such application, the department shall complete such review~~
20 ~~within one hundred fifty days after the date of issuance of its initial~~
21 ~~approval of such application.~~

22 **SECTION 4.** In Colorado Revised Statutes, 30-20-104, **amend**
23 (3) (a) as follows:

24 **30-20-104. Factors to be considered.** (3) (a) Prior to the
25 issuance of a certificate of designation, the governing body having
26 jurisdiction shall **MUST** require that the report, which shall be submitted
27 ENGINEERED DESIGN AND OPERATIONS PLAN IS FORWARDED by the

1 applicant under section 30-20-103, be reviewed and a recommendation
2 as to approval or disapproval be made by the department PURSUANT TO
3 SECTION 30-20-102.8 and shall MUST be satisfied that the proposed solid
4 wastes disposal site and facility conforms to the local government's
5 comprehensive land use plan and zoning restrictions, if any. Any
6 technical conditions of approval made by the department in its final report
7 shall be incorporated as requirements in the certificate of designation. The
8 application, report of the department ENGINEERED DESIGN AND
9 OPERATIONS PLAN, comprehensive land use plan, relevant zoning
10 ordinances, and other pertinent information shall MUST be presented to
11 the governing body having jurisdiction at a public hearing to be held after
12 notice. Such THE notice shall MUST contain the time and place of the
13 hearing, shall state that the matter to be considered is the applicant's
14 proposal for a solid wastes disposal site and facility, shall provide a
15 description of such proposed site and facility, and shall provide a
16 description of the geographic area that is within three miles of such
17 proposed site and facility. The notice shall MUST be published in a
18 newspaper having general circulation in the county or municipality in
19 which the proposed solid wastes disposal site and facility is located at
20 least ten but no more than thirty days prior to the date of the hearing. In
21 addition, the notice of such public hearing shall MUST be posted at a
22 conspicuous point in at least one location at the offices of the governing
23 body having jurisdiction and in at least one location at the proposed site.
24 Such THE notice shall be posted for a period beginning at least thirty days
25 before the public hearing and continuing through the date of such hearing.

26 **SECTION 5.** In Colorado Revised Statutes, 30-20-104.5, **amend**
27 (3) (b) (II) as follows:

1 **30-20-104.5. Closure and postclosure care estimates -**
2 **corrective action cost estimates - financial assurance requirements -**
3 **rules.** (3) (b) (II) The sufficiency of the financial assurance provided
4 pursuant to the provisions of paragraph (a) of this subsection (3) for any
5 solid wastes disposal site and facility that is in existence at the time the
6 applicable regulations of the department become effective shall be
7 reviewed pursuant to the procedures established by the department. Such
8 review may be performed either by the department or by a private
9 contractor hired by the department for the purpose of completing such
10 review. The department is authorized to impose a fee for any such review
11 that is performed by the department; except that such fee shall not exceed
12 the actual documented costs incurred by the department in the
13 performance of such review. Except as otherwise provided in this section,
14 any such review that is performed by a private contractor shall be
15 conducted pursuant to the provisions of section 30-20-103.7, AS SAID
16 SECTION EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SUBPARAGRAPH
17 (II), AS AMENDED.

18 **SECTION 6.** In Colorado Revised Statutes, 30-20-109, **repeal** (1)
19 (d) as follows:

20 **30-20-109. Commission to promulgate rules - definitions.**

21 (1) The solid and hazardous waste commission shall promulgate rules for
22 the engineering design and operation of solid wastes disposal sites and
23 facilities, which may include:

24 ~~(d) The establishment of a reviewing fee to be charged by the~~
25 ~~department for the review of any written recommendation and findings~~
26 ~~of a private contractor who has acted in lieu of the department to review~~
27 ~~an application for a solid wastes disposal site and facility under the~~

1 ~~provisions of section 30-20-103.7 for compliance with the state's~~
2 ~~requirements. Such fee shall not exceed actual and reasonable costs and~~
3 ~~shall not exceed five thousand dollars.~~

4 **SECTION 7.** In Colorado Revised Statutes, 30-20-118, **amend**
5 (1) as follows:

6 **30-20-118. Solid waste management fund - created.** (1) There
7 is hereby created in the state treasury a fund to be known as the solid
8 waste management fund, which shall consist of moneys collected
9 pursuant to sections ~~30-20-103.7~~; 30-20-109 and 30-20-123, as well as
10 that portion of the fee designated for solid waste management under
11 section 25-16-104.5 (2), C.R.S. Such moneys shall be appropriated
12 annually to the department by the general assembly. Except as provided
13 in section 25-15-314, C.R.S., the moneys in the solid waste management
14 fund shall not be credited or transferred to the general fund or any other
15 fund of the state.

16 **SECTION 8.** In Colorado Revised Statutes, 30-20-119, **amend**
17 (2) as follows:

18 **30-20-119. Disposal of low-level radioactive waste.** (2) The
19 appropriate governmental entity described in subsection (1) of this section
20 shall require a technical review by the department of the low-level
21 radioactive waste proposed to be disposed when permission is requested
22 pursuant to subsection (1) of this section, and the department shall make
23 a written recommendation to the governmental entity as to whether such
24 waste should be accepted. The appropriate governmental entity shall
25 charge a fee established pursuant to ~~section 30-20-109 (1) (d)~~ SECTION
26 39-20-109 (1) (e) to the applicant for such technical review and transmit
27 such fee to the department.

1 **SECTION 9.** In Colorado Revised Statutes, **repeal** 30-20-103.7.

2 **SECTION 10. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly (August 7, 2013, if adjournment sine die is on May 8,
6 2013); except that, if a referendum petition is filed pursuant to section 1
7 (3) of article V of the state constitution against this act or an item, section,
8 or part of this act within such period, then the act, item, section, or part
9 will not take effect unless approved by the people at the general election
10 to be held in November 2014 and, in such case, will take effect on the
11 date of the official declaration of the vote thereon by the governor.

12 (2) This act applies to applications for certificates of designation
13 to operate solid wastes disposal sites and facilities that are submitted to
14 governing bodies having jurisdiction on or after the applicable effective
15 date of this act.