

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 820  
PROPOSED COMMITTEE SUBSTITUTE S820-PCS85291-RI-44**

Short Title: Clean Energy and Economic Security Act.

(Public)

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Sponsors:

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Referred to:

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May 21, 2012

A BILL TO BE ENTITLED

1 AN ACT TO (1) RECONSTITUTE THE MINING COMMISSION AS THE MINING AND  
2 ENERGY COMMISSION, (2) REQUIRE THE MINING AND ENERGY COMMISSION  
3 AND OTHER REGULATORY AGENCIES TO DEVELOP A MODERN  
4 REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS  
5 EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING  
6 THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR  
7 THAT PURPOSE, (3) AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC  
8 FRACTURING, BUT PROHIBIT THE ISSUANCE OF PERMITS FOR THESE  
9 ACTIVITIES PENDING SUBSEQUENT LEGISLATIVE ACTION, (4) ENHANCE  
10 LANDOWNER AND PUBLIC PROTECTIONS RELATED TO HORIZONTAL  
11 DRILLING AND HYDRAULIC FRACTURING, AND (5) ESTABLISH THE JOINT  
12 LEGISLATIVE COMMISSION ON ENERGY POLICY.  
13  
14

**PART I. LEGISLATIVE FINDINGS AND INTENT**

15  
16 Whereas, in S.L. 2011-276, the General Assembly directed the Department of  
17 Environment and Natural Resources, in conjunction with the Department of Commerce, the  
18 Department of Justice, and the Rural Advancement Foundation (RAFI-USA), to study the issue  
19 of oil and gas exploration in the State and the use of horizontal drilling and hydraulic fracturing  
20 for that purpose, including the study of all of the following:

- 21 (1) Oil and gas resources present in the Triassic Basins and in any other areas of  
22 the State.
- 23 (2) Methods of exploration and extraction of oil and gas, including directional  
24 and horizontal drilling and hydraulic fracturing.
- 25 (3) Potential environmental, economic, and social impacts arising from such  
26 activities, as well as impacts on infrastructure.
- 27 (4) Appropriate regulatory requirements for management of oil and gas  
28 exploration activities, with particular attention to regulation of horizontal  
29 drilling and hydraulic fracturing for that purpose; and

30 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural  
31 Resources, in conjunction with the Department of Commerce, the Department of Justice, and  
32 the Rural Advancement Foundation (RAFI-USA), issued a draft report in March of 2012; and



1           Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural  
2 Resources received public comment regarding the draft report, including public comment  
3 received at public meetings held on March 20, March 27, and April 2, 2012; and

4           Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural  
5 Resources (DENR), in conjunction with the Department of Commerce, the Department of  
6 Justice, and the Rural Advancement Foundation (RAFI-USA), issued a final report on April 30,  
7 2012; and

8           Whereas, the final report set forth a number of recommendations, including  
9 recommendations concerning all of the following:

- 10           (1)   Development of a modern oil and gas regulatory program, taking into  
11           consideration the processes involved in hydraulic fracturing and horizontal  
12           drilling technologies, and long-term prevention of physical or economic  
13           waste in developing oil and gas resources.
- 14           (2)   Collection of baseline data for areas near proposed drill sites concerning air  
15           quality and emissions, as well as groundwater and surface water resources  
16           and quality.
- 17           (3)   Requirements that oil and gas operators prepare and have approved water  
18           management plans that limit water withdrawals during times of low-flow  
19           conditions and droughts.
- 20           (4)   Enhancements to existing oil and gas well construction standards to address  
21           the additional pressures of horizontal drilling and hydraulic fracturing.
- 22           (5)   Development of setback requirements and identification of areas where oil  
23           and gas exploration and development activities should be prohibited.
- 24           (6)   Development of a State stormwater regulatory program for oil and gas  
25           drilling sites.
- 26           (7)   Development of specific standards for management of oil and gas wastes.
- 27           (8)   Requirements for disclosure of hydraulic fracturing chemicals and  
28           constituents to regulatory agencies and the public.
- 29           (9)   Prohibitions on use of certain chemicals or constituents in hydraulic  
30           fracturing fluids.
- 31           (10)  Improvements to data management capabilities.
- 32           (11)  Development of a coordinated permitting program for oil and gas  
33           exploration and development activities within the Department of  
34           Environment and Natural Resources where it will benefit from the expertise  
35           of State geological staff and the ability to coordinate air, land, and water  
36           permitting.
- 37           (12)  Development of protocols to ensure that State agencies, local first  
38           responders, and industry are prepared to respond to a well blowout, chemical  
39           spill, or other emergency.
- 40           (13)  Adequate funding for any continued work on the development of a State  
41           regulatory program for the natural gas industry.
- 42           (14)  Appropriate distribution of revenues from any taxes or fees that may be  
43           imposed on oil and gas exploration and development activities to support a  
44           modern regulatory program for the management of all aspects of oil and gas  
45           exploration and development activities using the processes of horizontal  
46           drilling and hydraulic fracturing in the State, and to support local  
47           governments impacted by the activities, including, but not limited to,  
48           sufficient funding for improvements to and repair of roads subject to damage  
49           by truck traffic and heavy equipment from these activities.
- 50           (15)  Closure of gaps in regulatory authority over the siting, construction, and  
51           operation of gathering pipelines.

- 1 (16) Clarifications needed to address local government regulatory authority over  
2 oil and gas exploration and development activities, and use of horizontal  
3 drilling and hydraulic fracturing for that purpose.
- 4 (17) Additional research required on impacts to local governments and local  
5 infrastructure, as well as potential economic impacts from oil and gas  
6 exploration and development activities.
- 7 (18) Development of provisions to address liability of the oil and gas industry for  
8 environmental contamination caused by exploration and development  
9 activities, particularly with regard to groundwater contamination.
- 10 (19) Establishment of a process that affords additional public participation in  
11 connection with development of a modern oil and gas regulatory program;  
12 and

13 Whereas, the final report also states "[a]fter reviewing other studies and experiences  
14 in oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as  
15 long as the right protections are in place. It will be important to have those measures in place  
16 before issuing permits for hydraulic fracturing in North Carolina's shale formations"; and

17 Whereas, the General Assembly concurs in the conclusion of the final report that  
18 hydraulic fracturing can be done safely as long as the right protective measures are in place  
19 before any permits for horizontal drilling and hydraulic fracturing are issued; and

20 Whereas, it is the intent of the General Assembly to authorize oil and gas  
21 exploration and development activities using the processes of horizontal drilling and hydraulic  
22 fracturing, but to prohibit the issuance of permits for these activities until such time as the  
23 General Assembly has determined that a modern regulatory program for the management of oil  
24 and gas exploration and development in the State and the use of horizontal drilling and  
25 hydraulic fracturing for that purpose has been fully established and takes legislative action to  
26 allow the issuance of permits; and

27 Whereas, it is the intent of the General Assembly to establish a modern regulatory  
28 program based on the recommendations of the final report and the following principles:

- 29 (1) Protection of public health and safety.
- 30 (2) Protection of public and private property.
- 31 (3) Protection and conservation of the State's air, water, and other natural  
32 resources.
- 33 (4) Promotion of economic development and expanded employment  
34 opportunities.
- 35 (5) Productive and efficient development of the State's oil and gas resources;

36 Now, therefore,

37 The General Assembly of North Carolina enacts:

38  
39 **PART II. RECONSTITUTE THE MINING COMMISSION AS THE MINING AND**  
40 **ENERGY COMMISSION; RENAME THE DIVISION OF LAND RESOURCES AS**  
41 **THE DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES**

42 **SECTION 1.(a)** Part 6 of Article 7 of Chapter 143B of the General Statutes is  
43 repealed.

44 **SECTION 1.(b)** Article 7 of Chapter 143B of the General Statutes is amended by  
45 adding a new Part to read:

46 "Part 6A. North Carolina Mining and Energy Commission.

47 "**§ 143B-293.1. North Carolina Mining and Energy Commission – creation; powers and**  
48 **duties.**

49 (a) There is hereby created the North Carolina Mining and Energy Commission of the  
50 Department of Environment and Natural Resources with the power and duty to adopt rules for  
51 the development of the oil, gas, and mining resources of the State.

- 1           (1) The North Carolina Mining and Energy Commission shall have the  
2 following powers and duties:
- 3           a. To act as the advisory body to the Governor pursuant to Article V(a)  
4 of the Interstate Mining Compact, as set out in G.S. 74-37.
- 5           b. To hear permit appeals, conduct a full and complete hearing on such  
6 controversies, and affirm, modify, or overrule permit decisions made  
7 by the Department pursuant to G.S. 74-61.
- 8           c. To adopt rules necessary to administer the Mining Act of 1971  
9 pursuant to G.S. 74-63.
- 10          d. To adopt rules necessary to administer the Control of Exploration for  
11 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
- 12          e. To adopt rules necessary to administer the Oil and Gas Conservation  
13 Act pursuant to G.S. 113-391.
- 14          (2) The Commission is authorized to make such rules, not inconsistent with the  
15 laws of this State, as may be required by the federal government for  
16 grants-in-aid for mining resource purposes which may be made available to  
17 the State by the federal government. This section is to be liberally construed  
18 in order that the State and its citizens may benefit from such grants-in-aid.
- 19          (3) The Commission shall make such rules consistent with the provisions of this  
20 Chapter. All rules adopted by the Commission shall be enforced by the  
21 Department of Environment and Natural Resources.
- 22          (b) The Commission shall have the authority to hear permit appeals, conduct a full and  
23 complete hearing on such controversies, and affirm, modify, or overrule permit decisions made  
24 by the Department under the Oil and Gas Conservation Act, Article 27 of Chapter 113 of the  
25 General Statutes. The Commission shall also have the authority to make determinations and  
26 issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells  
27 and to establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells  
28 with efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or  
29 gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394;  
30 and (iv) require integration of interests as provided in G.S. 113-393.
- 31          (c) The Commission shall submit quarterly written reports as to its operation, activities,  
32 programs, and progress to the Joint Legislative Commission on Energy Policy and the  
33 Environmental Review Commission. The Commission shall supplement the written reports  
34 required by this subsection with additional written and oral reports as may be requested by the  
35 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.  
36 The Commission shall submit the written reports required by this subsection whether or not the  
37 General Assembly is in session at the time the report is due.
- 38 **§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection;**  
39 **removal; compensation; quorum; services.**
- 40          (a) Members; Selection. – The North Carolina Mining and Energy Commission shall  
41 consist of 14 members appointed as follows:
- 42           (1) The Chair of the North Carolina State University Minerals Research  
43 Laboratory Advisory Committee, or the Chair's designee, nonvoting ex  
44 officio.
- 45           (2) The State Geologist, or the State Geologist's designee, nonvoting ex officio.
- 46           (3) The Assistant Secretary of Energy for the Department of Commerce, or the  
47 Assistant Secretary's designee, nonvoting ex officio.
- 48           (4) The Chair of the Environmental Management Commission, or the Chair's  
49 designee, nonvoting ex officio.
- 50           (5) The Chair of the Commission for Public Health, or the Chair's designee,  
51 nonvoting ex officio.

- 1           (6) One appointed by the Governor who is a representative of the mining  
2           industry.
- 3           (7) One appointed by the Governor who is a representative of the mining  
4           industry.
- 5           (8) One appointed by the Governor with experience in oil and gas exploration,  
6           production, or development.
- 7           (9) One appointed by the General Assembly upon recommendation of the  
8           President Pro Tempore of the Senate with experience in environmental  
9           conservation or mitigation.
- 10          (10) One appointed by the General Assembly upon recommendation of the  
11          President Pro Tempore of the Senate with experience in oil and gas  
12          exploration, production, or development.
- 13          (11) One appointed by the General Assembly upon recommendation of the  
14          President Pro Tempore of the Senate with interest in mineral, oil, and gas  
15          exploration, production, or development.
- 16          (12) One appointed by the General Assembly upon recommendation of the  
17          Speaker of the House of Representatives with experience in environmental  
18          conservation or mitigation.
- 19          (13) One appointed by the General Assembly upon recommendation of the  
20          Speaker of the House of Representatives with experience in oil and gas  
21          exploration, production, or development.
- 22          (14) One appointed by the General Assembly upon recommendation of the  
23          Speaker of the House of Representatives with interest in mineral, oil, and gas  
24          exploration, production, or development.

25          (b) Terms. – The term of office of members of the Commission is three years. A  
26          member may be reappointed to any number of successive three-year terms. The term of  
27          members appointed under subdivisions (6), (9), and (12) of subsection (a) of this section shall  
28          expire on June 30 of years evenly divisible by three. The terms of members appointed under  
29          subdivisions (7), (10), and (13) of subsection (a) of this section shall expire on June 30 of years  
30          that precede by one year those years that are evenly divisible by three. The terms of members  
31          appointed under subdivisions (8), (11), and (14) of subsection (a) of this section shall expire on  
32          June 30 of years that follow by one year those years that are evenly divisible by three.

33          (c) Vacancies; Removal from Office. –

- 34          (1) Any appointment by the Governor to fill a vacancy on the Commission  
35          created by the resignation, dismissal, death, or disability of a member shall  
36          be for the balance of the unexpired term. The Governor shall have the power  
37          to remove any member of the Commission from office for misfeasance,  
38          malfaisance, or nonfeasance in accordance with the provisions of  
39          G.S. 143B-13 of the Executive Organization Act of 1973.
- 40          (2) Members appointed by the President Pro Tempore of the Senate and the  
41          Speaker of the House of Representatives shall be made in accordance with  
42          G.S. 120-121, and vacancies in those appointments shall be filled in  
43          accordance with G.S. 120-122. In accordance with Section 10 of Article VI  
44          of the North Carolina Constitution, a member may continue to serve until a  
45          successor is duly appointed.

46          (d) Compensation. – The members of the Commission shall receive per diem and  
47          necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

48          (e) Quorum. – A majority of the Commission shall constitute a quorum for the  
49          transaction of business.

50          (f) Staff. – All staff support required by the Commission shall be supplied by the  
51          Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

1 **"§ 143B-293.4. North Carolina Mining and Energy Commission – officers.**

2 The Mining and Energy Commission shall have a chair and a vice-chair. The Commission  
3 shall elect one of its members to serve as chair and one of its members to serve as vice-chair.  
4 The chair and vice-chair shall serve one-year terms beginning August 1 and ending July 31 of  
5 the following year. The chair and vice-chair may serve any number of terms, but not more than  
6 two terms consecutively.

7 **"§ 143B-293.5. North Carolina Mining and Energy Commission – meetings.**

8 The North Carolina Mining and Energy Commission shall meet at least quarterly and may  
9 hold special meetings at any time and place within the State at the call of the chair or upon the  
10 written request of at least nine members.

11 **"§ 143B-293.6. North Carolina Mining and Energy Commission – quasi-judicial powers;**  
12 **procedures.**

13 (a) With respect to those matters within its jurisdiction, the Mining and Energy  
14 Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter  
15 150B of the General Statutes.

16 (b) In the evaluation of each violation, the Commission shall recognize that harm to the  
17 natural resources of the State arising from the violation of standards or limitations established  
18 to protect those resources may be immediately observed through damaged resources or may be  
19 incremental or cumulative with no damage that can be immediately observed or documented.  
20 Penalties up to the maximum authorized may be based on any one or combination of the  
21 following factors:

- 22 (1) The degree and extent of harm to the natural resources of the State, to the  
23 public health, or to private property resulting from the violation.
- 24 (2) The duration and gravity of the violation.
- 25 (3) The effect on ground or surface water quantity or quality or on air quality.
- 26 (4) The cost of rectifying the damage.
- 27 (5) The amount of money saved by noncompliance.
- 28 (6) Whether the violation was committed willfully or intentionally.
- 29 (7) The prior record of the violator in complying or failing to comply with  
30 programs over which the Commission has regulatory authority.
- 31 (8) The cost to the State of the enforcement procedures.

32 (c) The chair shall appoint a Committee on Civil Penalty Remissions from the members  
33 of the Commission. No member of the Committee on Civil Penalty Remissions may hear or  
34 vote on any matter in which the member has an economic interest. In determining whether a  
35 remission request will be approved, the Committee shall consider the recommendation of the  
36 Secretary or the Secretary's designee and all of the following factors:

- 37 (1) Whether one or more of the civil penalty assessment factors in subsection (b)  
38 of this section were wrongly applied to the detriment of the petitioner.
- 39 (2) Whether the violator promptly abated continuing environmental damage  
40 resulting from the violation.
- 41 (3) Whether the violation was inadvertent or a result of an accident.
- 42 (4) Whether the violator had been assessed civil penalties for any previous  
43 violations.
- 44 (5) Whether payment of the civil penalty will prevent payment for the remaining  
45 necessary remedial actions.

46 (d) The Committee on Civil Penalty Remissions may remit the entire amount of the  
47 penalty only when the violator has not been assessed civil penalties for previous violations and  
48 when payment of the civil penalty will prevent payment for the remaining necessary remedial  
49 actions.

50 (e) If any civil penalty has not been paid within 30 days after the final decision by the  
51 administrative law judge in accordance with G.S. 150B-34 or court order has been served on

1 the violator, the Secretary or the Secretary's designee shall request the Attorney General to  
2 institute a civil action in the superior court of any county in which the violator resides or has his  
3 or its principal place of business to recover the amount of the assessment.

4 (f) For purposes of this section, "Secretary" shall mean the Secretary of Environment  
5 and Natural Resources."

6 **SECTION 1.(c)** Pursuant to G.S. 150B-21.7, rules adopted by the North Carolina  
7 Mining Commission shall remain in effect until amended or repealed by the North Carolina  
8 Mining and Energy Commission established pursuant to subsection (b) of this section.

9 **SECTION 1.(d)** The Revisor of Statutes shall make the conforming statutory  
10 changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the  
11 North Carolina Mining and Energy Commission as provided in subsection (b) of this section.  
12 The Codifier of Rules shall make the conforming rule changes necessary to reflect the  
13 reconstitution of the North Carolina Mining Commission to the North Carolina Mining and  
14 Energy Commission as provided in subsection (b) of this section.

15 **SECTION 1.(e)** The Division of Land Resources of the Department of  
16 Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and  
17 Land Resources.

18 **SECTION 1.(f)** The Revisor of Statutes shall make the conforming statutory  
19 changes necessary to reflect the renaming of the Division of Land Resources as the Division of  
20 Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The  
21 Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of  
22 the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as  
23 provided in subsection (e) of this section.

24 **SECTION 1.(g)** In order to maintain continuity and experience of membership, the  
25 Governor and the General Assembly should consider the members of the North Carolina  
26 Mining Commission, repealed pursuant to subsection (a) of this section, when appointing the  
27 members of the North Carolina Mining and Energy Commission, created by G.S. 143B-293.1,  
28 as enacted by subsection (b) of this section.

29 **SECTION 1.(h)** The North Carolina Mining and Energy Commission shall submit  
30 the first report due under G.S. 143B-293.1(c), as enacted by subsection (b) of this section, on or  
31 before January 1, 2013.

32  
33 **PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY**  
34 **AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT**  
35 **OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND**  
36 **THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR**  
37 **THAT PURPOSE**

38 **SECTION 2.(a)** G.S. 113-380 reads as rewritten:

39 **"§ 113-380. Violation a misdemeanor.**

40 ~~Any~~ Except as otherwise provided, any person, firm or officer of a corporation violating  
41 any of the provisions of G.S. 113-378 or 113-379, this Article shall upon conviction thereof be  
42 guilty of a Class 1 misdemeanor."

43 **SECTION 2.(b)** G.S. 113-389 reads as rewritten:

44 **"§ 113-389. Definitions.**

45 Unless the context otherwise requires, the words defined in this section shall have the  
46 following meaning when found in this law:

47 (1) "Commission" shall mean the North Carolina Mining and Energy  
48 Commission.

49 (1a) "Department" shall mean the "DepartmentDepartment of Environment and  
50 Natural Resources," as created by this law.

- 1           (1b) "Division" shall mean the Division of Energy, Mineral, and Land Resources  
2           of the Department of Environment and Natural Resources.
- 3           (2) "Field" shall mean the general area which is underlaid or appears to be  
4           underlaid by at least one pool; and "field" shall include the underground  
5           reservoir or reservoirs containing crude petroleum oil or natural gas, or both.  
6           The words "field" and "pool" mean the same thing when only one  
7           underground reservoir is involved; "field," unlike "pool," may relate to two  
8           or more pools.
- 9           (3) "Gas" shall mean all natural gas, including casing-head gas, and all other  
10           hydrocarbons not defined as oil in subdivision (7).
- 11           (3a) "Hydraulic fracturing fluid" shall mean the base fluid type utilized in a  
12           particular hydraulic fracturing treatment.
- 13           (3b) "Hydraulic fracturing treatment" shall mean stimulating a well by the  
14           application of hydraulic fracturing fluids and additives with force in order to  
15           create artificial fractures in the formation for the purpose of improving the  
16           capacity to produce hydrocarbons.

17           ...."

18           **SECTION 2.(c)** G.S. 113-391 reads as rewritten:

19           **"§ 113-391. Jurisdiction and authority; rules and orders.**

20           (a) The Mining and Energy Commission, created by G.S. 143B-293.1, shall establish a  
21           modern regulatory program for the management of oil and gas exploration and development in  
22           the State and the use of horizontal drilling and hydraulic fracturing for that purpose. The  
23           program shall be designed to protect public health and safety; protect public and private  
24           property; protect and conserve the State's air, water, and other natural resources; promote  
25           economic development and expand employment opportunities; and provide for the productive  
26           and efficient development of the State's oil and gas resources. To establish the program, the  
27           Commission shall adopt rules for all of the following purposes:

- 28           (1) Regulation of pre-drilling exploration activities, including seismic and other  
29           geophysical and stratigraphic surveys and testing.
- 30           (2) Regulation of drilling, operation, casing plugging, completion, and  
31           abandonment of wells.
- 32           (3) Prevention of pollution of water supplies by oil, gas, or other fluids used in  
33           oil and gas exploration and development.
- 34           (4) Protection of the quality of the water, air, soil, or any other environmental  
35           resource against injury or damage or impairment.
- 36           (5) Regulation of the processes of horizontal drilling and hydraulic fracturing  
37           for the purpose of oil and gas exploration. Such rules shall, at a minimum,  
38           include standards or requirements related to the following:
- 39           a. Information and data to be submitted in association with applications  
40           for permits to conduct oil and gas exploration and development  
41           activities using the processes of horizontal drilling and hydraulic  
42           fracturing, which may include submission of hydrogeological  
43           investigations and identification of mechanisms to prevent and  
44           diagnose sources of groundwater contamination in the area of drilling  
45           sites. In formulating these requirements, the Commission shall  
46           consider (i) how North Carolina's geology differs from other states  
47           where oil and gas exploration and development activities using the  
48           processes of horizontal drilling and hydraulic fracturing are common,  
49           and (ii) the routes of possible groundwater contamination resulting  
50           from these activities and the potential role of vertical geological



- 1 structures such as dikes and faults as conduits for groundwater  
2 contamination.
- 3 b. Collection of baseline data, including groundwater, surface water,  
4 and air quality in areas where oil and gas exploration and  
5 development activities are proposed.
- 6 c. Appropriate well construction standards, as may be appropriate  
7 relative to responsibilities of the Environmental Management  
8 Commission for such matters. Such standards shall address the  
9 additional pressures of horizontal drilling and hydraulic fracturing,  
10 such as standards for casing and cementing sufficient to handle  
11 highly pressurized injection of fluids into a well for purposes of  
12 fracturing bedrock and extraction of gas, and construction standards  
13 for other gas production infrastructure, such as storage pits and tanks.
- 14 d. Appropriate siting standards for wells and other gas production  
15 infrastructure, such as storage pits and tanks, including appropriate  
16 setback requirements and identification of areas, such as floodplains,  
17 where oil and gas exploration and production activities should be  
18 prohibited, as may be appropriate relative to responsibilities of the  
19 Environmental Management Commission for such matters.
- 20 e. Limits on water use, as may be appropriate relative to responsibilities  
21 of the Environmental Management Commission for such matters.  
22 Such rules shall be developed in light of water supply in the areas of  
23 proposed activity, competing water uses in those areas, and expected  
24 environmental impacts from such water withdrawals, including, but  
25 not limited to, a requirement that oil and gas operators prepare and  
26 have a water and wastewater management plan approved by the  
27 Department, which, among other things, limits water withdrawals  
28 during times of drought and periods of low flows.
- 29 f. Stormwater control at sites, as may be appropriate relative to  
30 responsibilities of the Environmental Management Commission for  
31 such matters.
- 32 g. Management of wastes produced in connection with oil and gas  
33 exploration and development and use of horizontal drilling and  
34 hydraulic fracturing for that purpose, as may be appropriate relative  
35 to responsibilities of the Commission for Public Health for such  
36 matters. Such rules shall address storage, transportation, and disposal  
37 of wastes that may contain radioactive materials or wastes that may  
38 be toxic or have other hazardous wastes' characteristics, that are not  
39 otherwise regulated as a hazardous waste by the federal Resource  
40 Conservation and Recovery Act, such as top-hole water, brines,  
41 drilling fluids, additives, drilling muds, stimulation fluids, well  
42 servicing fluids, oil, production fluids, and drill cuttings from the  
43 drilling, alteration, production, plugging, or other activity associated  
44 with oil and gas wells.
- 45 h. Regulation of toxic air emissions from drilling operations, as may be  
46 appropriate relative to responsibilities of the Environmental  
47 Management Commission for such matters. In formulating  
48 appropriate standards, the Department shall assess emissions from oil  
49 and gas exploration and development activities that use horizontal  
50 drilling and hydraulic fracturing technologies, including emissions  
51 from associated truck traffic in order to (i) determine the adequacy of

- 1 the State's current air toxics program to protect landowners who lease  
2 their property to drilling operations and (ii) determine the impact on  
3 ozone levels in the area in order to determine measures needed to  
4 maintain compliance with federal ozone standards.
- 5 i. Prohibitions on use of certain chemicals and constituents in hydraulic  
6 fracturing fluids, particularly diesel fuel.
- 7 j. Disclosure of chemicals and constituents used in oil and gas  
8 exploration, drilling, and production and, with the exception of those  
9 items constituting trade secrets as defined in G.S. 66-152(3), and that  
10 are designated as confidential or as a trade secret under G.S. 132-1.2,  
11 requirements for disclosure of those chemicals and constituents to the  
12 public.
- 13 k. Installation of appropriate safety devices and development of  
14 protocols for response to well blowouts, chemical spills, and other  
15 emergencies, including requirements for approved emergency  
16 response plans and certified personnel to implement these plans as  
17 needed.
- 18 l. Measures to mitigate impacts on infrastructure, including damage to  
19 roads by truck traffic and heavy equipment, in areas where oil and  
20 gas exploration and development activities that use horizontal  
21 drilling and hydraulic fracturing technologies are proposed to occur.
- 22 m. Notice, record keeping, and reporting.
- 23 n. Proper well closure, site reclamation, post-closure monitoring, and  
24 financial assurance. Rules for financial assurance shall require that an  
25 oil or gas developer or operator establish financial assurance that will  
26 ensure that sufficient funds are available for well closure,  
27 post-closure maintenance and monitoring, any corrective action that  
28 the Department may require, and to satisfy any potential liability for  
29 sudden and nonsudden accidental occurrences, and subsequent costs  
30 incurred by the Department in response to an incident involving a  
31 drilling operation, even if the developer or operator becomes  
32 insolvent or ceases to reside, be incorporated, do business, or  
33 maintain assets in the State.
- 34 (6) To require surveys upon application of any owner who has reason to believe  
35 that a well has been unlawfully drilled by another into land of the owner  
36 without permission. In the event such surveys are required, the costs thereof  
37 shall be borne by the owner making the request.
- 38 (7) To require the making of reports showing the location of oil and gas wells  
39 and the filing of logs and drilling records.
- 40 (8) To prevent "blowouts," "caving," and "seepage," as such terms are generally  
41 understood in the oil and gas industry.
- 42 (9) To identify the ownership of all oil or gas wells, producing leases, refineries,  
43 tanks, plants, structures, and all storage and transportation equipment and  
44 facilities.
- 45 (10) To regulate the "shooting," perforating, and chemical treatment of wells.
- 46 (11) To regulate secondary recovery methods, including the introduction of gas,  
47 air, water, or other substances into producing formations.
- 48 (12) To regulate the spacing of wells and to establish drilling units.
- 49 (13) To regulate and, if necessary in its judgment for the protection of unique  
50 environmental values, to prohibit the location of wells in the interest of

1 protecting the quality of the water, air, soil, or any other environmental  
2 resource against injury, damage, or impairment.

3 (14) Any other matter the Commission deems necessary for implementation of a  
4 modern regulatory program for the management of oil and gas exploration  
5 and development in the State and the use of horizontal drilling and hydraulic  
6 fracturing for that purpose.

7 (a1) The regulatory program required to be established and the rules required to be  
8 adopted pursuant to subsection (a) of this section shall not include a program or rules for the  
9 regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and  
10 the coastal sounds as defined in G.S. 113A-103.

11 (a2) In addition to the matters for which the Commission is required to adopt rules  
12 pursuant to subsection (a) of this section, the Commission may adopt rules as it deems  
13 necessary for any of the following purposes:

14 (1) To require the operation of wells with efficient gas-oil ratios and to fix such  
15 ratios.

16 (2) To limit and prorate the production of oil or gas, or both, from any pool or  
17 field for the prevention of waste as defined in this Article and rules adopted  
18 thereunder.

19 (3) To require, either generally or in or from particular areas, certificates of  
20 clearance or tenders in connection with the transportation of oil or gas.

21 (4) To prevent, so far as is practicable, reasonably avoidable drainage from each  
22 developed unit which is not equalized by counter-drainage.

23 (a3) The Department shall ~~have jurisdiction and authority of and over all persons and~~  
24 ~~property necessary to administer and enforce effectively the provisions of this law Article, and~~  
25 ~~rules adopted thereunder, and all other laws relating to the conservation of oil and gas-gas,~~  
26 ~~except for jurisdiction and authority reserved to the Department of Labor and the Mining and~~  
27 ~~Energy Commission, as otherwise provided. The Commission and the Department may issue~~  
28 ~~orders as may be necessary from time to time in the proper administration and enforcement of~~  
29 ~~this Article and rules adopted thereunder.~~

30 (b) The ~~Commission and the Department~~ Department, as appropriate, shall have the  
31 authority and it shall be ~~its~~ their duty to make such inquiries as ~~it may think~~ be proper to  
32 ~~determine whether or not waste over which it has jurisdiction exists or is imminent.~~ implement  
33 ~~the provisions of this Article.~~ In the exercise of such power the ~~Commission and the~~  
34 ~~Department~~ Department, as appropriate, shall have the authority to collect data; to make  
35 investigations and inspections; to examine properties, leases, papers, books and records; to  
36 examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation;  
37 to hold hearings; and to provide for the keeping of records and the making of reports; and to  
38 take such action as may be reasonably necessary to enforce this law.

39 (b1) In the exercise of their respective authority over oil and gas exploration and  
40 development activities, the Commission and the Department, as applicable, shall have access to  
41 all data, records, and information related to such activities, including, but not limited to,  
42 seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic  
43 fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole  
44 logs. With the exception of information designated as a trade secret, as defined in  
45 G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2,  
46 the Department shall make any information it receives available to the public. The State  
47 Geologist shall serve as the custodian of all data, information, and records received by the  
48 Department pursuant to this subsection and shall ensure that the information is maintained  
49 securely as provided in G.S. 132-7.

1 (c) The Department may make rules and orders as may be necessary from time to time  
2 in the proper administration and enforcement of this law, including rules or orders for the  
3 following purposes:

- 4 (1) To require the drilling, operation, casing and plugging of wells to be done in  
5 such manner as to prevent the escape of oil or gas out of one stratum to  
6 another; to prevent the intrusion of water into an oil or gas stratum from a  
7 separate stratum; to prevent the pollution of freshwater supplies by oil, gas  
8 or salt water, or to protect the quality of the water, air, soil or any other  
9 environmental resource against injury or damage or impairment; and to  
10 require reasonable bond condition for the performance of the duty to plug  
11 each dry or abandoned well.
- 12 (2) To require directional surveys upon application of any owner who has  
13 reason to believe that a well or wells of others has or have been drilled into  
14 the lands owned by him or held by him under lease. In the event such  
15 surveys are required, the costs thereof shall be borne by the owners making  
16 the request.
- 17 (3) To require the making of reports showing the location of oil and gas wells,  
18 and the filing of logs and drilling records.
- 19 (4) To prevent the drowning by water of any stratum or part thereof capable of  
20 producing oil or gas in paying quantities, and to prevent the premature and  
21 irregular encroachment of water which reduces, or tends to reduce, the total  
22 ultimate recovery of oil or gas from any pool.
- 23 (5) To require the operation of wells with efficient gas-oil ratios, and to fix such  
24 ratios.
- 25 (6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions  
26 indicated by such terms are generally understood in the oil and gas business.
- 27 (7) To prevent fires.
- 28 (8) To identify the ownership of all oil or gas wells, producing leases, refineries,  
29 tanks, plants, structures and all storage and transportation equipment and  
30 facilities.
- 31 (9) To regulate the "shooting," perforating, and chemical treatment of wells.
- 32 (10) To regulate secondary recovery methods, including the introduction of gas,  
33 air, water or other substances into producing formations.
- 34 (11) To limit and prorate the production of oil or gas, or both, from any pool or  
35 field for the prevention of waste as herein defined.
- 36 (12) To require, either generally or in or from particular areas, certificates of  
37 clearance or tenders in connection with the transportation of oil or gas.
- 38 (13) To regulate the spacing of wells and to establish drilling units.
- 39 (14) To prevent, so far as is practicable, reasonably avoidable drainage from each  
40 developed unit which is not equalized by counter drainage.
- 41 (15) To prevent where necessary the use of gas for the manufacture of carbon  
42 black.
- 43 (16) To regulate and, if necessary in its judgment for the protection of unique  
44 environmental values, to prohibit the location of wells in the interest of  
45 protecting the quality of the water, air, soil or any other environmental  
46 resource against injury, or damage or impairment.

47 (d) The Department of Labor shall develop, adopt, and enforce rules establishing health  
48 and safety standards for workers engaged in oil and gas operations in the State, including  
49 operations in which hydraulic fracturing treatments are used for that purpose.

50 (e) The Department shall submit an annual report on its activities conducted pursuant to  
51 this Article and rules adopted thereunder to the Environmental Review Commission, the Joint

1 Legislative Commission on Energy Policy, the Senate and House of Representatives  
2 Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research  
3 Division of the General Assembly on or before October 1 of each year."

4 **SECTION 2.(d)** G.S. 113-392 reads as rewritten:

5 "**§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in**  
6 **pools.**

7 (a) Whether or not the total production from a pool be limited or prorated, no rule or  
8 order of the ~~Department~~ Commission shall be such in terms or effect.

9 (1) That it shall be necessary at any time for the producer from, or the owner of,  
10 a tract of land in the pool, in order that he may obtain such tract's just and  
11 equitable share of the production of such pool, as such share is set forth in  
12 this section, to drill and operate any well or wells on such tract in addition to  
13 such well or wells as can produce without waste such share, or

14 (2) As to occasion net drainage from a tract unless there be drilled and operated  
15 upon such tract a well or wells in addition to such well or wells thereon as  
16 can produce without waste such tract's just and equitable share, as set forth  
17 in this section, of the production of such pool.

18 (b) For the prevention of waste and to avoid the augmenting and accumulation of risks  
19 arising from the drilling of an excessive number of wells, the ~~Commission~~ Department shall,  
20 after a hearing, establish a drilling unit or units for each pool. The ~~Commission~~ Department  
21 may establish drainage units of uniform size for the entire pool or may, if the facts so justify,  
22 divide into zones any pool, establish a drainage unit for each zone, which unit may differ in  
23 size from that established in any other zone; and the ~~Commission~~ Department may from time  
24 to time, if the facts so justify, change the size of the unit established for the entire pool or for  
25 any zone or zones, or part thereof, establishing new zones and units if the facts justify their  
26 establishment.

27 (c) Each well permitted to be drilled upon any drilling unit shall be drilled  
28 approximately in the center thereof, with such exception as may reasonably be necessary where  
29 it is shown, after notice and upon hearing, and the ~~Commission~~ Department finds that the unit  
30 is partly outside the pool or, for some other reason, a well approximately in the center of the  
31 unit would be nonproductive or where topographical conditions are such as to make the drilling  
32 approximately in the center of the unit unduly burdensome. Whenever an exception is granted,  
33 the ~~Commission~~ Department shall take such action as will offset any advantage which the  
34 person securing the exception may have over producers by reason of the drilling of the well as  
35 an exception, and so that drainage from developed units to the tract with respect to which the  
36 exception is granted will be prevented or minimized and the producer of the well drilled as an  
37 exception will be allowed to produce no more than his just and equitable share of the oil and  
38 gas in the pool, as such share is set forth in this section.

39 (d) Subject to the reasonable requirements for prevention of waste, a producer's just and  
40 equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and  
41 equitable share) is that part of the authorized production for the pool (whether it be the total  
42 which could be produced without any restriction on the amount of production, or whether it be  
43 an amount less than that which the pool could produce if no restriction on the amount were  
44 imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in  
45 the developed area of his tract in the pool bears to the recoverable oil and gas in the total  
46 developed area of the pool, insofar as these amounts can be ascertained practically; and to that  
47 end, the rules, permits and orders of the ~~Commission~~ Department shall be such as will prevent  
48 or minimize reasonably avoidable net drainage from each developed unit (that is, drainage  
49 which is not equalized by counter-drainage), and will give to each producer the opportunity to  
50 use his just and equitable share of the reservoir energy."

51 **SECTION 2.(e)** G.S. 113-394 reads as rewritten:

1 **"§ 113-394. Limitations on production; allocating and prorating "allowables."**

2 (a) Whenever the total amount of oil, including condensate, which all the pools in the  
3 State can produce, exceeds the amount reasonably required to meet the reasonable market  
4 demand for oil, including condensate, produced in this State, then the ~~Department~~ Commission  
5 shall limit the total amount of oil, including condensate, which may be produced in the State by  
6 fixing an amount which shall be designated "allowable" for this State, which will not exceed  
7 the reasonable market demand for oil, including condensate, produced in this State. The  
8 Commission ~~Department~~ shall then allocate or distribute the "allowable" for the State among  
9 the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so  
10 that waste will be prevented. In allocating the "allowable" for the State, and in fixing  
11 "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such  
12 hydrocarbons, the ~~Department~~ Commission shall take into account the producing conditions  
13 and other relevant facts with respect to such pools, including the separate needs for oil, gas and  
14 condensate, and shall formulate rules setting forth standards or a program for the distribution of  
15 the "allowable" for the State, and shall distribute the "allowable" for the State in accordance  
16 with such standards or program, and where conditions in one pool or area are substantially  
17 similar to those in another pool or area, then the same standards or programs shall be applied to  
18 such pools and areas so that as far as practicable a uniform program will be followed; provided,  
19 however, the ~~Department~~ Commission shall ~~permit~~ allow the production of a sufficient amount  
20 of natural gas from any pool to supply adequately the reasonable market demand for such gas  
21 for light and fuel purposes if such production can be obtained without waste, and the  
22 condensate "allowable" for such pool shall not be less than the total amount of condensate  
23 produced or obtained in connection with the production of the gas "allowable" for light and fuel  
24 purposes, and provided further that, if the amount allocated to pool as its share of the  
25 "allowable" for the State is in excess of the amount which the pool should produce to prevent  
26 waste, then the ~~Department~~ Commission shall fix the "allowable" for the pool so that waste will  
27 be prevented.

28 (b) The Commission ~~Department~~ shall not be required to determine the reasonable  
29 market demand applicable to any single pool except in relation to all pools producing oil of  
30 similar kind and quality and in relation to the demand applicable to the State, and in relation to  
31 the effect of limiting the production of pools in the State. In allocating "allowables" to pools,  
32 the ~~Department~~ Commission shall not be bound by nominations or desires of purchasers to  
33 purchase oil from particular fields or areas, and the Commission ~~Department~~ shall allocate the  
34 "allowable" for the State in such manner as will prevent undue discrimination against any pool  
35 or area in favor of another or others which would result from selective buying or nominating by  
36 purchasers of oil, as such term "selective buying or nominating" is understood in the oil  
37 business.

38 (c) Whenever the ~~Department~~ Commission limits the total amount of oil or gas which  
39 may be produced in any pool in this State to an amount less than that which the pool could  
40 produce if no restrictions were imposed (which limitation may be imposed either incidental to,  
41 or without, a limitation of the total amount of oil or gas which may be produced in the State),  
42 the ~~Department~~ Commission shall prorate or distribute the "allowable" production among the  
43 producers in the pool on a reasonable basis, and so that each producer will have the opportunity  
44 to produce or receive his just and equitable share, as such share is set forth in subsection  
45 G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

46 (d) Whenever the total amount of gas which can be produced from any pool in this  
47 State exceeds the amount of gas reasonably required to meet the reasonable market demand  
48 therefrom, the Commission ~~Department~~ shall limit the total amount of gas which may be  
49 produced from such pool. The Commission ~~Department~~ shall then allocate or distribute the  
50 allowable production among the developed areas in the pool on a reasonable basis, so that each  
51 producer will have the opportunity to produce his just and equitable share, as such share is set

1 forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is  
2 accomplished by order or by the automatic operation of the prohibitory provisions of this law.  
3 As far as applicable, the provisions of subsection (a) of this section shall be followed in  
4 allocating any "allowable" of gas for the State.

5 (e) After the effective date of any rule or order of the ~~Department-Commission~~ fixing  
6 the "allowable" production of oil or gas, or both, or condensate, no person shall produce from  
7 any well, lease, or property more than the "allowable" production which is fixed, nor shall such  
8 amount be produced in a different manner than that which may be authorized."

9 **SECTION 2.(f)** G.S. 113-410 reads as rewritten:

10 **"§ 113-410. Penalties for other violations.**

11 Any person who fails to secure a permit prior to drilling a well or using hydraulic fracturing  
12 treatments, or who knowingly and willfully violates any provision of this ~~law, Article,~~ or any  
13 rule or order of the Department made hereunder, shall, in the event a penalty for such violation  
14 is not otherwise provided for herein, be subject to a penalty of not to exceed ~~one-twenty-five~~  
15 thousand dollars (\$1,000)(\$25,000) a day for each and every day of such violation, and for each  
16 and every act of violation, such penalty to be recovered in a suit in the superior court of the  
17 county where the defendant resides, or in the county of the residence of any defendant if there  
18 be more than one defendant, or in the superior court of the county where the violation took  
19 place. The place of suit shall be selected by the Department, and such suit, by direction of the  
20 Department, shall be instituted and conducted in the name of the Department by the Attorney  
21 General. The payment of any penalty as provided for herein shall not have the effect of  
22 changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product,  
23 nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the  
24 transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas  
25 or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction  
26 relating to such illegal oil, illegal gas or illegal product.

27 Any person knowingly and willfully aiding or abetting any other person in the violation of  
28 any statute of this State relating to the conservation of oil or gas, or the violation of any  
29 provisions of this law, or any rule or order made thereunder, shall be subject to the same  
30 penalties as prescribed herein for the violation by such other person.

31 The clear proceeds of penalties provided for in this section shall be remitted to the Civil  
32 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

33 **SECTION 2.(g)** G.S. 113-415 reads as rewritten:

34 **"§ 113-415. Effect on laws applicable to water and air pollution control, and management**  
35 **of solid and hazardous waste. ~~Conflicting laws.~~**

36 No provision of this Article shall be construed to abridge or otherwise affect the authority  
37 and responsibility vested in the Environmental Management Commission related to the control  
38 of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General  
39 Statutes, or the authority and responsibility vested in the Commission for Public Health related  
40 to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of  
41 the General Statutes. ~~repeal, amend, abridge or otherwise affect the authority and responsibility~~  
42 ~~vested in the Environmental Management Commission by Article 7 of Chapter 87, pertaining to~~  
43 ~~the location, construction, repair, operation and abandonment of wells, or the authority or~~  
44 ~~responsibility vested in the Department and the Commission for Public Health by Article 10 of~~  
45 ~~Chapter 130A of the General Statutes pertaining to public water supply requirements."~~

46 **SECTION 2.(h)** G.S. 143B-282 reads as rewritten:

47 **"§ 143B-282. Environmental Management Commission – creation; powers and duties.**

48 (2) The Environmental Management Commission shall adopt rules:

49 ...

1                    l. For matters within its jurisdiction that allow for and regulate  
2                    horizontal drilling and hydraulic fracturing for the purpose of oil and  
3                    gas exploration and development.

4                    ...."

5                    **SECTION 2.(i)** G.S. 130A-29 reads as rewritten:

6                    "**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

7                    ...  
8                    (c) The Commission shall adopt rules:

9                    ...  
10                  (11) For matters within its jurisdiction that allow for and regulate horizontal  
11                  drilling and hydraulic fracturing for the purpose of oil and gas exploration  
12                  and development.

13                  ...."

14                  **SECTION 2.(j)** The Mining and Energy Commission, in conjunction with the  
15 Department of Environment and Natural Resources, the Department of Transportation, the  
16 North Carolina League of Municipalities, and the North Carolina Association of County  
17 Commissioners, shall identify appropriate levels of funding and potential sources for that  
18 funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local  
19 governments impacted by the industry and associated activities; (ii) address expected  
20 infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic  
21 and heavy equipment; (iii) cover any costs to the State for administering an oil and gas  
22 regulatory program, including remediation and reclamation of drilling sites when necessary due  
23 to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any  
24 other issues that may need to be addressed in the Commission's determination. Any  
25 recommendation concerning local impact fees shall be formulated to require that all such fees  
26 be used exclusively to address infrastructure impacts from the drilling operation for which a fee  
27 is imposed. The Commission shall report its findings and recommendations, including  
28 legislative proposals, to the Joint Legislative Commission on Energy Policy, created under  
29 Section 6(a) of this act, and the Environmental Review Commission or before January 1, 2013.

30                  **SECTION 2.(k)** The Mining and Energy Commission, in conjunction with the  
31 Department of Environment and Natural Resources, the North Carolina League of  
32 Municipalities, and the North Carolina Association of County Commissioners, shall examine  
33 the issue of local government regulation of oil and gas exploration and development activities,  
34 and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission  
35 shall formulate recommendations that maintain a uniform system for the management of such  
36 activities, which allow for reasonable local regulations, including required setbacks,  
37 infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect  
38 of prohibiting oil and gas exploration and development activities, and the use of horizontal  
39 drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The  
40 Commission shall report its findings and recommendations, including legislative proposals, to  
41 the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and  
42 the Environmental Review Commission or before January 1, 2013.

43                  **SECTION 2.(l)** The Mining and Energy Commission, in conjunction with the  
44 Department of Environment and Natural Resources and the Consumer Protection Division of  
45 the North Carolina Department of Justice, shall study the State's current law on the issue of  
46 integration or compulsory pooling and other states' laws on the matter. The Department shall  
47 report its findings and recommendations, including legislative proposals, to the Joint  
48 Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the  
49 Environmental Review Commission on or before January 1, 2013.

50                  **SECTION 2.(m)** All rules required to be adopted by the Mining and Energy  
51 Commission, the Environmental Management Commission, and the Commission for Public



1 Health pursuant to this act shall be adopted no later than October 1, 2014. In order to provide  
2 for the orderly, efficient, and effective development and adoption of rules and to prevent the  
3 adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the  
4 Department of Environment and Natural Resources shall coordinate the adoption of the rules.  
5 The Commissions and the Department shall develop the rules in an open and collaborative  
6 process that includes (i) input from scientific and technical advisory groups, (ii) consultation  
7 with the North Carolina League of Municipalities, the North Carolina Association of County  
8 Commissioners, the Division of Energy of the Department of Commerce, the Department of  
9 Transportation, the Division of Emergency Management of the Department of Public Safety,  
10 the Consumer Protection Division of the Department of Justice, the Department of Labor, the  
11 Department of Health and Human Services, the State Review of Oil and Natural Gas  
12 Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the  
13 Rural Advancement Foundation (RAFI-USA), and (iii) broad public participation. During the  
14 development of the rules, the Commissions and the Department shall identify changes required  
15 to all existing rules and statutes necessary for the implementation of this act, including repeal or  
16 modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this  
17 act, the Department shall submit quarterly reports to the Joint Legislative Commission on  
18 Energy Policy, created under Section 6(a) of this act, and the Environmental Review  
19 Commission on progress in developing and adopting the rules. The quarterly reports shall  
20 include recommendations on changes required to existing rules and statutes and any other  
21 findings or recommendations necessary for the implementation of this act. The first report  
22 required by this subsection is due January 1, 2013.

23 **SECTION 2.(n)** Notwithstanding G.S. 143B-293.5, as enacted by Section 1(b) of  
24 this act, the North Carolina Mining and Energy Commission shall meet at least twice quarterly  
25 until December 31, 2015, in order to develop a modern regulatory program for the management  
26 of oil and gas exploration and development activities in the State, including the use of  
27 horizontal drilling and hydraulic fracturing for that purpose.

28  
29 **PART IV. AUTHORIZE HORIZONTAL DRILLING AND HYDRAULIC**  
30 **FRACTURING; PROHIBIT ISSUANCE OF PERMITS PENDING SUBSEQUENT**  
31 **LEGISLATIVE ACTION**

32 **SECTION 3.(a)** G.S. 113-393 reads as rewritten:

33 "**§ 113-393. Development of lands as drilling unit by agreement or order of**  
34 **Department-Commission.**

35 (a) Integration of Interests and Shares in Drilling Unit. – When two or more separately  
36 owned tracts of land are embraced within an established drilling unit, the owners thereof may  
37 agree validly to integrate their interests and to develop their lands as a drilling unit. Where,  
38 however, such owners have not agreed to integrate their interests, the ~~Department-Commission~~  
39 shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners  
40 to do so and to develop their lands as a drilling unit. All orders requiring such integration shall  
41 be made after notice and hearing, and shall be upon terms and conditions that are just and  
42 reasonable, and will afford to the owner of each tract the opportunity to recover or receive his  
43 just and equitable share of the oil and gas in the pool without unnecessary expense, and will  
44 prevent or minimize reasonably avoidable drainage from each developed unit which is not  
45 equalized by counter-drainage. The portion of the production allocated to the owner of each  
46 tract included in a drilling unit formed by an integration order shall, when produced, be  
47 considered as if it had been produced from such tract by a well drilled thereon.

48 In the event such integration is required, and provided also that after due notice to all the  
49 owners of tracts within such drilling unit of the creation of such drilling unit, and provided  
50 further that the ~~Department-Commission~~ has received no protest thereto, or request for hearing  
51 thereon, whether or not 10 days have elapsed after notice has been given of the creation of the

1 drilling unit, the operator designated by the ~~Department~~Commission to develop and operate the  
2 integrated unit shall have the right to charge to each other interested owner the actual  
3 expenditures required for such purpose not in excess of what are reasonable, including a  
4 reasonable charge for supervision, and the operator shall have the right to receive the first  
5 production from the well drilled by him thereon, which otherwise would be delivered or paid to  
6 the other parties jointly interested in the drilling of the well, so that the amount due by each of  
7 them for his shares of the expense of drilling, equipping, and operating the well may be paid to  
8 the operator of the well out of production; with the value of the production calculated at the  
9 market price in the field at the time such production is received by the operator or placed to his  
10 credit. After being reimbursed for the actual expenditures for drilling and equipping and  
11 operating expenses incurred during the drilling operations and until the operator is reimbursed,  
12 the operator shall thereafter pay to the owner of each tract within the pool his ratable share of  
13 the production calculated at the market price in the field at the time of such production less the  
14 reasonable expense of operating the well. In the event of any dispute relative to such costs, the  
15 ~~Department~~Commission shall determine the proper costs.

16 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced  
17 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on  
18 the unit, and should it be established that the ~~Department~~Commission is without authority to  
19 require integration as provided for in subsection (a) of this section, then, subject to all other  
20 applicable provisions of this law, the owner of each tract embraced within the drilling unit may  
21 drill on his tract, but the allowable production from each tract shall be such proportion of the  
22 allowable for the full drilling unit as the area of such separately owned tract bears to the full  
23 drilling unit.

24 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the  
25 interests of conservation of oil or gas, or both, or for the prevention of waste, between and  
26 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in  
27 any area that appears from geological or other data to be underlaid by a common accumulation  
28 of oil or gas, or both, or between and among such owners or operators, or both, and royalty  
29 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out  
30 a plan for the cooperative development and operation thereof, when such agreements are  
31 approved by the ~~Department~~Commission, are hereby authorized and shall not be held or  
32 construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts  
33 and combinations in restraining of trade.

34 (d) Variation from Vertical. – Whenever the Department fixes the location of any well  
35 or wells on the surface, the point at which the maximum penetration of such wells into the  
36 producing formation is reached shall not unreasonably vary from the vertical drawn from the  
37 center of the hole at the surface, provided, that the ~~Department~~Commission shall prescribe  
38 rules and the Department shall prescribe orders governing the reasonableness of such variation.  
39 This subsection shall not apply to wells drilled for the purpose of exploration or development  
40 of natural gas through use of horizontal drilling in conjunction with hydraulic fracturing  
41 treatments."

42 **SECTION 3.(b)** G.S. 143-214.2 reads as rewritten:

43 **"§ 143-214.2. Prohibited discharges.**

44 (a) The discharge of any radiological, chemical or biological warfare agent or  
45 high-level radioactive waste to the waters of the State is prohibited.

46 (b) The discharge of any wastes to the subsurface or groundwaters of the State by  
47 means of wells is prohibited. This section shall not be construed to ~~prohibit~~prohibit (i) the  
48 operation of closed-loop groundwater remediation systems in accordance with  
49 G.S. 143-215.1A. G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the  
50 exploration or development of natural gas resources.

1 (c) Unless permitted by a rule of the Commission, the discharge of wastes, including  
2 thermal discharges, to the open waters of the Atlantic Ocean over which the State has  
3 jurisdiction are prohibited."

4 **SECTION 3.(c)** G.S. 113-395 reads as rewritten:

5 "**§ 113-395. Permits, fees, and notice required for oil and gas activities.**~~Notice and~~  
6 ~~payment of fee to Department before drilling or abandoning well; plugging~~  
7 ~~abandoned well.~~

8 (a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill  
9 the same shall ~~notify~~ submit an application for a permit to the Department upon such form as ~~it~~  
10 the Department may prescribe and shall pay a fee of three thousand dollars (\$3,000) for each  
11 well. The drilling of any well is ~~hereby prohibited until such notice is given and such fee has~~  
12 ~~been paid and permit granted.~~ unless the Department has issued a permit for the activity.

13 (b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil  
14 and gas operations or activities shall submit an application for a permit to the Department upon  
15 such form as the Department may prescribe. The use of hydraulic fracturing treatments is  
16 prohibited unless the Department has issued a permit for the activity.

17 (c) Each abandoned well and each dry hole shall be plugged promptly in the manner  
18 and within the time required by rules prescribed by the Department, and the owner of such well  
19 shall give notice, upon such form as the Department may prescribe, of the abandonment of each  
20 dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty  
21 dollars (\$450.00). No well shall be abandoned until such notice has been given and such fee has  
22 been paid."

23 **SECTION 3.(d)** The issuance of permits for oil and gas exploration and  
24 development activities using the processes of horizontal drilling and hydraulic fracturing in the  
25 State pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other  
26 provision of law shall be prohibited in order to allow the Mining and Energy Commission to  
27 create a modern regulatory program to govern all aspects of such activities. No agency of the  
28 State, including the Department of Environment and Natural Resources, the Environmental  
29 Management Commission, the Commission on Public Health, or the Mining and Energy  
30 Commission, shall issue a permit for oil or gas exploration or development activities using the  
31 processes of horizontal drilling and hydraulic fracturing until the General Assembly takes  
32 legislative action to allow the issuance of such permits.

## 33 **PART V. LANDOWNER AND PUBLIC PROTECTIONS**

34 **SECTION 4.(a)** G.S. 113-420 reads as rewritten:

35 "**§ 113-420. Notice and entry to property.**

36 (a) Notice Required for Activities That Do Not Disturb Surface of Property. – If an oil  
37 ~~and~~ or gas developer or operator is not the surface owner of the property on which oil and gas  
38 operations are to occur, before entering the property for oil ~~and~~ or gas operations that do not  
39 disturb the surface, including inspections, staking, surveys, measurements, and general  
40 evaluation of proposed routes and sites for oil ~~and~~ or gas drilling operations, the developer or  
41 operator shall give written notice to the surface owner at least ~~seven~~ 14 days before the desired  
42 date of entry to the property. Notice shall be given by certified mail, return receipt requested.  
43 The requirements of this subsection may not be waived by agreement of the parties. The notice,  
44 at a minimum, shall include all of the following:

45 (1) The identity of person(s) requesting entry upon the property.

46 (2) The purpose for entry on the property.

47 (3) The dates, times, and location on which entry to the property will occur,  
48 including the estimated number of entries.

49 (b) Notice Required for Land-Disturbing Activities. – If an oil ~~and~~ or gas developer or  
50 operator is not the surface owner of the property on which oil ~~and~~ or gas operations are to  
51

1 occur, before entering the property for oil ~~and~~ or gas operations that disturb the surface, the  
2 developer or operator shall give written notice to the surface owner at least ~~14~~30 days before  
3 the desired date of entry to the property. Notice shall be given by certified mail, return receipt  
4 requested. The notice, at a minimum, shall include all of the following:

- 5 (1) A description of the exploration or development plan, including, but not  
6 limited to (i) the proposed locations of any roads, drill pads, pipeline routes,  
7 and other alterations to the surface estate and (ii) the proposed date on or  
8 after which the proposed alterations will begin.
- 9 (2) An offer of the oil and gas developer or operator to consult with the surface  
10 owner to review and discuss the location of the proposed alterations.
- 11 (3) The name, address, telephone number, and title of a contact person  
12 employed by or representing the oil or gas developer or operator who the  
13 surface owner may contact following the receipt of notice concerning the  
14 location of the proposed alterations.

15 (b1) Persons Entering Land; Identification Required; Presumption of Proper Protection  
16 While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas  
17 developer or operator for oil and gas operations shall carry on their person identification  
18 sufficient to identify themselves and their employer or principal and shall present the  
19 identification to the surface owner upon request. Entry upon land by such a person creates a  
20 rebuttable presumption that the surface owner properly protected the person against personal  
21 injury or property damage while the person was on the land.

22 (c) Venue. – If the oil and or gas developer or operator fails to give notice or otherwise  
23 comply with the provisions of as provided in this section, the surface owner may seek  
24 appropriate relief in the superior court for the county in which the oil or gas well is located and  
25 may receive actual damages."

26 **SECTION 4.(b)** G.S. 113-421 reads as rewritten:

27 **"§ 113-421. ~~Compensation for damages.~~Presumptive liability for water contamination;**  
28 **compensation for other damages; responsibility for reclamation.**

29 (a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or  
30 gas developer or operator is responsible for contamination of a private drinking water well or  
31 water supply well, as those terms are defined in G.S. 87-85, that is within 5,000 feet of a  
32 wellhead that is part of the oil or gas developer's or operator's activities unless the presumption  
33 is rebutted by a defense established as set forth in subdivision (1) of this subsection. If a  
34 contaminated private drinking water well or water supply well is located within 5,000 feet of a  
35 wellhead, in addition to any other remedy available at law or in equity, including payment of  
36 compensation for damage to a private drinking water well or water supply well, the developer  
37 or operator shall provide a replacement water supply to the surface owner and other persons  
38 using the water supply at the time the oil or gas developer's activities were commenced on the  
39 property, which water supply shall be adequate in quality and quantity for those persons' use.

40 (1) In order to rebut a presumption arising pursuant to subsection (a) of this  
41 section, an oil or gas developer or operator shall have the burden of proving  
42 by a preponderance of the evidence any of the following:

- 43 a. The contamination existed prior to the commencement of the drilling  
44 activities of the oil or gas developer or operator, as evidenced by a  
45 pre-drilling test of the private drinking water well or water supply  
46 well in question conducted in conformance with G.S. 113-423(e).
- 47 b. The surface owner or owner of the water supply in question refused  
48 the oil or gas developer or operator access to conduct a pre-drilling  
49 test of the private drinking water well or water supply well conducted  
50 in conformance with G.S. 113-423(e).

1                   c.     The private drinking water well or water supply well, as those terms  
 2                   are defined in G.S. 87-85, in question is not within 5,000 feet of a  
 3                   wellhead that is part of the oil or gas developer's or operator's  
 4                   activities.

5                   d.     The contamination occurred as the result of a cause other than  
 6                   drilling activities of the developer or operator.

7           (a1)   Compensation for Other Damages Required. – The oil ~~and~~ or gas developer or  
 8   operator shall be obligated to pay the surface owner compensation for all of the following:

9                   (1)   ~~Any damage to a water supply in use prior to the commencement of the~~  
 10                   ~~activities of the developer or operator which is due to those activities.~~

11                   (2)   The cost of repair of personal property of the surface owner, which personal  
 12                   property is damaged due to activities of the developer or operator, up to the  
 13                   value of replacement by personal property of like age, wear, and quality.

14                   (3)   Damage to any livestock, crops, or timber determined according to the  
 15                   market value of the resources destroyed, damaged, or prevented from  
 16                   reaching market due to the oil or gas developer's or operator's activities.

17           (a2)   Reclamation of Surface Property Required. – An oil or gas developer or operator  
 18   who is not the surface owner of the property on which oil or gas operations are to occur shall  
 19   reclaim all surface areas affected by its operations no later than two years following completion  
 20   of the operations. Prior to commencement of activities on the property, the oil or gas developer  
 21   or operator shall provide a bond running to the surface owner sufficient to cover reclamation of  
 22   the surface owner's property.

23                   (b)   Time Frame for Compensation. – When compensation is required, the surface  
 24   owner shall have the option of accepting a one-time payment or annual payments for a period  
 25   of time not less than 10 years.

26                   (c)   Venue. – The surface owner has the right to seek damages pursuant to this section in  
 27   the superior court for the county in which the oil or gas well is located. The superior court for  
 28   the county in which the oil or gas well is located has jurisdiction over all proceedings brought  
 29   pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing  
 30   party in an action to recover unpaid ~~royalties, royalties~~ or other damages owed due to activities  
 31   of the developer or operator, the court shall award any court costs and reasonable attorneys'  
 32   fees to the surface owner or the surface owner's assignee.

33                   ~~(d)~~   Conditions precedent, notice provisions, or arbitration clauses included in lease  
 34   documents that have the effect of limiting access to the superior court in the county in which  
 35   the oil or gas well is located are void and unenforceable."

36                   **SECTION 4.(c)** G.S. 113-422 reads as rewritten:

37   "**§ 113-422. Indemnification.**

38   An oil or gas developer or operator shall indemnify and hold harmless a surface owner  
 39   against any claims related to the developer's or operator's activities on the surface owner's  
 40   property, including, but not limited to, (i) claims of injury or death to any person; (ii) for  
 41   damage to impacted infrastructure or water supplies; (iii) damage to a third party's property that  
 42   is adjacent to property on which drilling occurs, as well as real or personal property; adjacent  
 43   infrastructure, and wells; and (iv) violations of any federal, State, or local law, rule, regulation,  
 44   or ordinance, including those for protection of the environment."

45                   **SECTION 4.(d)** G.S. 113-423 reads as rewritten:

46   "**§ 113-423. Maximum Required lease terms.**

47                   (a)   Required Information to be Provided to Potential Lessors. – Prior to executing a  
 48   lease for oil or gas rights or any other conveyance of any kind separating rights to oil or gas  
 49   from the freehold estate of surface property with a surface owner, an oil or gas developer or  
 50   operator, or any agent thereof, shall provide that surface owner with a copy of this Part and a

1 publication produced by the Consumer Protection Division of the North Carolina Department  
2 of Justice entitled "Oil & Gas Leases: Landowners' Rights."

3 (b) Maximum Duration. – Any lease of oil or gas rights or any other conveyance of any  
4 kind separating rights to oil or gas from the freehold estate of surface property shall expire at  
5 the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period,  
6 oil or gas is being produced for commercial purposes from the land to which the lease applies.  
7 If, at any time after the 10-year period, commercial production of oil or gas is terminated for a  
8 period of six months or more, all rights to the oil or gas shall revert to the surface owner of the  
9 property to which the lease pertains. No assignment or agreement to waive the provisions of  
10 this subsection shall be valid or enforceable. As used in this subsection, the term "production"  
11 includes the actual production of oil or gas by a lessee, or when activities are being conducted  
12 by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or  
13 when rentals or royalties are being paid by the lessee. No force majeure clause shall operate to  
14 extend a lease beyond the time frames set forth in this subsection.

15 (c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other  
16 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
17 property shall provide that the owner of the surface property to which the lease pertains shall  
18 receive a royalty payment of not less than twelve and one-half percent (12.5%) of the proceeds  
19 of sale of all oil or gas produced from the surface owner's just and equitable share of the oil and  
20 gas in the pool, which sum may be diminished by production costs that shall not exceed ten  
21 percent (10%) of the proceeds of sale of all oil or gas produced from the surface owner's just  
22 and equitable share of the oil and gas in the pool. Production costs shall be limited to those  
23 associated with compression and dehydration. Royalty payments shall commence no later than  
24 six months after the date of first sale of product from the drilling operations subject to the lease  
25 and thereafter no later than 60 days after the end of the calendar month within which  
26 subsequent production is sold. At the time each royalty payment is made, the oil or gas  
27 developer or operator shall provide documentation on the time period for which the royalty  
28 payment is made, the quantity of product sold within that period, and the price received, at a  
29 minimum. If royalty payments have not been made within the required time frames, the owner  
30 of the property to which the lease pertains shall be entitled to interest on the unpaid royalties  
31 commencing on the payment due date at the rate of twelve and one-half percent (12.5%) per  
32 annum on the unpaid amounts. Upon written request, the owner of the surface property to  
33 which the lease pertains shall be entitled to inspect and copy records of the oil or gas developer  
34 or operator related to production and royalty payments associated with the lease.

35 (d) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or  
36 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold  
37 estate of surface property shall clearly state whether the oil or gas developer or operator shall  
38 use groundwater or surface water supplies located on the property and, if so, shall clearly state  
39 the estimated amount of water to be withdrawn from the supplies on the property, and shall  
40 require permission of the landowner therefore. At a minimum, water used by the developer or  
41 operator shall not restrict the supply of water for domestic uses by the surface owner. The lease  
42 shall provide for full compensation to the landowner for water used from the property by the  
43 developer or operator in an amount not less than the fair market value of the water consumed  
44 based on water sales in the area at the time of use.

45 (e) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other  
46 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
47 property shall include a clause that requires the oil or gas developer or operator to conduct a  
48 test of all private drinking water wells or water supply wells, as those terms are defined in  
49 G.S. 87-85, within 5,000 feet from a wellhead that is part of the oil or gas developer's or  
50 operator's activities at least 30 days prior to initial drilling activities and at least two follow-up  
51 tests within a 24-month period after production has commenced. The Department shall identify

1 the location of all such wells on a property on which drilling operations are proposed to occur.  
2 A surface owner may elect to have the Department sample wells located on their property, in  
3 lieu of sampling conducted by the oil or gas developer or operator, in which case the developer  
4 or operator shall reimburse the Department for the reasonable costs involved in testing of the  
5 wells in question. Nothing in this subsection shall be construed to preclude or impair the right  
6 of any surface owner to refuse pre-drilling testing of wells located on their property.

7 (f) Recordation of Leases. – Any lease of oil or gas rights or any other conveyance of  
8 any kind separating rights to oil or gas from the freehold estate of surface property, including  
9 assignments of such leases, shall be recorded within 30 days of execution in the register of  
10 deeds office in the county that the land that is subject to the lease is located.

11 (g) Notice of Assignment Required. – Notice of assignment of any lease of oil or gas  
12 rights or any other conveyance of any kind separating rights to oil or gas from the freehold  
13 estate of surface property shall be provided to the owner of the property to which the lease  
14 pertains within 30 days of such assignment."

15 **SECTION 4.(e)** Part 3 of Article 27 of Chapter 113 of the General Statutes is  
16 amended by adding a new section to read:

17 **"§ 113-423.1. Surface activities.**

18 (a) Agreements on Rights and Obligations of Parties. – The developer or operator and  
19 the surface owner may enter into a mutually acceptable agreement that sets forth the rights and  
20 obligations of the parties with respect to the surface activities conducted by the developer or  
21 operator.

22 (b) Minimization of Intrusion Required. – An oil or gas developer or operator shall  
23 conduct oil and gas operations in a manner that accommodates the surface owner by  
24 minimizing intrusion upon and damage to the surface of the land. As used in this subsection,  
25 "minimizing intrusion upon and damage to the surface" means selecting alternative locations  
26 for wells, roads, pipelines, or production facilities, or employing alternative means of operation  
27 that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where  
28 such alternatives are technologically sound, economically practicable, and reasonably available  
29 to the operator. The standard of conduct set forth in this subsection shall not be construed to (i)  
30 prevent an operator from entering upon and using that amount of the surface as is reasonable  
31 and necessary to explore for, develop, and produce oil and gas and (ii) abrogate or impair a  
32 contractual provision binding on the parties that expressly provides for the use of the surface  
33 for the conduct of oil and gas operations or that releases the operator from liability for the use  
34 of the surface. Failure of an oil or gas developer or operator to comply with the requirements of  
35 this subsection shall give rise to a cause of action by the surface owner. Upon a determination  
36 by the trier of fact that such failure has occurred, a surface owner may seek compensatory  
37 damages and equitable relief. In any litigation or arbitration based upon this subsection, the  
38 surface owner shall present evidence that the developer's or operator's use of the surface  
39 materially interfered with the surface owner's use of the surface of the land. After such  
40 showing, the developer or operator shall bear the burden of proof of showing that it minimized  
41 intrusion upon and damage to the surface of the land in accordance with the provisions of this  
42 subsection. If a developer or operator makes that showing, the surface owner may present  
43 rebuttal evidence. A developer or operator may assert, as an affirmative defense, that it has  
44 conducted oil or gas operations in accordance with a regulatory requirement, contractual  
45 obligation, or land-use plan provision that is specifically applicable to the alleged intrusion or  
46 damage. Nothing in this subsection shall do any of the following:

47 (1) Preclude or impair any person from obtaining any and all other remedies  
48 allowed by law.

49 (2) Prevent a developer or operator and a surface owner from addressing the use  
50 of the surface for oil and gas operations in a lease, surface use agreement, or  
51 other written contract.

1           (3) Establish, alter, impair, or negate the authority of local governments to  
2           regulate land use related to oil and gas operations."

3           **SECTION 4.(f)** G.S. 113-424 is repealed.

4           **SECTION 4.(g)** Part 3 of Article 27 of Chapter 113 of the General Statutes is  
5 amended by adding a new section to read:

6 **"§ 113-425. Registry of landmen required.**

7           (a) Establishment of Registry. – The Department of Environment and Natural  
8 Resources shall establish and maintain a registry of landmen operating in this State. As used in  
9 this section, "landman" means a person that, in the course and scope of the person's business,  
10 does any of the following:

11           (1) Acquires or manages oil, gas, or mineral interests.

12           (2) Performs title or contract functions related to the exploration, exploitation, or  
13 disposition of oil, gas, or mineral interests.

14           (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,  
15 including the acquisition or divestiture of land or oil, gas, or mineral rights  
16 for a pipeline.

17           (4) Negotiates business agreements that provide for the exploration for or  
18 development of oil, gas, or minerals.

19           (b) Registration Required. – A person may not act, offer to act, or hold oneself out as a  
20 landman in this State unless the person is registered with the Department in accordance with  
21 this section. To apply for registration as a landman, a person shall submit an application to the  
22 Department on a form to be provided by the Department, which shall include, at a minimum,  
23 all of the following information:

24           (1) The name of the applicant or, if the applicant is not an individual, the names  
25 and addresses of all principals of the applicant.

26           (2) The business address, telephone number, and electronic mail address of the  
27 applicant.

28           (3) The social security number of the applicant or, if the applicant is not an  
29 individual, the federal employer identification number of the applicant.

30           (4) A list of all states and other jurisdictions in which the applicant holds or has  
31 held a similar registration or license.

32           (5) A list of all states and other jurisdictions in which the applicant has had a  
33 similar registration or license suspended or revoked.

34           (6) A statement whether any pending judgments or tax liens exist against the  
35 applicant.

36           (c) The Department may deny registration to an applicant, reprimand a registrant,  
37 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department  
38 determines that the applicant or registrant does any of the following:

39           (1) Fraudulently or deceptively obtains, or attempts to obtain, a registration.

40           (2) Uses or attempts to use an expired, suspended, or revoked registration.

41           (3) Falsely represents oneself as a registered landman.

42           (4) Engages in any other fraud, deception, misrepresentation, or knowing  
43 omission of material facts related to oil, gas, or mineral interests.

44           (5) Had a similar registration or license denied, suspended, or revoked in  
45 another state or jurisdiction.

46           (6) Otherwise violates this section.

47           (d) An applicant may challenge a denial, suspension, or revocation of a registration or a  
48 reprimand issued pursuant to subsection (c) of this section, as provided in Chapter 150B of the  
49 General Statutes.

50           (e) The Department shall adopt rules as necessary to implement the provisions of this  
51 section."



1           **SECTION 4.(h)** Part 3 of Article 27 of Chapter 113 of the General Statutes is  
2 amended by adding a new section to read:

3 **"§ 113-426. Publication of information for landowners.**

4           In order to effect the pre-lease publication distribution requirement as set forth in  
5 G.S. 113-423(a), and to otherwise inform the public, the Consumer Protection Division of the  
6 North Carolina Department of Justice, in consultation with the North Carolina Real Estate  
7 Commission, shall develop and make available a publication entitled "Oil & Gas Leases:  
8 Landowners' Rights" to provide general information on consumer protection issues and  
9 landowner rights, including information on mineral leases, applicable to exploration and  
10 extraction of gas or oil. The Division and the Commission shall update the publication as  
11 necessary."

12           **SECTION 4.(i)** Part 3 of Article 27 of Chapter 113 of the General Statutes is  
13 amended by adding a new section to read:

14 **"§ 113-427. Additional remedies.**

15           The remedies provided by this Part are not exclusive and do not preclude any other  
16 remedies that may be allowed by law."

17           **SECTION 5.** G.S. 47E-4 reads as rewritten:

18 **"§ 47E-4. Required disclosures.**

19           (a) With regard to transfers described in G.S. 47E-1, the owner of the real property  
20 shall furnish to a purchaser a residential property disclosure statement. The disclosure  
21 statement shall:

- 22           (1) Disclose those items which are required to be disclosed relative to the  
23 characteristics and condition of the property and of which the owner has  
24 actual knowledge; or
- 25           (2) State that the owner makes no representations as to the characteristics and  
26 condition of the real property or any improvements to the real property  
27 except as otherwise provided in the real estate contract.

28           (b) The North Carolina Real Estate Commission shall develop and require the use of a  
29 standard disclosure statement to comply with the requirements of this section. The disclosure  
30 statement shall specify that certain transfers of residential property are excluded from this  
31 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease  
32 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and  
33 shall include at least the following characteristics and conditions of the property:

- 34           (1) The water supply and sanitary sewage disposal system;
- 35           (2) The roof, chimneys, floors, foundation, basement, and other structural  
36 components and any modifications of these structural components;
- 37           (3) The plumbing, electrical, heating, cooling, and other mechanical systems;
- 38           (4) Present infestation of wood-destroying insects or organisms or past  
39 infestation the damage for which has not been repaired;
- 40           (5) The zoning laws, restrictive covenants, building codes, and other land-use  
41 restrictions affecting the real property, any encroachment of the real property  
42 from or to adjacent real property, and notice from any governmental agency  
43 affecting this real property; and
- 44           (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground  
45 storage tank, hazardous material or toxic material (whether buried or  
46 covered), and other environmental contamination.

47           The disclosure statement shall provide the owner with the option to indicate whether the  
48 owner has actual knowledge of the specified characteristics or conditions, or the owner is  
49 making no representations as to any characteristic or condition.

1 (b1) With regard to transfers described in G.S. 47E-1, the owner of the real property  
2 shall furnish to a purchaser an owners' association and mandatory covenants disclosure  
3 statement.

4 (1) The North Carolina Real Estate Commission shall develop and require the  
5 use of a standard disclosure statement to comply with the requirements of  
6 this subsection. The disclosure statement shall specify that certain transfers  
7 of residential property are excluded from this requirement by G.S. 47E-2,  
8 including transfers of residential property made pursuant to a lease with an  
9 option to purchase where the lessee occupies or intends to occupy the  
10 dwelling. The standard disclosure statement shall require disclosure of  
11 whether or not the property to be conveyed is subject to regulation by one or  
12 more owners' association(s) and governing documents which impose various  
13 mandatory covenants, conditions, and restrictions upon the property,  
14 including, but not limited to, obligations to pay regular assessments or dues  
15 and special assessments. The statement required by this subsection shall  
16 include information on all of the following:

- 17 a. The name, address, telephone number, or e-mail address for the  
18 president or manager of the association to which the lot is subject.  
19 b. The amount of any regular assessments or dues to which the lot is  
20 subject.  
21 c. Whether there are any services that are paid for by regular  
22 assessments or dues to which the lot is subject.  
23 d. Whether, as of the date the disclosure is signed, there are any  
24 assessments, dues, fees, or special assessments which have been duly  
25 approved as required by the applicable declaration or bylaws,  
26 payable to an association to which the lot is subject.  
27 e. Whether, as of the date the disclosure is signed, there are any  
28 unsatisfied judgments against or pending lawsuits involving the lot,  
29 the planned community or the association to which the lot is subject,  
30 with the exception of any action filed by the association for the  
31 collection of delinquent assessments on lots other than the lot to be  
32 sold.  
33 f. Any fees charged by an association or management company to  
34 which the lot is subject in connection with the conveyance or transfer  
35 of the lot to a new owner.

36 (2) The owners' association and mandatory covenants disclosure statement shall  
37 provide the owner with the option to indicate whether the owner has actual  
38 knowledge of the specified characteristics, or conditions or the owner is  
39 making no representations as to any characteristic or condition contained in  
40 the statement.

41 (b2) With regard to transfers described in G.S. 47E-1, the owner of the real property  
42 shall include in any real estate contract an oil, gas, and mineral rights mandatory disclosure as  
43 provided in this subsection.

44 (1) Transfers of residential property set forth in G.S.47E-2 are excluded from  
45 this requirement, except that the exemptions provided under subdivisions (9)  
46 and (11) of G.S. 47E-2 specifically are not excluded from this requirement.

47 (2) The disclosure shall be conspicuous, shall be in boldface type, and shall be  
48 as follows:

49  
50 OIL, GAS, AND MINERAL RIGHTS DISCLOSURE  
51

Oil, gas, and mineral rights (hereinafter "mineral rights") can be severed from the title to real property by conveyance (deed) of the mineral rights from the owner or by reservation of the mineral rights by the owner. If mineral rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights, Seller makes the following disclosures:

		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
10 11	<u>                    </u> Buyer Initials	1. <u>Mineral rights were severed from</u>	—	—
		<u>the property by a previous owner.</u>	—	—
12 13	<u>                    </u> Buyer Initials	2. <u>Seller has severed the mineral rights</u>	<u>Yes</u>	<u>No</u>
		<u>from the property.</u>	—	—
14 15	<u>                    </u> Buyer Initials	3. <u>Seller intends to sever the mineral</u>	<u>Yes</u>	<u>No</u>
		<u>rights from the property prior to</u>	—	—
		<u>transfer of title to Buyer."</u>	—	—

**PART VI. CREATE ENERGY POLICY OVERSIGHT COMMISSION**

**SECTION 6.(a)** Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 33.

"Joint Legislative Commission on Energy Policy.

**"§ 120-285. Creation and membership of Joint Legislative Commission on Energy Policy.**

(a) The Joint Legislative Commission on Energy Policy is established.

(b) The Commission shall consist of 10 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate, at least one of whom is a member of the minority party.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, at least one of whom is a member of the minority party.

(c) Terms on the Commission are for two years and begin on the convening of the General Assembly in each odd-numbered year. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Commission. A member continues to serve until the member's successor is appointed.

**"§ 120-286. Purpose and powers and duties of Commission.**

(a) The Joint Legislative Commission on Energy Policy shall exercise legislative oversight over energy policy in the State. In the exercise of this oversight, the Commission may do any of the following:

(1) Monitor and evaluate the programs, policies, and actions of the Mining and Energy Commission established pursuant to G.S. 143B-293.1, the Energy Policy Council established pursuant to G.S. 113B-2, the Energy Division in the Department of Commerce, the Utilities Commission and Public Staff established pursuant to Chapter 62 of the General Statutes, and of any other board, commission, department, or agency of the State or local government with jurisdiction over energy policy in the State.

1           (2)    Review and evaluate existing and proposed State statutes and rules affecting  
2           energy policy and determine whether any modification of these statutes or  
3           rules is in the public interest.

4           (3)    Monitor changes in federal law and court decisions affecting energy policy.

5           (4)    Monitor and evaluate energy-related industries in the State and study  
6           measures to promote these industries.

7           (5)    Study any other matters related to energy policy that the Commission  
8           considers necessary to fulfill its mandate.

9           (b)    The Commission may make reports and recommendations, including proposed  
10          legislation, to the General Assembly from time to time as to any matter relating to its oversight  
11          and the powers and duties set out in this section.

12          "**§ 120-287. Organization of Commission.**

13          (a)    The President Pro Tempore of the Senate and the Speaker of the House of  
14          Representatives shall each designate a cochair of the Joint Legislative Commission on Energy  
15          Policy. The Commission may meet at any time upon the call of either cochair, whether or not  
16          the General Assembly is in session.

17          (b)    A quorum of the Commission is six members.

18          (c)    While in the discharge of its official duties, the Commission has the powers of a  
19          joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission  
20          may contract for consultants or hire employees in accordance with G.S. 120-32.02.

21          (d)    From funds available to the General Assembly, the Legislative Services  
22          Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.  
23          Members of the Commission receive subsistence and travel expenses as provided in  
24          G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,  
25          shall assign professional staff to assist the Commission in its work. Upon the direction of the  
26          Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of  
27          Representatives shall assign clerical staff to the Commission. The expenses for clerical  
28          employees shall be borne by the Commission."

29          **SECTION 6.(b)** Notwithstanding G.S. 120-285(c), as enacted by Section 6(a) of  
30 this act, the President Pro Tempore of the Senate and the Speaker of the House of  
31 Representatives may appoint members to the Joint Legislative Commission on Energy Policy to  
32 terms that begin prior to the convening of the 2013 General Assembly. The terms of members  
33 appointed pursuant to this section shall end upon the convening of the 2013 General Assembly.  
34 Members appointed pursuant to this section who are otherwise qualified to serve on the  
35 Commission may be reappointed to the Commission upon the convening of the 2013 General  
36 Assembly.

37  
38          **PART VII. EFFECTIVE DATE**

39          **SECTION 7.** Sections 4(a) through 4(f), 4(h), and 4(i) of this act are effective  
40 when this act becomes law and apply to wells drilled and leases or contracts entered into on or  
41 after that date. Sections 1(a) through 1(h), Sections 2(a) through 2(j), Sections 3(a) through  
42 3(d), Section 4(g), and Sections 6(a) and 6(b) of this act become effective October 1, 2012.  
43 Section 5 becomes effective October 1, 2012, and applies to real estate transfers or dispositions  
44 occurring on or after that date. All other sections of this act are effective when the act becomes  
45 law.