

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 820  
Commerce Committee Substitute Adopted 6/5/12  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S820-PCS15242-RI-48**

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



\* S 8 2 0 - P C S 1 5 2 4 2 - R I - 4 8 \*

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 has concluded that information available to date  
15 suggests that production of natural gas by means of hydraulic fracturing can be done safely as  
16 long as the right protections are in place"; 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 horizontal drilling and hydraulic fracturing  
22 treatments, 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 adopt rules necessary to administer the Mining Act of 1971  
6 pursuant to G.S. 74-63.
- 7           c. To adopt rules necessary to administer the Control of Exploration for  
8 Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.
- 9           d. To adopt rules necessary to administer the Oil and Gas Conservation  
10 Act pursuant to G.S. 113-391.
- 11          (2) The Commission is authorized to make such rules, not inconsistent with the  
12 laws of this State, as may be required by the federal government for  
13 grants-in-aid for mining resource purposes which may be made available to  
14 the State by the federal government. This section is to be liberally construed  
15 in order that the State and its citizens may benefit from such grants-in-aid.
- 16          (3) The Commission shall make such rules consistent with the provisions of this  
17 Chapter. All rules adopted by the Commission shall be enforced by the  
18 Department of Environment and Natural Resources.
- 19          (b) The Commission shall have the authority to make determinations and issue orders  
20 pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to  
21 establish drilling units as provided in G.S. 113-393; (ii) require the operation of wells with  
22 efficient gas-oil ratios and to fix such ratios; (iii) limit and prorate the production of oil or gas,  
23 or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; and  
24 (iv) require integration of interests as provided in G.S. 113-393.
- 25          (c) The Commission shall submit quarterly written reports as to its operation, activities,  
26 programs, and progress to the Joint Legislative Commission on Energy Policy and the  
27 Environmental Review Commission. The Commission shall supplement the written reports  
28 required by this subsection with additional written and oral reports as may be requested by the  
29 Joint Legislative Commission on Energy Policy and the Environmental Review Commission.  
30 The Commission shall submit the written reports required by this subsection whether or not the  
31 General Assembly is in session at the time the report is due.
- 32 **§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection;**  
33 **removal; compensation; quorum; services.**
- 34          (a) Members Selection. – The North Carolina Mining and Energy Commission shall  
35 consist of 15 members appointed as follows:
- 36           (1) The Chair of the North Carolina State University Minerals Research  
37 Laboratory Advisory Committee, or the Chair's designee, ex officio.
- 38           (2) The State Geologist, or the State Geologist's designee, ex officio.
- 39           (3) The Assistant Secretary of Energy for the Department of Commerce, ex  
40 officio.
- 41           (4) One appointed by the General Assembly upon recommendation of the  
42 Speaker of the House of Representatives who is a member of a  
43 nongovernmental conservation interest.
- 44           (5) One appointed by the General Assembly upon recommendation of the  
45 Speaker of the House of Representatives who is an elected official of a  
46 municipal government located in the Triassic Basin of North Carolina.
- 47           (6) One appointed by the General Assembly upon recommendation of the  
48 Speaker of the House of Representatives who is a member of the  
49 Environmental Management Commission and knowledgeable in the  
50 principles of water and air resources management.

- 1           (7)    One appointed by the General Assembly upon recommendation of the  
2           Speaker of the House of Representatives who shall be a geologist with  
3           experience in oil and gas exploration and development.  
4           (8)    One appointed by the General Assembly upon recommendation of the  
5           President Pro Tempore of the Senate who is a member of a nongovernmental  
6           conservation interest.  
7           (9)    One appointed by the General Assembly upon recommendation of the  
8           President Pro Tempore of the Senate who is a member of a county board of  
9           commissioners of a county located in the Triassic Basin of North Carolina.  
10          (10)   One appointed by the General Assembly upon recommendation of the  
11          President Pro Tempore of the Senate who is a member of the Commission  
12          for Public Health and knowledgeable in the principles of waste management.  
13          (11)   One appointed by the General Assembly upon recommendation of the  
14          President Pro Tempore of the Senate who shall be an engineer with  
15          experience in oil and gas exploration and development.  
16          (12)   One appointed by the Governor who shall be a representative of a publicly  
17          traded natural gas company.  
18          (13)   One appointed by the Governor who shall be an attorney on the staff of the  
19          North Carolina Department of Justice with experience in legal matters  
20          associated with oil and gas exploration and development, including  
21          experience in mineral or oil and gas leasing.  
22          (14)   One appointed by the Governor who is a representative of the mining  
23          industry.  
24          (15)   One appointed by the Governor who is a representative of the mining  
25          industry.

26          (b)    Terms. – The term of office of members of the Commission is three years. A  
27          member may be reappointed to no more than two consecutive three-year terms. The term of a  
28          member who no longer meets the qualifications of their respective appointment, as set forth in  
29          subsection (a) of this section, shall terminate but the member may continue to serve until a new  
30          member who meets the qualifications is appointed. The terms of members appointed under  
31          subdivisions (4), (6), (9), and (12) of subsection (a) of this section shall expire on June 30 of  
32          years evenly divisible by three. The terms of members appointed under subdivisions (7), (10),  
33          (13), and (14) of subsection (a) of this section shall expire on June 30 of years that precede by  
34          one year those years that are evenly divisible by three. The terms of members appointed under  
35          subdivisions (5), (8), (11), and (15) of subsection (a) of this section shall expire on June 30 of  
36          years that follow by one year those years that are evenly divisible by three.

37          (c)    Vacancies; Removal from Office. –

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

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

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

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

5       (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to  
6 be established under G.S. 143B-293.6, the chair may establish other committees from members  
7 of the Commission to address specific issues as appropriate. No member of a committee may  
8 hear or vote on any matter in which the member has an economic interest. A majority of a  
9 committee shall constitute a quorum for the transaction of business. At a minimum, the chair  
10 shall establish a Committee on Mining with exclusive responsibility and authority over matters  
11 pertaining to mining and implementation of the Mining Act of 1971, including rule making for  
12 those purposes. The Committee on Mining shall consist of members appointed under  
13 subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section.

14 **"§ 143B-293.4. North Carolina Mining and Energy Commission – officers.**

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

20 **"§ 143B-293.5. North Carolina Mining and Energy Commission – meetings.**

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

24 **"§ 143B-293.6. North Carolina Mining and Energy Commission – quasi-judicial powers;**  
25 **procedures.**

26       (a) With respect to those matters within its jurisdiction, the Mining and Energy  
27 Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter  
28 150B of the General Statutes.

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

34           (1) Whether one or more of the civil penalty assessment factors in subsection (b)  
35 of this section were wrongly applied to the detriment of the petitioner.

36           (2) Whether the violator promptly abated continuing environmental damage  
37 resulting from the violation.

38           (3) Whether the violation was inadvertent or a result of an accident.

39           (4) Whether the violator had been assessed civil penalties for any previous  
40 violations.

41           (5) Whether payment of the civil penalty will prevent payment for the remaining  
42 necessary remedial actions.

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

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

50       **SECTION 1.(d)** The Revisor of Statutes shall make the conforming statutory  
51 changes necessary to reflect the reconstitution of the North Carolina Mining Commission as the

1 North Carolina Mining and Energy Commission as provided in subsection (b) of this section.  
2 The Codifier of Rules shall make the conforming rule changes necessary to reflect the  
3 reconstitution of the North Carolina Mining Commission to the North Carolina Mining and  
4 Energy Commission as provided in subsection (b) of this section.

5 **SECTION 1.(e)** The Division of Land Resources of the Department of  
6 Environment and Natural Resources is hereby renamed the Division of Energy, Mineral, and  
7 Land Resources.

8 **SECTION 1.(f)** The Revisor of Statutes shall make the conforming statutory  
9 changes necessary to reflect the renaming of the Division of Land Resources as the Division of  
10 Energy, Mineral, and Land Resources as provided in subsection (e) of this section. The  
11 Codifier of Rules shall make the conforming rule changes necessary to reflect the renaming of  
12 the Division of Land Resources as the Division of Energy, Mineral, and Land Resources as  
13 provided in subsection (e) of this section.

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

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

22  
23 **PART III. MINING AND ENERGY COMMISSION AND OTHER REGULATORY**  
24 **AGENCIES TO ESTABLISH REGULATORY PROGRAM FOR THE MANAGEMENT**  
25 **OF OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE STATE AND**  
26 **THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR**  
27 **THAT PURPOSE**

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

29 **"§ 113-380. Violation a misdemeanor.**

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

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

34 **"§ 113-389. Definitions.**

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

37 (1) "Base fluid" shall mean the continuous phase fluid type, such as water, used  
38 in a hydraulic fracturing treatment.

39 (1a) "Commission" shall mean the North Carolina Mining and Energy  
40 Commission.

41 (1b) "Department" shall mean the "Department of Environment and  
42 Natural Resources," as created by this law.

43 (1c) "Division" shall mean the Division of Energy, Mineral, and Land Resources  
44 of the Department of Environment and Natural Resources.

45 (2) "Field" shall mean the general area which is underlaid or appears to be  
46 underlaid by at least one pool; and "field" shall include the underground  
47 reservoir or reservoirs containing crude petroleum oil or natural gas, or both.  
48 The words "field" and "pool" mean the same thing when only one  
49 underground reservoir is involved; "field," unlike "pool," may relate to two  
50 or more pools.

- 1 (3) "Gas" shall mean all natural gas, including casing-head gas, and all other  
2 hydrocarbons not defined as oil in subdivision (7).
- 3 (3a) "Hydraulic fracturing additive" shall mean any chemical substance or  
4 combination of substances, including any chemical or proppants, which is  
5 intentionally added to a base fluid for purposes of preparing a hydraulic  
6 fracturing fluid or treatment of a well.
- 7 (3b) "Hydraulic fracturing fluid" shall mean the fluid, including the applicable  
8 base fluid and all hydraulic fracturing additives, used to perform a hydraulic  
9 fracturing treatment.
- 10 (3c) "Hydraulic fracturing treatment" shall mean all stages of the treatment of a  
11 well by the application of hydraulic fracturing fluid under pressure that is  
12 expressly designed to initiate or propagate fractures in a target geologic  
13 formation to enhance production of oil and gas.
- 14 ...
- 15 (6a) "Lessee" shall mean the person entitled under an oil and gas lease to drill  
16 and operate wells.
- 17 (6b) "Lessor" shall mean the mineral owner who has executed a lease and who is  
18 entitled to the payment of a royalty on production.
- 19 ...
- 20 (12a) "Proppant" shall mean sand or any natural or man-made material that is used  
21 in a hydraulic fracturing treatment to prop open the artificially created or  
22 enhanced fractures once the treatment is completed.
- 23 (12b) "Surface owner" means the person who holds record title to or has a  
24 purchaser's interest in the surface of real property.
- 25 ...
- 26 (15) "Water supply" shall mean any groundwater or surface water intended or  
27 used for human consumption; household purposes; or farm, livestock, or  
28 garden purposes."

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

30 **"§ 113-391. Jurisdiction and authority; rules and orders.**

31 (a) The Mining and Energy Commission, created by G.S. 143B-293.1, in conjunction  
32 with rule-making authority specifically reserved to the Environmental Management  
33 Commission under subsection (a3) of this section, shall establish a modern regulatory program  
34 for the management of oil and gas exploration and development in the State and the use of  
35 horizontal drilling and hydraulic fracturing treatments for that purpose. The program shall be  
36 designed to protect public health and safety; protect public and private property; protect and  
37 conserve the State's air, water, and other natural resources; promote economic development and  
38 expand employment opportunities; and provide for the productive and efficient development of  
39 the State's oil and gas resources. To establish the program, the Commission shall adopt rules for  
40 all of the following purposes:

- 41 (1) Regulation of pre-drilling exploration activities, including seismic and other  
42 geophysical and stratigraphic surveys and testing.
- 43 (2) Regulation of drilling, operation, casing, plugging, completion, and  
44 abandonment of wells.
- 45 (3) Prevention of pollution of water supplies by oil, gas, or other fluids used in  
46 oil and gas exploration and development.
- 47 (4) Protection of the quality of the water, air, soil, or any other environmental  
48 resource against injury or damage or impairment.
- 49 (5) Regulation of horizontal drilling and hydraulic fracturing treatments for the  
50 purpose of oil and gas exploration. Such rules shall, at a minimum, include  
51 standards or requirements related to the following:

- 1           a.     Information and data to be submitted in association with applications  
2           for permits to conduct oil and gas exploration and development  
3           activities using horizontal drilling and hydraulic fracturing  
4           treatments, which may include submission of hydrogeological  
5           investigations and identification of mechanisms to prevent and  
6           diagnose sources of groundwater contamination in the area of drilling  
7           sites. In formulating these requirements, the Commission shall  
8           consider (i) how North Carolina's geology differs from other states  
9           where oil and gas exploration and development activities using  
10          horizontal drilling and hydraulic fracturing treatments are common  
11          and (ii) the routes of possible groundwater contamination resulting  
12          from these activities and the potential role of vertical geological  
13          structures such as dikes and faults as conduits for groundwater  
14          contamination.
- 15          b.     Collection of baseline data, including groundwater, surface water,  
16          and air quality in areas where oil and gas exploration and  
17          development activities are proposed. With regard to rules applicable  
18          to baseline data for groundwater and surface water, the Commission  
19          shall adopt rules that, at a minimum, establish standards to satisfy the  
20          pre-drilling testing requirement established under G.S. 113-421(a),  
21          including contaminants for which an operator or developer must test  
22          and necessary qualifications for persons conducting such tests.
- 23          c.     Appropriate construction standards for oil and gas wells, which shall  
24          address the additional pressures of horizontal drilling and hydraulic  
25          fracturing treatments. These rules, at a minimum, shall include  
26          standards for casing and cementing sufficient to handle highly  
27          pressurized injection of hydraulic fracturing fluids into a well for  
28          purposes of fracturing bedrock and extraction of gas, and  
29          construction standards for other gas production infrastructure, such  
30          as storage pits and tanks.
- 31          d.     Appropriate siting standards for wells and other gas production  
32          infrastructure, such as storage pits and tanks, including appropriate  
33          setback requirements and identification of areas, such as floodplains,  
34          where oil and gas exploration and production activities should be  
35          prohibited. Siting standards adopted shall be consistent with any  
36          applicable water quality standards adopted by the Environmental  
37          Management Commission or by local governments pursuant to water  
38          quality statutes, including standards for development in water supply  
39          watersheds.
- 40          e.     Limits on water use, including, but not limited to, a requirement that  
41          oil and gas operators prepare and have a water and wastewater  
42          management plan approved by the Department, which, among other  
43          things, limits water withdrawals during times of drought and periods  
44          of low flows. Rules adopted shall be (i) developed in light of water  
45          supply in the areas of proposed activity, competing water uses in  
46          those areas, and expected environmental impacts from such water  
47          withdrawals and (ii) consistent with statutes, and rules adopted by the  
48          Environmental Management Commission pursuant to those statutes,  
49          which govern water quality and management of water resources,  
50          including, but not limited to, statutes and rules applicable to water

- 1                    withdrawal registration, interbasin transfer requirements, and water  
2                    quality standards related to wastewater discharges.
- 3                    f. Management of wastes produced in connection with oil and gas  
4                    exploration and development and use of horizontal drilling and  
5                    hydraulic fracturing treatments for that purpose. Such rules shall  
6                    address storage, transportation, and disposal of wastes that may  
7                    contain radioactive materials or wastes that may be toxic or have  
8                    other hazardous wastes' characteristics that are not otherwise  
9                    regulated as a hazardous waste by the federal Resource Conservation  
10                   and Recovery Act (RCRA), such as top-hole water, brines, drilling  
11                   fluids, additives, drilling muds, stimulation fluids, well servicing  
12                   fluids, oil, production fluids, and drill cuttings from the drilling,  
13                   alteration, production, plugging, or other activity associated with oil  
14                   and gas wells. Wastes generated in connection with oil and gas  
15                   exploration and development and use of horizontal drilling and  
16                   hydraulic fracturing treatments for that purpose that constitute  
17                   hazardous waste under RCRA shall be subject to rules adopted by the  
18                   Commission for Public Health to implement RCRA requirements in  
19                   the State.
- 20                   g. Prohibitions on use of certain chemicals and constituents in hydraulic  
21                   fracturing fluids, particularly diesel fuel.
- 22                   h. Disclosure of chemicals and constituents used in oil and gas  
23                   exploration, drilling, and production, including hydraulic fracturing  
24                   fluids, to State regulatory agencies and to local government  
25                   emergency response officials, and, with the exception of those items  
26                   constituting trade secrets, as defined in G.S. 66-152(3), and that are  
27                   designated as confidential or as a trade secret under G.S. 132-1.2,  
28                   requirements for disclosure of those chemicals and constituents to the  
29                   public.
- 30                   i. Installation of appropriate safety devices and development of  
31                   protocols for response to well blowouts, chemical spills, and other  
32                   emergencies, including requirements for approved emergency  
33                   response plans and certified personnel to implement these plans as  
34                   needed.
- 35                   j. Measures to mitigate impacts on infrastructure, including damage to  
36                   roads by truck traffic and heavy equipment, in areas where oil and  
37                   gas exploration and development activities that use horizontal  
38                   drilling and hydraulic fracturing technologies are proposed to occur.
- 39                   k. Notice, record keeping, and reporting.
- 40                   l. Proper well closure, site reclamation, post-closure monitoring, and  
41                   financial assurance. Rules for financial assurance shall require that an  
42                   oil or gas developer or operator establish financial assurance that will  
43                   ensure that sufficient funds are available for well closure,  
44                   post-closure maintenance and monitoring, any corrective action that  
45                   the Department may require, and to satisfy any potential liability for  
46                   sudden and nonsudden accidental occurrences, and subsequent costs  
47                   incurred by the Department in response to an incident involving a  
48                   drilling operation, even if the developer or operator becomes  
49                   insolvent or ceases to reside, be incorporated, do business, or  
50                   maintain assets in the State.

- 1           (6)    To require surveys upon application of any owner who has reason to believe  
2           that a well has been unlawfully drilled by another person into land of the  
3           owner without permission. In the event such surveys are required, the costs  
4           thereof shall be borne by the owner making the request.
- 5           (7)    To require the making of reports showing the location of oil and gas wells  
6           and the filing of logs and drilling records.
- 7           (8)    To prevent "blowouts," "caving," and "seepage," as such terms are generally  
8           understood in the oil and gas industry.
- 9           (9)    To identify the ownership of all oil or gas wells, producing leases, refineries,  
10          tanks, plants, structures, and all storage and transportation equipment and  
11          facilities.
- 12          (10)   To regulate the "shooting," perforating, and chemical treatment of wells.
- 13          (11)   To regulate secondary recovery methods, including the introduction of gas,  
14          air, water, or other substances into producing formations.
- 15          (12)   To regulate the spacing of wells and to establish drilling units.
- 16          (13)   To regulate and, if necessary in its judgment for the protection of unique  
17          environmental values, to prohibit the location of wells in the interest of  
18          protecting the quality of the water, air, soil, or any other environmental  
19          resource against injury, damage, or impairment.
- 20          (14)   Any other matter the Commission deems necessary for implementation of a  
21          modern regulatory program for the management of oil and gas exploration  
22          and development in the State and the use of horizontal drilling and hydraulic  
23          fracturing for that purpose.
- 24          (a1)   The regulatory program required to be established and the rules required to be  
25          adopted pursuant to subsection (a) of this section shall not include a program or rules for the  
26          regulation of oil and gas exploration and development in the waters of the Atlantic Ocean and  
27          the coastal sounds as defined in G.S. 113A-103.
- 28          (a2)   In addition to the matters for which the Commission is required to adopt rules  
29          pursuant to subsection (a) of this section, the Commission may adopt rules as it deems  
30          necessary for any of the following purposes:
- 31               (1)    To require the operation of wells with efficient gas-oil ratios and to fix such  
32                ratios.
- 33               (2)    To limit and prorate the production of oil or gas, or both, from any pool or  
34                field for the prevention of waste as defined in this Article and rules adopted  
35                thereunder.
- 36               (3)    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               (4)    To prevent, so far as is practicable, reasonably avoidable drainage from each  
39                developed unit which is not equalized by counter-drainage.
- 40          (a3)   The Environmental Management Commission shall adopt rules, after consideration  
41          of recommendations from the Mining and Energy Commission, for all of the following  
42          purposes:
- 43               (1)    Stormwater control for sites on which oil and gas exploration and  
44                development activities are conducted.
- 45               (2)    Regulation of toxic air emissions from drilling operations. In formulating  
46                appropriate standards, the Department shall assess emissions from oil and  
47                gas exploration and development activities that use horizontal drilling and  
48                hydraulic fracturing technologies, including emissions from associated truck  
49                traffic, in order to (i) determine the adequacy of the State's current air toxics  
50                program to protect landowners who lease their property to drilling operations  
51                and (ii) determine the impact on ozone levels in the area in order to

1 determine measures needed to maintain compliance with federal ozone  
2 standards.

3 (a4) The Department shall have jurisdiction and authority of and over all persons and  
4 property necessary to administer and enforce effectively the provisions of this law Article, and  
5 rules adopted thereunder, and all other laws relating to the conservation of oil and gas-gas,  
6 except for jurisdiction and authority reserved to the Department of Labor and the Mining and  
7 Energy Commission, as otherwise provided. The Commission and the Department may issue  
8 orders as may be necessary from time to time in the proper administration and enforcement of  
9 this Article and rules adopted thereunder.

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

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

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

33 (1) To require the drilling, operation, casing and plugging of wells to be done in  
34 such manner as to prevent the escape of oil or gas out of one stratum to  
35 another; to prevent the intrusion of water into an oil or gas stratum from a  
36 separate stratum; to prevent the pollution of freshwater supplies by oil, gas  
37 or salt water, or to protect the quality of the water, air, soil or any other  
38 environmental resource against injury or damage or impairment; and to  
39 require reasonable bond condition for the performance of the duty to plug  
40 each dry or abandoned well.

41 (2) To require directional surveys upon application of any owner who has  
42 reason to believe that a well or wells of others has or have been drilled into  
43 the lands owned by him or held by him under lease. In the event such  
44 surveys are required, the costs thereof shall be borne by the owners making  
45 the request.

46 (3) To require the making of reports showing the location of oil and gas wells,  
47 and the filing of logs and drilling records.

48 (4) To prevent the drowning by water of any stratum or part thereof capable of  
49 producing oil or gas in paying quantities, and to prevent the premature and  
50 irregular encroachment of water which reduces, or tends to reduce, the total  
51 ultimate recovery of oil or gas from any pool.

- 1           (5)    To require the operation of wells with efficient gas-oil ratios, and to fix such  
2           ratios.
- 3           (6)    To prevent "blow-outs," "caving" and "seepage" in the sense that conditions  
4           indicated by such terms are generally understood in the oil and gas business.
- 5           (7)    To prevent fires.
- 6           (8)    To identify the ownership of all oil or gas wells, producing leases, refineries,  
7           tanks, plants, structures and all storage and transportation equipment and  
8           facilities.
- 9           (9)    To regulate the "shooting," perforating, and chemical treatment of wells.
- 10          (10)   To regulate secondary recovery methods, including the introduction of gas,  
11          air, water or other substances into producing formations.
- 12          (11)   To limit and prorate the production of oil or gas, or both, from any pool or  
13          field for the prevention of waste as herein defined.
- 14          (12)   To require, either generally or in or from particular areas, certificates of  
15          clearance or tenders in connection with the transportation of oil or gas.
- 16          (13)   To regulate the spacing of wells and to establish drilling units.
- 17          (14)   To prevent, so far as is practicable, reasonably avoidable drainage from each  
18          developed unit which is not equalized by counter drainage.
- 19          (15)   To prevent where necessary the use of gas for the manufacture of carbon  
20          black.
- 21          (16)   To regulate and, if necessary in its judgment for the protection of unique  
22          environmental values, to prohibit the location of wells in the interest of  
23          protecting the quality of the water, air, soil or any other environmental  
24          resource against injury, or damage or impairment.

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

28          (e)    The Department shall submit an annual report on its activities conducted pursuant to  
29          this Article and rules adopted thereunder to the Environmental Review Commission, the Joint  
30          Legislative Commission on Energy Policy, the Senate and House of Representatives  
31          Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research  
32          Division of the General Assembly on or before October 1 of each year."

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

34                "**§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in**  
35                **pools.**

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

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

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

47                (b)    For the prevention of waste and to avoid the augmenting and accumulation of risks  
48                arising from the drilling of an excessive number of wells, the ~~Commission~~ Department shall,  
49                after a hearing, establish a drilling unit or units for each pool. The ~~Commission~~ Department  
50                may establish drainage units of uniform size for the entire pool or may, if the facts so justify,  
51                divide into zones any pool, establish a drainage unit for each zone, which unit may differ in

1 size from that established in any other zone; and the Commission ~~Department~~ may from time  
2 to time, if the facts so justify, change the size of the unit established for the entire pool or for  
3 any zone or zones, or part thereof, establishing new zones and units if the facts justify their  
4 establishment.

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

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

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

30 **"§ 113-394. Limitations on production; allocating and prorating "allowables."**

31 (a) Whenever the total amount of oil, including condensate, which all the pools in the  
32 State can produce, exceeds the amount reasonably required to meet the reasonable market  
33 demand for oil, including condensate, produced in this State, then the ~~Department~~ Commission  
34 shall limit the total amount of oil, including condensate, which may be produced in the State by  
35 fixing an amount which shall be designated "allowable" for this State, which will not exceed  
36 the reasonable market demand for oil, including condensate, produced in this State. The  
37 Commission ~~Department~~ shall then allocate or distribute the "allowable" for the State among  
38 the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so  
39 that waste will be prevented. In allocating the "allowable" for the State, and in fixing  
40 "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such  
41 hydrocarbons, the ~~Department~~ Commission shall take into account the producing conditions  
42 and other relevant facts with respect to such pools, including the separate needs for oil, gas and  
43 condensate, and shall formulate rules setting forth standards or a program for the distribution of  
44 the "allowable" for the State, and shall distribute the "allowable" for the State in accordance  
45 with such standards or program, and where conditions in one pool or area are substantially  
46 similar to those in another pool or area, then the same standards or programs shall be applied to  
47 such pools and areas so that as far as practicable a uniform program will be followed; provided,  
48 however, the ~~Department~~ Commission shall permit allow the production of a sufficient amount  
49 of natural gas from any pool to supply adequately the reasonable market demand for such gas  
50 for light and fuel purposes if such production can be obtained without waste, and the  
51 condensate "allowable" for such pool shall not be less than the total amount of condensate

1 produced or obtained in connection with the production of the gas "allowable" for light and fuel  
2 purposes, and provided further that, if the amount allocated to pool as its share of the  
3 "allowable" for the State is in excess of the amount which the pool should produce to prevent  
4 waste, then the ~~Department-Commission~~ shall fix the "allowable" for the pool so that waste will  
5 be prevented.

6 (b) The ~~Commission Department~~ shall not be required to determine the reasonable  
7 market demand applicable to any single pool except in relation to all pools producing oil of  
8 similar kind and quality and in relation to the demand applicable to the State, and in relation to  
9 the effect of limiting the production of pools in the State. In allocating "allowables" to pools,  
10 the ~~Department-Commission~~ shall not be bound by nominations or desires of purchasers to  
11 purchase oil from particular fields or areas, and the ~~Commission Department~~ shall allocate the  
12 "allowable" for the State in such manner as will prevent undue discrimination against any pool  
13 or area in favor of another or others which would result from selective buying or nominating by  
14 purchasers of oil, as such term "selective buying or nominating" is understood in the oil  
15 business.

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

24 (d) Whenever the total amount of gas which can be produced from any pool in this  
25 State exceeds the amount of gas reasonably required to meet the reasonable market demand  
26 therefrom, the ~~Commission Department~~ shall limit the total amount of gas which may be  
27 produced from such pool. The ~~Commission Department~~ shall then allocate or distribute the  
28 allowable production among the developed areas in the pool on a reasonable basis, so that each  
29 producer will have the opportunity to produce his just and equitable share, as such share is set  
30 forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is  
31 accomplished by order or by the automatic operation of the prohibitory provisions of this law.  
32 As far as applicable, the provisions of subsection (a) of this section shall be followed in  
33 allocating any "allowable" of gas for the State.

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

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

39 **"§ 113-410. Penalties for other violations.**

40 (a) Any person who fails to secure a permit prior to drilling a well or using hydraulic  
41 fracturing treatments, or who knowingly and willfully violates any provision of this  
42 law, Article, or any rule or order of the Commission or the Department made hereunder, shall,  
43 in the event a penalty for such violation is not otherwise provided for herein, be subject to a  
44 penalty of not to exceed ~~one~~ twenty-five thousand dollars (\$25,000) a day for each and  
45 every day of such violation, and for each and every act of violation, such penalty to be  
46 recovered in a suit in the superior court of the county where the defendant resides, or in the  
47 county of the residence of any defendant if there be more than one defendant, or in the superior  
48 court of the county where the violation took place. The place of suit shall be selected by the  
49 Department, and such suit, by direction of the Department, shall be instituted and conducted in  
50 the name of the Department by the Attorney General. The payment of any penalty as provided  
51 for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal

1 gas, or illegal product into legal product, nor shall such payment have the effect of authorizing  
 2 the sale or purchase or acquisition, or the transportation, refining, processing, or handling in  
 3 any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty  
 4 shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal  
 5 product.

6 (b) Any person knowingly and willfully aiding or abetting any other person in the  
 7 violation of any statute of this State relating to the conservation of oil or gas, or the violation of  
 8 any provisions of this law, or any rule or order made thereunder, shall be subject to the same  
 9 penalties as prescribed ~~herein~~ in subsection (a) of this section for the violation by such other  
 10 person.

11 (c) In determining the amount of a penalty under this section, the Department shall  
 12 consider all of the following factors:

13 (1) The degree and extent of harm to the natural resources of the State, to the  
 14 public health, or to private property resulting from the violation.

15 (2) The duration and gravity of the violation.

16 (3) The effect on ground or surface water quantity or quality or on air quality.

17 (4) The cost of rectifying the damage.

18 (5) The amount of money the violator saved by noncompliance.

19 (6) Whether the violation was committed willfully or intentionally.

20 (7) The prior record of the violator in complying or failing to comply with this  
 21 Article or a rule adopted pursuant to this Article.

22 (8) The cost to the State of the enforcement procedures.

23 (d) If any civil penalty has not been paid within 60 days after notice of assessment has  
 24 been served on the violator or within 30 days after service of the final decision by the  
 25 administrative law judge in accordance with G.S. 150B-34, a final decision by the Committee  
 26 on Civil Penalty Remissions established under G.S. 143B-293.6, or a court order, whichever is  
 27 later, the Secretary or the Secretary's designee shall request the Attorney General to institute a  
 28 civil action in the superior court of any county in which the violator resides or has his or its  
 29 principal place of business to recover the amount of the civil penalty.

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

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

33 "**§ 113-415. Conflicting laws.**

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

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

46 "**§ 143B-282. Environmental Management Commission – creation; powers and duties.**

47 ...

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 on or before January 1,  
30 2013.

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

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

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

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

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

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

35 "**§ 113-393. Development of lands as drilling unit by agreement or order of**  
36 **Department.Commission.**

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

50           In the event such integration is required, and provided also that after due notice to all the  
51 owners of tracts within such drilling unit of the creation of such drilling unit, and provided

1 further that the ~~Department-Commission~~ has received no protest thereto, or request for hearing  
2 thereon, whether or not 10 days have elapsed after notice has been given of the creation of the  
3 drilling unit, the operator designated by the ~~Department-Commission~~ to develop and operate the  
4 integrated unit shall have the right to charge to each other interested owner the actual  
5 expenditures required for such purpose not in excess of what are reasonable, including a  
6 reasonable charge for supervision, and the operator shall have the right to receive the first  
7 production from the well drilled by him thereon, which otherwise would be delivered or paid to  
8 the other parties jointly interested in the drilling of the well, so that the amount due by each of  
9 them for his shares of the expense of drilling, equipping, and operating the well may be paid to  
10 the operator of the well out of production; with the value of the production calculated at the  
11 market price in the field at the time such production is received by the operator or placed to his  
12 credit. After being reimbursed for the actual expenditures for drilling and equipping and  
13 operating expenses incurred during the drilling operations and until the operator is reimbursed,  
14 the operator shall thereafter pay to the owner of each tract within the pool his ratable share of  
15 the production calculated at the market price in the field at the time of such production less the  
16 reasonable expense of operating the well. In the event of any dispute relative to such costs, the  
17 ~~Department-Commission~~ shall determine the proper costs.

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

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

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

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

45 **"§ 143-214.2. Prohibited discharges.**

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

48 (b) The discharge of any wastes to the subsurface or groundwaters of the State by  
49 means of wells is prohibited. This section shall not be construed to ~~prohibit-prohibit (i)~~ the  
50 operation of closed-loop groundwater remediation systems in accordance with

1 ~~G.S. 143-215.1A~~ G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the  
2 exploration or development of natural gas resources.

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

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

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

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

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

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

25 **SECTION 3.(d)** The issuance of permits for oil and gas exploration and  
26 development activities using horizontal drilling and hydraulic fracturing treatments in the State  
27 pursuant to G.S. 113-395, as amended by subsection (c) of this section, or any other provision  
28 of law shall be prohibited in order to allow the Mining and Energy Commission sufficient time  
29 for development of a modern regulatory program for the management of oil and gas exploration  
30 and development in the State and the use of horizontal drilling and hydraulic fracturing  
31 treatments for that purpose, and for adoption of appropriate environmental standards applicable  
32 to these activities. No agency of the State, including the Department of Environment and  
33 Natural Resources, the Environmental Management Commission, the Commission on Public  
34 Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or  
35 development activities using horizontal drilling and hydraulic fracturing treatments until the  
36 General Assembly takes legislative action to allow the issuance of such permits.

## 37 38 **PART V. LANDOWNER AND PUBLIC PROTECTIONS**

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

40 "**§ 113-420. Notice and entry to property.**

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

- 50 (1) The identity of person(s) requesting entry upon the property.  
51 (2) The purpose for entry on the property.

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

3 (b) Notice Required for Land-Disturbing Activities. – If an oil ~~and~~or gas developer or  
4 operator is not the surface owner of the property on which oil ~~and~~or gas operations are to  
5 occur, before entering the property for oil ~~and~~or gas operations that disturb the surface, the  
6 developer or operator shall give written notice to the surface owner at least ~~14~~30 days before  
7 the desired date of entry to the property. Notice shall be given by certified mail, return receipt  
8 requested. The notice, at a minimum, shall include all of the following:

9 (1) A description of the exploration or development plan, including, but not  
10 limited to (i) the proposed locations of any roads, drill pads, pipeline routes,  
11 and other alterations to the surface estate and (ii) the proposed date on or  
12 after which the proposed alterations will begin.

13 (2) An offer of the oil and gas developer or operator to consult with the surface  
14 owner to review and discuss the location of the proposed alterations.

15 (3) The name, address, telephone number, and title of a contact person  
16 employed by or representing the oil or gas developer or operator who the  
17 surface owner may contact following the receipt of notice concerning the  
18 location of the proposed alterations.

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

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

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

31 "**§ 113-421. Compensation for damages.Presumptive liability for water contamination;**  
32 **compensation for other damages; responsibility for reclamation.**

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

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

46 a. The contamination existed prior to the commencement of the drilling  
47 activities of the oil or gas developer or operator, as evidenced by a  
48 pre-drilling test of the water supply in question conducted in  
49 conformance with G.S. 113-423(f).

50 b. The surface owner or owner of the water supply in question refused  
51 the oil or gas developer or operator access to conduct a pre-drilling

1 test of the water supply conducted in conformance with  
2 G.S. 113-423(f).

3 c. The water supply in question is not within 5,000 feet of a wellhead  
4 that is part of the oil or gas developer's or operator's activities.

5 d. The contamination occurred as the result of a cause other than  
6 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 shall reclaim all surface areas affected by its operations no later than two years following  
19 completion of the operations. If the developer or operator is not the surface owner of the  
20 property, prior to commencement of activities on the property, the oil or gas developer or  
21 operator shall provide a bond running to the surface owner sufficient to cover reclamation of  
22 the surface owner's property.

23 (a3) Remediation Required. – Nothing in this Article shall be construed to obviate or  
24 affect the obligation of a developer or operator to comply with any other requirement under law  
25 to remediate contamination caused by its activities.

26 (a4) Replacement Water Supply Required. – If a water supply belonging to the surface  
27 owner or third parties is contaminated due to the activities of the developer or operator, in  
28 addition to any other remedy available at law or in equity, the developer or operator shall  
29 provide a replacement water supply to persons using the water supply at the time the oil or gas  
30 developer's activities were commenced on the property, which water supply shall be adequate  
31 in quality and quantity for those persons' use.

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

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

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

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

46 **"§ 113-422. Indemnification.**

47 An oil or gas developer or operator shall indemnify and hold harmless a surface owner  
48 against any claims related to the developer's or operator's activities on the surface owner's  
49 property, including, but not limited to, (i) claims of injury or death to any person; (ii) for  
50 damage to impacted infrastructure or water supplies; (iii) damage to a third party's property that  
51 is adjacent to property on which drilling occurs, as well as real or personal property; adjacent

1 infrastructure, and wells, and (iv) violations of any federal, State, or local law, rule, regulation,  
2 or ordinance, including those for protection of the environment."

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

4 **"§ 113-423. Maximum Required lease terms.**

5 (a) Required Information to be Provided to Potential Lessors and Surface Owners. –  
6 Prior to executing a lease for oil and gas rights or any other conveyance of any kind separating  
7 rights to oil or gas from the freehold estate of surface property, an oil or gas developer or  
8 operator, or any agent thereof, shall provide the lessor with a copy of this Part and a publication  
9 produced by the Consumer Protection Division of the North Carolina Department of Justice  
10 entitled "Oil & Gas Leases: Landowners' Rights." If the lessor is not the surface owner of the  
11 property, the oil or gas developer or operator shall also provide the surface owner with a copy  
12 of this Part and the publication prior to execution of a lease for oil and gas rights.

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

25 (c) Minimum Royalty Payments. – Any lease of oil or gas rights or any other  
26 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
27 property shall provide that the lessor shall receive a royalty payment of not less than twelve and  
28 one-half percent (12.5%) of the proceeds of sale of all oil or gas produced from the lessor's just  
29 and equitable share of the oil and gas in the pool, which sum shall not be diminished by  
30 pre-production or post-production costs, fees, or other charges assessed by the oil or gas  
31 developer or operator against the property owner. Royalty payments shall commence no later  
32 than six months after the date of first sale of product from the drilling operations subject to the  
33 lease and thereafter no later than 60 days after the end of the calendar quarter within which  
34 subsequent production is sold. At the time each royalty payment is made, the oil or gas  
35 developer or operator shall provide documentation to the lessor on the time period for which  
36 the royalty payment is made, the quantity of product sold within that period, and the price  
37 received, at a minimum. If royalty payments have not been made within the required time  
38 frames, the lessor shall be entitled to interest on the unpaid royalties commencing on the  
39 payment due date at the rate of twelve and one-half percent (12.5%) per annum on the unpaid  
40 amounts. Upon written request, the lessor shall be entitled to inspect and copy records of the oil  
41 or gas developer or operator related to production and royalty payments associated with the  
42 lease.

43 (d) Bonus Payments. – Any bonus payments, or other initial payments, due under a  
44 lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas  
45 from the freehold estate of surface property shall be paid by the lessee to the lessor within 60  
46 days of execution of a lease. If a bonus payment or other initial payment has not been made  
47 within the required time frame, the lessor shall be entitled to interest on the unpaid amount  
48 commencing on the payment due date at the rate of ten percent (10%) per annum on the unpaid  
49 amount.

50 (e) Agreements for Use of Other Resources; Associated Payments. – Any lease of oil or  
51 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold

1 estate of surface property shall clearly state whether the oil or gas developer or operator shall  
2 use groundwater or surface water supplies located on the property and, if so, shall clearly state  
3 the estimated amount of water to be withdrawn from the supplies on the property, and shall  
4 require permission of the surface owner therefore. At a minimum, water used by the developer  
5 or operator shall not restrict the supply of water for domestic uses by the surface owner. The  
6 lease shall provide for full compensation to the surface owner for water used from the property  
7 by the developer or operator in an amount not less than the fair market value of the water  
8 consumed based on water sales in the area at the time of use.

9 (f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other  
10 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
11 property shall include a clause that requires the oil or gas developer or operator to conduct a  
12 test of all water supplies within 5,000 feet from a wellhead that is part of the oil or gas  
13 developer's or operator's activities at least 30 days prior to initial drilling activities and at least  
14 two follow-up tests within a 24-month period after production has commenced. The  
15 Department shall identify the location of all water supplies, including wells, on a property on  
16 which drilling operations are proposed to occur. A surface owner may elect to have the  
17 Department sample wells located on their property, in lieu of sampling conducted by the oil or  
18 gas developer or operator, in which case the developer or operator shall reimburse the  
19 Department for the reasonable costs involved in testing of the wells in question. Nothing in this  
20 subsection shall be construed to preclude or impair the right of any surface owner to refuse  
21 pre-drilling testing of wells located on their property.

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

26 (h) Notice of Assignment Required. – Written notice of assignment of any lease of oil  
27 or gas rights or any other conveyance of any kind separating rights to oil or gas from the  
28 freehold estate of surface property shall be provided to the lessor within 30 days of such  
29 assignment. If the surface owner of the property is not the lessor, written notice of assignment  
30 of any lease of oil or gas rights shall also be given to the surface owner of the property to which  
31 the lease pertains within 30 days of such assignment.

32 (i) Lender Approval of Lease. – Any lease for oil or gas rights or any other conveyance  
33 of any kind separating rights to oil or gas from the freehold estate of surface property with a  
34 surface owner shall include a conspicuous boldface disclosure concerning notification to  
35 lenders, which shall be initialed by the surface owner, and state the following:

36  
37 NOTICE TO LENDER(S) PRIOR TO EXECUTION OF LEASE:

38  
39 Surface owners are advised to secure written approval from any lender who  
40 holds a mortgage or deed of trust on any portion of the surface property  
41 involved in the lease prior to execution of the lease and obtain written  
42 confirmation that execution of the lease will not violate any provision  
43 associated with any applicable mortgage or deed of trust, which could  
44 potentially result in foreclosure.

45  
46 I have read and understood the  
47 terms of this provision.

\_\_\_\_\_  
Surface Owner's Initials

48 (j) Three-Day Right of Rescission. – Any lease of oil or gas rights or any other  
49 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
50 property shall be subject to a three-day right of rescission in which the lessor or lessee may  
51 cancel the lease. In order to cancel the lease, the lessor or lessee shall notify the other party in

1 writing within three business days of execution of the lease, and the lessor shall return any  
2 sums paid by the lessee to the lessor under the terms of the lease."

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

5 **"§ 113-423.1. Surface activities.**

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

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

- 35 (1) Preclude or impair any person from obtaining any and all other remedies  
36 allowed by law.  
37 (2) Prevent a developer or operator and a surface owner from addressing the use  
38 of the surface for oil and gas operations in a lease, surface use agreement, or  
39 other written contract.  
40 (3) Establish, alter, impair, or negate the authority of local governments to  
41 regulate land use related to oil and gas operations."

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

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

45 **"§ 113-425. Registry of landmen required.**

46 (a) Establishment of Registry. – The Department of Environment and Natural  
47 Resources, in consultation with the Consumer Protection Division of the North Carolina  
48 Department of Justice, shall establish and maintain a registry of landmen operating in this  
49 State. As used in this section, "landman" means a person that, in the course and scope of the  
50 person's business, does any of the following:

- 51 (1) Acquires or manages oil or gas interests.

- 1           (2)   Performs title or contract functions related to the exploration, exploitation, or  
2           disposition of oil or gas interests.
- 3           (3)   Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,  
4           including the acquisition or divestiture of land or oil or gas rights for a  
5           pipeline.
- 6           (4)   Negotiates business agreements that provide for the exploration for or  
7           development of oil or gas.

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

- 13           (1)   The name of the applicant or, if the applicant is not an individual, the names  
14           and addresses of all principals of the applicant.
- 15           (2)   The business address, telephone number, and electronic mail address of the  
16           applicant.
- 17           (3)   The social security number of the applicant or, if the applicant is not an  
18           individual, the federal employer identification number of the applicant.
- 19           (4)   A list of all states and other jurisdictions in which the applicant holds or has  
20           held a similar registration or license.
- 21           (5)   A list of all states and other jurisdictions in which the applicant has had a  
22           similar registration or license suspended or revoked.
- 23           (6)   A statement whether any pending judgments or tax liens exist against the  
24           applicant.

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

- 28           (1)   Fraudulently or deceptively obtains, or attempts to obtain, a registration.
- 29           (2)   Uses or attempts to use an expired, suspended, or revoked registration.
- 30           (3)   Falsely represents oneself as a registered landman.
- 31           (4)   Engages in any other fraud, deception, misrepresentation, or knowing  
32           omission of material facts related to oil, gas, or mineral interests.
- 33           (5)   Had a similar registration or license denied, suspended, or revoked in  
34           another state or jurisdiction.
- 35           (6)   Otherwise violates this section.

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

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

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

43          **"§ 113-426. Publication of information for landowners.**

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

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

3 **"§ 113-427. Additional remedies.**

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

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

7 **"§ 47E-4. Required disclosures.**

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

- 11           (1) Disclose those items which are required to be disclosed relative to the  
12 characteristics and condition of the property and of which the owner has  
13 actual knowledge; or
- 14           (2) State that the owner makes no representations as to the characteristics and  
15 condition of the real property or any improvements to the real property  
16 except as otherwise provided in the real estate contract.

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

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

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

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

- 42           (1) The North Carolina Real Estate Commission shall develop and require the  
43 use of a standard disclosure statement to comply with the requirements of  
44 this subsection. The disclosure statement shall specify that certain transfers  
45 of residential property are excluded from this requirement by G.S. 47E-2,  
46 including transfers of residential property made pursuant to a lease with an  
47 option to purchase where the lessee occupies or intends to occupy the  
48 dwelling. The standard disclosure statement shall require disclosure of  
49 whether or not the property to be conveyed is subject to regulation by one or  
50 more owners' association(s) and governing documents which impose various  
51 mandatory covenants, conditions, and restrictions upon the property,

including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

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

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

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

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

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

OIL, GAS, AND MINERAL RIGHTS DISCLOSURE

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>
<u>1. Mineral rights were severed from the property by a previous owner.</u>	—	—	—
	<u>Yes</u>	<u>No</u>	
<u>2. Seller has severed the mineral rights</u>	—	—	



1 Policy. The Commission may meet at any time upon the call of either cochair, whether or not  
2 the General Assembly is in session.

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

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

7 (d) From funds available to the General Assembly, the Legislative Services  
8 Commission shall allocate monies to fund the Joint Legislative Commission on Energy Policy.  
9 Members of the Commission receive subsistence and travel expenses as provided in  
10 G.S. 120-3.1. The Legislative Services Commission, through the Legislative Services Officer,  
11 shall assign professional staff to assist the Commission in its work. Upon the direction of the  
12 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of  
13 Representatives shall assign clerical staff to the Commission. The expenses for clerical  
14 employees shall be borne by the Commission."

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

## 23 24 **PART VII. EFFECTIVE DATE**

25 **SECTION 7.** Sections 4(a) through 4(f), 4(h), and 4(i) of this act are effective  
26 when this act becomes law and apply to wells drilled and leases or contracts entered into on or  
27 after that date. Sections 1(a) through 1(h), Sections 2(a) through 2(n), Sections 3(a) through  
28 3(d), and Sections 6(a) and 6(b) of this act become effective August 1, 2012. Section 4(g) and  
29 Section 5 become effective October 1, 2012, and Section 5 applies to real estate transfers or  
30 dispositions occurring on or after that date. All other sections of this act are effective when this  
31 act becomes law.