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FAILED

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 820

AMENDMENT NO. 5  
(to be filled in by  
Principal Clerk)

S820-ARI-65 [v.3]

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Comm. Sub. [YES]  
Amends Title [YES]  
S820-PCS15242-RI-48

Date 6-14, 2012

Representative Harrison

1 moves to amend the bill on page 1, line 1, through page 30, line 31,  
2 by rewriting those lines to read:

"A BILL TO BE ENTITLED

5 AN ACT TO (1) EXTEND THE STUDY OF OIL AND GAS EXPLORATION IN THE  
6 STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC  
7 FRACTURING FOR THAT PURPOSE; (2) TO DIRECT THE DEPARTMENT OF  
8 ENVIRONMENT AND NATURAL RESOURCES TO FORMULATE SPECIFIC  
9 LEGISLATIVE RECOMMENDATIONS FOR REGULATION OF THE USE OF  
10 HORIZONTAL DRILLING AND HYDRAULIC FRACTURING; AND (3) REQUIRE  
11 ENHANCED CONSUMER AND LANDOWNER PROTECTIONS IN CONNECTION  
12 WITH LEASES EXECUTED FOR THE EXPLORATION AND EXTRACTION OF OIL  
13 OR GAS.

15 **PART I. DEVELOPMENT OF REGULATORY PROGRAM**

17 Whereas, in S.L. 2011-276, the General Assembly directed the Department of  
18 Environment and Natural Resources and other entities to study the issue of oil and gas  
19 exploration in the State and the use of horizontal drilling and hydraulic fracturing for that  
20 purpose, including study of (i) oil and gas resources present in the Triassic Basins and in any  
21 other areas of the State; (ii) methods of exploration and extraction of oil and gas, including  
22 directional and horizontal drilling and hydraulic fracturing; (iii) potential environmental,  
23 economic, and social impacts arising from such activities, as well as impacts on infrastructure;  
24 and (iv) appropriate regulatory requirements for management of oil and gas exploration  
25 activities with particular attention to regulation of horizontal drilling and hydraulic fracturing  
26 for that purpose; and

27 Whereas, pursuant to S.L. 2011-276, the Department of Environment and Natural  
28 Resources (DENR), in conjunction with the Department of Commerce, the Department of  
29 Justice, and the Rural Advancement Foundation International (RAFI-USA), issued a draft  
30 report on oil and gas resources in March 2012; and

31 Whereas, that draft report states "[a]fter reviewing other studies and experiences in  
32 oil and gas-producing states, DENR believes that hydraulic fracturing can be done safely as





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1 long as the right protections are in place. It will be important to have those measures in place  
2 before issuing permits for hydraulic fracturing in North Carolina's shale formations."; and

3 Whereas, that draft report states "[a] number of states have experienced problems  
4 associated with natural gas exploration and development because the appropriate measures  
5 were not in place from the beginning—forcing both the state and the industry to react after  
6 damage had already been done."; and

7 Whereas, that draft report states "[a] complete oil and gas permitting program will  
8 require more detailed standards than it is possible to provide in this report and those standards  
9 should be based on conditions in North Carolina. Conditions in the Triassic Basins of North  
10 Carolina are not identical to those found in Pennsylvania or other gas-producing states."; and

11 Whereas, the draft report states "[a] comprehensive oil and gas regulatory program  
12 requires such a broad range of standards—many of them technical—that DENR cannot make  
13 specific recommendations on a full set of regulatory standards without further study."; and

14 Whereas, the draft report states "[t]he development of specific standards for gas  
15 production and hydraulic fracturing (such as siting criteria, waste management guidelines and  
16 well construction standards) will require a more detailed discussion of standards appropriate for  
17 North Carolina conditions."; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.(a)** The Department of Environment and Natural Resources, and other  
20 entities as specifically designated below, shall continue the study required by S.L. 2011-276  
21 concerning the issue of oil and gas exploration in the State and the use of horizontal drilling  
22 and hydraulic fracturing for that purpose. Specifically, the Department shall gather any  
23 additional information and data necessary to formulate detailed standards and regulatory  
24 requirements for management of natural gas exploration and development activities using  
25 horizontal drilling and hydraulic fracturing that are appropriate to address the particular  
26 conditions existing in North Carolina. At a minimum, the Department shall formulate specific  
27 recommendations and submit draft legislation on all of the following:

28 (1) Development of a modern oil and gas regulatory program, taking into  
29 consideration the processes involved in hydraulic fracturing and horizontal  
30 drilling technologies, and long-term prevention of physical or economic  
31 waste in developing oil and gas resources in the State. These  
32 recommendations shall include necessary updates and enhancements to  
33 existing oil and gas regulations, including, but not limited to, requirements  
34 pertaining to:

35 a. Collection of baseline data, including groundwater, surface water,  
36 and air quality in areas where oil and gas exploration and  
37 development activities are proposed.

38 b. State stormwater regulatory controls for oil and gas drilling sites.

39 c. Water use associated with the process of hydraulic fracturing in light  
40 of water supply in the areas of proposed activity, competing water  
41 uses in those areas, and expected environmental impacts from such  
42 water withdrawals, including, but not limited to, a requirement that  
43 oil and gas operators prepare and have a water and wastewater



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- 1 management plan approved by the Department, which, among other  
2 things, limits water withdrawals during times of drought and periods  
3 of low flows.
- 4 d. Management of oil and gas wastes, including storage, transportation,  
5 and disposal of wastes that may contain radioactive materials or  
6 wastes that may be toxic or have other hazardous wastes'  
7 characteristics, that are not otherwise regulated as a hazardous waste  
8 by the federal Resource Conservation and Recovery Act, such as  
9 top-hole water, brines, drilling fluids, additives, drilling muds,  
10 stimulation fluids, well servicing fluids, oil, production fluids, and  
11 drill cuttings from the drilling, alteration, production, plugging, or  
12 other activity associated with oil and gas wells.
- 13 e. Full disclosure of hydraulic fracturing chemicals and constituents to  
14 regulatory agencies, and, with the exception of those items  
15 constituting trade secrets, requirements for disclosure of hydraulic  
16 fracturing chemicals and constituents to the public.
- 17 f. Prohibitions on use of certain chemicals and constituents in hydraulic  
18 fracturing fluids, particularly diesel fuel.
- 19 g. State regulation of toxic air emissions from drilling operations. In  
20 formulating appropriate standards, the Department shall assess  
21 emissions from oil and gas exploration and development activities  
22 that use horizontal drilling and hydraulic fracturing technologies,  
23 including emissions from associated truck traffic in order to (i)  
24 determine the adequacy of the State's current air toxics program to  
25 protect landowners who lease their property to drilling operations,  
26 and (ii) determine the impact on ozone levels in the area in order to  
27 determine measures needed to maintain compliance with federal  
28 ozone standards.
- 29 h. Information and data to be submitted in association with applications  
30 for permits to conduct oil and gas exploration and development  
31 activities using the processes of horizontal drilling and hydraulic  
32 fracturing, which may include submission of hydrogeological  
33 investigations and identification of mechanisms to prevent and  
34 diagnose sources of groundwater contamination in the area of drilling  
35 sites. In formulating these requirements, the Department shall  
36 specifically examine (i) how North Carolina's geology differs from  
37 other states where oil and gas exploration and development activities  
38 using the processes of horizontal drilling and hydraulic fracturing are  
39 common, and (ii) the routes of possible groundwater contamination  
40 resulting from these activities and the potential role of vertical  
41 geological structures such as dikes and faults as conduits for  
42 groundwater contamination.



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- 1                   i.       Well construction standards to address the additional pressures of  
2                   horizontal drilling and hydraulic fracturing, such as standards for  
3                   casing and cementing sufficient to handle highly pressurized  
4                   injection of fluids into a well for purposes of fracturing bedrock and  
5                   extraction of gas, and construction standards for other gas production  
6                   infrastructure, such as storage pits and tanks.  
7                   j.       Siting standards for wells and other gas production infrastructure,  
8                   such as storage pits and tanks, including appropriate setback  
9                   requirements and identification of areas, such as floodplains, where  
10                  oil and gas exploration and production activities should be  
11                  prohibited.  
12                  k.       Installation of safety devices, such as blow-out preventers, and  
13                  actions to be taken in response to operational or mechanical  
14                  problems, including approved emergency response plans and  
15                  certified personnel to implement these plans as needed.  
16                  l.       Notice, record keeping, and reporting.  
17                  m.       Well closure, site reclamation, post-closure monitoring, and financial  
18                  assurance.
- 19           (2)     Review and evaluate the advisability and efficacy of creation of a new board  
20           or commission with jurisdiction over matters pertaining to oil and gas  
21           exploration and development, which would withdraw jurisdiction over such  
22           activities from existing entities such as the Environmental Management  
23           Commission and the Mining Commission.
- 24           (3)     Identification of appropriate levels of funding and potential sources for that  
25           funding, including permit fees, bonds, taxes, and impact fees, necessary to  
26           (i) support local governments impacted by the industry and associated  
27           activities; (ii) address expected infrastructure impacts, including, but not  
28           limited to, repair of roads damaged by truck traffic and heavy equipment;  
29           (iii) cover any costs to the State for administering an oil and gas regulatory  
30           program, including remediation and reclamation of drilling sites when  
31           necessary due to abandonment or insolvency of an oil or gas operator or  
32           other responsible party; and (iv) any other issues that may need to be  
33           addressed in the Department's determination. The Department shall develop  
34           recommendations on appropriate levels of funding in conjunction with the  
35           Department of Transportation, the North Carolina League of Municipalities,  
36           and the North Carolina Association of County Commissioners, as necessary.
- 37           (4)     Identification of potential impacts on local governments and local  
38           infrastructure, including, but not limited to, damage to roads by truck traffic  
39           and heavy equipment, and recommendations on measures to mitigate those  
40           impacts, as well as recommendations concerning the extent to which local  
41           governments should have regulatory authority over oil and gas exploration  
42           and development activities, including authority for adoption of reasonable  
43           restrictions on such activity in order to protect public health, safety, welfare,



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1 and the environment. The Department of Environment and Natural  
2 Resources, in conjunction with the Department of Transportation, the North  
3 Carolina League of Municipalities and the North Carolina Association of  
4 County Commissioners, shall identify these impacts and formulate  
5 recommendations for inclusion in the study and recommendations required  
6 by this act.

7 (5) Preparations necessary for appropriate response of State agencies, local first  
8 responders, and industry to a well blowout, chemical spill, or other  
9 emergency related to exploration and development activities, including  
10 requirements for contingency planning and spill risk management  
11 procedures. The Department shall develop these proposals in conjunction  
12 with the Division of Emergency Management of the Department of Public  
13 Safety.

14 (6) Development of proposals concerning an operator's liability for  
15 environmental contamination caused by exploration and development  
16 activities, particularly as it concerns groundwater contamination. The  
17 Consumer Protection Division of the North Carolina Department of Justice  
18 shall develop these proposals in consultation with the Department of  
19 Environment and Natural Resources and the Rural Advancement Foundation  
20 International (RAFI) for inclusion in the study and recommendations  
21 required by this act.

22 (7) Development of a coordinated permitting process for oil and gas exploration  
23 and development activities, which maintains the environmental permitting  
24 program for such activities within the Department of Environment and  
25 Natural Resources where it will benefit from the expertise of State  
26 geological staff and the ability to coordinate air, land, and water quality  
27 permitting. In developing a coordinated permitting process, the Department  
28 shall also examine and make recommendations concerning an appropriate  
29 fee structure applicable to oil and gas exploration and development activities  
30 that will ensure adequate and sustainable staffing levels in the long term,  
31 despite fluctuations in such activities and corresponding markets.

32 (8) Necessary data management capabilities and development of an electronic  
33 permitting program.

34 (9) Identification of gaps in regulatory authority over the siting, construction,  
35 and operation of gathering pipelines.

36 **SECTION 1.(b)** The Department shall identify all existing statutes and rules  
37 governing all aspects of oil and gas exploration and development activities, identify all  
38 statutory and rule changes necessary to implement the recommendations formulated pursuant to  
39 Section 1(a) of this act, and provide draft legislative proposals accordingly.

40 **SECTION 1.(c)** In conducting the continuing study required by Section 1(a) of this  
41 act, and in formulating the associated recommendations for legislative action by Section 1(b) of  
42 this act, the Department of Environment and Natural Resources shall (i) do so using a process  
43 involving scientific and technical advisory groups that allows for broad public participation and







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1       (a1) Other requirements concerning activities that do not disturb surface of property. –  
2 Persons who enter land pursuant to subsection (a) of this section shall carry on their person  
3 identification sufficient to identify themselves and their employer or principal and shall present  
4 the identification to the surface owner upon request. In addition, activities for which notice is  
5 required pursuant to subsection (a) of this section shall be subject to the following conditions:

6           (1) Vehicular access shall be limited to established roads and trails, unless  
7 approval for other vehicular access is granted by the surface owner.

8           (2) Approval of the surface owner is required for the clearing of trees, brush, or  
9 other vegetation.

10          (3) Entry upon land by a person to conduct or perform such activities creates a  
11 rebuttable presumption that the surface owner properly protected the person  
12 against personal injury or property damage while the person was on the land.

13          (4) A surveyor who enters land pursuant to subsection (a) of this section shall:  
14 (i) supply the surface owner with information on located, established, or  
15 reestablished corners that lie on the land or that may affect the boundaries of  
16 the land; and, (ii) provide the surface owner with a copy of any relevant  
17 survey filed or recorded, upon request of the surface owner.

18       (b) Notice required for land-disturbing activities. – If an oil and or gas developer or  
19 operator is not the surface owner of the property on which oil and or gas operations are to  
20 occur, before entering the property for oil and or gas operations that disturb the surface, the  
21 developer or operator shall give written notice to the surface owner at least 14-60 days before  
22 the desired date of entry to the property. Notice shall be given by certified mail, return receipt  
23 requested. The notice, at a minimum, shall include all of the following:

24           (1) A sufficient description of the planned oil or gas operations to enable the  
25 surface owner to evaluate the effect of the operations on the property.  
26 exploration or development plan, including, but not limited to (i) the  
27 proposed locations of any roads, drill pads, pipeline routes, and other  
28 alterations to the surface estate and (ii) the proposed date on or after which  
29 the proposed alterations will begin.

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

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

36           (4) A copy of this Part, and a publication produced by the Consumer Protection  
37 Division of the North Carolina Department of Justice entitled "Oil & Gas  
38 Leases: Landowners' Rights".

39           (5) A proposed surface use and compensation agreement addressing, at a  
40 minimum and to the extent known, all of the following issues:

41           a. Placement, specifications, maintenance and design of well pads,  
42 gathering pipelines and roads to be constructed for oil and gas  
43 operations.







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- 1           a.     The contamination existed prior to the commencement of the drilling  
2                 activities of the oil or gas developer or operator, as evidenced by a  
3                 pre-drilling test of the water supply in question conducted in  
4                 conformance with G.S. 113-423(e).
- 5           b.     The surface owner or owner of the water supply in question refused  
6                 the oil or gas developer or operator access to conduct a pre-drilling  
7                 test of the water supply conducted in conformance with  
8                 G.S. 113-423(c).
- 9           c.     The water supply in question is not within 5,000 feet of a wellhead  
10                that is part of the oil or gas developer or operator's activities.
- 11           d.     The contamination occurred as the result of a cause other than  
12                drilling activities of the developer or operator.

13       (a1)   Compensation for other damages required. – The oil and or gas developer or  
14       operator shall be obligated to pay the surface owner compensation for all damages incurred by  
15       a surface owner, including, but not limited to all of the following:

- 16           ~~(1)~~   ~~Any damage to a water supply in use prior to the commencement of the~~  
17                ~~activities of the developer or operator which is due to those activities.~~
- 18           (2)   The cost of repair of personal property of the surface owner, which personal  
19                property is damaged due to activities of the developer or operator, up to the  
20                value of replacement by personal property of like age, wear, and quality.
- 21           (3)   Lost income or expenses incurred as a result of being unable to dedicate  
22                surface property actually occupied by the oil or gas developer or operator's  
23                activities or to which access is prevented by such activities to the uses to  
24                which the property was dedicated prior to commencement of the activities  
25                measured from the date the activity was initiated until the date reclamation  
26                of the surface property is completed. This shall include lost income from  
27                agricultural production activities involving livestock, crops, or timber  
28                occurring prior to commencement of the activities of the oil or gas developer  
29                or operator.
- 30           (4)   Damage to any livestock, crops, or timber determined according to the  
31                market value of the resources destroyed, damaged, or prevented from  
32                reaching market due to the oil or gas developer or operator's activities.
- 33           (5)   The diminution in value, if any, of the surface property and other property  
34                after completion of the activities and reclamation conducted as required by  
35                subsection (a2) of this section determined according to the actual use made  
36                thereof by the surface owner immediately prior to the commencement of the  
37                activities of the oil or gas developer on the property.
- 38           (6)   Reimbursement for any additional taxes or assessments levied against the  
39                property due to the developer or operator's activities.

40       (a2)   Reclamation of Surface Property Required. – An oil or gas developer or operator  
41       shall reclaim all surface areas affected by its operations no later than two years following  
42       completion of the operations. If the developer or operator is not the surface owner of the  
43       property, prior to commencement of activities on the property, the oil or gas developer or



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1 operator shall provide a bond running to the surface owner sufficient to cover reclamation of  
2 the surface owner's property.

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

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

12 (b) Time-frame for compensation. – When compensation is required, the surface owner  
13 shall have the option of accepting a one-time payment or annual payments for a period of time  
14 not less than 10 years.

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

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

25 **§ 113-422. Indemnification.**

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

33 **§ 113-423. Maximum Required lease terms.**

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

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1       (b) Maximum duration. – Any lease of oil or gas rights or any other conveyance of any  
2 kind separating rights to oil or gas from the freehold estate of surface property shall expire at  
3 the end of ~~105~~ years from the date the lease is executed, unless, at the end of the ~~10-year~~5-year  
4 period, oil or gas is being produced for commercial purposes from the land to which the lease  
5 applies. If, at any time after the ~~10-year~~5-year period, commercial production of oil or gas in  
6 paying quantities is terminated for a period of six months or more, all rights to the oil or gas  
7 shall revert to the surface owner of the property to which the lease pertains. No assignment or  
8 agreement to waive the provisions of this subsection shall be valid or enforceable. As used in  
9 this subsection, the term "production" includes the actual production of oil or gas by a lessee, or  
10 when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal  
11 of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee. No force  
12 majeure clause shall operate to extend a lease beyond the time frames set forth in this  
13 subsection.

14       (c) Minimum royalty payments. – Any lease of oil or gas rights or any other  
15 conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
16 property shall provide that the lessor shall receive a royalty payment of not less than 15.0% of  
17 the proceeds of sale of all oil or gas produced from the lessor's just and equitable share of the  
18 oil and gas in the pool, which sum shall not be diminished by pre-production or post-production  
19 costs, fees, or other charges assessed by the oil or gas developer or operator against the  
20 property owner. Royalty payments shall commence no later than six (6) months after the date  
21 of first sale of product from the drilling operations subject to the lease and thereafter no later  
22 than sixty (60) days after the end of the calendar month within which subsequent production is  
23 sold. At the time each royalty payment is made, the oil or gas developer or operator shall  
24 provide documentation on the time-period for which the royalty payment is made, the quantity  
25 of product sold within that period, and the price received, at a minimum. If royalty payments  
26 have not been made within the required timeframes, the owner of the property to which the  
27 lease pertains shall be entitled to interest on the unpaid royalties commencing on the payment  
28 due date at the rate of 10% per annum on the unpaid amounts. Upon written request, the lessor  
29 shall be entitled to inspect and copy records of the oil or gas developer or operator related to  
30 production and royalty payments associated with the lease.

31       (d) Bonus payments. – Any bonus payments, or other initial payments, due under a  
32 lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas  
33 from the freehold estate of surface property shall be paid by the lessee to the lessor within  
34 30-days of execution of a lease. If a bonus payment or other initial payment has not been made  
35 within the required timeframe, the lessor shall be entitled to interest on the unpaid amount  
36 commencing on the payment due date at the rate of 10% per annum on the unpaid amount.

37       (e) Agreements for use of other resources; associated payments. – Any lease of oil or  
38 gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold  
39 estate of surface property shall clearly state if the oil or gas developer or operator shall use  
40 groundwater or surface water supplies located on the property, and if so, shall clearly state the  
41 estimated amount of water to be withdrawn from the supplies on the property, and shall require  
42 permission of the surface owner therefore. At a minimum, water used by the developer or  
43 operator shall not restrict the supply of water for domestic uses by the surface owner. The lease



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1 shall provide for full compensation to the surface owner for water used from the property by  
2 the developer or operator in amount not less than the fair market value of the water consumed  
3 based on water sales in the area at the time of use.

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

16 (g) Recordation of leases. – Any lease of oil or gas rights or any other conveyance of  
17 any kind separating rights to oil or gas from the freehold estate of surface property, including  
18 assignments of such leases, shall be recorded within 30 days of execution in the register of  
19 deeds office in the county where the land which is subject to the lease is located.

20 (h) Notice of assignment required. – Notice of assignment of any lease of oil or gas  
21 rights or any other conveyance of any kind separating rights to oil or gas from the freehold  
22 estate of surface property shall be provided to the owner of the property to which the lease  
23 pertains within 30 days of such assignment.

24 (i) Approval required from lenders. – Prior to executing a lease for oil or gas rights or  
25 any other conveyance of any kind separating rights to oil or gas from the freehold estate of  
26 surface property with a surface owner, an oil or gas developer or operator shall obtain written  
27 approval from any lender who holds a mortgage or deed of trust on any portion of the surface  
28 property involved in the proposed lease. Such approval shall include a confirmation from that  
29 lender that execution of a lease for oil or gas rights or any other conveyance of any kind  
30 separating rights to oil or gas from the freehold estate of the surface property will not violate  
31 any provision associated with the mortgage or deed of trust.

32 (j) 30-day right of rescission. – Any lease of 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, shall be  
34 subject to a 30-day right of rescission in which the lessor may cancel the lease. In order to  
35 cancel the lease, the lessor shall notify the lessee in writing within 30 calendar days of  
36 execution of the lease, and return any sums paid by the lessee to the lessor under the terms of  
37 the lease.

38 **§ 113-424. Applicability; effect.**

39 This Part applies to leases or contracts, and amendments to leases or contracts, entered into  
40 on or after June 15, 2011.

41 **"§ 113-423.1. Surface activities.**

42 (a) Agreements on Rights and Obligations of Parties. – The developer or operator and  
43 the surface owner may enter into a mutually acceptable agreement that sets forth the rights and



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1 obligations of the parties with respect to the surface activities conducted by the developer or  
2 operator.

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

- 28           (1) Preclude or impair any person from obtaining any and all other remedies  
29           allowed by law.  
30           (2) Prevent a developer or operator and a surface owner from addressing the use  
31           of the surface for oil and gas operations in a lease, surface use agreement, or  
32           other written contract.  
33           (3) Establish, alter, impair, or negate the authority of local governments to  
34           regulate land use related to oil and gas operations.

35 **"§ 113-425. Registry of landmen required.**

36       **(a) Establishment of registry.** – The Department of Environment and Natural Resources  
37 shall establish and maintain a registry of landmen operating in this State. As used in this  
38 section, "landman" means a person that, in the course and scope of the person's business:

- 39           (1) Acquires or manages oil, gas, or mineral interests;  
40           (2) Performs title or contract functions related to the exploration, exploitation, or  
41           disposition of oil, gas, or mineral interests;



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- 1           (3) Negotiates for the acquisition or divestiture of oil, gas, or mineral rights,  
2           including the acquisition or divestiture of land or oil, gas, or mineral rights  
3           for a pipeline; or  
4           (4) Negotiates business agreements that provide for the exploration for or  
5           development of oil, gas, or minerals.

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

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

23           (c) The Department may deny registration to an applicant, reprimand a registrant,  
24 suspend or revoke a registration, or impose a civil penalty on a registrant if the Department  
25 determines that the applicant or registrant:

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

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

37           (e) The Department shall adopt rules as necessary to implement the provisions of this  
38 section.

39 **"§ 113-426. Additional Remedies.**

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

42           **SECTION 4.(a)** G.S.113-380 reads as rewritten:

43 **"§ 113-380. Violation a misdemeanor.**



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

4            **SECTION 4.(b)** G.S.113-410 reads as rewritten:

5            "**§ 113-410. Penalties for other violations.**

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

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

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

27            **SECTION 5.** G.S. 113-393 reads as rewritten:

28            "**§ 113-393. Development of lands as drilling unit by agreement or order of Department.**

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

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



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1 further that the Department has received no protest thereto, or request for hearing thereon,  
2 whether or not 10 days have elapsed after notice has been given of the creation of the drilling  
3 unit, the operator designated by the Department to develop and operate the integrated unit shall  
4 have the right to charge to each other interested owner the actual expenditures required for such  
5 purpose not in excess of what are reasonable, including a reasonable charge for supervision,  
6 and the operator shall have the right to receive the first production from the well drilled by him  
7 thereon, which otherwise would be delivered or paid to the other parties jointly interested in the  
8 drilling of the well, so that the amount due by each of them for his shares of the expense of  
9 drilling, equipping, and operating the well may be paid to the operator of the well out of  
10 production; with the value of the production calculated at the market price in the field at the  
11 time such production is received by the operator or placed to his credit. After being reimbursed  
12 for the actual expenditures for drilling and equipping and operating expenses incurred during  
13 the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to  
14 the owner of each tract within the pool his ratable share of the production calculated at the  
15 market price in the field at the time of such production less the reasonable expense of operating  
16 the well. In the event of any dispute relative to such costs, the Department shall determine the  
17 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 is without authority to require  
21 integration as provided for in subsection (a) of this section, then, subject to all other applicable  
22 provisions of this law, the owner of each tract embraced within the drilling unit may drill on his  
23 tract, but the allowable production from each tract shall be such proportion of the allowable for  
24 the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

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

35 (d) Variation from Vertical. – Whenever the Department fixes the location of any well  
36 or wells on the surface, the point at which the maximum penetration of such wells into the  
37 producing formation is reached shall not unreasonably vary from the vertical drawn from the  
38 center of the hole at the surface, provided, that the Department shall prescribe rules and orders  
39 governing the reasonableness of such variation.

40 (e) No owner of land in this State shall be required to allow activities for the  
41 exploration or extraction of oil or gas on the owner's property, nor shall an owner of oil or gas  
42 interests be required to allow activities for the exploration or extraction of the oil or gas  
43 resources owned by them."



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

2   **"§ 47E-4. Required disclosures.**

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

6           (1)    Disclose those items which are required to be disclosed relative to the  
7                   characteristics and condition of the property and of which the owner has  
8                   actual knowledge; or

9           (2)    State that the owner makes no representations as to the characteristics and  
10                  condition of the real property or any improvements to the real property  
11                  except as otherwise provided in the real estate contract.

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

18           (1)    The water supply and sanitary sewage disposal system;

19           (2)    The roof, chimneys, floors, foundation, basement, and other structural  
20                  components and any modifications of these structural components;

21           (3)    The plumbing, electrical, heating, cooling, and other mechanical systems;

22           (4)    Present infestation of wood-destroying insects or organisms or past  
23                  infestation the damage for which has not been repaired;

24           (5)    The zoning laws, restrictive covenants, building codes, and other land-use  
25                  restrictions affecting the real property, any encroachment of the real property  
26                  from or to adjacent real property, and notice from any governmental agency  
27                  affecting this real property; and

28           (6)    Presence of lead-based paint, asbestos, radon gas, methane gas, underground  
29                  storage tank, hazardous material or toxic material (whether buried or  
30                  covered), and other environmental contamination.

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

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

37           (1)    The North Carolina Real Estate Commission shall develop and require the  
38                  use of a standard disclosure statement to comply with the requirements of  
39                  this subsection. The disclosure statement shall specify that certain transfers  
40                  of residential property are excluded from this requirement by G.S. 47E-2,  
41                  including transfers of residential property made pursuant to a lease with an  
42                  option to purchase where the lessee occupies or intends to occupy the  
43                  dwelling. The standard disclosure statement shall require disclosure of



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1 whether or not the property to be conveyed is subject to regulation by one or  
2 more owners' association(s) and governing documents which impose various  
3 mandatory covenants, conditions, and restrictions upon the property,  
4 including, but not limited to, obligations to pay regular assessments or dues  
5 and special assessments. The statement required by this subsection shall  
6 include information on all of the following:

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

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

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

- 34 (1) Transfers of residential property set forth in G.S.47E-2 are excluded from  
35 this requirement, except that the exemptions provided under subdivisions (9)  
36 and (11) of G.S. 47E-2 specifically are not excluded from this requirement.  
37 (2) The disclosure shall be conspicuous, shall be in boldface type and shall be as  
38 follows:

39  
40 OIL, GAS AND MINERAL RIGHTS DISCLOSURE

41  
42 Oil, gas, and mineral rights (hereinafter "mineral rights") can be severed  
43 from the title to real property by conveyance (deed) of the mineral rights



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1                   from the owner or by reservation of the mineral rights by the owner. If  
2                   mineral rights are or will be severed from the property, the owner of those  
3                   rights may have the perpetual right to drill, mine, explore, and remove any of  
4                   the subsurface resources on or from the property either directly from the  
5                   surface of the property or from a nearby location. With regard to the  
6                   severance of mineral rights, Seller makes the following disclosures:

		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
7				
8				
9	<u>Buyer Initials</u>			
10		<u>Yes</u>	<u>No</u>	
11				
12	<u>Buyer Initials</u>			
13		<u>Yes</u>	<u>No</u>	
14				
15	<u>Buyer Initials</u>			
16				

17                   **SECTION 7.** In order to effect the pre-lease publication distribution requirement as  
18 set forth in G.S. 113-420(b) and G.S. 113-423(a), and to otherwise inform the public, the  
19 Consumer Protection Division of the North Carolina Department of Justice in consultation with  
20 the North Carolina Real Estate Commission shall develop and make available a publication  
21 entitled "Oil & Gas Leases: Landowners' Rights" to provide general information on consumer  
22 protection issues and landowner rights, including information on mineral leases, applicable to  
23 exploration and extraction of gas or oil. The publication shall be made available by October 1,  
24 2012.

25  
26 **PART IV. SEVERANCE TAX**

27  
28                   **SECTION 8.** G.S. 113-387 reads as rewritten:

29 **"§ 113-387. Production of crude oil and gas regulated; tax assessments.**

30                   All common sources of supply of crude oil discovered after January 1, 1945, if so found  
31 necessary by the Department, shall have the production of oil therefrom controlled or regulated  
32 in accordance with the provisions of this law, and the Department is hereby authorized to assess  
33 from time to time against each barrel of oil produced and saved a tax not to exceed five mills  
34 on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs  
35 in connection with the administration of this law.

36                   All common sources of supply of natural gas discovered after January 1, 1945, if so found  
37 necessary by the Department, shall have the production of gas therefrom controlled or regulated  
38 in accordance with the provisions of this law, and the Department is hereby authorized to assess  
39 from time to time against each 1000 cubic feet of gas produced and saved from a gas well a tax  
40 not to exceed ~~one-half mill~~ twenty-six cents (26¢) on each 1000 cubic feet of gas. All moneys  
41 so collected shall be used solely to pay the expenses and other costs in connection with the  
42 administration of this law."  
43



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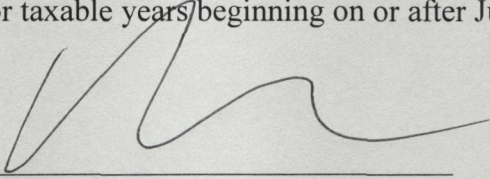
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1 **PART V. EFFECTIVE DATE**

2  
3  
4  
5  
6  
7  
8

**SECTION 9.** Except as otherwise provided, this act is effective when it becomes law and applies to leases or contracts, or amendments to leases or contracts, entered into on or after that date. The publication required pursuant to G.S. 113-423, as enacted by Section 3 of this act, shall be made available by October 1, 2012. Section 6 becomes effective October 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date. Section 8 is effective for taxes imposed for taxable years beginning on or after July 1, 2012."

SIGNED \_\_\_\_\_

  
Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_

FAILED

51-57 EV  
50-58 (adj)

TABLED \_\_\_\_\_

JUN 14 2012

*Senie Wukh*

**FAILED**