

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 953
Committee Substitute Favorable 6/21/12
PROPOSED SENATE COMMITTEE SUBSTITUTE H953-PCS11388-SB-64

Short Title: Amend Environmental Laws 2.

(Public)

Sponsors:

Referred to:

May 17, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS
3 TO VARIOUS LAWS RELATED TO ENVIRONMENT AND NATURAL RESOURCES,
4 DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER
5 MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT
6 RULE, AND TO MAKE CHANGES TO THE CLEAN ENERGY AND ECONOMIC
7 SECURITY ACT.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 113-182.1(e) reads as rewritten:

10 "(e) The Secretary of Environment and Natural Resources shall monitor progress in the
11 development and adoption of Fishery Management Plans in relation to the Schedule for
12 development and adoption of the plans established by the Marine Fisheries Commission. The
13 Secretary of Environment and Natural Resources shall report to the Joint Legislative
14 Commission on Governmental Operations on progress in developing and implementing the
15 Fishery Management Plans on or before 1 September of each year. The Secretary of
16 Environment and Natural Resources shall report to the ~~Joint Legislative Commission on~~
17 ~~Seafood and Aquaculture~~ Joint Legislative Commission on Governmental Operations within 30
18 days of the completion or substantial revision of each proposed Fishery Management Plan. The
19 Joint Legislative Commission on Governmental Operations shall review each proposed Fishery
20 Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary.
21 The Joint Legislative Commission on Governmental Operations may submit comments and
22 recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed
23 Plan is submitted by the Secretary."

24 SECTION 2.(a) G.S. 113A-115.1 is amended by adding a new subsection to read:

25 "§ 113A-115.1. Limitations on erosion control structures.

26 ...

27 (i) No later than September 1 of each year, the Coastal Resources Commission shall
28 report to the Environmental Review Commission on the implementation of this section. The
29 report shall provide a detailed description of each proposed and permitted terminal groin and its
30 accompanying beach fill project, including the information required to be submitted pursuant to
31 subsection (e) of this section. For each permitted terminal groin and its accompanying beach
32 fill project, the report shall also provide all of the following:



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1 utilize this program only when procurement under subdivision (1) or (2) of
2 this subsection is not feasible. Any mitigation site design work currently
3 being performed through contracts awarded under the design-bid-build
4 program shall be allowed to continue as scheduled. Contracts for
5 construction of projects with a design already approved by the Ecosystem
6 Enhancement Program shall be awarded by the Ecosystem Enhancement
7 Program by issuing a Request for Proposal (RFP). Only contractors who
8 have prequalified under procedures established by the Ecosystem
9 Enhancement Program shall be eligible to bid on Ecosystem Enhancement
10 Program construction projects. Construction contracts issued under this
11 subdivision shall be exempt from the requirements of Article 8B of Chapter
12 143 of the General Statutes.

13 (j) The regulatory requirements for the establishment, operation, and monitoring of a
14 compensatory mitigation bank or full delivery project shall vest at the time of the execution of
15 the mitigation banking instrument or the award of a full delivery contract."

16 **SECTION 5.(b)** Sections 1.2 and 1.3 of S.L. 2011-343 are repealed.

17 **SECTION 6.** G.S. 143B-279.8(f) reads as rewritten:

18 "(f) The Secretary of Environment and Natural Resources shall report to the
19 Environmental Review Commission and the ~~Joint Legislative Commission on Seafood and~~
20 ~~Aquaculture [Joint Legislative Commission on Governmental Operations]~~ Joint Legislative
21 Commission on Governmental Operations within 30 days of the completion or substantial
22 revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission
23 and the Joint Legislative Commission on Governmental Operations shall concurrently review
24 each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted
25 by the Secretary. The Environmental Review Commission and the Joint Legislative
26 Commission on Governmental Operations may submit comments and recommendations on the
27 draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the
28 Secretary."

29 **SECTION 7.** G.S. 143B-344.37(b)(1) reads as rewritten:

30 **"§ 143B-344.37. (Expires June 30, 2016) North Carolina Sustainable Communities Grant**
31 **Fund.**

32 ...

33 (b) Purposes. – Funds in the North Carolina Sustainable Communities Grant Fund shall
34 be used, as available, to provide funding to regional bodies, cities, or counties to improve
35 regional planning efforts that integrate housing and transportation decisions, to increase the
36 capacity to improve land use and zoning and to provide up to fifty percent (50%) of any
37 required local matching funds for recipients of Federal Sustainable Communities Planning
38 Grants and any other federal grants related to sustainable development and requiring local
39 matching funds. In order to receive funds under this section, regions must meet all of the
40 following requirements:

41 (1) The regional body, city, or county is a part of a regional sustainable
42 development partnership that includes any of the metro regions as defined in
43 ~~G.S. 143B-344.38(b).~~ G.S. 143B-344.38(c). Partnerships may also include
44 any Metropolitan Planning Organizations, Regional Planning Organizations,
45 regional transit agencies, and representation from involved State agencies.

46"

47 **SECTION 8.** G.S. 143B-344.38 reads as rewritten:

48 **"§ 143B-344.38. (Expires June 30, 2016) North Carolina Sustainable Communities Task**
49 **Force – reports.**

50 (a) Beginning in 2011, the Task Force shall report to the Governor, the chairs of the
51 ~~House Commerce, Small Business, and Entrepreneurship Committee~~ House Committee on

1 Commerce and Job Development, and the Senate Commerce Committee, and the Joint
2 Legislative Commission on Governmental Operations no later than October 1 each year. The
3 report shall include the following elements:

4 ...
5 (b) Prior to awarding any funding under G.S. 143B-344.37 and no later than February
6 1, 2011, the Task Force shall report to the ~~House Commerce, Small Business, and~~
7 ~~Entrepreneurship Committee~~ House Committee on Commerce and Job Development and the
8 Senate Commerce Committee regarding the sustainable practices scoring system developed in
9 accordance with G.S. 143B-344.35(7).

10"

11 **SECTION 9.** G.S. 143B-432(a) reads as rewritten:

12 "(a) The Division of Economic Development of the Department of Natural and
13 Economic Resources, the Science and Technology Committee of the Department of Natural
14 and Economic Resources, and the Science and Technology Research Center of the Department
15 of Natural and Economic ~~Resources Resources, and the Western North Carolina Public Lands~~
16 ~~Council of the Department of Natural and Economic Resources~~ are each hereby transferred to
17 the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6."

18 **SECTION 10.** G.S. 18B-1105(b) reads as rewritten:

19 "**§ 18B-1105. Authorization of distillery permit.**

20 ...

21 (b) Distilleries for Fuel Alcohol. – Any person in possession of a Federal Operating
22 Permit pursuant to Title 27, Code of Federal Regulations, Part 19 (April 1, 2010 Edition),
23 ~~201.64 through 201.65 or Part 201.131 through 201.138~~ shall obtain a fuel alcohol permit
24 before manufacturing any alcohol. The permit shall entitle the permittee to perform only those
25 acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating
26 Permit shall apply to the State permit."

27 **SECTION 11.(a)** Definition. – As used in this act, "New Development Rule 15A
28 NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy:
29 Stormwater Management for New Development) adopted by the Commission on May 8, 2008,
30 and approved by the Rules Review Commission on November 20, 2008.

31 **SECTION 11.(b)** New Development Rule 15A NCAC 02B .0265. – Until the
32 effective date of the revised permanent rule that the Commission is required to adopt pursuant
33 to Section 11(d) of this act, the Commission and the Department shall implement New
34 Development Rule 15A NCAC 02B .0265, as provided in Section 11(c) of this act.

35 **SECTION 11.(c)** Implementation. – Notwithstanding sub-subdivision (d) of
36 subdivision (4) of New Development Rule 15A NCAC 02B .0265, by August 10, 2014, within
37 three months after the Commission's approval of a local program, or upon the Division's first
38 renewal of a local government's NPDES stormwater permit, whichever occurs later, the
39 affected local government shall complete adoption of and implement its local stormwater
40 management program.

41 **SECTION 11.(d)** Additional Rule-Making Authority. – The Commission shall
42 adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding
43 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
44 substantively identical to the provisions of Section 11(c) of this act. Rules adopted pursuant to
45 this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted
46 pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10
47 or more written objections had been received as provided by G.S. 150B-21.3(b2).

48 **SECTION 11.(e)** Sunset. – Section 11(c) of this act expires on the date that rules
49 adopted pursuant to Section 11(d) of this act become effective.

50 **SECTION 12.(a)** If Senate Bill 820, 2012 Regular Session, becomes law, then
51 Section 2(j) of that act reads as rewritten:

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

18 **SECTION 12.(b)** If Senate Bill 820, 2012 Regular Session, becomes law, then
19 Section 2(k) of that act reads as rewritten:

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

33 **SECTION 12.(c)** If Senate Bill 820, 2012 Regular Session, becomes law, then
34 Section 2(l) of that act reads as rewritten:

35 "SECTION 2.(l) The Mining and Energy Commission, in conjunction with the
36 Department of Environment and Natural Resources and the Consumer Protection Division of
37 the North Carolina Department of Justice, shall study the State's current law on the issue of
38 integration or compulsory pooling and other states' laws on the matter. The Department shall
39 report its findings and recommendations, including legislative proposals, to the Joint
40 Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the
41 Environmental Review Commission on or before ~~January~~October 1, 2013."

42 **SECTION 12.(d)** If Senate Bill 820, 2012 Regular Session, becomes law, then
43 G.S. 113-423(j), as enacted by Section 4(d) of that act, reads as rewritten:

44 "(j) ~~Three-Day~~Seven-Day Right of Rescission. – Any lease of oil or gas rights or any
45 other conveyance of any kind separating rights to oil or gas from the freehold estate of surface
46 property shall be subject to a ~~three-day~~seven-day right of rescission in which the lessor or
47 lessee may cancel the lease. A bold and conspicuous notice of this right of rescission shall be
48 included in all such leases. In order to cancel the lease, the lessor or lessee shall notify the other
49 party in writing within ~~three-seven~~seven business days of execution of the lease, and the lessor shall
50 return any sums paid by the lessee to the lessor under the terms of the lease."

1 **SECTION 13.** Sections 12(a) through 12(c) of this act become effective August 1,
2 2012. Section 12(d) of this act is effective when it becomes law and applies to leases or
3 contracts entered into on or after that date. The remainder of this act is effective when it
4 becomes law.