

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 612
PROPOSED COMMITTEE SUBSTITUTE S612-PCS35333-TP-23

Short Title: Regulatory Reform Act of 2013.

(Public)

Sponsors:

Referred to:

April 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE REGULATORY RELIEF TO THE CITIZENS OF NORTH
3 CAROLINA BY CREATING A FAST TRACK PERMITTING PROCESS FOR
4 CERTAIN ENVIRONMENTAL PERMITS; BY CLARIFYING THE PREEMPTION OF
5 CITY ORDINANCES AND CLARIFYING THAT SIMILAR RULES APPLY TO
6 COUNTY ORDINANCES; BY PROVIDING THAT THE DISPOSAL OF ON-SITE
7 DEMOLITION DEBRIS FROM THE DECOMMISSIONING OF MANUFACTURING
8 BUILDINGS, INCLUDING ELECTRIC GENERATING STATIONS, IS EXEMPT
9 FROM THE LANDFILL PERMITTING REQUIREMENTS; BY CLARIFYING THE
10 LAWS RELATING TO GROUNDWATER COMPLIANCE BOUNDARIES; BY
11 EXTENDING THE TERMS OF CERTAIN ENVIRONMENTAL PERMITS; BY
12 AMENDING THE ADMINISTRATIVE PROCEDURE ACT TO ELIMINATE THE
13 REQUIREMENT THAT AN AGENCY PREPARE A FISCAL NOTE WHEN
14 REPEALING A RULE; BY EXEMPTING CERTAIN PROPERTIES FROM RIPARIAN
15 BUFFER RULES; BY REQUIRING THE REPEAL OR REVISION OF EXISTING
16 ENVIRONMENTAL RULES MORE RESTRICTIVE THAN FEDERAL RULES
17 PERTAINING TO THE SAME SUBJECT MATTER; BY ALLOWING
18 MUNICIPALITIES TO LEASE REAL PROPERTY FOR A TERM OF UP TO
19 TWENTY-FIVE YEARS TO PRIVATE COMPANIES CONSTRUCTING RENEWABLE
20 ENERGY FACILITIES; BY ALLOWING GOING-OUT-OF-BUSINESS SALE
21 LICENSES TO BE ISSUED BY ANY MUNICIPAL OFFICIAL DESIGNATED BY THE
22 GOVERNING BODY OF THE MUNICIPALITY; BY DIRECTING THE
23 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE
24 DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE
25 WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF
26 ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO
27 PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED
28 WHERE DEVELOPMENT WILL OCCUR; AND BY REQUIRING MEMBERS OF
29 ADVISORY BODIES TO STATE AGENCIES AND BOARDS TO DISCLOSE
30 POTENTIAL CONFLICTS OF INTEREST PRIOR TO MAKING ANY
31 RECOMMENDATION.

32 The General Assembly of North Carolina enacts:

33

34 **PART I. FAST-TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL**
35 **PERMITS**



* S 6 1 2 - P C S 3 5 3 3 3 - T P - 2 3 *

1 **SECTION 1.1.(a)** Stormwater. – The Department of Environment and Natural
2 Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff
3 permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include
4 all requirements for siting, site preparation, design and construction, and post-construction
5 monitoring and evaluation necessary for the Department to issue a stormwater permit.

6 **SECTION 1.1.(b)** Erosion and Sedimentation Control. – The Department of
7 Environment and Natural Resources shall develop Minimum Design Criteria for erosion and
8 sedimentation control plans issued by the Department and local governments under the
9 authority of Article 4 of Chapter 113A of the General Statutes. The Minimum Design Criteria
10 shall include all requirements for siting, site preparation, design and construction, and
11 post-construction monitoring and evaluation necessary for the Department or a local
12 government stormwater program to approve an erosion and sedimentation control plan.

13 **SECTION 1.1.(c)** Designation of Appropriate Professionals. – In the development
14 of Minimum Design Criteria under this section, the Department shall specify types of licensed
15 professionals qualified to certify the design, effectiveness, and appropriateness of each
16 criterion. For purposes of this subsection, "licensed professionals" shall include, but not be
17 limited to, engineers certified under Chapter 89C of the General Statutes, geologists certified
18 under Chapter 89E of the General Statutes, and landscape architects certified under Chapter
19 89A of the General Statutes, and "qualified to certify" means, at a minimum, that the licensing
20 board for that professional has the statutory authority to discipline the professional for falsely
21 certifying design, effectiveness, or appropriateness of the particular criterion.

22 **SECTION 1.2.** Technical Working Group. – In developing the Minimum Design
23 Criteria, the Department may consult with a technical working group that consists of industry
24 experts, environmental engineers or consultants, relevant faculty from The University of North
25 Carolina, and other interested stakeholders. The Department shall submit the final Minimum
26 Design Criteria to the Environmental Review Commission no later than March 1, 2014.

27 **SECTION 1.3.** Article 21 of Chapter 143 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 143-214.7B. Fast-track permitting.**

30 The Commission shall adopt rules implementing a fast-track permitting process allowing
31 for issuance of stormwater management system permits without a technical review when the
32 permit applicant (i) complies with the Minimum Design Criteria for stormwater management
33 developed by the Department and (ii) submits a permit application sealed by the appropriate
34 professional specified in the criteria."

35 **SECTION 1.4.** Article 4 of Chapter 113A of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 113A-68. Fast-track plan approval.**

38 The Commission shall adopt rules implementing a fast-track plan approval process
39 allowing for approval of erosion and sedimentation control plans by the Department or a local
40 erosion and sedimentation control program without a technical review when the person files a
41 plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control
42 developed by the Department and (ii) is sealed by the appropriate professional specified in the
43 criteria."

44 **SECTION 1.5.(a)** The Environmental Management Commission shall adopt
45 temporary rules implementing Section 1.3 of this act no later than May 1, 2014. The temporary
46 rules shall remain in effect until permanent rules that replace the temporary rules become
47 effective.

48 **SECTION 1.5.(b)** The Sedimentation Control Commission shall adopt temporary
49 rules implementing Section 1.4 of this act no later than May 1, 2014. The temporary rules shall
50 remain in effect until permanent rules that replace the temporary rules become effective.

51 **SECTION 1.6.** G.S. 89C-19 reads as rewritten:

"§ 89C-19. Public works; requirements where public safety involved.

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter. These entities shall not, in the course of conducting technical review of an application for a permit or a plan submitted for approval by the entity, require revisions to that part of the application or plan that constitutes the practice of engineering and that has been supervised and sealed by a professional engineer unless the employee or official of the reviewing entity requiring the revision is also a professional engineer or is an engineering intern under the responsible charge of a professional engineer. Any revisions to the application or plan that are required by the reviewing entity and that constitute the practice of engineering shall be provided by written notice to the permit applicant or the person submitting a plan for approval. The written notice shall be on agency letterhead and shall be signed by the professional engineer reviewing or supervising the review of the submission and shall include the engineer's state license number.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision of the State, or any municipality including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision of the State, or municipal corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

SECTION 1.7. The Department of Environment and Natural Resources shall identify other permitting programs for which the fast-track permitting process described by this Part would be appropriate and make a report, including proposed legislation, to the Environmental Review Commission no later than May 1, 2014.

PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION

SECTION 2.1. G.S. 160A-174(b) reads as rewritten:

"(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

- (1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;
- (2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;
- (3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
- (4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

1 (5) The ordinance purports to regulate a field for which a State or federal statute
2 clearly shows a legislative intent to provide a complete and integrated
3 regulatory scheme to the exclusion of local regulation;

4 (5a) The ordinance (i) regulates a field that is also regulated by a State or federal
5 statute enforced by, or a regulation promulgated by, an environmental
6 agency; and (ii) is more stringent than the State or federal statute or
7 regulation; and

8 (6) The elements of an offense defined by a city ordinance are identical to the
9 elements of an offense defined by State or federal law.

10 The fact that a State or federal law, standing alone, makes a given act, omission, or condition
11 unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

12 (c) The limitation set forth in subdivision (5a) of subsection (b) of this section does not
13 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
14 the following:

15 (1) A serious and unforeseen threat to the public health, safety, or welfare.

16 (2) An act of the General Assembly or United States Congress that expressly
17 requires the agency to adopt rules.

18 (3) A provision in federal or State budgetary policy.

19 (4) A federal regulation required by an act of the United States Congress to be
20 adopted or administered by the State.

21 (5) A court order.

22 (d) For purposes of this section, "an environmental agency" means any of the following:

23 (1) The Department of Environment and Natural Resources created pursuant to
24 G.S. 143B-279.1.

25 (2) The Environmental Management Commission created pursuant to
26 G.S. 143B-282.

27 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

28 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

29 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

30 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
31 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
32 and 19B of Chapter 130A of the General Statutes.

33 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

34 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

35 (9) The Pesticide Board created pursuant to G.S. 143-436."

36 **SECTION 2.2.** G.S. 153A-121 is amended by adding a new subsection to read:

37 "(a1) A county ordinance shall be consistent with the Constitution and laws of North
38 Carolina and of the United States. An ordinance is not consistent with State or federal law
39 when:

40 (1) The ordinance infringes a liberty guaranteed to the people by the State or
41 federal Constitution;

42 (2) The ordinance makes unlawful an act, omission, or condition which is
43 expressly made lawful by State or federal law;

44 (3) The ordinance makes lawful an act, omission, or condition which is
45 expressly made unlawful by State or federal law;

46 (4) The ordinance purports to regulate a subject that counties are expressly
47 forbidden to regulate by State or federal law;

48 (5) The ordinance purports to regulate a field for which a State or federal statute
49 clearly shows a legislative intent to provide a complete and integrated
50 regulatory scheme to the exclusion of local regulation;

1 (6) The ordinance (i) regulates a field that is also regulated by a State or federal
 2 statute enforced by, or a regulation promulgated by, an environmental
 3 agency; and (ii) is more stringent than the State or federal statute or
 4 regulation; and

5 (7) The elements of an offense defined by a county ordinance are identical to the
 6 elements of an offense defined by State or federal law.

7 The fact that a State or federal law, standing alone, makes a given act, omission, or
 8 condition unlawful shall not preclude county ordinances requiring a higher standard of conduct
 9 or condition.

10 (a2) The limitation set forth in subdivision (6) of subsection (a1) of this section does not
 11 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
 12 the following:

13 (1) A serious and unforeseen threat to the public health, safety, or welfare.

14 (2) An act of the General Assembly or United States Congress that expressly
 15 requires the agency to adopt rules.

16 (3) A provision in federal or State budgetary policy.

17 (4) A federal regulation required by an act of the United States Congress to be
 18 adopted or administered by the State.

19 (5) A court order.

20 (a3) For purposes of this section, "an environmental agency" means any of the following:

21 (1) The Department of Environment and Natural Resources created pursuant to
 22 G.S. 143B-279.1.

23 (2) The Environmental Management Commission created pursuant to
 24 G.S. 143B-282.

25 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

26 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

27 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

28 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
 29 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
 30 and 19B of Chapter 130A of the General Statutes.

31 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

32 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

33 (9) The Pesticide Board created pursuant to G.S. 143-436."

35 **PART III. ENVIRONMENTAL REGULATORY REFORM**

36 **SECTION 3.1.(a)** G.S. 130A-294(a) reads as rewritten:

37 "(a) The Department is authorized and directed to engage in research, conduct
 38 investigations and surveys, make inspections and establish a statewide solid waste management
 39 program. In establishing a program, the Department shall have authority to:

40 ...

41 (4) a. Develop a permit system governing the establishment and operation
 42 of solid waste management facilities. A landfill with a disposal area
 43 of 1/2 acre or less for the on-site disposal of land clearing and inert
 44 debris is exempt from the permit requirement of this section and shall
 45 be governed by G.S. 130A-301.1. Demolition debris from the
 46 decommissioning of manufacturing buildings, including electric
 47 generating stations, that is disposed of on the same site as the
 48 decommissioned buildings, is exempt from the permit requirement of
 49 this section and rules adopted pursuant to this section and shall be
 50 governed by G.S. 130A-301.3. The Department shall not approve an
 51 application for a new permit, the renewal of a permit, or a substantial

1 amendment to a permit for a sanitary landfill, excluding demolition
2 landfills as defined in the rules of the Commission, except as
3 provided in subdivisions (3) and (4) of subsection (b1) of this
4 section. No permit shall be granted for a solid waste management
5 facility having discharges that are point sources until the Department
6 has referred the complete plans and specifications to the
7 Environmental Management Commission and has received advice in
8 writing that the plans and specifications are approved in accordance
9 with the provisions of G.S. 143-215.1. If the applicant is a unit of
10 local government, and has not submitted a solid waste management
11 plan that has been approved by the Department pursuant to
12 G.S. 130A-309.09A(b), the Department may deny a permit for a
13 sanitary landfill or a facility that disposes of solid waste by
14 incineration, unless the Commission has not adopted rules pursuant
15 to G.S. 130A-309.29 for local solid waste management plans. In any
16 case where the Department denies a permit for a solid waste
17 management facility, it shall state in writing the reason for denial and
18 shall also state its estimate of the changes in the applicant's proposed
19 activities or plans that will be required for the applicant to obtain a
20 permit.

21"

22 **SECTION 3.1.(b)** Part 2 of Article 9 of Chapter 130A of the General Statutes is
23 amended by adding a new section to read:

24 **"§ 130A-301.3. Disposal of demolition debris generated from the decommissioning of**
25 **manufacturing buildings, including electric generating stations, on site.**

26 (a) A person may dispose of demolition debris from the decommissioning of
27 manufacturing buildings, including electric generating stations, on the same site as the
28 decommissioned buildings if the demolition debris meets all of the following requirements:

- 29 (1) It is composed only of inert debris such as brick or other masonry materials,
30 dirt, sand, gravel, rock, and concrete if the material, when characterized
31 using the toxicity characteristic leaching procedure developed by the United
32 States Environmental Protection Agency, is not a hazardous waste. The
33 debris may contain small amounts of wood, paint, sealants, and metal
34 associated with the inert debris.
- 35 (2) It does not extend beyond the footprint of the decommissioned buildings and
36 shall be at least 50 feet from the property boundary or enclosed by the walls
37 of the building that are left in place below grade. Walls left in place below
38 grade are not subject to the requirements of subdivision (4) of this
39 subsection.
- 40 (3) It is placed at least 500 feet from the nearest drinking water well.
- 41 (4) It is placed to assure at least two feet of clean soil between any coated inert
42 debris and the seasonal high groundwater table. Uncoated inert debris may
43 be used as fill anywhere within the footprint of the decommissioned building
44 or as beneficial fill on the site.
- 45 (5) It complies with all other applicable federal, State, and local laws,
46 regulations, rules, and ordinances.

47 (b) After the decommissioning is completed or terminated, the owner or operator shall
48 compact the demolition debris and cover it with at least two feet of compacted earth finer than
49 a sandy texture soil. The cover of the demolition debris shall be graded so as to minimize water
50 infiltration, promote proper drainage, and control erosion. Erosion of the cover shall be

1 controlled by establishing suitable vegetative cover. All site stabilization should be completed
2 within 90 days of the completed demolition.

3 (c) Within 30 days of completing the final site stabilization or at least 30 days before
4 the land, or any interest in the land, on which the demolition debris is located is transferred,
5 whichever is earlier, the owner or owners of record of the land on which the demolition debris
6 is located shall file each of the following with the register of deeds of the county in which the
7 demolition debris is located:

8 (1) A survey plat of the property that meets the requirements of G.S. 47-30. The
9 plat shall accurately show the location of the demolition debris in a manner
10 that will allow the demolition debris disposal site to be accurately delineated
11 and shall reference this section.

12 (2) A notice that disposal of demolition debris has been located on the land. The
13 notice shall include a description of the land that would be sufficient as a
14 description in an instrument of conveyance. The notice shall list the owners
15 of record of the land at the time the notice is filed and shall reference the
16 book and page number where the deed or other instrument by which the
17 owners of record acquired title is located. The notice shall reference the
18 book and page number where the survey plat required by subdivision (1) of
19 this subsection is recorded. The notice shall reference this section, shall
20 describe with particularity the type and size of the building or other structure
21 that was demolished, and shall state the dates on which the demolition began
22 and ended. The notice shall be executed by the owner or owners of record as
23 provided in Chapter 47 of the General Statutes. The register of deeds shall
24 record the notice and index it in the grantor index under the names of all
25 owners of record of the land.

26 (d) A certified copy of both the plat and notice required by subsection (c) of this section
27 shall also be filed with the Department. The plat and the notice shall indicate on the face of the
28 document the book and page number where recorded.

29 (e) When the land, or any portion of the land, on which the demolition debris is located
30 is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain a
31 statement that the property has been used for the disposal of demolition debris. The statement
32 shall include a reference to this section and to the book and page number where the notice
33 required by subdivision (2) of subsection (c) of this section is recorded."

34 **SECTION 3.1.(c)** G.S. 47-29 is amended by adding a new subsection to read:
35 **"§ 47-29.1. Recordation of environmental notices.**

36 ...
37 (a4) The disposal of on-site demolition debris from the decommissioning of
38 manufacturing buildings, including electric generating stations, shall be recorded as provided in
39 G.S. 130A-301.3.
40"

41 **SECTION 3.2.(a)** G.S. 143-215.1 is amended by adding three new subsections to
42 read:

43 **"§ 143-215.1. Control of sources of water pollution; permits required.**

44 ...
45 (i) Any person subject to the requirements of this section who is required to obtain an
46 individual permit from the Commission for a disposal system under the authority of
47 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
48 may be established by rule or permit for various categories of disposal systems and beyond
49 which groundwater quality standards may not be exceeded. The location of the compliance
50 boundary shall be established at the property boundary, except as otherwise established by the
51 Commission. Multiple contiguous properties under common ownership and permitted for use

1 as a disposal system shall be treated as a single property with regard to determination of a
 2 compliance boundary under this subsection. Nothing in this subsection shall be interpreted to
 3 require a revision to an existing compliance boundary previously approved by rule or permit.

4 (j) When operation of a disposal system permitted under this section results in an
 5 exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1,
 6 the Commission shall require that the exceedances within the compliance boundary be
 7 remedied through clean-up, recovery, containment, or other response only when any of the
 8 following conditions occur:

9 (1) A violation of any water quality standard in adjoining classified waters of
 10 the State occurs or can be reasonably predicted to occur considering
 11 hydrogeological conditions, modeling, or any other available evidence.

12 (2) An imminent hazard or threat to the environment, public health, or safety
 13 exists.

14 (3) A violation of any standard in groundwater occurring in the bedrock other
 15 than limestones found in the Coastal Plain sediments, unless it can be
 16 demonstrated that the violation will not adversely affect, or have the
 17 potential to adversely affect, a water supply well.

18 (k) Where operation of a disposal system permitted under this section results in
 19 exceedances of the groundwater quality standards at or beyond the compliance boundary
 20 established under subsection (i) of this section, exceedances shall be remedied through
 21 clean-up, recovery, containment, or other response as directed by the Commission."

22 **SECTION 3.2.(b)** With respect to exceedances of groundwater quality standards
 23 within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth
 24 in Section 3.1(a) of this act shall apply in lieu of the restricted designation directives found in
 25 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources
 26 has adopted revisions to those rules to comply with this act.

27 **SECTION 3.3.(a)** G.S. 143-215.1 reads as rewritten:

28 **"§ 143-215.1. Control of sources of water pollution; permits required.**

29 ...

30 (d2) No permit issued pursuant to subsection (c) of this section shall be issued or
 31 renewed for a term exceeding five years. All other permits issued pursuant to this section for
 32 which an expiration date is specified shall be issued for a term ~~not to exceed eight of 10~~ years.

33 (e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or
 34 a third party who is dissatisfied with a decision of the Commission may commence a contested
 35 case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the
 36 applicant or permittee of its decision. If the permit applicant or permittee does not file a petition
 37 within the required time, the Commission's decision is final and is not subject to review.

38"

39 **SECTION 3.3.(b)** G.S. 143-215.108 reads as rewritten:

40 **"§ 143-215.108. Control of sources of air pollution; permits required.**

41 ...

42 (d1) No Title V permit issued pursuant to this section shall be issued or renewed for a
 43 term exceeding five years. All other permits issued pursuant to this section shall be issued for a
 44 term ~~not to exceed eight of 10~~ years.

45 (e) A permit ~~applicant or permittee~~ applicant, a permittee, or a third party who is
 46 dissatisfied with a decision of the Commission may commence a contested case by filing a
 47 petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or
 48 permittee of its decision. If the permit applicant or permittee does not file a petition within the
 49 required time, the Commission's decision on the application is final and is not subject to
 50 review.

51"

PART IV. NO FISCAL NOTE FOR RULE REPEAL

SECTION 4.1. G.S. 150B-21.4 is amended by adding a new subsection to read:

"(d) If an agency proposes the repeal of an existing rule, the agency is not required to prepare a fiscal note on the proposed rule change as provided by this section."

PART V. EXEMPT CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES

SECTION 5. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-214.18. Exemption to riparian buffer requirements for certain private properties in the Neuse River and Tar-Pamlico River Basins.

(a) Absent a requirement of federal law or an imminent threat to public health or safety, (i) the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in the Neuse River Basin; and (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; shall not apply to any tract of land that meets all of the following criteria:

(1) The property is private property.

(2) Prior to August 1, 2000, the property was private property and was recorded in the register of deeds in the county where the property is located.

(3) With the exception of 15A NCAC 02B .0233, the use of the property complies with the rules and other laws regulating and applicable to that property prior to August 1, 2000.

(b) If a property described in subsection (a) of this section is converted to a use that does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A NCAC 02B .0233 shall apply."

PART VI. REFORM OF EXISTING RULES

SECTION 6.1.(a) Definitions. – For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

(9) The Pesticide Board created pursuant to G.S. 143-436.

SECTION 6.1.(b) An agency authorized to implement and enforce State and federal environmental laws shall identify all existing rules for the protection of the environment or natural resources that impose a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted.

SECTION 6.1.(c) No later than September 1, 2013, agencies identifying rules under subsection (b) of this section shall initiate rule-making proceedings to (i) repeal the

1 rules; or (ii) rewrite the rules to make them no more restrictive than the corresponding federal
2 laws or rules. Rules adopted pursuant to this subsection are not subject to G.S. 150B-21.9
3 through G.S. 150B-21.14.

4 **SECTION 6.1.(d).** The rule-making proceedings required by subsection (c) of this
5 section are not required for any rule identified under subsection (b) of this section if adoption of
6 the rule was and continues to be required by one of the following:

- 7 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 8 (2) An act of the General Assembly or United States Congress that expressly
9 requires the agency to adopt rules.
- 10 (3) A provision in federal or State budgetary policy.
- 11 (4) A federal regulation required by an act of the United States Congress to be
12 adopted or administered by the State.
- 13 (5) A court order.

14 **PART VII. PERMIT LONGER ALTERNATE ENERGY LEASING PERIODS**

15 **SECTION 7.** G.S. 160A-272 reads as rewritten:

16 **"§ 160A-272. Lease or rental of property.**

17 ...

18
19 (c) **(Effective until June 30, 2015)** The council may approve a lease for the siting and
20 operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a
21 term up to ~~20-25~~ years without treating the lease as a sale of property and without giving notice
22 by publication of the intended lease. ~~This subsection applies to Catawba, Mecklenburg, and~~
23 ~~Wake Counties, the Cities of Asheville, Raleigh, and Winston Salem, and the Towns of Apex,~~
24 ~~Carrboro, Cary, Chapel Hill, Fuquay Varina, Garner, Holly Springs, Knightdale, Morrisville,~~
25 ~~Rolesville, Wake Forest, Wendell, and Zebulon only.~~

26 (c) **(Effective June 30, 2015)** The council may approve a lease for the siting and
27 operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a
28 term up to ~~20-25~~ years without treating the lease as a sale of property and without giving notice
29 by publication of the intended lease. ~~This subsection applies to Catawba, Mecklenburg, and~~
30 ~~Wake Counties, the Cities of Raleigh and Winston Salem, and the Towns of Apex, Cary,~~
31 ~~Fuquay Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest,~~
32 ~~Wendell, and Zebulon only."~~

33 **PART VIII. GOING-OUT-OF-BUSINESS SALE LICENSING FLEXIBILITY**

34 **SECTION 8.** G.S. 66-77 reads as rewritten:

35 **"§ 66-77. License required; contents of applications; inventory required; fees; bond;**
36 **extension of licenses; records; false statements.**

37
38 (a) No person shall advertise or offer for sale a stock of goods, wares or merchandise
39 under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by
40 fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to
41 conduct such sale from the ~~clerk of the~~ officer designated by the governing board of the city or
42 town in which he proposes to conduct such a sale or from the officer designated by the Board
43 of County Commissioners if the sale is conducted in an unincorporated area. The applicant for
44 such a license shall make to ~~such clerk~~ the designated officer an application ~~therefor~~, in writing
45 and under oath at least seven days prior to the opening date of sale, showing all the facts
46 relating to the reasons and character of such sale, including the opening and terminating dates
47 of the proposed sale, the opening and terminating dates of any previous distress sale or
48 closing-out sale held by the applicant within that county during the preceding 12 months, a
49 complete inventory of the goods, wares or merchandise actually on hand in the place ~~whereat~~
50 ~~such~~ where the sale is to be conducted, and all details necessary to locate exactly and identify

1 fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not
2 file an inventory.

3 (b) If ~~such clerk~~ the designated officer shall be satisfied from said application that the
4 proposed sale is of the character which the applicant desires to advertise and conduct, the ~~clerk~~
5 designated officer shall issue a license, upon the payment of a fee of fifty dollars (\$50.00)
6 therefor, together with a bond, payable to the city or town or county in the penal sum of five
7 hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant
8 authorizing him to advertise and conduct a sale of the particular kind mentioned in the
9 application. The license fee provided for herein shall be good for a period of 30 days from its
10 date, and if the applicant shall not complete said sale within said 30-day period then the
11 applicant shall make application to ~~such clerk~~ the designated officer for a license for a new
12 permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum
13 of fifty dollars (\$50.00), and a second extension period of 30 days may be similarly applied for
14 and granted by the ~~clerk~~ designated officer upon payment of an additional fee of fifty dollars
15 (\$50.00) and upon the ~~clerk~~ designated officer being satisfied that the applicant is holding a
16 bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner;
17 provided, however, that the ~~clerk~~ designated officer may not grant an extension period as
18 provided in this subsection if (i) the applicant conducted a distress sale immediately preceding
19 the current sale for which the extension is applied for and (ii) the period of the extension
20 applied for, when added to the period of the preceding sale and the period of the current sale,
21 will exceed 120 days. No additional bond shall be required in the event of one or more
22 extensions as herein provided for. Any merchant who shall have been conducting a business in
23 the same location where the sale is to be held for a period of not less than one year, prior to the
24 date of holding such sale, or any merchant who shall have been conducting a business in one
25 location for such period but who shall, by reason of the building being untenable or by
26 reason of the fact that said merchant shall have no existing lease or ownership of the building
27 and shall be forced to hold such sale at another location, shall be exempted from the payment
28 of the fees and the filing of the bond herein provided for.

29"
30

31 **PART IX. WETLANDS AND STREAM MITIGATION HUC FLEXIBILITY**

32 **SECTION 9.1.** No later than October 1, 2013, the Department of Environment and
33 Natural Resources and the Department of Transportation shall jointly petition the Wilmington
34 District of the United States Army Corps of Engineers (Wilmington District) to allow for
35 greater flexibility and opportunity to perform wetlands and stream mitigation outside of the
36 eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall
37 seek this greater flexibility and opportunity for mitigation for both public and private
38 development. The Departments shall request that the Wilmington District review the flexibility
39 and opportunities for mitigation allowed by other Districts of the United States Army Corps of
40 Engineers.

41 **SECTION 9.2.** The Departments shall jointly report on their progress in petitioning
42 the Wilmington District as required by Section 9.1 of this act to the Environmental Review
43 Commission no later than January 1, 2014.

44 **PART X. ETHICS/ADVISORY BOARDS**

45 **SECTION 10.** G.S. 138A-15 is amended by adding a new subsection to read:
46 "**§ 138A-15. Duties of heads of State agencies.**

47 ...

48
49 (i) Before receiving or accepting any recommendation, the head of each State agency,
50 including the chair of each board subject to this Chapter, shall require each member of an
51 advisory body appointed or created by the State to serve that State agency or board, or

1 appointed or created by the State agency or board subject to this Chapter, to disclose all
2 reasonably foreseeable financial benefits from the matter under recommendation, which
3 financial benefit would impair the member of the advisory body's independence of judgment or
4 from which it could reasonably be inferred that the financial benefit would influence the
5 member of the advisory body participation in the advisory body. Each member of an advisory
6 body appointed or created by a State agency or board subject to this Chapter shall also provide
7 to that State agency or board subject to this Chapter a list of all grants or employment
8 pertaining to the matter under recommendation held or awarded within the previous 24 months
9 before the recommendation and a copy of any deliverable associated with such grants."

10
11 **PART XI. SEVERABILITY AND EFFECTIVE DATE PROVISIONS**

12 **SECTION 11.1.** If any section or provision of this act is declared unconstitutional
13 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
14 than the part so declared to be unconstitutional or invalid.

15 **SECTION 11.2.** Sections 3.1 and 10 of this act become effective July 1, 2013.
16 Section 4.1 of this act is effective when it becomes law and applies to all proposed rules
17 published in the North Carolina Register on or after that date. Except as otherwise provided, the
18 remainder of this act is effective when it becomes law.