

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 636
Judiciary II Committee Substitute Adopted 5/13/13
House Committee Substitute Favorable 6/26/13
PROPOSED HOUSE COMMITTEE SUBSTITUTE S636-PCS85258-RV-55

Short Title: Wildlife Resources Comm. Penalty Changes.

(Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BOATING SAFETY ACT BY INCREASING THE FINES AND OTHERWISE AMENDING THE PENALTY AND OTHER PROVISIONS OF THAT ACT AND BY AMENDING THE PENALTY PROVISIONS FOR SPECIFIC VIOLATIONS OF THE WILDLIFE LAWS; TO AUTHORIZE COUNTIES AND CITIES TO ATTACH AND GARNISH A MEMBER OF THE GOVERNING BODY IF THE COUNTY OR CITY HAS BEEN GRANTED A MONEY JUDGMENT AGAINST THAT MEMBER AND THE MONEY JUDGMENT HAS NOT BEEN SATISFIED; AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROHIBIT CONDEMNATION OF PRIVATE PROPERTY EXCEPT FOR A PUBLIC USE, TO PROVIDE FOR THE PAYMENT OF JUST COMPENSATION WITH RIGHT OF TRIAL BY JURY IN ALL CONDEMNATION CASES, AND TO MAKE SIMILAR STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART I. WILDLIFE RESOURCES COMMISSION PENALTY CHANGES

SECTION 1. G.S. 75A-3 reads as rewritten:

"§ 75A-3. **Wildlife Resources Commission to administer Chapter; ~~Vessel Committee; Boating Safety Committee~~; funds for administration.**

(a) The Commission shall enforce and administer the provisions of this Chapter.

(b) The chair of the Commission shall designate from among the members of the Commission three members who shall serve as the ~~Vessel Committee~~ Boating Safety Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars (\$3.00) of each one-year certificate of number fee and at least nine dollars (\$9.00) of each three-year certificate of



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1 number fee collected under the numbering provisions of G.S. 75A-5 for boating access area
2 acquisition, development, and maintenance."

3 **SECTION 2.** G.S. 75A-6.1(c) reads as rewritten:

4 "(c) Violation of ~~the navigation rules specified in subsection (a) of this section~~ any rule
5 governing navigational lighting adopted by the Commission shall constitute a Class 3
6 misdemeanor and is punishable only by a fine not to exceed one hundred dollars
7 (\$100.00)-misdemeanor."

8 **SECTION 3.** G.S. 75A-10 reads as rewritten:

9 "**§ 75A-10. Operating vessel or manipulating water skis, etc., in reckless manner;**
10 **operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.**

11 (a) No person shall operate any motorboat or vessel, or manipulate any water skis,
12 surfboard, or similar device on the waters of this State in a reckless or negligent manner so as
13 to endanger the life, limb, or property of any person.

14 (b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or
15 similar device on the waters of this State while under the influence of an impairing substance.

16 (b1) No person shall operate any vessel while underway on the waters of this State:

17 (1) While under the influence of an impairing substance, or

18 (2) After having consumed sufficient alcohol that the person has, at any relevant
19 time after the boating, an alcohol concentration of 0.08 or more.

20 (b2) The fact that a person charged with violating this subsection is or has been legally
21 entitled to use alcohol or a drug is not a defense to a charge under subsections (b) and (b1) of
22 this section. The relevant definitions contained in G.S. 20-4.01 shall apply to subsections (b),
23 (b1), and (b2) of this section.

24 (b3) A person who violates a provision of ~~subsection (a), (b), or (b1)~~ subsections (a) or
25 (b) of this section is guilty of a Class 2 misdemeanor.

26 (b4) A person who violates subsection (b1) of this section is guilty of a Class 2
27 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00).

28 (c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown,
29 deposited, or discharged on the waters of this State or into the inland lake waters of this State,
30 any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the
31 waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public
32 health or welfare or to the enjoyment and safety of the water for recreational purposes.

33 (d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown,
34 deposited, or discharged on the waters of this State or into the inland lake waters of this State
35 any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious,
36 or otherwise unwholesome so as to be detrimental to the public health or welfare or to the
37 enjoyment and safety of the water for recreational purposes.

38 (e) A person who willfully violates subsection (d) of this section is guilty of a Class 1
39 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing
40 releases medical waste that creates a substantial risk of physical injury to any person who is not
41 a participant in the offense is guilty of a Class F felony which may include a fine not to exceed
42 fifty thousand dollars (\$50,000) per day of violation."

43 **SECTION 4.** G.S. 75A-13.1(d) reads as rewritten:

44 "(d) A person who violates a provision of this section is ~~guilty of a Class 3 misdemeanor~~
45 ~~and shall only be subject to a fine not to exceed twenty five dollars (\$25.00)-~~ responsible for an
46 infraction as provided in G.S. 14-3.1."

47 **SECTION 5.** G.S. 75A-13.3(b1) reads as rewritten:

48 "(b1) A person who is the lawful owner of a personal watercraft or a person having
49 control of a personal watercraft who knowingly allows a person under 16 years of age ~~who~~
50 ~~operates to operate~~ a personal watercraft in violation of the provisions of subsection (b) of this
51 section is guilty of responsible for an infraction as provided in G.S. 14-3.1."

1 **SECTION 6.** G.S. 75A-13.3(c3) reads as rewritten:

2 "(c3) A vessel livery shall provide the operator of a leased personal watercraft with basic
3 safety instruction prior to allowing the operation of the leased personal watercraft. "Basic safety
4 instruction" shall include direction on how to safely operate the personal watercraft and a
5 review of the safety provisions of this section. A vessel livery that fails to provide basic safety
6 instruction is ~~guilty of a Class 3 misdemeanor responsible for an infraction as provided in~~
7 G.S. 14-3.1."

8 **SECTION 7.** G.S. 75A-16.2 reads as rewritten:

9 "**§ 75A-16.2. Boating safety education required.**

10 (a) No person shall operate a vessel with a motor of 10 horsepower or greater on the
11 public waters of this State unless the operator has met the requirements for boating safety
12 education.

13 (b) A person shall be considered in compliance with the requirements of boating safety
14 education if the person does one of the following:

- 15 (1) Completes and passes the boating safety course instituted by the Wildlife
16 Resources Commission under G.S. 75A-16.1 or another boating safety
17 course that is approved by the National Association of State Boating Law
18 Administrators (NASBLA) and accepted by the Wildlife Resources
19 Commission;
- 20 (2) Passes a proctored equivalency examination that tests the knowledge of
21 information included in the curriculum of an approved course;
- 22 (3) Possesses a valid or expired license to operate a vessel issued to maritime
23 personnel by the United States Coast Guard;
- 24 (4) Possesses a State-approved nonrenewable temporary operator's certificate to
25 operate a vessel for 90 days that was issued with the certificate of number
26 for the vessel, if the boat was new or was sold with a transfer of ownership;
- 27 (5) Possesses a rental or lease agreement from a vessel rental or leasing business
28 that lists the person as the authorized operator of the vessel;
- 29 (6) Properly displays Commission-issued dealer registration numbers during the
30 demonstration of the vessel;
- 31 (7) Operates the vessel under onboard direct supervision of a person who is at
32 least 18 years of age and who meets the requirements of this section;
- 33 (8) Demonstrates that he or she is not a resident, is temporarily using the waters
34 of this State for a period not to exceed 90 days, and meets any applicable
35 boating safety education requirements of the state or nation of residency;
- 36 (9) Has assumed operation of the vessel due to the illness or physical
37 impairment of the initial operator, and is returning the vessel to shore in
38 order to provide assistance or care for the operator;
- 39 (10) Is registered as a commercial fisherman or a person who is under the
40 onboard direct supervision of a commercial fisherman while operating the
41 commercial fisherman's boat; or
- 42 (11) Provides proof that he or she ~~is at least 26 years of age, was born before~~
43 January 1, 1988.

44 Any person who operates a vessel with a motor of 10 horsepower or greater on the waters
45 of this State shall, upon the request of a law enforcement officer, present to the officer a
46 certification card or proof that the person has complied with the provisions of this section.

47 (c) Any person who violates a provision of this section or a rule adopted pursuant to
48 this section is ~~guilty of responsible for an infraction, as provided in G.S. 14-3.1. The court shall~~
49 ~~assess court costs for each violation but shall not assess a penalty. G.S. 14-3.1, and shall pay a~~
50 fine of fifty dollars (\$50.00). A person may not be ~~convicted of responsible for violating this~~
51 section if, when tried for the offense, if the person produces in court at the adjudicatory hearing

1 a certification card or proof that the person has completed and passed a boating safety course in
2 compliance with subdivision (b)(1) of this section.

3 (d) No unit of local government shall enact any ordinance or rule relating to boating
4 safety education, and this law preempts all existing ordinances or rules.

5 (e) An operator of a personal watercraft on the public waters of this State remains
6 subject to any more specific provision of law found in G.S. 75A-13.3."

7 **SECTION 8.** G.S. 75A-18 reads as rewritten:

8 "**§ 75A-18. Penalties.**

9 (a) Except as otherwise provided, a person who violates a provision of this Article ~~or~~
10 ~~who violates a rule adopted under authority of this Chapter~~ is guilty of a Class 3 misdemeanor
11 and shall only be subject to a fine not to exceed two hundred and fifty dollars (\$250.00) for
12 each violation. This limitation shall not apply in a case where a more severe penalty is
13 prescribed in this Chapter.

14 (b) through (e) Repealed by Session Laws 2006-185, s. 1.

15 (f) Except as otherwise provided in this Chapter, a person who violates a rule adopted
16 by the Commission under the authority of this Chapter is responsible for an infraction as
17 provided in G.S. 14-3.1 and shall pay a fine of fifty dollars (\$50.00). A person responsible for
18 an infraction under this Chapter shall not be assessed court costs."

19 **SECTION 9.** G.S. 113-294 reads as rewritten:

20 "**§ 113-294. Specific violations.**

21 (a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of
22 a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars
23 (\$250.00), unless a greater penalty is prescribed for the offense in question.

24 (b) Any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey
25 is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~two hundred fifty~~
26 ~~dollars (\$250.00)~~ five hundred dollars (\$500.00) in addition to such other punishment
27 prescribed for the offense in question.

28 (c) Any person who unlawfully takes, possesses, or transports any wild turkey is guilty
29 of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars
30 (\$250.00) in addition to such other punishment prescribed for the offense in question.

31 (c1) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or
32 buys any bear or bear part is guilty of a Class 1 misdemeanor, punishable by a fine of not less
33 than two thousand dollars (\$2,000) in addition to such other punishment prescribed for the
34 offense in question. Each of the acts specified shall constitute a separate offense.

35 (c2) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or
36 buys any cougar (*Felis concolor*) is guilty of a Class 1 misdemeanor, unless a greater penalty is
37 prescribed for the offense in question.

38 (c3) Any person who unlawfully takes, possesses, or transports any elk is guilty of a
39 Class 1 misdemeanor, punishable by a fine of not less than two thousand five hundred dollars
40 (\$2,500) in addition to such other punishment prescribed for the offense in question.

41 (d) Any person who unlawfully takes, possesses, or transports any deer is guilty of a
42 Class 3 misdemeanor, punishable by a fine of not less than ~~one hundred dollars (\$100.00)~~ two
43 hundred fifty dollars (\$250.00) in addition to such other punishment prescribed for the offense
44 in question.

45 (d1) Any person who unlawfully takes, possesses, or transports any deer from land that
46 has been posted in accordance with the provisions of G.S. 14-159.7 without written permission
47 of the landowner, lessee, or the agent of the landowner or lessee is guilty of a Class 2
48 misdemeanor, punishable by a fine of not less than five hundred dollars (\$500.00).

49 (e) Any person who unlawfully takes deer between a half hour after sunset and a half
50 hour before sunrise with the aid of an artificial light is guilty of a Class 2 misdemeanor,

1 punishable by a fine of not less than ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars
2 (\$500.00) in addition to such other punishment prescribed for the offense in question.

3 (f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver,
4 or violates any rule of the Wildlife Resources Commission adopted to protect beavers, is guilty
5 of a Class 3 misdemeanor, unless a greater penalty is prescribed for the offense in question.

6 (g) Any person who unlawfully takes wild animals or birds from or with the use of a
7 vessel equipped with a motor or with motor attached is guilty of a Class 2 misdemeanor, unless
8 a greater penalty is prescribed for the offense in question.

9 (h) Any person who willfully makes any false or misleading statement in order to
10 secure for himself or another any license, permit, privilege, exemption, or other benefit under
11 this Subchapter to which he or the person in question is not entitled is guilty of a Class 1
12 misdemeanor.

13 (i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is
14 guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in
15 question.

16 (j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any
17 fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2
18 misdemeanor, unless a greater penalty is prescribed for the offense in question.

19 (k) Repealed by Session Laws 1995, c. 209, s. 1.

20 (l) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle
21 or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle is guilty
22 of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

23 (m) Any person who unlawfully takes any migratory game bird with a rifle; or who
24 unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or
25 other bait; or who unlawfully takes any migratory game bird during the closed season or during
26 prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits
27 applicable to any migratory game bird; or who violates any of the migratory game bird permit
28 or tagging rules of the Wildlife Resources Commission is guilty of a Class 2 misdemeanor,
29 punishable by a fine of not less than ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars
30 (\$250.00) in addition to any other punishment prescribed for the offense in question.

31 (n) Any person who violates any rule of the Commission that restricts access by vehicle
32 on game lands to a person who holds a special vehicular access identification card and permit
33 issued by the Commission to persons who have a handicap that limits physical mobility shall be
34 guilty of a Class 2 misdemeanor and shall be fined not less than one hundred dollars (\$100.00)
35 in addition to any other punishment prescribed for the offense.

36 (o) Any person who willfully transports or attempts to transport live coyotes (*Canis*
37 *latrans*) into this State for any purpose, or who breeds coyotes for any purpose in this State, is
38 guilty of a Class 1 misdemeanor, and upon conviction the Wildlife Resources Commission
39 shall suspend any controlled hunting preserve operator license issued to that person for two
40 years.

41 (p) Any person who willfully imports or possesses black-tailed or mule deer
42 (*Odocoileus hemionus* and all subspecies) in this State for any purpose is guilty of a Class 1
43 misdemeanor.

44 (q) Any person who violates any provision of G.S. 113-291.1A is guilty of a Class 1
45 misdemeanor.

46 (r) It is unlawful to place processed food products as bait in any area of the State where
47 the Wildlife Resources Commission has set an open season for taking black bears. For purposes
48 of this subsection, the term "processed food products" means any food substance or flavoring
49 that has been modified from its raw components by the addition of ingredients or by treatment
50 to modify its chemical composition or form or to enhance its aroma or taste. The term includes
51 substances modified by sugar, honey, syrups, oils, salts, spices, peanut butter, grease, meat,

1 bones, or blood, as well as extracts of such substances. The term also includes sugary products
2 such as candies, pastries, gums, and sugar blocks, as well as extracts of such products. Nothing
3 in this subsection prohibits the lawful disposal of solid waste or the legitimate feeding of
4 domestic animals, livestock, or birds. The prohibition against taking bears with the use and aid
5 of bait shall not apply to the release of dogs in the vicinity of any food source that is not a
6 processed food product as defined herein. Violation of this subsection constitutes a ~~Class 2~~
7 ~~misdemeanor~~. Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty
8 dollars (\$250.00).

9 (s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing
10 feral swine from a trap while the swine is still alive or by transporting such swine after that
11 removal is guilty of a ~~Class 2 misdemeanor~~. Class 2 misdemeanor, punishable by a fine of not
12 less than two hundred fifty dollars (\$250.00). The acts of removal from a trap and of
13 transporting the swine after removal shall constitute separate offenses."
14

15 PART II. GOVERNING BODIES/COLLECT UNPAID JUDGMENTS

16 SECTION 10. Part 1 of Article 5 of Chapter 160A of the General Statutes is
17 amended by adding a new section to read as follows:

18 "§ 160A-64.1. Withholding compensation; money judgment against council member.

19 In addition to any other enforcement available, the finance officer of a city that obtains a
20 final judgment awarding monetary damages against an elected or appointed member of the city
21 council, either individually or jointly, may enforce that final judgment using any of the
22 remedies set forth in G.S. 105-366(b) or the procedure for attachment and garnishment set forth
23 in G.S. 105-368 as if final judgment awarding monetary damages were delinquent taxes and
24 that finance officer were the tax collector. The provision of G.S. 105-368(a) that limits the
25 amount of compensation that may be garnished to not more than ten percent (10%) for any one
26 pay period shall not apply to this section."

27 SECTION 11. Part 1 of Article 4 of Chapter 153A of the General Statutes is
28 amended by adding a new section to read as follows:

29 "§ 153A-30. Withholding compensation; money judgment against board member.

30 In addition to any other enforcement available, the finance officer of a county that obtains a
31 final judgment awarding monetary damages against an elected or appointed member of the
32 board of commissioners, either individually or jointly, may enforce that final judgment using
33 any of the remedies set forth in G.S. 105-366(b) or the procedure for attachment and
34 garnishment set forth in G.S. 105-368 as if final judgment awarding monetary damages were
35 delinquent taxes and that finance officer were the tax collector. The provision of
36 G.S. 105-368(a) that limits the amount of compensation that may be garnished to not more than
37 ten percent (10%) for any one pay period shall not apply to this section."

38 PART III. EMINENT DOMAIN

39 SECTION 12. Article I of the North Carolina Constitution is amended by adding a
40 new section to read:

41 "Sec. 19.1. Eminent domain.

42 Private property shall not be taken by eminent domain except for a public use. Just
43 compensation shall be paid and shall be determined by a jury at the request of any party."

44 SECTION 13. The amendment set out in Section 12 of this act shall be submitted
45 to the qualified voters of the State at a statewide election to be conducted on November 4,
46 2014, which election shall be conducted under the laws then governing elections in the State.
47 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General
48 Statutes. The question to be used in the voting systems and ballots shall be:

49
50 "[] FOR [] AGAINST

1 Constitutional amendment to prohibit condemnation of private property except for a
2 public use and to provide for the payment of just compensation with right of trial by jury in all
3 condemnation cases."

4 **SECTION 14.** If a majority of votes cast on the question are in favor of the
5 amendment set out in Section 12 of this act, the State Board of Elections shall certify the
6 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
7 certified among the permanent records of that office. The amendment set out in Section 12 of
8 this act becomes effective upon certification and applies to takings after that date.

9 **SECTION 15.(a)** G.S. 40A-3(1) and the prefatory language of G.S. 40A-3(a) read
10 as rewritten:

11 "(a) Private Condemnors. – For the public ~~use or benefit,~~ use, the persons or
12 organizations listed below shall have the power of eminent domain and may acquire by
13 purchase or condemnation property for the stated purposes and other works which are
14 authorized by ~~law.~~ law:

15 (1) Corporations, bodies politic or persons have the power of eminent domain
16 for the construction of railroads, power generating facilities, substations,
17 switching stations, microwave towers, roads, alleys, access railroads,
18 turnpikes, street railroads, plank roads, tramroads, canals, telegraphs,
19 telephones, electric power lines, electric lights, public water supplies, public
20 sewerage systems, flumes, bridges, and pipelines or mains originating in
21 North Carolina for the transportation of petroleum products, coal, gas,
22 limestone or minerals. Land condemned for any liquid pipelines shall:

23 a. Not be less than 50 feet nor more than 100 feet in width; and

24 b. Comply with the provisions of G.S. 62-190(b).

25 The width of land condemned for any natural gas pipelines shall not be more
26 than 100 feet.

27"

28 **SECTION 15.(b)** The prefatory language of G.S. 40A-3(b) reads as rewritten:

29 "(b) Local Public Condemnors – Standard Provision. – For the public ~~use or benefit,~~ use,
30 the governing body of each municipality or county shall possess the power of eminent domain
31 and may acquire by purchase, gift or condemnation any property, either inside or outside its
32 boundaries, for the following ~~purposes.~~ purposes:"

33 **SECTION 15.(c)** The prefatory language of G.S. 40A-3(b1) reads as rewritten:

34 "(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the
35 public ~~use or benefit,~~ use, the governing body of each municipality or county shall possess the
36 power of eminent domain and may acquire by purchase, gift or condemnation any property or
37 interest therein, either inside or outside its boundaries, for the following ~~purposes.~~ purposes:"

38 **SECTION 15.(d)** The prefatory language of G.S. 40A-3(c) reads as rewritten:

39 "(c) Other Public Condemnors. – For the public ~~use or benefit,~~ use, the following
40 political entities shall possess the power of eminent domain and may acquire property by
41 purchase, gift, or condemnation for the stated ~~purposes.~~ purposes:"

42 **SECTION 16.** G.S. 40A-3 is amended by adding a new subsection to read:

43 "(d) Connection of Customers. – For the public use, private condemnors, local public
44 condemnors, and other public condemnors in subsections (a), (b), (b1), and (c) of this section
45 shall possess the power of eminent domain and may acquire by purchase, gift, or condemnation
46 any property for the connection of any customer or customers."

47 **PART IV. EFFECTIVE DATE**

48 **SECTION 17.** Sections 1 through 9 of this act become effective October 1, 2013,
49 and apply to offenses committed on or after that date. Section 10 and Section 11 of this act
50 become effective October 1, 2013, and apply to final judgments awarding monetary damages
51

1 that are unsatisfied or entered on or after that date. Sections 15 and 16 of this act become
2 effective when this act becomes law and apply to takings occurring on or after that date. The
3 remainder of this act is effective when it becomes law.