

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 74
Committee Substitute Favorable 5/9/13
Senate Rules and Operations of the Senate Committee Substitute Adopted 7/18/13
Proposed Conference Committee Substitute H74-PCCS10431-SBx-1

Short Title: Regulatory Reform Act of 2013.

(Public)

Sponsors:

Referred to:

February 7, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER
3 TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION,
4 TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN
5 ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. IMPROVE RULE-MAKING PROCESS**

9 **SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

10 "(7a) "Policy" means any nonbinding interpretive statement within the delegated
11 authority of an agency that merely defines, interprets, or explains the
12 meaning of a statute or rule. The term includes any document issued by an
13 agency which is intended and used purely to assist a person to comply with
14 the law, such as a guidance document."

15 **SECTION 2.** G.S. 150B-21.4 reads as rewritten:

16 **"§ 150B-21.4. Fiscal notes on rules.**

17 (a) State Funds. – Before an agency publishes in the North Carolina Register the
18 proposed text of adopts a permanent rule change that would require the expenditure or
19 distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it
20 must submit the text of the proposed rule change, an analysis of the proposed rule change, and
21 a fiscal note on the proposed rule change to the Office of State Budget and Management and
22 obtain certification from the Office of State Budget and Management that the funds that would
23 be required by the proposed rule change are available. The agency shall submit the text of the
24 proposed rule change, an analysis of the proposed rule change, and a fiscal note on the
25 proposed rule change to the Office at the same time as the agency submits the notice of text for
26 publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that
27 would be expended or distributed as a result of the proposed rule change and explain how the
28 amount was computed. The Office of State Budget and Management must certify a proposed
29 rule change if funds are available to cover the expenditure or distribution required by the
30 proposed rule change.



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1 (a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section,
2 any agency that adopts a rule affecting environmental permitting of Department of
3 Transportation projects shall conduct an analysis to determine if the rule will result in an
4 increased cost to the Department of Transportation. The analysis shall be conducted and
5 submitted to the Board of Transportation ~~before when the agency publishes the proposed text of~~
6 ~~the rule change in the North Carolina Register.~~ submits the notice of text for publication. The
7 agency shall consider any recommendations offered by the Board of Transportation prior to
8 adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation
9 may submit any objection to the rule it may have to the Rules Review Commission. If the Rules
10 Review Commission receives an objection to a rule from the Board of Transportation no later
11 than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule
12 shall only become effective as provided in G.S. 150B-21.3(b1).

13 (b) Local Funds. – Before an agency ~~publishes in the North Carolina Register the~~
14 ~~proposed text of~~ adopts a permanent rule change that would affect the expenditures or revenues
15 of a unit of local government, it must submit the text of the proposed rule change and a fiscal
16 note on the proposed rule change to the Office of State Budget and Management as provided by
17 G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina
18 Association of County Commissioners, and the North Carolina League of Municipalities. The
19 fiscal note must state the amount by which the proposed rule change would increase or
20 decrease expenditures or revenues of a unit of local government and must explain how the
21 amount was computed.

22 (b1) Substantial Economic Impact. – Before an agency ~~publishes in the North Carolina~~
23 ~~Register the proposed text of~~ adopts a permanent rule change that would have a substantial
24 economic impact and that is not identical to a federal regulation that the agency is required to
25 adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note
26 approved by the Office of State Budget and Management. The agency may request the Office
27 of State Budget and Management to prepare the fiscal note only after, working with the Office,
28 it has exhausted all resources, internal and external, to otherwise prepare the required fiscal
29 note. If an agency requests the Office of State Budget and Management to prepare a fiscal note
30 for a proposed rule change, that Office must prepare the note within 90 days after receiving a
31 written request for the note. If the Office of State Budget and Management fails to prepare a
32 fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal
33 note. A fiscal note prepared in this circumstance does not require approval of the Office of
34 State Budget and Management.

35 If an agency prepares the required fiscal note, the agency must submit the note to the Office
36 of State Budget and Management for review. The Office of State Budget and Management
37 shall review the fiscal note within 14 days after it is submitted and either approve the note or
38 inform the agency in writing of the reasons why it does not approve the fiscal note. After
39 addressing these reasons, the agency may submit the revised fiscal note to that Office for its
40 review. If an agency is not sure whether a proposed rule change would have a substantial
41 economic impact, the agency shall ask the Office of State Budget and Management to
42 determine whether the proposed rule change has a substantial economic impact. Failure to
43 prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for
44 objection to the rule under G.S. 150B-21.9(a)(4).

45 As used in this subsection, the term "substantial economic impact" means an aggregate
46 financial impact on all persons affected of at least ~~five hundred thousand dollars (\$500,000)~~
47 one million dollars (\$1,000,000) in a 12-month period. In analyzing substantial economic
48 impact, an agency shall do the following:

- 49 (1) Determine and identify the appropriate time frame of the analysis.
- 50 (2) Assess the baseline conditions against which the proposed rule is to be
- 51 measured.

- 1 (3) Describe the persons who would be subject to the proposed rule and the type
2 of expenditures these persons would be required to make.
- 3 (4) Estimate any additional costs that would be created by implementation of the
4 proposed rule by measuring the incremental difference between the baseline
5 and the future condition expected after implementation of the rule. The
6 analysis should include direct costs as well as opportunity costs. Cost
7 estimates must be monetized to the greatest extent possible. Where costs are
8 not monetized, they must be listed and described.
- 9 (5) For costs that occur in the future, the agency shall determine the net present
10 value of the costs by using a discount factor of seven percent (7%).
- 11 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the
12 following:
- 13 (1) A description of the persons who would be affected by the proposed rule
14 change.
- 15 (2) A description of the types of expenditures that persons affected by the
16 proposed rule change would have to make to comply with the rule and an
17 estimate of these expenditures.
- 18 (3) A description of the purpose and benefits of the proposed rule change.
- 19 (4) An explanation of how the estimate of expenditures was computed.
- 20 (5) A description of at least two alternatives to the proposed rule that were
21 considered by the agency and the reason the alternatives were rejected. The
22 alternatives may have been identified by the agency or by members of the
23 public.
- 24 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity
25 of a rule."

26 **SECTION 3.(a)** G.S. 150B-21.2(c) reads as rewritten:

- 27 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of the
28 following:
- 29 (1) The text of the proposed rule, unless the rule is a readoption without
30 substantive changes to the existing rule proposed in accordance with
31 G.S. 150B-21.3A.
- 32 (2) A short explanation of the reason for the proposed rule and a link to the
33 agency's Web site containing the information required by G.S. 150B-19.1(c).
- 34 (3) A citation to the law that gives the agency the authority to adopt the rule.
- 35 (4) The proposed effective date of the rule.
- 36 (5) The date, time, and place of any public hearing scheduled on the rule.
- 37 (6) Instructions on how a person may demand a public hearing on a proposed
38 rule if the notice does not schedule a public hearing on the proposed rule and
39 subsection (e) of this section requires the agency to hold a public hearing on
40 the proposed rule when requested to do so.
- 41 (7) The period of time during which and the person to whom written comments
42 may be submitted on the proposed rule.
- 43 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
44 fiscal note can be obtained from the agency.
- 45 (9) The procedure by which a person can object to a proposed rule and the
46 requirements for subjecting a proposed rule to the legislative review
47 process."

48 **SECTION 3.(b)** Part 2 of Article 2A of Chapter 150B of the General Statutes is
49 amended by adding a new section to read:

50 **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

- 51 (a) Definitions. – For purposes of this section, the following definitions apply:

- 1 (1) Commission. – Means the Rules Review Commission.
2 (2) Committee. – Means the Joint Legislative Administrative Procedure
3 Oversight Committee.
4 (3) Necessary with substantive public interest. – Means any rule for which the
5 agency has received public comments within the past two years. A rule is
6 also "necessary with substantive public interest" if the rule affects the
7 property interest of the regulated public and the agency knows or suspects
8 that any person may object to the rule.
9 (4) Necessary without substantive public interest. – Means a rule for which the
10 agency has not received a public comment concerning the rule within the
11 past two years. A "necessary without substantive public interest" rule
12 includes a rule that merely identifies information that is readily available to
13 the public, such as an address or a telephone number.
14 (5) Public comment. – Means written comments objecting to the rule, in whole
15 or in part, received by an agency from any member of the public, including
16 an association or other organization representing the regulated community or
17 other members of the public.
18 (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete,
19 redundant, or otherwise not needed.
20 (b) Automatic Expiration. – Except as provided in subsection (d1) of this section, any
21 rule for which the agency that adopted the rule has not conducted a review in accordance with
22 this section shall expire on the date set in the schedule established by the Commission pursuant
23 to subsection (d) of this section.
24 (c) Review Process. – Each agency subject to this Article shall conduct a review of the
25 agency's existing rules at least once every 10 years in accordance with the following process:
26 (1) Step 1: The agency shall conduct an analysis of each existing rule and make
27 an initial determination as to whether the rule is (i) necessary with
28 substantive public interest, (ii) necessary without substantive public interest,
29 or (iii) unnecessary. The agency shall then post the results of the initial
30 determination on its Web site and invite the public to comment on the rules
31 and the agency's initial determination. The agency shall also submit the
32 results of the initial determination to the Office of Administrative Hearings
33 for posting on its Web site. The agency shall accept public comment for no
34 less than 60 days following the posting. The agency shall review the public
35 comments and prepare a brief response addressing the merits of each
36 comment. After completing this process, the agency shall submit a report to
37 the Commission. The report shall include the following items:
38 a. The agency's initial determination.
39 b. All public comments received in response to the agency's initial
40 determination.
41 c. The agency's response to the public comments.
42 (2) Step 2: The Commission shall review the reports received from the agencies
43 pursuant to subdivision (1) of this subsection. If a public comment relates to
44 a rule that the agency determined to be necessary and without substantive
45 public interest or unnecessary, the Commission shall determine whether the
46 public comment has merit and, if so, designate the rule as necessary with
47 substantive public interest. For purposes of this subsection, a public
48 comment has merit if it addresses the specific substance of the rule and
49 relates to any of the standards for review by the Commission set forth in
50 G.S. 150B-21.9(a). The Commission shall prepare a final determination
51 report and submit the report to the Committee for consultation in accordance

1 with subdivision (3) of this subsection. The report shall include the
2 following items:

- 3 a. The agency's initial determination.
4 b. All public comments received in response to the agency's initial
5 determination.
6 c. The agency's response to the public comments.
7 d. A summary of the Commission's determinations regarding public
8 comments.
9 e. A determination that all rules that the agency determined to be
10 necessary and without substantive public interest and for which no
11 public comment was received or for which the Commission
12 determined that the public comment was without merit be allowed to
13 remain in effect without further action.
14 f. A determination that all rules that the agency determined to be
15 unnecessary and for which no public comment was received or for
16 which the Commission determined that the public comment was
17 without merit shall expire on the first day of the month following the
18 date the report becomes effective in accordance with this section.
19 g. A determination that all rules that the agency determined to be
20 necessary with substantive public interest or that the Commission
21 designated as necessary with public interest as provided in this
22 subdivision shall be readopted as though the rules were new rules in
23 accordance with this Article.

24 (3) Step 3: The final determination report shall not become effective until the
25 agency has consulted with the Committee. The determinations contained in
26 the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this
27 subsection shall become effective on the date the report is reviewed by the
28 Committee. If the Committee does not hold a meeting to hear the
29 consultation required by this subdivision within 60 days of receipt of the
30 final determination report, the consultation requirement is deemed satisfied,
31 and the determinations contained in the report become effective on the 61st
32 day following the date the Committee received the report. If the Committee
33 disagrees with a determination regarding a specific rule contained in the
34 report, the Committee may recommend that the General Assembly direct the
35 agency to conduct a review of the specific rule in accordance with this
36 section in the next year following the consultation.

37 (d) Timetable. – The Commission shall establish a schedule for the review of existing
38 rules in accordance with this section on a decennial basis by assigning each Title of the
39 Administrative Code a date by which the review required by this section must be completed. In
40 establishing the schedule, the Commission shall consider the scope and complexity of rules
41 subject to this section and the resources required to conduct the review required by this section.
42 The Commission shall have broad authority to modify the schedule and extend the time for
43 review in appropriate circumstances. Except as provided in subsection (d1) of this section, if
44 the agency fails to conduct the review by the date set by the Commission, the rules contained in
45 that Title which have not been reviewed will expire. The Commission may exempt rules that
46 have been adopted or amended within the previous 10 years from the review required by this
47 section. However, any rule exempted on this basis must be reviewed in accordance with this
48 section no more than 10 years following the last time the rule was amended.

49 (d1) Rules to Conform to or Implement Federal Law. – Rules adopted to conform to or
50 implement federal law shall not expire as provided by this section. The Commission shall
51 report annually to the Committee on any rules that do not expire pursuant to this subsection.

1 (e) Other Reviews. – Notwithstanding any provision of this section, an agency may
2 subject a rule that it determines to be unnecessary to review under this section at any time by
3 notifying the Commission that it wishes to be placed on the schedule for the current year. The
4 Commission may also subject a rule to review under this section at any time by notifying the
5 agency that the rule has been placed on the schedule for the current year."

6 **SECTION 3.(c)** G.S. 150B-19.2 is repealed.

7 **SECTION 3.(d)** If G.S. 150B-21.3A, as enacted by subsection (b) of this section,
8 becomes law, the Rules Review Commission shall subject rules adopted by the Environmental
9 Management Commission related to surface water quality and wetlands to review in the first
10 year that the Rules Review Commission establishes for the review of existing rules in
11 accordance with G.S. 150B-21.3A.

12 **SECTION 4.** The Joint Legislative Administrative Procedure Oversight Committee
13 shall undertake a study of the exemptions from rule making contained in G.S. 150B-1(d) and
14 elsewhere in the General Statutes. For each exemption, the Committee shall evaluate the
15 continued need for the exemption and the potential consequences of repeal of the exemption.
16 The Committee shall report to the 2014 Regular Session of the 2013 General Assembly on its
17 findings and recommendations, including any legislative recommendations for the repeal of
18 exemptions.

19 **PART II. STATE AND LOCAL GOVERNMENT REGULATIONS**

20 **PROHIBIT DELAYED ENFORCEMENT OF LOCAL ORDINANCES AND PROHIBIT** 21 **CERTAIN CONTRACT REQUIREMENTS BY LOCAL GOVERNMENTS**

22 **SECTION 5.(a)** G.S. 153A-348 is amended by adding a new subsection to read:

23 "(d) When a use constituting a violation of a zoning or unified development ordinance is
24 in existence prior to adoption of the zoning or unified development ordinance creating the
25 violation, and that use is grandfathered and subsequently terminated for any reason, a county
26 shall bring an enforcement action within 10 years of the date of the termination of the
27 grandfathered status, unless the violation poses an imminent hazard to health or public safety."

28 **SECTION 5.(b)** G.S. 160A-364.1 is amended by adding a new subsection to read:

29 "(d) When a use constituting a violation of a zoning or unified development ordinance is
30 in existence prior to adoption of the zoning or unified development ordinance creating the
31 violation, and that use is grandfathered and subsequently terminated for any reason, a city shall
32 bring an enforcement action within 10 years of the date of the termination of the grandfathered
33 status, unless the violation poses an imminent hazard to health or public safety."

34 **SECTION 5.(c)** G.S. 153A-449 reads as rewritten:

35 "**§ 153A-449. Contracts with private entities.**

36 A county may contract with and appropriate money to any person, association, or
37 corporation, in order to carry out any public purpose that the county is authorized by law to
38 engage in. A county may not require a private contractor under this section to abide by any
39 restriction that the county could not impose on all employers in the county, such as paying
40 minimum wage or providing paid sick leave to its employees, as a condition of bidding on a
41 contract."

42 **SECTION 5.(d)** G.S. 160A-20.1 reads as rewritten:

43 "**§ 160A-20.1. Contracts with private entities.**

44 A city may contract with and appropriate money to any person, association, or corporation,
45 in order to carry out any public purpose that the city is authorized by law to engage in. A city
46 may not require a private contractor under this section to abide by any restriction that the city
47 could not impose on all employers in the city, such as paying minimum wage or providing paid
48 sick leave to its employees, as a condition of bidding on a contract."

1 **SECTION 5.(e)** This section is effective when it becomes law and applies to
2 contracts entered on or after that date.

3
4 **EQUAL TREATMENT FOR FRATERNITIES AND SORORITIES BY LOCAL**
5 **GOVERNMENT**

6 **SECTION 6.(a)** G.S. 153A-340 is amended by adding a new subsection to read:

7 "**(k)** A zoning or unified development ordinance may not differentiate in terms of the
8 regulations applicable to fraternities or sororities between those fraternities or sororities that are
9 approved or recognized by a college or university and those that are not."

10 **SECTION 6.(b)** G.S. 160A-381 is amended by adding a new subsection to read:

11 "**(g)** A zoning or unified development ordinance may not differentiate in terms of the
12 regulations applicable to fraternities or sororities between those fraternities or sororities that are
13 approved or recognized by a college or university and those that are not."

14 **SECTION 6.(c)** Part 3 of Article 1 of Chapter 116 of the General Statutes is
15 amended by adding a new section to read:

16 **"§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

17 **(a)** Any student enrolled at a constituent institution who is accused of a violation of the
18 disciplinary or conduct rules of the constituent institution shall have the right to be represented,
19 at the student's expense, by a licensed attorney or nonattorney advocate who may fully
20 participate during any disciplinary procedure or other procedure adopted and used by the
21 constituent institution regarding the alleged violation. However, a student shall not have the
22 right to be represented by a licensed attorney or nonattorney advocate in either of the following
23 circumstances:

24 **(1)** If the constituent institution has implemented a "Student Honor Court"
25 which is fully staffed by students to address such violations.

26 **(2)** For any allegation of "academic dishonesty" as defined by the constituent
27 institution.

28 **(b)** Any student organization officially recognized by a constituent institution that is
29 accused of a violation of the disciplinary or conduct rules of the constituent institution shall
30 have the right to be represented, at the organization's expense, by a licensed attorney or
31 nonattorney advocate who may fully participate during any disciplinary procedure or other
32 procedure adopted and used by the constituent institution regarding the alleged violation.
33 However, a student organization shall not have the right to be represented by a licensed
34 attorney or nonattorney advocate if the constituent institution has implemented a "Student
35 Honor Court" which is fully staffed by students to address such violations.

36 **(c)** Nothing in this section shall be construed to create a right to be represented at a
37 disciplinary proceeding at public expense."

38 **SECTION 6.(d)** Each constituent institution shall track the number and type of
39 disciplinary proceedings impacted by this section, as well as the number of cases in which a
40 student or student organization is represented by an attorney or nonattorney advocate. The
41 constituent institutions shall report their findings to the Board of Governors of The University
42 of North Carolina, and the Board of Governors shall submit a combined report to the Joint
43 Legislative Education Oversight Committee and the House and Senate Education
44 Appropriations Subcommittees by May 1, 2014.

45 **SECTION 6.(e)** Subsection (c) of this section is effective when it becomes law and
46 applies to all allegations of violations beginning on or after that date.

47
48 **AMEND PRIVATE CLUB DEFINITION**

49 **SECTION 7.** G.S. 130A-247 reads as rewritten:

50 **"§ 130A-247. Definitions.**

51 The following definitions shall apply throughout this Part:

1 ...
 2 (2) "Private club" means an organization that (i) maintains selective members, is
 3 operated by the membership, does not provide food or lodging for pay to
 4 anyone who is not a member or a member's guest, and is either incorporated
 5 as a nonprofit corporation in accordance with Chapter 55A of the General
 6 Statutes or is exempt from federal income tax under the Internal Revenue
 7 Code as defined in ~~G.S. 105-130.2(1)~~ G.S. 105-130.2(1) or (ii) meets the
 8 definition of a private club set forth in G.S. 18B-1000(5).
 9"

10
 11 **OUTDOOR ADVERTISING AMENDMENTS**

12 **SECTION 8.(a)** G.S. 136-133.1 reads as rewritten:

13 **"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

14 ...
 15 (a1) Notwithstanding any law to the contrary, in order to promote the outdoor
 16 advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of
 17 Transportation, at the request of a selective vegetation removal permittee, may approve plans
 18 for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone
 19 defined in subsection (a) of this section along acceleration or deceleration ramps so long as the
 20 view to the outdoor advertising sign will be improved and the total aggregate area of cutting or
 21 removal does not exceed the maximum allowed in subsection (a) of this section.

22 ...
 23 (f) Tree branches within a highway right-of-way that encroach into the zone created by
 24 points A, ~~C,~~ ~~and DB,~~ D, and E may be cut or pruned. Except as provided in subsection (g) of
 25 this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be
 26 cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor
 27 advertising and within the limits of the highway right-of-way for the purpose of enhancing the
 28 visibility of outdoor advertising unless permitted to do so by the Department in accordance
 29 with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

30"
 31 **SECTION 8.(b)** Article 11 of Chapter 136 of the General Statutes is amended by
 32 adding a new section to read:

33 **"§ 136-131.2. Modernization of outdoor advertising devices.**

34 No municipality, county, local or regional zoning authority, or other political subdivision
 35 shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or
 36 prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a
 37 valid permit issued by the Department of Transportation so long as the square footage of its
 38 advertising surface area is not increased. As used in this section, reconstruction includes the
 39 changing of an existing multipole outdoor advertising structure to a new monopole structure."

40
 41 **DISPOSITION OF DMH/DD/SAS RECORDS**

42 **SECTION 9.** The Division of Mental Health, Developmental Disabilities, and
 43 Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual
 44 to provide that if a Medicaid service has been eliminated by the State, the provider must retain
 45 records for three years after the last date of the service, unless a longer period is required by
 46 federal law. At the termination of that time period, records may be destroyed or transferred to a
 47 State agency or contractor identified by the Department of Health and Human Services.

48
 49 **STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

50 **SECTION 10.(a)** The Joint Legislative Program Evaluation Oversight Committee
 51 shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General

1 Assembly a study to evaluate the structure, organization, and operation of the various
2 independent occupational licensing boards. For purposes of this act, the term "occupational
3 licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation
4 Division shall include the following within this study:

- 5 (1) Consideration of the feasibility of establishing a single State agency to
6 oversee the administration of all or some of the occupational licensing
7 boards.
- 8 (2) Whether greater efficiency and cost-effectiveness can be realized by
9 combining the administrative functions of the boards while allowing the
10 boards to continue performing the regulatory functions.
- 11 (3) Whether the total number of boards should be reduced by combining and/or
12 eliminating some boards.

13 **SECTION 10.(b)** The Program Evaluation Division shall submit its findings and
14 recommendations from Section 10(a) of this act to the Joint Legislative Program Evaluation
15 Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee
16 at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.
17

18 PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES

19 **SECTION 10.1.(a)** Article 8 of Chapter 160A of the General Statutes is amended
20 by adding a new section to read as follows:

21 **"§ 160A-204. Transportation impact mitigation ordinances prohibited.**

22 No city may enact or enforce an ordinance, rule, or regulation that requires an employer to
23 assume financial, legal, or other responsibility for the mitigation of the impact of his or her
24 employees' commute or transportation to or from the employer's workplace, which may result
25 in the employer being subject to a fine, fee, or other monetary, legal, or negative
26 consequences."

27 **SECTION 10.1.(b)** Article 6 of Chapter 153A of the General Statutes is amended
28 by adding a new section to read as follows:

29 **"§ 153A-145.1. Transportation impact mitigation ordinances prohibited.**

30 No county may enact or enforce an ordinance, rule, or regulation that requires an employer
31 to assume financial, legal, or other responsibility for the mitigation of the impact of his or her
32 employees' commute or transportation to or from the employer's workplace, which may result
33 in the employer being subject to a fine, fee, or other monetary, legal, or negative
34 consequences."

35 36 TEMPORARY LIMITATION ON ENACTMENT OF ENVIRONMENTAL 37 ORDINANCES BY CITIES AND COUNTIES; STUDY

38 **SECTION 10.2(a)** Notwithstanding any other provision of law and except as
39 authorized by this section, a city or county may not enact an ordinance that regulates a field that
40 is also regulated by a State or federal statute enforced by an environmental agency or that
41 regulates a field that is also regulated by a rule adopted by an environmental agency. A city or
42 county may enact an ordinance that regulates a field that is also regulated by a State or federal
43 statute enforced by an environmental agency or that regulates a field that is also regulated by a
44 rule adopted by an environmental agency if the ordinance is approved by a unanimous vote of
45 the members present and voting.

46 **SECTION 10.2(b)** For purposes of this section, "an environmental agency" means
47 any of the following:

- 48 (1) The Department of Environment and Natural Resources created pursuant to
49 G.S. 143B-279.1.
- 50 (2) The Environmental Management Commission created pursuant to
51 G.S. 143B-282.

- 1 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
2 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
3 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
4 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
5 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
6 and 19B of Chapter 130A of the General Statutes.
7 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
8 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
9 (9) The Pesticide Board created pursuant to G.S. 143-436.

10 **SECTION 10.2.(c)** The Environmental Review Commission shall study the
11 circumstances under which cities and counties should be authorized to enact ordinances (i) that
12 regulate a field that is also regulated by a State or federal statute enforced by an environmental
13 agency or that regulate a field that is also regulated by a rule adopted by an environmental
14 agency and (ii) that are more stringent than the State or federal statute or State rule. The
15 Environmental Review Commission shall report its findings and recommendations to the 2014
16 Regular Session of the 2013 General Assembly.

17 **SECTION 10.2.(d)** This section is effective when it becomes law. Subsection (a)
18 of this section applies to ordinances enacted on or after that date. Subsection (a) of this section
19 expires October 1, 2014.

20 **PART III. BUSINESS AND LABOR REGULATIONS**

21 **LET BED AND BREAKFASTS OFFER THREE MEALS/DAY**

22 **SECTION 11.(a)** G.S. 130A-247 is amended by adding a new subdivision to read:

23 "(5a) "Bed and breakfast home" means a business in a private home of not more
24 than eight guest rooms that offers bed and breakfast accommodations for a
25 period of less than one week and that meets all of the following criteria:

- 26 a. Does not serve food or drink to the general public for pay.
27 b. Serves the breakfast meal, the lunch meal, the dinner meal, or a
28 combination of all or some of these three meals, only to overnight
29 guests of the home.
30 c. Includes the price of any meals served in the room rate.
31 d. Is the permanent residence of the owner or the manager of the
32 business."

33 **SECTION 11.(b)** G.S. 130A-248(a2) reads as rewritten:

34 "(a2) For the protection of the public health, the Commission shall adopt rules governing
35 the sanitation of ~~private homes offering bed and breakfast accommodations to eight or fewer~~
36 ~~persons per night,~~ bed and breakfast homes, as defined in G.S. 130A-247, and rules governing
37 the sanitation of ~~bed and breakfast inns-inns,~~ as defined in G.S. 130A-247. In carrying out this
38 function, the Commission shall adopt requirements that are the least restrictive so as to protect
39 the public health and not unreasonably interfere with the operation of bed and breakfast homes
40 and bed and breakfast inns."

41 **SECTION 11.(c)** This section becomes effective October 1, 2013.

42 **PEO ACT AMENDMENTS**

43 **SECTION 11.1.(a)** G.S. 58-89A-5(8) is repealed.

44 **SECTION 11.1.(b)** G.S. 58-89A-50 reads as rewritten:

45 **"§ 58-89A-50. Surety bond; letter of credit; other deposits.**

46 (a) An applicant for licensure shall file with the Commissioner a surety ~~bond for the~~
47 ~~benefit of the Commissioner as follows:~~

1 (1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~
2 ~~other items as provided for in subsection (f) of this section, shall be in the~~
3 ~~amount of one hundred thousand dollars (\$100,000).~~

4 (2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~
5 ~~or other items as provided for in subsection (f) of this section, shall be in an~~
6 ~~amount equal to five percent (5%) of the applicant's prior year's total North~~
7 ~~Carolina wages, benefits, workers compensation premiums, and~~
8 ~~unemployment compensation contributions, but not greater than five~~
9 ~~hundred thousand dollars (\$500,000), or such greater amount as the~~
10 ~~Commissioner may require.~~

11 bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred
12 thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current
13 assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional
14 surety bond or other items set forth in subsection (f) of this section equal to or in excess of
15 current liabilities less current assets.

16 (b) The surety bond required by this section shall be in a form acceptable to the
17 Commissioner, issued by an insurer authorized by the Commissioner to write surety business in
18 this State, and maintained in force while the license remains in effect or any obligations or
19 liabilities of the applicant, licensee or PEO previously licensed by this State remain
20 outstanding.

21 (c) The surety bond required by this section may be exchanged or replaced with another
22 surety bond if (i) the surety bond applies to obligations and liabilities that arose during the
23 period of the original surety bond, (ii) the surety bond meets the requirements of this section,
24 and (iii) 90 days' advance written notice is provided to the Commissioner.

25 (d) ~~A licensee shall not require a client company to contribute in any manner to the~~
26 ~~payment of the surety bond required by this section.~~

27"

28 **SECTION 11.1.(c)** G.S. 58-89A-60(b) reads as rewritten:

29 "(b) Every applicant shall file with the Commissioner ~~evidence of financial~~
30 ~~responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial
31 statement, prepared as of a date not more than 90 days before the date of application that
32 demonstrates that the applicant or licensee ~~is not in a hazardous financial condition~~ licensee's
33 current assets exceed current liabilities and attached to which is a separate document signed by
34 the chief executive and the chief financial officer certifying that (i) each has reviewed the
35 financial statement; (ii) based on each signatory's knowledge, the financial statement does not
36 contain any untrue or misleading statement of material fact or omit a fact with respect to the
37 period covered by the financial statement; and (iii) based on each signatory's knowledge, the
38 financial statement fairly presents in all material respects the financial condition of the licensee
39 as of, and for, the period presented in the financial statement.

40 Notwithstanding the requirements of this subsection, the Commissioner may, in the
41 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared
42 more than 90 days before submission to the Commissioner if the Commissioner deems such
43 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose
44 conditions upon such acceptance of financial statements prepared more than 90 days prior to
45 submission.

46 The audited GAAP financial statement shall be prepared in accordance with generally
47 accepted accounting principles and audited by an independent certified public accountant
48 licensed to practice in the jurisdiction in which such accountant is located and shall be without
49 qualification as to the going concern status of the PEO. A PEO group may submit combined or
50 consolidated audited financial statements to meet the requirements of this section, except that a
51 PEO that has not had sufficient operating history to have audited financial statements based

1 upon at least 12 months of operating history must meet the financial capacity requirements of
2 this subsection and present financial statements reviewed by a certified public accountant."

3 **SECTION 11.1.(d)** G.S. 58-89A-85 reads as rewritten:

4 "**§ 58-89A-85. Supervision; rehabilitation; liquidation.**

5 If at any time the Commissioner determines, after notice and an opportunity for the licensee
6 to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the
7 ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) is ~~bankrupt~~
8 ~~or in a hazardous financial condition, bankrupt,~~ the Commissioner may either (i) commence a
9 supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court
10 of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over
11 the licensee, if applicable, for an order directing the Commissioner or authorizing the
12 Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this
13 Chapter."

14 **SECTION 11.1.(e)** G.S. 58-89A-95 reads as rewritten:

15 "**§ 58-89A-95. Agreement; notice.**~~Agreement.~~

16 (a) A licensee shall establish the terms of a PEO agreement by a written contract
17 between the licensee and the client company.

18 (b) The licensee shall give written notice of the agreement, by agreement or otherwise,
19 as it affects assigned employees to each employee assigned to a client company work site. ~~This~~
20 ~~written notice shall be given to each assigned employee not later than the first payday after the~~
21 ~~date on which that individual becomes an assigned employee.~~

22 (c) ~~The licensee shall give each employee written notice when the employee ceases to~~
23 ~~be an employee of the licensee."~~

24 **SECTION 11.1.(f)** G.S. 58-89A-100 reads as rewritten:

25 "**§ 58-89A-100. Contract requirements.**

26 A contract between a licensee and a client company shall provide:

- 27 (1) ~~That the licensee reserves a right of direction and control over employees~~
28 ~~assigned to a client company's work sites. However, a~~ Unless otherwise
29 expressly agreed by a professional employer organization and a client
30 company in a PEO agreement, the client company may retain such sufficient
31 retains the exclusive right of direction and control over the assigned
32 employees as is necessary to conduct the client company's business and
33 without which the client company would be unable to conduct its business,
34 to discharge any fiduciary responsibility that it may have, or to comply with
35 any applicable licensure, regulatory, or statutory requirement of the client
36 company, company or an assigned employee. The PEO agreement shall
37 provide that employment responsibilities not allocated to the licensee by the
38 PEO agreement or this section remain with the client company.
- 39 (2) That the licensee assumes responsibility for the payment of wages to the
40 assigned employees as agreed to in the PEO agreement.
- 41 (3) That the licensee assumes responsibility for the payment of payroll taxes and
42 collection of taxes from payroll on assigned employees.
- 43 (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned~~
44 ~~employees.~~ That the licensee shall have a right to hire, discipline, and
45 terminate an assigned employee as may be necessary to fulfill the licensee's
46 responsibilities under this Chapter and a PEO agreement. The client
47 company shall have a right to hire, discipline, and terminate an assigned
48 employee.
- 49 (5) That the licensee retains a right of direction and control over the adoption of
50 employment policies and the management of workers' compensation claims,

1 claim filings, and related procedures in accordance with applicable federal
2 laws and the laws of this State.

- 3 (6) That responsibility to obtain workers' compensation coverage for assigned
4 employees, from an entity authorized to do business in this State and
5 otherwise in compliance with all applicable requirements, shall be
6 specifically allocated in the PEO agreement to either the client company or
7 the licensee. If the responsibility is allocated to the licensee under any such
8 agreement, that agreement shall require that the licensee maintain and
9 provide to the client company, at the termination of the agreement if
10 requested by the client company, records regarding the loss experience
11 related to workers' compensation insurance provided to assigned employees
12 pursuant to the agreement."

13 **SECTION 11.1.(g)** G.S. 58-89A-145 reads as rewritten:

14 **"§ 58-89A-145. Examinations.**

15 (a) The Commissioner may conduct an examination of a licensee as often as the
16 Commissioner considers appropriate.

17 (b) An examination under this Article shall be conducted in accordance with the
18 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

19 (c) In lieu of an examination of any foreign or alien person licensed under this Article,
20 the Commissioner may, in the Commissioner's discretion, accept an examination report on the
21 licensee prepared by the appropriate regulator for the licensee's state of domicile.

22 (d) When making an examination under this Article, the Commissioner may retain
23 attorneys, appraisers, independent actuaries, independent certified public accountants, or other
24 professionals and specialists as examiners, the reasonable cost of which ~~shall be borne by the~~
25 ~~licensee that is the subject of the examination~~ may only be recovered pursuant to
26 G.S. 58-89A-65(d)."

27 **SECTION 11.1.(h)** G.S. 58-89A-155(a)(4) is repealed.

28 **SECTION 11.1.(i)** This section becomes effective October 1, 2013.

29
30 **CHILD CARE PROVIDERS' CRIMINAL HISTORY CHECKS**

31 **SECTION 12.** G.S. 110-90.2 is amended by adding a new subsection to read:

32 "(h) The check of the State and National Repositories for the criminal history of a person
33 required to be conducted by this section and directed to the State Bureau of Investigation shall
34 be completed within 15 business days of the receipt of the properly submitted request from the
35 Department of Health and Human Services. If the check reveals that the child care provider has
36 no criminal history as defined by subdivision (a)(3) of this section, the Department of Health
37 and Human Services shall make a determination of the fitness of the provider pursuant to
38 subsection (d) of this section within 15 calendar days of receipt of the results of the criminal
39 history check. If the check reveals that the child care provider has a criminal history as defined
40 by subdivision (a)(3) of this section, the Department of Health and Human Services shall make
41 a determination of the fitness of the provider pursuant to subsection (d) of this section within 30
42 business days of receipt of the results of the criminal history check."

43
44 **REGULATION OF DIGITAL DISPATCHING SERVICES**

45 **SECTION 12.1.(a)** G.S. 160A-194 reads as rewritten:

46 **"§ 160A-194. Regulating and licensing businesses, trades, etc.**

47 (a) A city may by ordinance, subject to the general law of the State, regulate and license
48 occupations, businesses, trades, professions, and forms of amusement or entertainment and
49 prohibit those that may be inimical to the public health, welfare, safety, order, or convenience.
50 In licensing trades, occupations, and professions, the city may, consistent with the general law
51 of the State, require applicants for licenses to be examined and charge a reasonable fee therefor.

1 Nothing in this section shall impair the city's power to levy privilege license taxes on
2 occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

3 (b) Nothing in this section shall authorize a city to examine or license a person holding
4 a license issued by an occupational licensing board of this State as to the profession or trade
5 that he has been licensed to practice or pursue by the State.

6 (c) Nothing in this section shall authorize a city to regulate and license digital
7 dispatching services for prearranged transportation services for hire."

8 **SECTION 12.1.(b)** G.S. 160A-304 is amended by adding a new subsection to
9 read:

10 "(c) Nothing in this Chapter authorizes a city to adopt an ordinance doing any of the
11 following:

- 12 (1) Requiring licensing or regulation of digital dispatching services for
13 prearranged transportation services for hire connected with vehicles operated
14 for hire in the city if the business providing the digital dispatching services
15 does not own or operate the vehicles for hire in the city.
- 16 (2) Setting a minimum rate or minimum increment of time used to calculate a
17 rate for prearranged transportation services for hire.
- 18 (3) Requiring an operator to use a particular formula or method to calculate rates
19 charged.
- 20 (4) Setting a minimum waiting period between requesting prearranged
21 transportation services and the provision of those transportation services
22 when the prearranged transportation services are digitally dispatched.
- 23 (5) Requiring a final destination to be set at the time of requesting prearranged
24 transportation services through digital dispatching services.
- 25 (6) Requiring or prohibiting taxi franchises or taxi operators from contracting
26 with a person in the business of digital dispatching services for prearranged
27 transportation services for hire."

28 **SECTION 12.1.(c)** G.S. 153A-134 reads as rewritten:

29 **"§ 153A-134. Regulating and licensing businesses, trades, etc.**

30 (a) A county may by ordinance, subject to the general law of the State, regulate and
31 license occupations, businesses, trades, professions, and forms of amusement or entertainment
32 and prohibit those that may be inimical to the public health, welfare, safety, order, or
33 convenience. In licensing trades, occupations, and professions, the county may, consistent with
34 the general law of the State, require applicants for licenses to be examined and charge a
35 reasonable fee therefor. This section does not authorize a county to examine or license a person
36 holding a license issued by an occupational licensing board of this State as to the profession or
37 trade that he has been licensed to practice or pursue by the State.

38 (b) This section does not impair the county's power to levy privilege license taxes on
39 occupations, businesses, trades, professions, and other activities pursuant to G.S. 153A-152.

40 (c) Nothing in this section shall authorize a county to regulate and license digital
41 dispatching services for prearranged transportation services for hire."

42 43 **WC INSURANCE CANCELLATION/ELECTRONIC COMMUNICATIONS**

44 **SECTION 13.(a)** G.S. 58-36-105(b) reads as rewritten:

45 "(b) Any cancellation permitted by subsection (a) of this section is not effective unless
46 written notice of cancellation has been given ~~by registered or certified mail, return receipt~~
47 ~~requested,~~ to the insured not less than 15 days before the proposed effective date of
48 cancellation. The notice ~~shall~~ may be given by registered or certified mail, return receipt
49 requested, to the insured and any other person designated in the policy to receive notice of
50 cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last
51 known addresses. The notice shall state the precise reason for cancellation. Whenever notice of

1 intention to cancel is ~~required to be~~ given by registered or certified mail, no cancellation by the
2 insurer shall be effective unless and until such method is employed and completed. Notice of
3 cancellation, termination, or nonrenewal may also be given by any method permitted for
4 service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Failure to
5 send this notice, as provided in this section, to any other person designated in the policy to
6 receive notice of cancellation invalidates the cancellation only as to that other person's
7 interest."

8 **SECTION 13.(b)** Article 2 of Chapter 58 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 58-2-255. Electronic insurance communications and records.**

11 (a) Definitions. – As used in this section:

12 (1) "Communications" means notices, offers, disclosures, documents, forms,
13 information, and correspondence required or permitted to be provided to a
14 party in writing under the insurance laws of this State or that are otherwise
15 provided by an insurer, including, but not limited to, notices pertaining to the
16 cancellation, termination, or nonrenewal of insurance.

17 (2) "Delivered by electronic means" includes any of the following:

18 a. Delivery to an electronic mail address or an electronic account at
19 which a party has consented to receive electronic communications.

20 b. Displaying information, or a link to information, as an essential step
21 to completing the transaction to which such information relates.

22 c. Providing notice to a party at the electronic mail address or an
23 electronic account at which the party has consented to receive notice
24 of the posting of a communication on an electronic network or site.

25 (3) "Insurer" has the same meaning as in G.S. 58-1-5(3).

26 (4) "Party" means a recipient of any communications defined in this section.
27 "Party" includes an applicant, policyholder, insured, claimant, member,
28 provider, or beneficiary.

29 (b) When any insurance law of this State, except for cancellation, termination, or
30 nonrenewal of workers' compensation policies pursuant to G.S. 58-36-105(b), requires a
31 communication to be provided to a party in writing, signed by a party, provided by means of a
32 specific delivery method, or retained by an insurer, those requirements are satisfied if the
33 insurer complies with Article 40 of Chapter 66 of the General Statutes.

34 (c) Verification of communications delivered by electronic means shall constitute proof
35 of mailing in civil and administrative proceedings and under the insurance laws of this State.

36 (d) Nothing in this section affects requirements related to the content or timing of any
37 communication required under the insurance laws of this State.

38 (e) A recording of an oral communication between an insurer and a party that is reliably
39 stored and reproduced by an insurer shall constitute an electronic communication or record.
40 When a communication is required under the insurance laws of this State to be provided in
41 writing, the communication provided in accordance with this subsection shall satisfy the
42 requirement that the communication be in writing. When a communication is required under
43 the insurance laws of this State to be signed, a recorded oral communication in which a party
44 agrees to the terms stated in the oral communication shall satisfy the requirement."

45 **SECTION 13.(c)** G.S. 97-19 reads as rewritten:

46 **"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied**
47 **with law; right to recover compensation of those who would have been liable;**
48 **order of liability.**

49 Any principal contractor, intermediate contractor, or subcontractor who shall sublet any
50 contract for the performance of any work without ~~requiring~~ obtaining from such subcontractor
51 or obtaining from the Industrial Commission a certificate, issued by a workers' compensation

1 insurance carrier, or a certificate of compliance issued by the Department of Insurance to a
2 self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93
3 ~~hereof, for a specified term,~~ shall be liable, irrespective of whether such subcontractor has
4 regularly in service fewer than three employees in the same business within this State, to the
5 same extent as such subcontractor would be if he were subject to the provisions of this Article
6 for the payment of compensation and other benefits under this Article on account of the injury
7 or death of any employee of such subcontractor due to an accident arising out of and in the
8 course of the performance of the work covered by such subcontract. If the principal contractor,
9 intermediate contractor or subcontractor shall obtain such certificate at ~~the any time of before~~
10 subletting such contract to the subcontractor, he shall not thereafter be held liable to any
11 employee of such subcontractor for compensation or other benefits under this ~~Article.~~ Article
12 and within the term specified by the certificate.

13 Notwithstanding the provisions of this section, any principal contractor, intermediate
14 contractor, or subcontractor who shall sublet any contract for the performance of work shall not
15 be held liable to any employee of such subcontractor if either (i) the subcontractor has a
16 workers' compensation insurance policy in compliance with G.S. 97-93 in effect on the date of
17 injury regardless of whether the principal contractor, intermediate contractor, or subcontractor
18 failed to timely obtain a certificate from the subcontractor; or (ii) the policy expired or was
19 cancelled prior to the date of injury provided the principal contractor, intermediate contractor,
20 or subcontractor obtained a certificate at any time before subletting such contract to the
21 subcontractor and was unaware of the expiration or cancellation.

22 Any principal contractor, intermediate contractor, or subcontractor paying compensation or
23 other benefits under this Article, under the foregoing provisions of this section, may recover the
24 amount so paid from any person, persons, or corporation who independently of such provision,
25 would have been liable for the payment thereof.

26 Every claim filed with the Industrial Commission under this section shall be instituted
27 against all parties liable for payment, and said Commission, in its award, shall fix the order in
28 which said parties shall be exhausted, beginning with the immediate employer.

29 The principal or owner may insure any or all of his contractors and their employees in a
30 blanket policy, and when so insured such contractor's employees will be entitled to
31 compensation benefits regardless of whether the relationship of employer and employee exists
32 between the principal and the contractor."

33 **SECTION 13.(d)** This section is effective when it becomes law and applies to
34 insurance policies and certificates of insurance in effect on or after that date.

35 36 **VETERANS PREFERENCE FOR PRIVATE EMPLOYERS**

37 **SECTION 14.** Article 3 of Chapter 95 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 95-28.4. Veterans preference.**

40 A private, nonpublic employer in the State may provide a preference to a veteran for
41 employment. Spouses of honorably discharged veterans who have a service-connected
42 permanent and total disability also may be preferred for employment. Granting of this
43 preference is not a violation of any State or local equal employment opportunity law."

44 45 **AGRICULTURAL RIGHT TO WORK**

46 **SECTION 15.** G.S. 95-79 reads as rewritten:

47 **"§ 95-79. Certain agreements declared illegal.**

48 (a) Any agreement or combination between any employer and any labor union or labor
49 organization whereby persons not members of such union or organization shall be denied the
50 right to work for said employer, or whereby such membership is made a condition of
51 employment or continuation of employment by such employer, or whereby any such union or

1 organization acquires an employment monopoly in any enterprise, is hereby declared to be
2 against the public policy and an illegal combination or conspiracy in restraint of trade or
3 commerce in the State of North Carolina.

4 (b) Any provision that directly or indirectly conditions the purchase of agricultural
5 products or the terms of an agreement for the purchase of agricultural products upon an
6 agricultural producer's status as a union or nonunion employer or entry into or refusal to enter
7 into an agreement with a labor union or labor organization is invalid and unenforceable as
8 against public policy in restraint of trade or commerce in the State of North Carolina. For
9 purposes of this subsection, the term "agricultural producer" means any producer engaged in
10 any service or activity included within the provisions of section 3(f) of the Fair Labor
11 Standards Act of 1938, 29 U.S.C. § 203, or section 3121(g) of the Internal Revenue Code of
12 1986, 26 U.S.C. § 3121."

13 14 **W/C/TAXI DRIVER/INDEPENDENT CONTRACTOR**

15 **SECTION 17.(a)** Article 1 of Chapter 97 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 97-5.1. Presumption that taxicab drivers are independent contractors.**

18 (a) It shall be a rebuttable presumption under this Chapter that any person who
19 operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is
20 operated as a taxicab is an independent contractor for the purposes of this Chapter and not an
21 employee as defined in G.S. 97-2. The presumption is not rebutted solely (i) because the
22 operator is required to comply with rules and regulations imposed on taxicabs by the local
23 governmental unit that licenses companies, taxicabs, or operators or (ii) because a taxicab
24 accepts a trip request to be at a specific place at a specific time, but the presumption may be
25 rebutted by application of the common law test for determining employment status.

26 (b) The following definitions apply in this section:

- 27 (1) Lease. – A contract under which the lessor provides a vehicle to a lessee for
28 consideration.
- 29 (2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer
30 period.
- 31 (3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:
- 32 a. Has a passenger seating capacity that does not exceed seven persons;
33 and
- 34 b. Is transporting persons, property, or both on a route that begins or
35 ends in this State and either:
- 36 1. Carries passengers for hire when the destination and route
37 traveled may be controlled by a passenger and the fare is
38 calculated on the basis of any combination of an initial fee,
39 distance traveled, or waiting time; or
- 40 2. Is in use under a contract between the operator and a third
41 party to provide specific service to transport designated
42 passengers or to provide errand services to locations selected
43 by the third party."

44 **SECTION 17.(b)** This section is effective when it becomes law and applies to
45 causes of action arising on or after that date.

46 47 **PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS**

48 49 **SCRAP TIRE DISPOSAL**

50 **SECTION 18.** G.S. 130A-309.57 reads as rewritten:

51 **"§ 130A-309.57. Scrap tire disposal program.**

1 (a) The owner or operator of any scrap tire collection site shall, within six months after
2 October 1, 1989, provide the Department with information concerning the site's location, size,
3 and the approximate number of scrap tires that are accumulated at the site and shall initiate
4 steps to comply with subsection (b) of this section.

5 (b) On or after July 1, 1990:

6 (1) A person may not maintain a scrap tire collection site or a scrap tire disposal
7 site unless the site is permitted.

8 (2) It is unlawful for any person to dispose of scrap tires in the State unless the
9 scrap tires are disposed of at a scrap tire collection site or at a tire disposal
10 site, or disposed of for processing at a scrap tire processing facility.

11 (c) The Commission shall adopt rules to carry out the provisions of this section. Such
12 rules shall:

13 (1) Provide for the administration of scrap tire collector and collection center
14 permits and scrap tire disposal site permits, which may not exceed two
15 hundred fifty dollars (\$250.00) annually.

16 (2) Set standards for scrap tire processing facilities and associated scrap tire
17 sites, scrap tire collection centers, and scrap tire collectors.

18 (3) Authorize the final disposal of scrap tires at a permitted solid waste disposal
19 facility provided the tires have been cut into sufficiently small parts to assure
20 their proper disposal.

21 (4) ~~Provide that permitted scrap tire collectors may not contract with a scrap tire
22 processing facility unless the processing facility documents that it has access
23 to a facility permitted to receive scrap tires.~~

24 (d) A permit is not required for:

25 (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the
26 business premises;

27 (2) A business that, in the ordinary course of business, removes tires from motor
28 vehicles if fewer than 1,000 of these tires are kept on the business premises;
29 or

30 (3) A retail tire-selling business which is serving as a scrap tire collection center
31 if fewer than 1,000 scrap tires are kept on the business premises.

32 (e) The Department shall encourage the voluntary establishment of scrap tire collection
33 centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal
34 facilities, to be open to the public for the deposit of used and scrap tires. The Department may
35 establish an incentives program for individuals to encourage them to return their used or scrap
36 tires to a scrap tire collection center.

37 (f) Permitted scrap tire collectors may not contract with a scrap tire processing facility,
38 unless the processing facility documents that it has access to a facility permitted to receive the
39 scrap tires."

41 CARBON MONOXIDE DETECTORS

42 SECTION 19.(a) G.S. 143-138 reads as rewritten:

43 "§ 143-138. North Carolina State Building Code.

44 ...

45 (b2) Carbon Monoxide Detectors. – The Code-Code (i) may contain provisions requiring
46 the installation of either battery-operated or electrical carbon monoxide detectors in every
47 dwelling unit having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling
48 unit having an attached garage-garage and (ii) shall contain provisions requiring the installation
49 of electrical carbon monoxide detectors at a lodging establishment. Violations of this
50 subsection and rules adopted pursuant to this subsection shall be punishable in accordance with
51 subsection (h) of this section and G.S. 143-139. In particular, the rules shall provide:

1 (1) For dwelling units, carbon~~Carbon~~ monoxide detectors shall be those listed
 2 by a nationally recognized testing laboratory that is OSHA-approved to test
 3 and certify to American National Standards Institute/Underwriters
 4 Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be
 5 installed in accordance with either the standard of the National Fire
 6 Protection Association or the minimum protection designated in the
 7 manufacturer's instructions, which the property owner shall retain or provide
 8 as proof of compliance. A carbon monoxide detector may be combined with
 9 smoke detectors if the combined detector does both of the following: (i)
 10 complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms
 11 and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner
 12 that clearly differentiates between detecting the presence of carbon
 13 monoxide and the presence of smoke.

14 (2) For lodging establishments, carbon monoxide detectors shall be installed in
 15 every enclosed space having a fossil fuel burning heater, appliance, or
 16 fireplace and in any enclosed space, including a sleeping room, that shares a
 17 common wall, floor, or ceiling with an enclosed space having a fossil fuel
 18 burning heater, appliance, or fireplace. Carbon monoxide detectors shall be
 19 (i) listed by a nationally recognized testing laboratory that is
 20 OSHA-approved to test and certify to American National Standards
 21 Institute/Underwriters Laboratories Standards ANSI/UL2034 or
 22 ANSI/UL2075, (ii) installed in accordance with either the standard of the
 23 National Fire Protection Association or the minimum protection designated
 24 in the manufacturer's instructions, which the lodging establishment shall
 25 retain or provide as proof of compliance, (iii) receive primary power from
 26 the building's wiring, where such wiring is served from a commercial source,
 27 and (iv) receive power from a battery when primary power is interrupted. A
 28 carbon monoxide detector may be combined with smoke detectors if the
 29 combined detector complies with the requirements of this subdivision for
 30 carbon monoxide alarms and ANSI/UL217 for smoke detectors. For
 31 purposes of this subsection, "lodging establishment" means any hotel, motel,
 32 tourist home, or other establishment permitted under authority of
 33 G.S. 130A-248 to provide lodging accommodations for pay to the public.

34 "

35 **SECTION 19.(b)** G.S. 130A-248 reads as rewritten:

36 **"§ 130A-248. Regulation of food and lodging establishments.**

37 ...

38 (b) No establishment shall commence or continue operation without a permit or
 39 transitional permit issued by the Department. The permit or transitional permit shall be issued
 40 to the owner or operator of the establishment and shall not be transferable. If the establishment
 41 is leased, the permit or transitional permit shall be issued to the lessee and shall not be
 42 transferable. If the location of an establishment changes, a new permit shall be obtained for the
 43 establishment. A permit shall be issued only when the establishment satisfies all of the
 44 requirements of the ~~rules~~rules and the requirements of subsection (g) of this section. The
 45 Commission shall adopt rules establishing the requirements that must be met before a
 46 transitional permit may be issued, and the period for which a transitional permit may be issued.
 47 The Department may also impose conditions on the issuance of a permit or transitional permit
 48 in accordance with rules adopted by the Commission. A permit or transitional permit shall be
 49 immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to
 50 maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or
 51 revoked in accordance with G.S. 130A-23.

1 ...
2 (g) All hotels, motels, tourist homes, and other establishments that provide lodging for
3 pay shall install either a battery-operated or electrical carbon monoxide detector in every
4 enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed
5 space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed
6 space having a fossil fuel burning heater, appliance, or fireplace. Carbon monoxide detectors
7 shall be listed by a nationally recognized testing laboratory that is OSHA-approved to test and
8 certify to American National Standards Institute/Underwriters Laboratories Standards
9 ANSI/UL2034 or ANSI/UL2075, and installed in accordance with either the standard of the
10 National Fire Protection Association or the minimum protection designated in the
11 manufacturer's instructions, which the establishment shall retain or provide as proof of
12 compliance. A carbon monoxide detector may be combined with smoke detectors if the
13 combined detector complies with the requirements of this subdivision for carbon monoxide
14 alarms and ANSI/UL217 for smoke detectors."

15 SECTION 19.(c) G.S. 130A-248 reads as rewritten:

16 "§ 130A-248. Regulation of food and lodging establishments.

17 ...
18 (b) No establishment shall commence or continue operation without a permit or
19 transitional permit issued by the Department. The permit or transitional permit shall be issued
20 to the owner or operator of the establishment and shall not be transferable. If the establishment
21 is leased, the permit or transitional permit shall be issued to the lessee and shall not be
22 transferable. If the location of an establishment changes, a new permit shall be obtained for the
23 establishment. A permit shall be issued only when the establishment satisfies all of the
24 requirements of the ~~rules~~-rules and the requirements of subsection (g) of this section. The
25 Commission shall adopt rules establishing the requirements that must be met before a
26 transitional permit may be issued, and the period for which a transitional permit may be issued.
27 The Department may also impose conditions on the issuance of a permit or transitional permit
28 in accordance with rules adopted by the Commission. A permit or transitional permit shall be
29 immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to
30 maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or
31 revoked in accordance with G.S. 130A-23.

32 ...
33 (g) All hotels, motels, tourist homes, and other establishments that provide lodging for
34 pay shall have carbon monoxide detectors installed in every enclosed space having a fossil fuel
35 burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room,
36 that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning
37 heater, appliance, or fireplace. Carbon monoxide detectors shall be (i) listed by a nationally
38 recognized testing laboratory that is OSHA-approved to test and certify to American National
39 Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, (ii)
40 installed in accordance with either the standard of the National Fire Protection Association or
41 the minimum protection designated in the manufacturer's instructions, which the establishment
42 shall retain or provide as proof of compliance, (iii) receive primary power from the building's
43 wiring, where such wiring is served from a commercial source, and (iv) receive power from a
44 battery when primary power is interrupted. A carbon monoxide detector may be combined with
45 smoke detectors if the combined detector complies with the requirements of this subdivision for
46 carbon monoxide alarms and ANSI/UL217 for smoke detectors."

47 SECTION 19.(d) The Building Code Council, the Department of Health and
48 Human Services, and the Commission for Public Health, shall jointly study the requirements
49 for installation of carbon monoxide detectors in lodging establishments, enacted by subsections
50 (a), (b), and (c) of this section, in order to determine whether the requirements are adequate to
51 protect the health and safety of the traveling public. At a minimum, the Council, the

1 Department, and the Commission shall study the requirements for placement of detectors and
2 evaluate whether sufficient coverage will be provided to guests and occupants in all areas of an
3 establishment. The Council, the Department, and the Commission shall report their findings
4 and recommendations to the General Assembly no later than April 15, 2014.

5 **SECTION 19.(e)** This section is effective when it becomes law, except that (i)
6 subsection (b) of this section becomes effective October 1, 2013, and expires October 1, 2014;
7 and (ii) subsection (c) of this section becomes effective October 1, 2014.

8 9 **LAGOON CLOSURE RULE**

10 **SECTION 20.(a)** The definitions set out in G.S. 143-212, 15A NCAC 02T .0103
11 (Definitions) and 15A NCAC 02T .1302 (Definitions) apply to this section.

12 **SECTION 20.(b)** 15A NCAC 02T .1306 (Closure Requirements). – Until the
13 effective date of the revised permanent rule that the Commission is required to adopt pursuant
14 to Section 20(d) of this act, the Commission and the Department shall implement 15A NCAC
15 02T .1306 (Closure Requirements) as provided in Section 20(c) of this act.

16 **SECTION 20.(c)** Implementation. – Notwithstanding 15A NCAC 02T .1306
17 (Closure Requirements), any containment basin, such as a lagoon or a waste storage structure,
18 permitted at a cattle facility under the Section 1300 Rules, shall continue to be subject to the
19 conditions and requirements of the facility's permit until that permit is rescinded by the
20 Division. Upon request of the permittee, the permit may be rescinded by the Division prior to
21 closure of the containment basin if the average size of the confined cattle herd at the cattle
22 facility, calculated on an annual basis during the three years prior to the request for rescission,
23 is less than one hundred confined cattle. Upon permit rescission, all of the following
24 requirements shall apply:

- 25 (1) The cattle facility shall be subject to the requirements of 15A NCAC 02T
26 .1303 (Permitting By Regulation) and 15A NCAC 02T .0113 (Permitting By
27 Regulation) until the containment area is closed in accordance with
28 standards adopted by the NRCS.
- 29 (2) The farm owner shall maintain records of land application and weekly
30 records of containment basin waste levels on forms provided by or approved
31 by the Division.
- 32 (3) Closure shall include prenotification to the Division and, within 15 days of
33 completion of closure, submittal of a closure form supplied by the Division
34 or closure forms approved by the Division that provide the same information
35 required by the forms supplied by the Division.

36 The Division shall have the authority to deny a request for permit rescission based on the
37 factors set out in subsection (e) of 15A NCAC 02T .0113 (Permitting By Regulation).

38 **SECTION 20.(d)** Additional Rule-Making Authority. – The Commission shall
39 adopt a rule to amend 15A NCAC 02T .1306 (Closure Requirements) consistent with Section
40 20(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission
41 pursuant to this section shall be substantively identical to the provisions of Section 20(c) of this
42 act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter
43 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as
44 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
45 provided by G.S. 150B-21.3(b2).

46 **SECTION 20.(e)** Sunset. – Section 20(c) of this act expires on the date that rules
47 adopted pursuant to Section 20(d) of this act become effective.

48 49 **AMEND THE DEFINITION OF "NEW ANIMAL WASTE MANAGEMENT SYSTEM"**

50 **SECTION 21.(a)** 15A NCAC 02T .1302 (Definitions). – Until the effective date of
51 the revised permanent rule that the Environmental Management Commission is required to

1 adopt pursuant to Section 21(c) of this act, the Commission and the Department of
2 Environment and Natural Resources shall implement 15A NCAC 02T .1302 (Definitions) as
3 provided in Section 21(b) of this act.

4 **SECTION 21.(b)** Implementation. – Notwithstanding 15A NCAC 02T .1302
5 (Definitions), "new animal waste management system" means animal waste management
6 systems which are constructed and operated at a site where no feedlot existed previously, where
7 a system serving a feedlot has been abandoned or unused for a period of four years or more and
8 is then put back into service, or where a permit for a system has been rescinded, and is then
9 reissued when the permittee confines animals in excess of the thresholds established in
10 G.S. 143-215.10B.

11 **SECTION 21.(c)** Additional Rule-Making Authority. – The Environmental
12 Management Commission shall adopt a rule to amend 15A NCAC 02T .1302 (Definitions)
13 consistent with Section 21(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
14 the Commission pursuant to this section shall be substantively identical to the provisions of
15 Section 21(b) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
16 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
17 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
18 had been received as provided by G.S. 150B-21.3(b2).

19 **SECTION 21.(d)** Sunset. – Section 21(b) of this act expires on the date that rules
20 adopted pursuant to Section 21(c) of this act become effective.

21 RECLAIMED WATER IRRIGATION SETBACK RULE

22 **SECTION 22.(a)** The definitions set out in G.S. 143-212 and 15A NCAC 02U
23 .0103 (Definitions) apply to this section.

24 **SECTION 22.(b)** 15A NCAC 02U .0701 (Setbacks). – Until the effective date of
25 the revised permanent rule that the Commission is required to adopt pursuant to Section 22(d)
26 of this act, the Commission and the Department shall implement 15A NCAC 02U .0701
27 (Setbacks) as provided in Section 22(c) of this act.

28 **SECTION 22.(c)** Implementation. – Notwithstanding 15A NCAC 02U .0701
29 (Setbacks), the rule shall be implemented as provided in this section.

- 30 (1) Setbacks in subsection (c) of the rule for surface waters not classified as SA
31 shall not apply provided that the reclaimed water to be utilized contains no
32 more than 10 mg/l of Total Nitrogen and no more than 2 mg/l of Total
33 Phosphorus. The elimination of setbacks to surface waters does not exempt
34 any discharge of reclaimed water to waters of the State from meeting permit
35 requirements established in 15A NCAC 02U .0101 (Purpose).
- 36 (2) Notwithstanding subsections (a) and (b) of the rule, no setback shall be
37 required between final reclaimed water effluent storage facilities and
38 property lines provided that the proposed final effluent storage facility was
39 constructed prior to June 18, 2011.
- 40 (3) Setbacks between reclaimed water storage ponds and property lines or wells
41 under separate ownership may be waived by the adjoining property owner. A
42 copy of the signed waiver shall be provided to the Department.
- 43 (4) Setbacks between reclaimed water storage ponds and wells under the same
44 ownership as the reclaimed water storage pond may be waived by the
45 property owner.

46 **SECTION 22.(d)** Additional Rule-Making Authority. – The Environmental
47 Management Commission shall adopt a rule to amend 15A NCAC 02U .0701 (Setbacks)
48 consistent with Section 22(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
49 the Commission pursuant to this section shall be substantively identical to the provisions of
50 Section 22(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
51

1 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
2 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
3 had been received as provided by G.S. 150B-21.3(b2).

4 **SECTION 22.(e)** Sunset. – Section 22(c) of this act expires on the date that rules
5 adopted pursuant to Section 22(d) of this act become effective.

6 7 **SMOKING BAN RULES**

8 **SECTION 23.** No later than January 1, 2014, the Commission for Public Health
9 shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of
10 the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent
11 interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General
12 Statutes and shall specifically clarify the definition of enclosed areas for purposes of
13 implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the
14 requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of
15 the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as
16 though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No
17 later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight
18 Committee on Health and Human Services on its progress in amending and clarifying the rules.

19 20 **ERC WATER AND SEWER STUDY**

21 **SECTION 24.(a)** The Environmental Review Commission shall study the statutory
22 models for establishing, operating, and financing certain organizations that provide water and
23 sewer services in the State. The Commission shall specifically consider the statutory models for
24 the following:

- 25 (1) Sanitary Districts (Part 2 of Article 2 of Chapter 130A of the General
26 Statutes).
- 27 (2) Water and Sewer Authorities (Article 1 of Chapter 162A of the General
28 Statutes).
- 29 (3) Metropolitan Water Districts (Article 4 of Chapter 162A of the General
30 Statutes).
- 31 (4) Metropolitan Sewerage Districts (Article 5 of Chapter 162A of the General
32 Statutes).
- 33 (5) County Water and Sewer Districts (Article 6 of Chapter 162A of the General
34 Statutes).
- 35 (6) Any other similar organizations that provide water or sewer service in the
36 State.

37 **SECTION 24.(b)** The Commission shall determine whether, how, and to what
38 extent the number of statutory models should be reduced and consolidated. In making these
39 determinations, the Commission shall consider and address any impacts such reduction and
40 consolidation would have on the ongoing operations and financing of existing organizations for
41 the provision of water and sewer services.

42 **SECTION 24.(c)** The Commission shall report its findings and recommendations,
43 if any, to the 2014 Regular Session of the 2013 General Assembly upon its convening.

44 45 **PART V. AMEND ENVIRONMENTAL LAWS**

46 47 **REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL** 48 **VEHICLE REQUIREMENTS**

49 **SECTION 25.** The Environmental Management Commission shall repeal 15A
50 NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle
51 Requirements) on or before December 1, 2013. Until the effective date of the repeal of the rule

1 required pursuant to this section, the Environmental Management Commission, the Department
2 of Environment and Natural Resources, or any other political subdivision of the State shall not
3 implement or enforce 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year
4 Heavy-Duty Vehicle Requirements).

5
6 **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE**
7 **CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS**

8 **SECTION 26.** The Department of Environment and Natural Resources shall
9 conduct a study to examine whether all of the counties covered under the emissions testing and
10 maintenance program pursuant to G.S. 143-215.107A are needed to meet and maintain the
11 current and proposed federal ozone standards in North Carolina. The Department shall report
12 its interim findings to the Environmental Review Commission on or before April 1, 2015, and
13 shall submit its final report, including any findings and legislative recommendations, to the
14 Environmental Review Commission on or before April 1, 2016.

15
16 **PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION WITH**
17 **FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR**
18 **CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY**

19 **SECTION 27.** G.S. 143-215.109(a) reads as rewritten:

20 "(a) The Commission ~~shall~~ may by rule establish criteria for controlling the effects of
21 complex sources on air quality. The rules shall set forth such basic minimum criteria or
22 standards under which the Commission shall approve or disapprove any such construction or
23 modification. The rules shall further provide for the submission of plans, specifications and
24 such other information as may be necessary for the review and evaluation of proposed or
25 modified complex sources."

26
27 **AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING**
28 **OR RIGHT-OF-WAY MAINTENANCE**

29 **SECTION 28.(a)** 15A NCAC 02D .1903 (Open Burning Without an Air Quality
30 Permit). – Until the effective date of the revised permanent rule that the Commission is
31 required to adopt pursuant to Section 28(c) of this act, the Commission, the Department, and
32 any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open
33 Burning Without an Air Quality Permit) shall implement the rule, as provided in Section 28(b)
34 of this act.

35 **SECTION 28.(b)** Implementation. – Notwithstanding 15A NCAC 02D
36 .1903(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing
37 or right-of-way maintenance is permissible without an air quality permit if materials are not
38 carried off site or transported over public roads for open burning unless the materials are
39 carried or transported to:

- 40 (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain
41 Burners) for the operation of an air curtain burner at a permanent site; or
42 (2) A location, where the material is burned not more than four times per year,
43 that meets all of the following criteria:
44 a. At least 500 feet from any dwelling, group of dwellings, or
45 commercial or institutional establishment, or other occupied structure
46 not located on the property on which the burning is conducted.
47 b. There are no more than two piles, each 20 feet in diameter, being
48 burned at one time.
49 c. The location is not a permitted solid waste management facility.

50 **SECTION 28.(c)** Additional Rule-Making Authority. – The Commission shall
51 adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit)

1 consistent with Section 28(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
 2 the Commission pursuant to this section shall be substantively identical to the provisions of
 3 Section 28(b) of this act. Rules adopted pursuant to this section are not subject to
 4 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become
 5 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
 6 received as provided by G.S. 150B-21.3(b2).

7 **SECTION 28.(d)** Sunset. – Section 28(b) of this act expires on the date that rules
 8 adopted pursuant to Section 28(c) of this act become effective.

9 **SECTION 28.(e)** G.S. 130A-294(a)(4) is amended by adding a new
 10 sub-subdivision to read:

11 "d. Management of land clearing debris burned in accordance with 15A
 12 NCAC 02D .1903 shall not require a permit pursuant to this section."
 13

14 **CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A TERM OF**
 15 **EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED**
 16 **WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION**
 17 **REGARDING AN AIR QUALITY PERMIT MAY FILE A CONTESTED CASE**
 18 **UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

19 **SECTION 29.** G.S. 143-215.108 reads as rewritten:

20 "**§ 143-215.108. Control of sources of air pollution; permits required.**

21 ...

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

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

31"

32
 33 **AMEND CAMA MINOR PERMIT NOTICE REQUIREMENTS**

34 **SECTION 30.** G.S. 113A-119 reads as rewritten:

35 "**§ 113A-119. Permit applications generally.**

36 (a) Any person required to obtain a permit under this Part shall file with the Secretary
 37 and (in the case of a permit sought from a city or county) with the designated local official an
 38 application for a permit in accordance with the form and content designated by the Secretary
 39 and approved by the Commission. The applicant must submit with the application a check or
 40 money order payable to the Department or the city or county, as the case may be, constituting a
 41 fee set by the Commission pursuant to G.S. 113A-119.1.

42 (b) Upon receipt of any application, a significant modification to an application for a
 43 major permit, or an application to modify substantially a previously issued major permit, the
 44 Secretary shall issue public notice of the proposed development (i) by mailing a copy of the
 45 application or modification, or a brief description thereof together with a statement indicating
 46 where a detailed copy of the proposed development may be inspected, to any citizen or group
 47 which has filed a request to be notified of the proposed development, and to any interested
 48 State agency; (ii) by posting or causing to be posted a notice at the location of the proposed
 49 development stating that an application, a modification of an application for a major permit, or
 50 an application to modify a previously issued major permit for development has been made,
 51 where the application or modification may be inspected, and the time period for comments; and

1 (iii) with the exception of minor permit applications, by publishing notice of the application or
2 modification at least once in one newspaper of general circulation in the county or counties
3 wherein the development would be located at least 20 days before final action on a major
4 permit ~~and at least seven days before final action on a permit under G.S. 113A-121 or before~~
5 the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any
6 comments on the development should be submitted to the Secretary by a specified date, not less
7 than 15 days from the date of the newspaper publication of the notice or 15 days after mailing
8 of the mailed notice, whichever is later. ~~Public notice under this subsection is mandatory,~~
9 ~~except for a proposed modification to an application for a minor permit or proposed~~
10 ~~modification of a previously issued minor permit that does not substantially alter the original~~
11 ~~project.~~

12 (c) Within the meaning of this Part, the "designated local official" is the official who
13 has been designated by the local governing body to receive and consider permit applications
14 under this Part."
15

16 **CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION** 17 **AND POLLUTION CONTROL ACT**

18 **SECTION 33.** G.S. 113A-64 reads as rewritten:

19 **"§ 113A-64. Penalties.**

20 (a) Civil Penalties. –

21 (1) Any person who violates any of the provisions of this Article or any
22 ordinance, rule, or order adopted or issued pursuant to this Article by the
23 Commission or by a local government, or who initiates or continues a
24 land-disturbing activity for which an erosion and sedimentation control plan
25 is required except in accordance with the terms, conditions, and provisions
26 of an approved plan, is subject to a civil penalty. The maximum civil penalty
27 for a violation is five thousand dollars (\$5,000). A civil penalty may be
28 assessed from the date of the violation. Each day of a continuing violation
29 shall constitute a separate violation.

30 (2) The Secretary or a local government that administers an erosion and
31 sedimentation control program approved under G.S. 113A-60 shall
32 determine the amount of the civil penalty and shall notify the person who is
33 assessed the civil penalty of the amount of the penalty and the reason for
34 assessing the penalty. The notice of assessment shall be served by any means
35 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1.~~ A notice of assessment
36 by the Secretary shall direct the violator to either pay the assessment or
37 contest the assessment within 30 days by filing a petition for a contested
38 case under Article 3 of Chapter 150B of the General Statutes. If a violator
39 does not pay a civil penalty assessed by the Secretary within 30 days after it
40 is due, the Department shall request the Attorney General to institute a civil
41 action to recover the amount of the assessment. A notice of assessment by a
42 local government shall direct the violator to either pay the assessment or
43 contest the assessment within 30 days by filing a petition for hearing with
44 the local government as directed by procedures within the local ordinances
45 or regulations adopted to establish and enforce the erosion and sedimentation
46 control program. If a violator does not pay a civil penalty assessed by a local
47 government within 30 days after it is due, the local government may institute
48 a civil action to recover the amount of the assessment. The civil action may
49 be brought in the superior court of any county where the violation occurred
50 or the violator's residence or principal place of business is located. A civil
51 action must be filed within three years of the date the assessment was due.

1 An assessment that is not contested is due when the violator is served with a
2 notice of assessment. An assessment that is contested is due at the
3 conclusion of the administrative and judicial review of the assessment.

4 (3) In determining the amount of the penalty, the Secretary or a local
5 government shall consider the degree and extent of harm caused by the
6 violation, the cost of rectifying the damage, the amount of money the
7 violator saved by noncompliance, whether the violation was committed
8 willfully and the prior record of the violator in complying or failing to
9 comply with this ~~Article~~-Article, or any ordinance, rule, or order adopted or
10 issued pursuant to this Article by the Commission or by a local government.

11 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

12 (5) The clear proceeds of civil penalties collected by the Department or other
13 State agency or a local government under this subsection shall be remitted to
14 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
15 ~~Civil penalties collected by a local government under this subsection shall be~~
16 ~~credited to the general fund of the local government as nontax revenue.~~

17 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
18 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
19 Commission or a local government, or who knowingly or willfully initiates or continues a
20 land-disturbing activity for which an erosion and sedimentation control plan is required, except
21 in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of
22 a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."

23 24 **PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER** 25 **SYSTEMS**

26 **SECTION 34.(a)** 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design
27 Units). – Until the effective date of the revised permanent rule that the Commission is required
28 to adopt pursuant to Section 34(c) of this act, the Commission, the Department, and any other
29 political subdivision of the State shall implement 15A NCAC 18A .1949(b) (Sewage Flow
30 Rates for Design Units) as provided in Section 34(b) of this act.

31 **SECTION 34.(b)** Implementation. – Notwithstanding the Daily Flow for Design
32 rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units),
33 a wastewater system shall be exempt from the Daily Flow for Design, and any other design
34 flow standards that are established by the Department of Health and Human Services or the
35 Commission for Public Health provided flow rates that are less than those listed in Table No. 1
36 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through
37 engineering design that utilizes low-flow fixtures and low-flow technologies and the design is
38 prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the
39 General Statutes. The Department and Commission may establish lower limits on reduced flow
40 rates as necessary to ensure wastewater system integrity and protect public health, safety, and
41 welfare. Proposed daily design flows for wastewater systems that are calculated to be less than
42 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

43 **SECTION 34.(c)** Additional Rule-Making Authority. – The Commission shall
44 adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units)
45 consistent with Section 34(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
46 the Commission pursuant to this section shall be substantively identical to the provisions of
47 Section 34(b) of this act. Rules adopted pursuant to this section are not subject to
48 G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become
49 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
50 received as provided by G.S. 150B-21.3(b2).

1 **SECTION 34.(d)** Sunset. – Section 34(b) of this act expires on the date that rules
2 adopted pursuant to Section 34(c) of this act become effective.

3
4 **DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO**
5 **PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO**
6 **SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS AND TO**
7 **DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A PERMIT OR**
8 **DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR OPERATION**
9 **OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION**

10 **SECTION 35.(a)** G.S. 87-97 reads as rewritten:

11 **"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

12 (a) Mandatory Local Well Programs. – Each county, through the local health
13 department that serves the county, shall implement a private drinking water well permitting,
14 inspection, and testing program. Local health departments shall administer the program and
15 enforce the minimum well construction, permitting, inspection, repair, and testing requirements
16 set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay
17 or refuse to permit a well that can be constructed or repaired and operated in compliance with
18 the requirements set out in this Article and rules adopted pursuant to this Article.

19 (b) Permit Required. – Except for those wells required to be permitted by the
20 Environmental Management Commission pursuant to G.S. 87-88, no person shall:

21 (1) Construct or assist in the construction of a private drinking water well unless
22 a construction permit has been obtained from the local health department.

23 (2) Repair or assist in the repair of a private drinking water well unless a repair
24 permit has been obtained from the local health department, except that a
25 permit shall not be required for the repair or replacement of a pump or tank.

26 (c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A repair
27 permit shall not be required for any private drinking water well maintenance work that does not
28 involve breaking or opening the well seal. A repair permit shall not be required for any private
29 drinking water well repair work that involves only the repair or replacement of a pump or tank.

30 (d) Well Site Evaluation. – The local health department shall conduct a field
31 investigation to evaluate the site on which a private drinking water well is proposed to be
32 located before issuing a permit pursuant to this section. The field investigation shall determine
33 whether there is any abandoned well located on the site, and if so, the construction permit shall
34 be conditioned upon the proper closure of all abandoned wells located on the site in accordance
35 with the requirements of this Article and rules adopted pursuant to this Article. If a private
36 drinking water well is proposed to be located on a site on which a wastewater system subject to
37 the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed
38 to be located, the application for a construction permit shall be accompanied by a plat or site
39 plan, as defined in G.S. 130A-334.

40 (e) Issuance of Permit. – ~~The local health department shall issue a construction permit~~
41 ~~or repair permit if it determines that a private drinking water well can be constructed or~~
42 ~~repaired and operated in compliance with this Article and rules adopted pursuant to this Article.~~
43 Within 30 days of receipt of an application to construct or repair a well, a local health
44 department shall make a determination whether the proposed private drinking water well can be
45 constructed or repaired and operated in compliance with this Article and rules adopted pursuant
46 to this Article and shall issue a permit or denial accordingly. If a local health department fails to
47 act within 30 days, the permit shall automatically be issued, and the local health department
48 may challenge issuance of the permit as provided in Chapter 150B of the General Statutes. The
49 local health department may impose any conditions on the issuance of a construction permit or
50 repair permit that it determines to be necessary to ensure compliance with this Article and rules
51 adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a

1 well that is in compliance with this Article and the rules adopted pursuant to this Article shall
2 be denied on the basis of a local government policy that discourages or prohibits the drilling of
3 new wells.

4 (e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules
5 governing permits issued for private drinking water wells for circumstances in which the local
6 health department has determined that the proposed site for a private drinking water well is
7 located within 1,000 feet of a known source of release of contamination. Rules adopted
8 pursuant to this subsection shall provide for notice and information of the known source of
9 release of contamination and any known risk of issuing a permit for the construction and use of
10 a private drinking water well on such a site.

11"

12 **SECTION 35.(b)** This section is effective when it becomes law, and G.S. 87-97(e),
13 as amended by subsection (a) of this section, applies to applications to construct or repair a
14 private drinking water well that are received by a local health department on or after that date.

15
16 **CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT**
17 **REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020**

18 **SECTION 36.** Section 11.6(a) of S.L. 2011-394 reads as rewritten:

19 "**SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation
20 Schedule for Performance Standards for New UST Systems and Upgrading Requirements for
21 Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed
22 after January 1, 1991, and prior to April 1, 2001, shall not be required to provide secondary
23 containment until January 1, 2020."

24
25 **TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES AND**
26 **MARINE/WILDLIFE RESOURCES STATUTES**

27 **SECTION 37.(a)** G.S. 113-129 reads as rewritten:

28 "**§ 113-129. Definitions relating to resources.**

29 The following definitions and their cognates apply in the description of the various marine
30 and estuarine and wildlife resources:

31 ...

32 (7) Fish; Fishes. – All ~~marine mammals; finfish;~~ all shellfish; and all
33 crustaceans; and all other fishes; crustaceans.

34"

35 **SECTION 37.(b)** G.S. 113-189 reads as rewritten:

36 "**§ 113-189. Protection of sea ~~turtles and porpoises;~~ turtles, marine mammals, migratory**
37 **birds, and finfish.**

38 (a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected
39 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be
40 subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback
41 turtles, or their nests or eggs.

42 (b) It shall be unlawful willfully to take, ~~harm~~—harm, disturb, or destroy
43 ~~porpoises; marine mammals~~ protected under the federal Marine Mammal Protection Act of 1972
44 (Public Law 92-522), as it may be subsequently amended.

45 (c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds
46 protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703 through 712),
47 as it may be subsequently amended, unless such action is permitted by regulations.

48 (d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected
49 under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be
50 subsequently amended."

1 **CLARIFYING AND CONFORMING CHANGES TO STATUTES PERTAINING TO**
2 **THE MANAGEMENT OF SNAKES AND OTHER REPTILES**

3 **SECTION 38.(a)** G.S. 14-417 reads as rewritten:

4 **"§ 14-417. Regulation of ownership or use of venomous reptiles.**

5 (a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any
6 venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures
7 shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport
8 containers shall be designed to be escape-proof and bite-proof.

9 (b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with
10 scientific name, common name, appropriate ~~antivenom,antivenin,~~ and owner's identifying
11 information noted on the container. A written bite protocol that includes emergency contact
12 information, local animal control office, the name and location of suitable ~~antivenom,antivenin,~~
13 first aid procedures, and treatment guidelines, as well as an escape recovery plan must be
14 within sight of permanent housing, and a copy must accompany the transport of any venomous
15 reptile.

16 (c) In the event of an escape of a venomous reptile, the owner or possessor of the
17 venomous reptile shall immediately notify local law enforcement."

18 **SECTION 38.(b)** G.S. 14-419 reads as rewritten:

19 **"§ 14-419. Investigation of suspected violations; seizure and examination of reptiles;**
20 **disposition of reptiles.**

21 (a) In any case in which any law-enforcement officer or animal control officer has
22 probable cause to believe that any of the provisions of this Article have been or are about to be
23 violated, it shall be the duty of the officer and the officer is authorized, empowered, and
24 directed to immediately investigate the violation or impending violation and to consult with
25 representatives of the North Carolina Museum of Natural Sciences or the North Carolina
26 Zoological Park or a designated representative of either the Museum or Zoological Park to
27 identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the
28 reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile
29 believed to be venomous to the North Carolina State Museum of Natural Sciences or to its
30 designated representative for examination for the purpose of ascertaining whether the reptile is
31 regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or
32 crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the
33 reptile is regulated under this Article. In any case in which a law enforcement officer or animal
34 control officer determines that there is an immediate risk to public safety, the officer shall not
35 be required to consult with representatives of the North Carolina Museum of Natural Sciences
36 or the North Carolina Zoological Park as provided by this subsection.

37 (b) If the Museum or the Zoological Park or their designated representatives find that a
38 seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this
39 Article, the Museum or the Zoological Park or their designated representative shall determine
40 final disposition of the reptile in a manner consistent with the safety of the ~~public-public,~~ which
41 in the case of a venomous reptile for which antivenin is not readily available, may include
42 euthanasia.

43 (c) If the Museum or the Zoological Park or their designated representatives find that
44 the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under
45 this Article, and either no criminal warrants or indictments are initiated in connection with the
46 reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being
47 owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the
48 duty of the law enforcement officer to return the reptile or reptiles to the person from whom
49 they were seized within 15 days."

50

1 **AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE**
 2 **WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING**
 3 **AUTHORITY FOR MANNER OF TAKE**

4 **SECTION 39.** G.S. 150B-21.1 reads as rewritten:

5 **"§ 150B-21.1. Procedure for adopting a temporary rule.**

6 (a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to
 7 the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest
 8 and that the immediate adoption of the rule is required by one or more of the following:

9 ...
 10 (7) The need for the Wildlife Resources Commission to establish any of the
 11 following:

- 12 a. No wake zones.
 13 b. Hunting or fishing seasons-seasons, including provisions for manner
 14 of take or any other conditions required for the implementation of
 15 such season.
 16 c. Hunting or fishing bag limits.
 17 d. Management of public game lands as defined in G.S. 113-129(8a).

18"

19
 20 **PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY**
 21 **WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR**
 22 **AND COUNCIL OF STATE**

23 **SECTION 40.(a)** Chapter 133 of the General Statutes is amended by adding a new
 24 Article to read:

25 "Article 4.

26 "Purchase of Contaminated Property by Public Entities.

27 **"§ 133-40. Purchase of contaminated property by public entities.**

28 (a) For purposes of this Article, the term "public entity" means the State and the
 29 Community College System.

30 (b) No public entity, as defined in subsection (a) of this section, shall purchase or
 31 otherwise acquire an ownership interest in any real property with known contamination, as that
 32 term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of
 33 State. A public entity seeking to purchase or otherwise acquire an ownership interest in such
 34 property shall petition the Governor and Council of State for approval of the transaction, with
 35 sufficient information to identify the property, the nature and extent of the contamination
 36 present, and a plan of paying for the project and for remediation of any contamination without
 37 the use of General Fund appropriations. The approval of such a transaction by the Governor
 38 and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the
 39 meeting of the Governor and Council of State, attested by the private secretary to the Governor
 40 or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and
 41 said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of
 42 review and approval of the subject transaction by the Governor and Council of State. The
 43 Governor, acting with the approval of the Council of State, may delegate the review and
 44 approval of such transactions as the Governor deems advisable.

45 (c) This Article shall not apply to situations in which a public entity acquires ownership
 46 or control of real property involuntarily, including having obtained the property through
 47 bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity
 48 involuntarily acquires title by virtue of its function as a sovereign."

49 **SECTION 40.(b)** This section becomes effective September 1, 2013, and applies
 50 to a purchase or acquisition of interest in real property occurring on or after that date.
 51

1 **CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR ROUTINE**
2 **MAINTENANCE ON FUEL DISPENSERS**

3 **SECTION 41.** G.S. 143-138 is amended by adding a new subsection to read:

4 "(b13) No building permit shall be required under the Code for routine maintenance on fuel
5 dispensing pumps and other dispensing devices. For purposes of this subsection, "routine
6 maintenance" includes repair or replacement of hoses, O-rings, nozzles, or emergency
7 breakaways."

8
9 **CLARIFY THE FEES THAT THE SECRETARY OF ENVIRONMENT AND**
10 **NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA**
11 **AQUARIUMS**

12 **SECTION 42.(a)** G.S. 143B-289.44 reads as rewritten:

13 "**§ 143B-289.44. North Carolina Aquariums; fees; fund.**

14 (a) Fees. – The Secretary of Environment and Natural Resources may adopt a schedule
15 of ~~uniform entrance~~ fees for the aquariums and piers operated by the North Carolina
16 ~~Aquariums.~~ Aquariums, including:

- 17 (1) Gate admission fees.
18 (2) Facility rental fees.
19 (3) Educational programs.

20"

21 **SECTION 42.(b)** This section is effective when it becomes law.

22
23 **REPEAL THE MOUNTAIN RESOURCES PLANNING ACT**

24 **SECTION 43.** Chapter 153B of the General Statutes is repealed.

25
26 **PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT REQUIREMENTS**
27 **REGARDING THE NUMBER OF ACRES FOR PROPERTY DEVELOPMENT FOR**
28 **BROWNFIELDS DEVELOPMENTS**

29 **SECTION 44.(a)** G.S. 153A-349.4 reads as rewritten:

30 "**§ 153A-349.4. Developed property must contain certain number of acres; permissible**
31 **durations of agreements.**

32 (a) A local government may enter into a development agreement with a developer for
33 the development of property as provided in this Part, provided the property contains 25 acres or
34 more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes,
35 and other portions of the property which may be precluded from development at the time of
36 application). Development agreements shall be of a term specified in the agreement, provided
37 they may not be for a term exceeding 20 years.

38 (b) Notwithstanding the acreage requirements of subsection (a) of this section, a local
39 government may enter into a development agreement with a developer for the development of
40 property as provided in this Part for developable property of any size (exclusive of wetlands,
41 mandatory buffers, unbuildable slopes, and other portions of the property which may be
42 precluded from development at the time of application), if the developable property that would
43 be subject to the development agreement is subject to an executed brownfields agreement
44 pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development
45 agreements shall be of a term specified in the agreement, provided they may not be for a term
46 exceeding 20 years."

47 **SECTION 44.(b)** G.S. 160A-400.23 reads as rewritten:

48 "**§ 160A-400.23. Developed property must contain certain number of acres; permissible**
49 **durations of agreements.**

50 (a) A local government may enter into a development agreement with a developer for
51 the development of property as provided in this Part, provided the property contains 25 acres or

1 more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes,
2 and other portions of the property which may be precluded from development at the time of
3 application). Development agreements shall be of a term specified in the agreement, provided
4 they may not be for a term exceeding 20 years.

5 (b) Notwithstanding the acreage requirements of subsection (a) of this section, a local
6 government may enter into a development agreement with a developer for the development of
7 property as provided in this Part for developable property of any size (exclusive of wetlands,
8 mandatory buffers, unbuildable slopes, and other portions of the property which may be
9 precluded from development at the time of application), if the developable property that would
10 be subject to the development agreement is subject to an executed brownfields agreement
11 pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development
12 agreements shall be of a term specified in the agreement, provided they may not be for a term
13 exceeding 20 years."

14
15 **DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR**
16 **SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY**

17 **SECTION 45.** The Department of Transportation shall adopt rules to authorize
18 selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of
19 properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur. The
20 Department of Transportation is exempt from the provisions of G.S. 150B that require the
21 preparation of fiscal notes for any rule proposed pursuant to this section.

22
23 **CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES WITH RESPECT**
24 **TO GROUNDWATER QUALITY STANDARDS**

25 **SECTION 46.(a)** G.S. 143-215.1 is amended by adding three new subsections to
26 read:

27 **"§ 143-215.1. Control of sources of water pollution; permits required.**

28 ...

29 (i) Any person subject to the requirements of this section who is required to obtain an
30 individual permit from the Commission for a disposal system under the authority of
31 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
32 may be established by rule or permit for various categories of disposal systems and beyond
33 which groundwater quality standards may not be exceeded. The location of the compliance
34 boundary shall be established at the property boundary, except as otherwise established by the
35 Commission. Multiple contiguous properties under common ownership and permitted for use
36 as a disposal system shall be treated as a single property with regard to determination of a
37 compliance boundary under this subsection. Nothing in this subsection shall be interpreted to
38 require a revision to an existing compliance boundary previously approved by rule or permit.

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

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

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

49 (3) A violation of any standard in groundwater occurring in the bedrock,
50 including limestone aquifers in Coastal Plain sediments, unless it can be

1 demonstrated that the violation will not adversely affect, or have the
2 potential to adversely affect, a water supply well.

3 (k) Where operation of a disposal system permitted under this section results in
4 exceedances of the groundwater quality standards at or beyond the compliance boundary
5 established under subsection (i) of this section, exceedances shall be remedied through cleanup,
6 recovery, containment, or other response as directed by the Commission."

7 **SECTION 46.(b)** With respect to exceedances of groundwater quality standards
8 within a compliance boundary and related remedy requirements, G.S. 143-215.1(j), as set forth
9 in Section 46(a) of this act, shall apply in lieu of the restricted designation directives found in
10 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources
11 has adopted revisions to those rules to comply with this act.

12 13 **EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH THE** 14 **MILITARY LANDS PROTECTION ACT OF 2013**

15 **SECTION 47.** G.S. 143-151.74, as enacted by Section 1 of S.L. 2013-206, reads as
16 rewritten:

17 **"§ 143-151.74. Exemptions from applicability.**

18 (a) Wind energy facilities and wind energy facility expansions, as those terms are
19 defined in Chapter 143 of the General Statutes, that are subject to the applicable permit
20 requirements of that Chapter shall be exempt from obtaining the endorsement required by this
21 Article.

22 (b) ~~Cellular-Cellular, radio,~~ and television towers erected to temporarily replace ~~cellular~~
23 ~~cellular, radio,~~ and television towers that are damaged or destroyed due to a natural disaster
24 shall be exempt from obtaining the endorsement required by this Article provided all of the
25 following conditions are met:

26 (1) The height of the ~~cellular-cellular, radio,~~ or television tower that is erected to
27 temporarily replace the ~~cellular-cellular, radio,~~ or television tower that is
28 damaged or destroyed does not exceed the height of the original ~~cellular~~
29 ~~cellular, radio,~~ or television tower.

30 (2) A disaster has been declared pursuant to Chapter 166A of the General
31 Statutes for the area in which the damaged or destroyed ~~cellular-cellular,~~
32 ~~radio,~~ or television tower is located.

33 (3) The temporary ~~cellular-cellular, radio,~~ or television tower shall only remain
34 in place until the expiration of the declared disaster.

35 (c) The modification, replacement, removal, or addition of antennas on ~~cellular-cellular,~~
36 ~~radio,~~ or television towers in an area surrounding a major military installation shall be exempt
37 from obtaining the endorsement required by this Article provided the modification,
38 replacement, removal, or addition does not increase the vertical height of the structure."
39

40 **CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS** 41 **AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR** 42 **OPERATION AS WELL AS CONSTRUCTION**

43 **SECTION 48.(a)** Section 15.1 of S.L. 2012-187 reads as rewritten:

44 **"SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt
45 rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct
46 and operate a five-year phase of landfill development and apply to amend the permit to
47 construct and operate subsequent five-year phases of landfill development; or (ii) apply for a
48 permit to construct and operate a 10-year phase of landfill development and apply to amend the
49 permit to construct and operate subsequent 10-year phases of landfill development, with a
50 limited review of the permit five years after issuance of the initial permit and five years after
51 issuance of each amendment for subsequent phases of development. No later than July 1, 2013,

1 the Commission shall also adopt rules to allow applicants for permits for transfer stations the
2 option to (i) apply for a permit with a five-year duration to construct and operate a transfer
3 station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer
4 station, with a limited review of the permit five years after issuance of the initial permit and
5 five years after issuance of any amendment to the permit. In developing these rules, the
6 Department of Environment and Natural Resources shall examine the current fee schedule for
7 permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and
8 formulate recommendations for adjustments to the current fee schedule sufficient to address
9 any additional demands associated with review of permits issued for 10-year phases of landfill
10 development and the issuance permits with a duration of up to 10 years for transfer stations.
11 The Department shall report its findings and recommendations, including any legislative
12 proposals, to the Environmental Review Commission on or before December 1, 2012. The rules
13 required by this section shall not become effective until the fee schedule set forth under
14 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with
15 review of permits issued for 10-year phases of landfill development and the issuance of permits
16 with a duration of up to 10 years to construct and operate transfer stations."

17 **SECTION 48.(b)** If Senate Bill 328, 2013 Regular Session, becomes law, then
18 Section 48(a) of this act is repealed.

19
20 **ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE**
21 **PENALTIES**

22 **SECTION 49.** G.S. 130A-22 reads as rewritten:

23 "**§ 130A-22. Administrative penalties.**

24 ...

25 (d) In determining the amount of the penalty in subsections (a), (b) and (c), the
26 Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree~~
27 ~~and extent of the harm caused by the violation and the cost of rectifying the damage.~~ all of the
28 following factors:

29 (1) Type of violation.

30 (2) Type of waste involved.

31 (3) Duration of the violation.

32 (4) Cause (whether resulting from a negligent, reckless, or intentional act or
33 omission).

34 (5) Potential effect on public health and the environment.

35 (6) Effectiveness of responsive measures taken by the violator.

36 (7) Damage to private property.

37 (8) The degree and extent of harm caused by the violation.

38 (9) Cost of rectifying any damage.

39 (10) The amount of money the violator saved by noncompliance.

40 (11) The violator's previous record in complying or not complying with the
41 provisions of Article 9 of this Chapter, Article 11 of this Chapter, or
42 G.S. 130A-325, and any regulations adopted thereunder, as applicable to the
43 violation in question.

44"

45
46 **LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR**
47 **USE OF NONHAZARDOUS RECYCLED MATERIALS**

48 **SECTION 50.** G.S. 130A-309.09A is amended by adding a new subsection to
49 read:

50 "(h) The storage, retention, and use of nonhazardous recyclable materials, including
51 asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A

1 unit of local government shall not impede the storage, retention, or use of nonhazardous
2 recyclable materials in properly zoned storage facilities through the regulation of the height or
3 setback of recyclable material stockpiles, except when such facilities are located on lots within
4 200 yards of residential districts."
5

6 **AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF**
7 **IMPLEMENTING STORMWATER PROGRAMS**

8 **SECTION 51.(a)** G.S. 143-214.7 is amended by adding a new subsection to read:

9 "(b2) For purposes of implementing stormwater programs, "built-upon area" means
10 impervious surface and partially impervious surface to the extent that the partially impervious
11 surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon
12 area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

13 **SECTION 51.(b)** Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

14 **SECTION 51.(c)** Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is
15 repealed.

16 **SECTION 51.(d)** The Environmental Management Commission shall amend its
17 rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of
18 G.S. 143-214.7, as enacted by Section 51(a) of this act.

19 **SECTION 51.(e)** The Environmental Review Commission shall study State
20 stormwater programs, including how partially impervious surfaces are treated in the calculation
21 of built-upon area under those programs. The Environmental Review Commission shall report
22 its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

23 **SECTION 51.(f)** This section is effective when it becomes law, and subsection
24 (b2) of G.S. 143-214.7, as enacted by subsection (a) of this section, applies to projects for
25 which permit applications are received on or after that date.
26

27 **EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL**
28 **PURPOSES FROM RIPARIAN BUFFER RULES**

29 **SECTION 52.(a)** Except as required by federal law or in an imminent threat to
30 public health or safety, (i) the temporary rules adopted July 22, 1997, January 22, 1998, April
31 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as
32 15A NCAC 02B .0233 regarding the protection and maintenance of existing riparian buffers in
33 the Neuse River Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule
34 adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and
35 maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent
36 rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484,
37 and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267
38 regarding the protection and maintenance of existing riparian buffers in the Jordan Water
39 Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent
40 rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and
41 maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v)
42 the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as
43 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in
44 the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as
45 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A
46 NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the
47 Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for
48 the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer
49 Rules" for the purposes of this section, shall not apply to a freshwater pond to which Riparian
50 Buffer Rules would otherwise apply if all of the following conditions are met:

- 1 (1) The property on which the pond is located is used for agriculture as that term
2 is defined in G.S. 106-581.1.
- 3 (2) Except for the Riparian Buffer Rules and any similar rule adopted for the
4 protection and maintenance of riparian buffers, the use of the property is in
5 compliance with all other water quality and water quantity statutes and rules
6 applicable to the property before the adoption of the Riparian Buffer Rules
7 for the river basin or watershed in which the property is located.
- 8 (3) The pond is not a component of an animal waste management system as
9 defined in G.S. 143-215.10B(3).

10 **SECTION 52.(b)** If the use of property on which a pond is located changes such
11 that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the
12 Riparian Buffer Rules for the river basin or watershed in which the property is located shall
13 apply.

14 **SECTION 52.(c)** The Commission shall not adopt rules for the protection or
15 maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used
16 for agriculture as that term is defined in G.S. 106-581.1.

17 **SECTION 52.(d)** Units of local government shall not adopt ordinances,
18 resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to
19 ponds provided the ponds are constructed or used for agriculture as that term is defined in
20 G.S. 106-581.1.

21 **SECTION 52.(e)** The Environmental Management Commission shall adopt rules
22 to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian
23 Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water
24 Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the
25 Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other
26 similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section.
27 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
28 shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section.
29 Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through
30 G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in
31 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
32 G.S. 150B-21.3(b2).

33 **SECTION 52.(f)** This section is effective when it becomes law and applies to
34 ponds used for agriculture that were either in existence on or constructed after July 22, 1997.
35 Section 52(a) of this act expires on the date that rules adopted pursuant to Section 52(e) of this
36 act become effective.

37
38 **PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF**
39 **THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING A WATER**
40 **QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE**
41 **ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS**

42 **SECTION 53.** G.S. 143-215.1 reads as rewritten:

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

44 ...

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

51"

REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS

SECTION 54. Article 4A of Chapter 113A of the General Statutes is repealed.

AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS

SECTION 55. G.S. 113-229 reads as rewritten:

"§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

....

(d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his application to notify~~ the owner of each tract of riparian property that adjoins that of the applicant. ~~The copy shall be served.~~ An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail-mail, or, if If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the ~~Commission.~~ Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after ~~he~~ the owner is served with a copy of the ~~application.~~ application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that ~~he~~ the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED AUTHORIZATION

SECTION 56.(a) Public water systems with expired authorizations for water treatment plants that have been deactivated may obtain new water treatment plant authorizations that allow the system to withdraw surface water from the same water body and at the same rate as approved in the expired authorization, and such new authorizations shall not be required to prepare an environmental document pursuant to Article 1 of Chapter 113A of the General Statutes.

SECTION 56.(b) This section applies only to those public water systems for which the authorization for the water treatment plant expired within the last 10 calendar years of the effective date of this act.

COMBINE THE DIVISION OF WATER QUALITY AND THE DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF WATER RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND MAKE CONFORMING CHANGES

SECTION 57.(a) The Department of Environment and Natural Resources shall combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

1 **SECTION 57.(b)** G.S. 74-50(b3) reads as rewritten:

2 "(b3) When the Department receives an application for a new mining permit or for a
3 modification of a mining permit to add land to the permitted area, the Department shall send a
4 notice of the application to each of the following agencies with a request that each agency
5 review and provide written comment on the application within 30 days of the date on which the
6 request is made:

- 7 (1) Division of Air Quality, Department of Environment and Natural Resources.
- 8 (2) Division of Parks and Recreation, Department of Environment and Natural
9 Resources.
- 10 ~~(3) Division of Water Quality, Department of Environment and Natural~~
11 ~~Resources.~~
- 12 (4) Division of Water Resources, Department of Environment and Natural
13 Resources.
- 14 (5) North Carolina Geological Survey, Division of Energy, Mineral, and Land
15 Resources, Department of Environment and Natural Resources.
- 16 (6) Wildlife Resources Commission, Department of Environment and Natural
17 Resources.
- 18 (7) Office of Archives and History, Department of Cultural Resources.
- 19 (8) United States Fish and Wildlife Service, United States Department of the
20 Interior.
- 21 (9) Any other federal or State agency that the Department determines to be
22 appropriate, including the Division of Coastal Management, Department of
23 Environment and Natural Resources; the Division of Marine Fisheries,
24 Department of Environment and Natural Resources; the Division of Waste
25 Management, Department of Environment and Natural Resources; and the
26 Department of Transportation."

27 **SECTION 57.(c)** G.S. 90A-47.3 reads as rewritten:

28 "**§ 90A-47.3. Qualifications for certification; training; examination.**

29 (a) The Commission shall develop and administer a certification program for animal
30 waste management system operators in charge that provides for receipt of applications, training
31 and examination of applicants, and investigation of the qualifications of applicants.

32 (b) The Commission, in cooperation with the Division of ~~Water Quality Resources~~
33 the Department of Environment and Natural Resources, and the Cooperative Extension Service,
34 shall develop and administer a training program for animal waste management system
35 operators in charge. An applicant for initial certification shall complete 10 hours of classroom
36 instruction prior to taking the examination. In order to remain certified, an animal waste
37 management system operator in charge shall complete six hours of approved additional training
38 during each three-year period following initial certification. A certified animal waste
39 management system operator in charge who fails to complete approved additional training
40 within 30 days of the end of the three-year period shall take and pass the examination for
41 certification in order to renew the certificate."

42 **SECTION 57.(d)** G.S. 106-805 reads as rewritten:

43 "**§ 106-805. Written notice of swine farms.**

44 Any person who intends to construct a swine farm whose animal waste management system
45 is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes
46 shall, after completing a site evaluation and before the farm site is modified, notify all
47 adjoining property owners; all property owners who own property located across a public road,
48 street, or highway from the swine farm; the county or counties in which the farm site is located;
49 and the local health department or departments having jurisdiction over the farm site of that
50 person's intent to construct the swine farm. This notice shall be by certified mail sent to the
51 address on record at the property tax office in the county in which the land is located. Notice to

1 a county shall be sent to the county manager or, if there is no county manager, to the chair of
2 the board of county commissioners. Notice to a local health department shall be sent to the
3 local health director. The written notice shall include all of the following:

- 4 (1) The name and address of the person intending to construct a swine farm.
- 5 (2) The type of swine farm and the design capacity of the animal waste
6 management system.
- 7 (3) The name and address of the technical specialist preparing the waste
8 management plan.
- 9 (4) The address of the local Soil and Water Conservation District office.
- 10 (5) Information informing the adjoining property owners and the property
11 owners who own property located across a public road, street, or highway
12 from the swine farm that they may submit written comments to the Division
13 of Water ~~Quality Resources~~, Department of Environment and Natural
14 Resources."

15 **SECTION 57.(e)** G.S. 106-860(d) reads as rewritten:

16 "(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by
17 the Community Conservation Assistance Program Advisory Committee. The Advisory
18 Committee shall meet quarterly to review the progress of the Program. The Advisory
19 Committee shall consist of the following members:

- 20 (1) The Director of the Division of Soil and Water Conservation of the
21 Department of Agriculture and Consumer Services or the Director's
22 designee, who shall serve as the Chair of the Advisory Committee.
- 23 (2) The President of the North Carolina Association of Soil and Water
24 Conservation Districts or the President's designee.
- 25 (3) The Director of the Cooperative Extension Service at North Carolina State
26 University or the Director's designee.
- 27 (4) The Executive Director of the North Carolina Association of County
28 Commissioners or the Executive Director's designee.
- 29 (5) The Executive Director of the North Carolina League of Municipalities or
30 the Executive Director's designee.
- 31 (6) The State Conservationist of the Natural Resources Conservation Service of
32 the United States Department of Agriculture or the State Conservationist's
33 designee.
- 34 (7) The Executive Director of the Wildlife Resources Commission or the
35 Executive Director's designee.
- 36 (8) The President of the North Carolina Conservation District Employees
37 Association or the President's designee.
- 38 (9) The President of the North Carolina Association of Resource Conservation
39 and Development Councils or the President's designee.
- 40 ~~(10) The Director of the Division of Water Quality of the Department of~~
41 ~~Environment and Natural Resources or the Director's designee.~~
- 42 (11) The Director of the Division of Forest Resources of the Department of
43 Agriculture and Consumer Services or the Director's designee.
- 44 (12) The Director of the Division of Energy, Mineral, and Land Resources of the
45 Department of Environment and Natural Resources or the Director's
46 designee.
- 47 (13) The Director of the Division of Coastal Management of the Department of
48 Environment and Natural Resources or the Director's designee.
- 49 (14) The Director of the Division of Water Resources of the Department of
50 Environment and Natural Resources or the Director's designee.

1 (15) The President of the Carolinas Land Improvement Contractors Association
2 or the President's designee."

3 **SECTION 57.(f)** G.S. 113A-57 reads as rewritten:

4 **"§ 113A-57. Mandatory standards for land-disturbing activity.**

5 No land-disturbing activity subject to this Article shall be undertaken except in accordance
6 with the following mandatory requirements:

7 (1) No land-disturbing activity during periods of construction or improvement to
8 land shall be permitted in proximity to a lake or natural watercourse unless a
9 buffer zone is provided along the margin of the watercourse of sufficient
10 width to confine visible siltation within the twenty-five percent (25%) of the
11 buffer zone nearest the land-disturbing activity. Waters that have been
12 classified as trout waters by the Environmental Management Commission
13 shall have an undisturbed buffer zone 25 feet wide or of sufficient width to
14 confine visible siltation within the twenty-five percent (25%) of the buffer
15 zone nearest the land-disturbing activity, whichever is greater. Provided,
16 however, that the Sedimentation Control Commission may approve plans
17 which include land-disturbing activity along trout waters when the duration
18 of said disturbance would be temporary and the extent of said disturbance
19 would be minimal. This subdivision shall not apply to a land-disturbing
20 activity in connection with the construction of facilities to be located on,
21 over, or under a lake or natural watercourse.

22 (2) The angle for graded slopes and fills shall be no greater than the angle that
23 can be retained by vegetative cover or other adequate erosion-control
24 devices or structures. In any event, slopes left exposed will, within 21
25 calendar days of completion of any phase of grading, be planted or otherwise
26 provided with temporary or permanent ground cover, devices, or structures
27 sufficient to restrain erosion.

28 (3) Whenever land-disturbing activity that will disturb more than one acre is
29 undertaken on a tract, the person conducting the land-disturbing activity
30 shall install erosion and sedimentation control devices and practices that are
31 sufficient to retain the sediment generated by the land-disturbing activity
32 within the boundaries of the tract during construction upon and development
33 of the tract, and shall plant or otherwise provide a permanent ground cover
34 sufficient to restrain erosion after completion of construction or development
35 within a time period to be specified by rule of the Commission.

36 (4) No person shall initiate any land-disturbing activity that will disturb more
37 than one acre on a tract unless, 30 or more days prior to initiating the
38 activity, an erosion and sedimentation control plan for the activity is filed
39 with the agency having jurisdiction and approved by the agency. An erosion
40 and sedimentation control plan may be filed less than 30 days prior to
41 initiation of a land-disturbing activity if the plan is submitted under an
42 approved express permit program, and the land-disturbing activity may be
43 initiated and conducted in accordance with the plan once the plan has been
44 approved. The agency having jurisdiction shall forward to the Director of the
45 Division of Water ~~Quality~~ Resources a copy of each erosion and
46 sedimentation control plan for a land-disturbing activity that involves the
47 utilization of ditches for the purpose of de-watering or lowering the water
48 table of the tract.

49 (5) The land-disturbing activity shall be conducted in accordance with the
50 approved erosion and sedimentation control plan."

51 **SECTION 57.(g)** G.S. 136-44.7D reads as rewritten:

1 **"§ 136-44.7D. Bridge construction guidelines.**

2 A bridge crossing rivers and streams in watersheds shall be constructed to accommodate the
3 hydraulics of a flood water level equal to the water level projected for a 100-year flood for the
4 region in which the bridge is built. The bridge shall be built without regard for the riparian
5 buffer zones as designated by the Department of Environment and Natural Resources, Division
6 of Water ~~Quality-Resources~~. No Memorandums of Agreement may be made between
7 Departments to bypass this construction mandate. No agency rules shall be enacted contrary to
8 this section."

9 **SECTION 57.(h)** G.S. 143-214.7(c3) reads as rewritten:

10 "(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory
11 Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the
12 Department shall not require the use of stormwater retention ponds, stormwater detention
13 ponds, or any other stormwater control measure that promotes standing water in order to
14 comply with this section at public airports that support commercial air carriers or general
15 aviation services. Development projects located within five statute miles from the farthest edge
16 of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011
17 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds,
18 or any other stormwater control measure that promotes standing water in order to comply with
19 this section. Existing stormwater retention ponds, stormwater detention ponds, or any other
20 stormwater control measure that promotes standing water in order to comply with this section
21 located at public airports or that are within five statute miles from the farthest edge of an airport
22 operations area may be replaced with alternative measures included in the Division of Water
23 ~~Quality's-Resources'~~ Best Management Practice Manual chapter on airports. In order to be
24 approved by the Department, alternative measures or management designs that are not
25 expressly included in the Division of Water ~~Quality's-Resources'~~ Best Management Practice
26 Manual shall provide for equal or better stormwater control based on the pre- and
27 post-development hydrograph. Any replacement of existing stormwater retention ponds,
28 stormwater detention ponds, or any other stormwater control measure that promotes standing
29 water shall be considered a minor modification to the State general stormwater permit."

30 **SECTION 57.(i)** G.S. 143-214.7A reads as rewritten:

31 **"§ 143-214.7A. Stormwater control best management practices.**

32 (a) The Department of Environment and Natural Resources shall establish standard
33 stormwater control best management practices and standard process water treatment processes
34 or equivalent performance standards for composting operations that are required to be
35 permitted by the Division of Water ~~Quality-Resources~~ in the Department and the Division of
36 Waste Management in the Department. These practices, processes, and standards shall be
37 developed for the purpose of protecting water quality by controlling and containing stormwater
38 that is associated with composting operations, by reducing the pollutant levels of process water
39 from composting operations, and by reducing the opportunities for generation of such waters.

40 (b) Unless otherwise provided in this subsection, the Division of Water ~~Quality~~
41 ~~Resources~~ shall clarify that stormwater is water that does not contact anything considered a
42 feedstock, intermediate product, or final product of composting operations. Unless otherwise
43 provided in this subsection, the Division of Water ~~Quality-Resources~~ shall clarify that
44 wastewater is leachate and water that contacts feedstocks, intermediate products, or final
45 product, of composting operations. The clarifications shall incorporate available scientifically
46 valid information obtained from sampling and analyses of North Carolina composting facilities
47 and from valid representative data from other states. In addition, the Division of Water ~~Quality~~
48 ~~Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final
49 products above which water quality permitting will be required. A Type 1 solid waste compost
50 facility shall be subject only to applicable State stormwater requirements and federal
51 stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid

1 waste compost facility shall not be required to obtain a National Pollutant Discharge
2 Elimination System (NPDES) permit for discharge of process wastewater based solely on the
3 discharge of stormwater that has come into contact with feedstock, intermediate product, or
4 final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities"
5 are facilities that may receive yard and garden waste, silvicultural waste, untreated and
6 unpainted wood waste, or any combination thereof.

7 (c) The Department shall establish revised water quality permitting procedures for the
8 composting industry. The revised permitting procedures shall identify the various
9 circumstances that determine which water quality permit is required for various composting
10 activities. The Department shall determine whether selected low-risk subsets of the composting
11 industry may be suitable for expedited or reduced water quality permitting procedures. The
12 determination shall include consideration of the economic impact of regulatory decisions.

13 (d) In developing the practices, processes, and standards and the revised water quality
14 permitting procedures required by this section, the Department shall review practices,
15 processes, and standards and permitting procedures adopted by other states and similar federal
16 programs.

17 (e) The Department shall form a Compost Operation Stakeholder Advisory Group
18 composed of representatives from the North Carolina Chapter of the United States Composting
19 Council, the North Carolina Association of County Commissioners, the North Carolina League
20 of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina
21 Chapter of the American Water Works Association-Water Environment Federation, the North
22 Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North
23 America, the North Carolina Septic Tank Association, and any individual or group commenting
24 to the Department on issues related to water quality at composting operations. The Compost
25 Operation Stakeholder Advisory Group shall be convened periodically to provide input and
26 assistance to the Department.

27 (f) The practices, processes, and standards and the revised permitting procedures shall
28 address the site size of an operation, the nature of the feedstocks composted, the type of
29 compost production method employed, the quantity and water quality of the stormwater or
30 process water associated with composting facilities, the water quality of the receiving waters,
31 as well as operation and maintenance requirements for the resulting standard stormwater
32 control best management practices and standard process water treatment processes."

33 **SECTION 57.(j)** G.S. 143-214.10 reads as rewritten:

34 **"§ 143-214.10. Ecosystem Enhancement Program: development and implementation of**
35 **basinwide restoration plans.**

36 Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for
37 wetlands and riparian area restoration with the goal of protecting and enhancing water quality,
38 flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17
39 major river basins in the State. The Department shall develop and implement a basinwide
40 restoration plan for each of the 17 river basins in the State in accordance with the basinwide
41 schedule currently established by the Division of Water ~~Quality~~Resources."

42 **SECTION 57.(k)** G.S. 143-214.25A, as amended by Section 22 of S.L. 2013-155,
43 reads as rewritten:

44 **"§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification**
45 **Training and Certification Program.**

46 (a) The Division of Water ~~Quality~~Resources of the Department shall develop a
47 program to train and certify individuals to determine the presence of surface waters that would
48 require the application of rules adopted by the Commission for the protection of riparian
49 buffers. The Division may train and certify employees of the Division as determined by the
50 Director of the Division of Water ~~Quality~~Resources; employees of units of local government
51 to whom responsibility for the implementation and enforcement of the riparian buffer

1 protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under
2 Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of
3 the Department of Agriculture and Consumer Services as determined by the Assistant
4 Commissioner of the North Carolina Forest Service. The Director of the Division of Water
5 ~~Quality Resources~~ may review the determinations made by individuals who are certified
6 pursuant to this section, may override a determination made by an individual certified under
7 this section, and, if the Director of the Division of Water ~~Quality Resources~~ determines that an
8 individual is failing to make correct determinations, revoke the certification of that individual.

9 (b) The Division of Water ~~Quality Resources~~ shall develop standard forms for use in
10 making and reporting determinations. Each individual who is certified to make determinations
11 under this section shall prepare a written report of each determination and shall submit the
12 report to the agency that employs the individual. Each agency shall maintain reports of
13 determinations made by its employees, shall forward a copy of each report to the Director of
14 the Division of Water ~~Quality Resources~~, and shall maintain these reports and all other records
15 related to determinations so that they will be readily accessible to the public.

16 (c) In implementing the Surface Water Identification Training and Certification
17 Program established by this section, the Division of Water ~~Quality Resources~~ of the
18 Department of Environment and Natural Resources shall give priority to training and certifying
19 the most highly qualified and experienced personnel in each agency. The Division of Water
20 ~~Quality Resources~~ shall evaluate the effectiveness of the Surface Water Identification Training
21 and Certification Program and shall submit an annual report of its findings and
22 recommendations, if any, to the Environmental Review Commission on or before October 1 of
23 each year."

24 **SECTION 57.(l)** G.S. 143-215.9C reads as rewritten:

25 **"§ 143-215.9C. Use of certain types of culverts allowed.**

26 (a) The Division of Water ~~Quality Resources~~ in the Department of Environment and
27 Natural Resources shall allow the use of structures known as three-sided, open-bottom, or
28 bottomless culverts. A culvert authorized under this section shall be designed, constructed, and
29 installed so that it satisfies all of the following requirements:

- 30 (1) Adheres to professional engineering standards and sound engineering
31 practices.
- 32 (2) To the extent practicable, minimizes the erosive velocity of water.
- 33 (3) Has an inside that is greater than or equal to 1.2 times the bankfull width of
34 the spanned waterbody. For purposes of this subdivision, "bankfull width"
35 means the width of the stream where over-bank flow begins during a flood
36 event.

37 (b) The Division shall allow the use of culverts authorized under this section throughout
38 the State and may not limit their use to locations where they must be tied into bedrock. Culverts
39 authorized under this section may only be used on private property and may not be transferred
40 to, or operated or maintained by, the Department of Transportation."

41 **SECTION 57.(m)** G.S. 143-215.10A reads as rewritten:

42 **"§ 143-215.10A. Legislative findings and intent.**

43 The General Assembly finds that animal operations provide significant economic and other
44 benefits to this State. The growth of animal operations in recent years has increased the
45 importance of good animal waste management practices to protect water quality. It is critical
46 that the State balance growth with prudent environmental safeguards. It is the intention of the
47 State to promote a cooperative and coordinated approach to animal waste management among
48 the agencies of the State with a primary emphasis on technical assistance to farmers. To this
49 end, the General Assembly intends to establish a permitting program for animal waste
50 management systems that will protect water quality and promote innovative systems and
51 practices while minimizing the regulatory burden. Technical assistance will be provided by the

1 Division of Soil and Water Conservation of the Department of Agriculture and Consumer
2 Services. Inspection and enforcement will be provided by the Division of Water
3 ~~Quality Resources.~~"

4 **SECTION 57.(n)** G.S. 143-215.10B reads as rewritten:

5 **"§ 143-215.10B. Definitions.**

6 As used in this Part:

- 7 (1) "Animal operation" means any agricultural feedlot activity involving 250 or
8 more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more
9 sheep, or 30,000 or more confined poultry with a liquid animal waste
10 management system, or any agricultural feedlot activity with a liquid animal
11 waste management system that discharges to the surface waters of the State.
12 A public livestock market regulated under Article 35 of Chapter 106 of the
13 General Statutes is an animal operation for purposes of this Part.
- 14 (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta
15 with feed, bedding, litter, or other materials from an animal operation.
- 16 (3) "Animal waste management system" means a combination of structures and
17 nonstructural practices serving a feedlot that provide for the collection,
18 treatment, storage, or land application of animal waste.
- 19 (4) "Division" means the Division of Water ~~Quality Resources~~ of the
20 Department.
- 21 (5) "Feedlot" means a lot or building or combination of lots and buildings
22 intended for the confined feeding, breeding, raising, or holding of animals
23 and either specifically designed as a confinement area in which animal waste
24 may accumulate or where the concentration of animals is such that an
25 established vegetative cover cannot be maintained. A building or lot is not a
26 feedlot unless animals are confined for 45 or more days, which may or may
27 not be consecutive, in a 12-month period. Pastures shall not be considered
28 feedlots for purposes of this Part.
- 29 (6) "Technical specialist" means an individual designated by the Soil and Water
30 Conservation Commission, pursuant to rules adopted by that Commission, to
31 certify animal waste management plans."

32 **SECTION 57.(o)** G.S. 143-215.10M(a) reads as rewritten:

33 "(a) The Department shall report to the Environmental Review Commission and the
34 Fiscal Research Division on or before 1 October of each year as required by this section. Each
35 report shall include:

- 36 (1) The number of permits for animal waste management systems, itemized by
37 type of animal subject to such permits, issued since the last report.
- 38 (2) The number of operations reviews of animal waste management systems that
39 the Division of Soil and Water Conservation of the Department of
40 Agriculture and Consumer Services has conducted since the last report.
- 41 (3) The number of operations reviews of animal waste management systems
42 conducted by agencies other than the Division of Soil and Water
43 Conservation of the Department of Agriculture and Consumer Services that
44 have been conducted since the last report.
- 45 (4) The number of reinspections associated with operations reviews conducted
46 by the Division of Soil and Water Conservation of the Department of
47 Agriculture and Consumer Services since the last report.
- 48 (5) The number of reinspections associated with operations reviews conducted
49 by agencies other than the Division of Soil and Water Conservation of the
50 Department of Agriculture and Consumer Services since the last report.

- 1 (6) The number of compliance inspections of animal waste management
2 systems that the Division of Water ~~Quality Resources~~ has conducted since
3 the last report.
- 4 (7) The number of follow-up inspections associated with compliance inspections
5 conducted by the Division of Water ~~Quality Resources~~ since the last report.
- 6 (8) The average length of time for each category of reviews and inspections
7 under subdivisions (2) through (7) of this subsection.
- 8 (9) The number of violations found during each category of review and
9 inspection under subdivisions (2) through (7) of this subsection, the status of
10 enforcement actions taken and pending, and the penalties imposed, collected,
11 and in the process of being negotiated for each such violation.
- 12 (10) Any other information that the Department determines to be appropriate or
13 that is requested by the Environmental Review Commission or the Fiscal
14 Research Division."

15 **SECTION 57.(p)** G.S. 143B-279.7(a) reads as rewritten:

16 "(a) The Department of Environment and Natural Resources shall coordinate an
17 intradepartmental effort to develop scientific protocols to respond to significant fish kill events
18 utilizing staff from the Division of Water ~~Quality Resources~~, Division of Marine Fisheries,
19 Department of Health and Human Services, Wildlife Resources Commission, the scientific
20 community, and other agencies, as necessary. In developing these protocols, the Department of
21 Environment and Natural Resources shall address the unpredictable nature of fish kills caused
22 by both natural and man-made factors. The protocols shall contain written procedures to
23 respond to significant fish kill events including:

- 24 (1) Developing a plan of action to evaluate the impact of fish kills on public
25 health and the environment.
- 26 (2) Responding to fish kills within 24 hours.
- 27 (3) Investigating and collecting data relating to fish kill events.
- 28 (4) Summarizing and distributing fish kill information to participating agencies,
29 scientists and other interested parties."

30 **SECTION 57.(q)** G.S. 159G-20(5) is repealed.

31 **SECTION 57.(r)** G.S. 159G-23 reads as rewritten:

32 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking**
33 **Water Reserve.**

34 The criteria in this section apply to a loan or grant from the Wastewater Reserve or the
35 Drinking Water Reserve. The ~~Division of Water Quality and the Division of Water Resources~~
36 must ~~each~~ establish a system of assigning points to applications based on the following criteria:

37 "...."

38 **SECTION 57.(s)** G.S. 159G-26(a) reads as rewritten:

39 **"§ 159G-26. Annual reports on Water Infrastructure Fund.**

40 (a) Requirement. – The Department must publish a report each year on the accounts in
41 the Water Infrastructure Fund that are administered by the ~~Division of Water Quality or the~~
42 ~~Division of Water Resources~~. The report must be published by 1 November of each year and
43 cover the preceding fiscal year. The Department must make the report available to the public
44 and must give a copy of the report to the Environmental Review Commission and the Fiscal
45 Research Division of the General Assembly."

46 **SECTION 57.(t)** G.S. 159G-30 reads as rewritten:

47 **"§ 159G-30. Department's responsibility.**

48 The Department, through the ~~Division of Water Quality and the Division of Water~~
49 ~~Resources~~, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater
50 Reserve, and the Drinking Water Reserve. ~~The Division of Water Quality administers loans and~~

1 ~~grants from the CWSRF and the Wastewater Reserve. The Division of Water Resources~~
2 ~~administers loans and grants from the DWSRF and the Drinking Water Reserve."~~

3 **SECTION 57.(u)** G.S. 159G-37 reads as rewritten:

4 "**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water**
5 **Reserve.**

6 An application for a loan or grant from the ~~CWSRF or the Wastewater Reserve~~ must be
7 ~~filed with the Division of Water Quality of the Department. An application for a loan or grant~~
8 ~~from the DWSRF or the Drinking Water Reserve must be filed with the CWSRF, the~~
9 ~~Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the~~
10 Division of Water Resources of the Department. An application must be submitted on a form
11 prescribed by the Division and must contain the information required by the Division. An
12 applicant must submit to the Division any additional information requested by the Division to
13 enable the Division to make a determination on the application. An application that does not
14 contain information required on the application or requested by the Division is incomplete and
15 is not eligible for consideration. An applicant may submit an application in as many categories
16 as it is eligible for consideration under this Article."

17 **SECTION 57.(v)** G.S. 159G-38 reads as rewritten:

18 "**§ 159G-38. Environmental assessment and public hearing.**

19 (a) Required Information. – An application submitted under this Article for a loan or
20 grant for a project must state whether the project requires an environmental assessment. If the
21 application indicates that an environmental assessment is not required, it must identify the
22 exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the
23 General Statutes, that applies to the project. If the application does not identify an exclusion in
24 the North Carolina Environmental Policy Act, it must include an environmental assessment of
25 the project's probable impacts on the environment.

26 (b) Division Review. – If, after reviewing an application, ~~the Division of Water Quality~~
27 ~~or the Division of Water Resources, as appropriate, Resources~~ determines that a project requires
28 an environmental assessment, the assessment must be submitted before the Division continues
29 its review of the application. If, after reviewing an environmental assessment, the Division
30 concludes that an environmental impact statement is required, the Division may not continue its
31 review of the application until a final environmental impact statement has been completed and
32 approved as provided in the North Carolina Environmental Policy Act.

33 (c) Hearing. – ~~The Division of Water Quality or the Division of Water Resources, as~~
34 ~~appropriate, Resources~~ may hold a public hearing on an application for a loan or grant under
35 this Article if it determines that holding a hearing will serve the public interest. An individual
36 who is a resident of any county in which a proposed project is located may submit a written
37 request for a public hearing. The request must set forth each objection to the proposed project
38 or other reason for requesting a hearing and must include the name and address of the
39 individual making the request. The Division may consider all written objections to the proposed
40 project, any statement submitted with the hearing request, and any significant adverse effects
41 the proposed project may have on the environment. The Division's decision on whether to hold
42 a hearing is conclusive. The Division must keep all written requests for a hearing on an
43 application as part of the records pertaining to the application."

44 **SECTION 57.(w)** G.S. 159G-39(a) reads as rewritten:

45 "(a) Point Assignment. – ~~The Division of Water Quality or the Division of Water~~
46 ~~Resources, as appropriate, Resources~~ must review all applications filed for a loan or grant under
47 this Article for an application period. The Division must rank each application in accordance
48 with the points assigned to the evaluation criteria. The Division must make a written
49 determination of an application's rank and attach the determination to the application. The
50 Division's determination of rank is conclusive."

51 **SECTION 57.(x)** Section 1.6 of S.L. 1998-221 reads as rewritten:

1 "Section 1.6. **Delegation of riparian buffer protection requirements to local**
2 **governments.** – (a) The Commission may delegate responsibility for the implementation and
3 enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to
4 units of local government that have the power to regulate land use. A delegation under this
5 section shall not affect the jurisdiction of the Commission over State agencies and units of local
6 government. Any unit of local government in the Neuse River Basin that has the power to
7 regulate land use may request that responsibility for the implementation and enforcement of the
8 State's riparian buffer protection requirements be delegated to the unit of local government. To
9 this end, units of local government may adopt ordinances and regulations necessary to establish
10 and enforce the State's riparian buffer protection requirements.

11 (b) Within 90 days after the Commission receives a complete application requesting
12 delegation of responsibility for the implementation and enforcement of the State's riparian
13 buffer protection requirement, the Commission shall review the application and notify the unit
14 of local government that submitted the application whether the application has been approved,
15 approved with modifications, or disapproved. The Commission shall not approve a delegation
16 unless the Commission finds that local implementation and enforcement of the State's riparian
17 buffer protection requirements will equal implementation and enforcement by the State.

18 (c) If the Commission determines that any unit of local government is failing to
19 implement or enforce the State's riparian buffer protection requirements, the Commission shall
20 notify the unit of local government in writing and shall specify the deficiencies in
21 implementation and enforcement. If the local government has not corrected the deficiencies
22 within 90 days after the unit of local government receives the notification, the Commission
23 shall rescind delegation and shall implement and enforce the State's riparian buffer protection
24 program. If the unit of local government indicates that it is willing and able to resume
25 implementation and enforcement of the State's riparian buffer protection requirements, the unit
26 of local government may reapply for delegation under this section.

27 (d) The Division of Water ~~Quality Resources~~ in the Department shall provide technical
28 assistance to units of local government in the development, implementation, and enforcement
29 of the State's riparian buffer protection requirements.

30 (e) The Commission may adopt rules to implement this section and may recommend
31 any legislation it determines to be necessary or desirable to achieve the purposes of this section.
32 Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall
33 be set out as a separately numbered rule."

34 **SECTION 57.(y)** Section 2(c) of S.L. 2001-355 reads as rewritten:

35 "**SECTION 2.(c)** The Director of the Division of Water ~~Quality Resources~~ and the
36 Director of the Division of Soil and Water Conservation of the Department of Environment and
37 Natural Resources shall jointly appoint members described in subdivisions (1) through (4) of
38 subsection (b) of this section. The Commissioner of Agriculture shall appoint the members
39 described in subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of
40 Agriculture shall appoint the members described in subdivision (6) of subsection (b) of this
41 section from persons nominated by nongovernmental organizations whose members produce or
42 manage significant agricultural commodities in each county or watershed."

43 **SECTION 57.(z)** Section 2 of S.L. 2006-246 reads as rewritten:

44 "**SECTION 2.** Definitions. – The following definitions apply to this act and its
45 implementation:

- 46 (1) The definitions set out in 40 Code of Federal Regulations § 122.2
47 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003
48 Edition).
- 49 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 50 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).

- 1 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the
2 definitions of "Built-upon area", "Development", and "Redevelopment",
3 which are defined below.
- 4 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be
5 equaled or exceeded, on average, once in 12 months and with a duration of
6 24 hours.
- 7 (6) "BMP" means Best Management Practice.
- 8 (7) "Built-upon area" means that portion of a project that is covered by
9 impervious or partially impervious surface including, but not limited to,
10 buildings; pavement and gravel areas such as roads, parking lots, and paths;
11 and recreation facilities such as tennis courts. "Built-upon area" does not
12 include a wooden slatted deck, the water area of a swimming pool, or
13 pervious or partially pervious paving material to the extent that the paving
14 material absorbs water or allows water to infiltrate through the paving
15 material.
- 16 (8) "Development" means any land-disturbing activity that increases the amount
17 of built-upon area or that otherwise decreases the infiltration of precipitation
18 into the soil.
- 19 (9) "Division" means the Division of Water ~~Quality~~ Resources in the
20 Department.
- 21 (10) "Planning jurisdiction" means the territorial jurisdiction within which a
22 municipality exercises the powers authorized by Article 19 of Chapter 160A
23 of the General Statutes, or a county may exercise the powers authorized by
24 Article 18 of Chapter 153A of the General Statutes.
- 25 (11) "Public entity" means the United States; the State; a city, village, township,
26 county, school district, public college or university, or single-purpose
27 governmental agency; or any other governing body that is created by federal
28 or State law.
- 29 (12) "Redevelopment" means any land-disturbing activity that does not result in a
30 net increase in built-upon area and that provides greater or equal stormwater
31 control than the previous development.
- 32 (13) "Regulated entity" means any public entity that must obtain a Phase II
33 National Pollutant Discharge Elimination System (NPDES) permit for
34 stormwater management for its municipal separate storm sewer system
35 (MS4).
- 36 (14) "Sensitive receiving waters" means any of the following:
37 a. Waters that are classified as high quality, outstanding resource,
38 shellfish, trout, or nutrient-sensitive waters in accordance with
39 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for
40 Assignment of Water Quality Standards – General Procedures).
- 41 b. Waters that are occupied by or designated as critical habitat for
42 aquatic animal species that are listed as threatened or endangered by
43 the United States Fish and Wildlife Service or the National Marine
44 Fisheries Service under the provisions of the Endangered Species Act
45 of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et
46 seq.), as amended.
- 47 c. Waters for which the designated use, as described by the
48 classification system set out in subsections (c), (d), and (e) of 15A
49 NCAC 2B .0101 (Procedures for Assignment of Water Quality
50 Standards – General Procedures), have been determined to be

1 impaired in accordance with the requirements of subsection (d) of 33
2 U.S.C. § 1313.

- 3 (15) "Shellfish resource waters" means Class SA waters that contain an average
4 concentration of 500 parts per million of natural chloride ion. Average
5 concentration is determined by averaging the chloride concentrations of five
6 water samples taken one-half mile downstream from the project site that are
7 taken on separate days, within one hour of high tide, and not within 48 hours
8 following a rain event. The chloride ion concentrations are to be determined
9 by a State-certified laboratory.
- 10 (16) "Significant contributor of pollutants" means a municipal separate storm
11 sewer system (MS4) or a discharge that contributes to the pollutant loading
12 of a water body or that destabilizes the physical structure of a water body
13 such that the contribution to pollutant loading or the destabilization may
14 reasonably be expected to adversely affect the quality and uses of the water
15 body. Uses of a water body shall be determined pursuant to 15A NCAC 2B
16 .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality
17 Standards Applicable to Surface Waters and Wetlands of North Carolina)
18 and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).
- 19 (17) "Total maximum daily load (TMDL) implementation plan" means a written,
20 quantitative plan and analysis for attaining and maintaining water quality
21 standards in all seasons for a specific water body and pollutant."

22 **SECTION 57.(aa)** S.L. 2008-211 reads as rewritten:

23 **"SECTION 1.(a)** Disapprove Rule. – Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H
24 .1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental
25 Management Commission on 10 January 2008 and approved by the Rules Review Commission
26 on 20 March 2008, is disapproved.

27 **"SECTION 1.(b)** Supersede Rule. – 15A NCAC 02H .1005 (Stormwater Requirements:
28 Coastal Counties), effective 1 September 1995, is superseded by this act. References in the
29 North Carolina Administrative Code to 15A NCAC 02H .1005 shall be deemed to refer to the
30 equivalent provisions of this act.

31 **"SECTION 2.(a)** Definitions. – The following definitions apply to this act and its
32 implementation:

- 33 (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
34 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
35 (3) "Built upon area" has the same meaning as in Session Law 2006-246 and
36 means that portion of a project that is covered by impervious or partially
37 impervious surface including, but not limited to, buildings; pavement and
38 gravel areas such as roads, parking lots, and paths; and recreation facilities
39 such as tennis courts. "Built upon area" does not include a wooden slatted
40 deck, the water area of a swimming pool, or pervious or partially pervious
41 paving material to the extent that the paving material absorbs water or allows
42 water to infiltrate through the paving material.
- 43 (4) "Permeable pavement" means paving material that absorbs water or allows
44 water to infiltrate through the paving material. Permeable pavement
45 materials include porous concrete, permeable interlocking concrete pavers,
46 concrete grid pavers, porous asphalt, and any other material with similar
47 characteristics. Compacted gravel shall not be considered permeable
48 pavement.
- 49 (5) "Residential development activities" has the same meaning as in 15A NCAC
50 02B .0202(54).

- 1 (6) "Vegetative buffer" has the same meaning as in 15A NCAC 02H .1002(22)
2 and means an area of natural or established vegetation directly adjacent to
3 surface waters through which stormwater runoff flows in a diffuse manner to
4 protect surface waters from degradation due to development activities.
5 (7) "Vegetative conveyance" means a permanent, designed waterway lined with
6 vegetation that is used to convey stormwater runoff at a non-erosive velocity
7 within or away from a developed area.

8 **"SECTION 2.(b)** Requirements for Certain Nonresidential and Residential Development
9 in the Coastal Counties. – All nonresidential development activities that occur within the
10 Coastal Counties that will add more than 10,000 square feet of built upon area or that require a
11 Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area
12 Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 and all
13 residential development activities within the Coastal Counties that require a Sedimentation and
14 Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA)
15 Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as
16 provided in this subsection. A development activity or project requires a Sedimentation and
17 Erosion Control Plan if the activity or project disturbs one acre or more of land, including an
18 activity or project that disturbs less than one acre of land that is part of a larger common plan of
19 development. Whether an activity or project that disturbs less than one acre of land is part of a
20 larger common plan of development shall be determined in a manner consistent with the
21 memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from
22 the Director of the Division of Water Quality of the Department of Environment and Natural
23 Resources to Interested Parties dated 24 July 2006.

- 24 (1) Development Near Outstanding Resource Waters (ORW). – Development
25 activities within the Coastal Counties and located within 575 feet of the
26 mean high waterline of areas designated by the Commission as Outstanding
27 Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H
28 .1007 (Stormwater Requirements: Outstanding Resource Waters) and shall
29 be permitted as follows:

- 30 a. Low-Density Option. – Development shall be permitted pursuant to
31 15A NCAC 02H .1003(d)(1) if the development meets all of the
32 following requirements:
33 1. The development has a built upon area of twelve percent
34 (12%) or less. A development project with an overall density
35 at or below the low-density threshold, but containing areas
36 with a density greater than the overall project density, shall be
37 considered low-density as long as the project meets or
38 exceeds the requirements for low-density development and
39 locates the higher density development in upland areas and
40 away from surface waters and drainageways to the maximum
41 extent practicable.
42 2. Stormwater runoff from the development is transported
43 primarily by vegetated conveyances. As used in this
44 sub-sub-subdivision, "conveyance system" shall not include a
45 stormwater collection system. Stormwater runoff from built
46 upon areas that is directed to flow through any wetlands shall
47 flow into and through these wetlands at a non-erosive
48 velocity.
49 3. The development contains a 50-foot-wide vegetative buffer
50 for new development activities and a 30-foot-wide vegetative
51 buffer for redevelopment activities. The width of a buffer is

1 measured horizontally from the normal pool elevation of
2 impounded structures, from the bank of each side of streams
3 or rivers, and from the mean high waterline of tidal waters,
4 perpendicular to the shoreline. The vegetative buffer may be
5 cleared or graded, but must be planted with and maintained in
6 grass or any other vegetative or plant material. The Division
7 of Water ~~Quality~~ Resources may, on a case-by-case basis,
8 grant a minor variance from the vegetative buffer
9 requirements of this section pursuant to the procedures set out
10 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters
11 required by this section and any other buffers or filters
12 required by State water quality or coastal management rules
13 or local government requirements may be met concurrently
14 and may contain, in whole or in part, coastal, isolated, or 404
15 jurisdictional wetlands that are located landward of the
16 normal waterline.

- 17 b. High-Density Option. – Development shall be permitted pursuant to
18 15A NCAC 02H .1003(d)(2) if the development meets all of the
19 following requirements:
- 20 1. The development has a built upon area of greater than twelve
21 percent (12%).
 - 22 2. The development has no direct outlet channels or pipes to
23 Class SA waters unless permitted in accordance with 15A
24 NCAC 02H .0126. Stormwater runoff from built upon areas
25 that is directed to flow through any wetlands shall flow into
26 and through these wetlands at a non-erosive velocity.
 - 27 3. The development utilizes control systems that are any
28 combination of infiltration systems, bioretention systems,
29 constructed stormwater wetlands, sand filters, rain barrels,
30 cisterns, rain gardens or alternative low impact development
31 stormwater management systems designed in accordance with
32 15A NCAC 02H .1008 to control and treat the runoff from all
33 surfaces generated by one and one-half inches of rainfall, or
34 the difference in the stormwater runoff from all surfaces from
35 the predevelopment and postdevelopment conditions for a
36 one-year, 24-hour storm, whichever is greater. Wet detention
37 ponds may be used as a stormwater control system to meet
38 the requirements of this sub-sub-subdivision, provided that
39 the stormwater control system fully complies with the
40 requirements of this sub-subdivision. If a wet detention pond
41 is used within one-half mile of Class SA waters, installation
42 of a stormwater best management practice in series with the
43 wet detention pond shall be required to treat the discharge
44 from the wet detention pond. Secondary stormwater best
45 management practices that are used in series with another
46 stormwater best management practice do not require any
47 minimum separation from the seasonal high water table.
48 Alternatives as described in 15A NCAC 02H .1008(h) may
49 also be approved if they meet the requirements of this
50 sub-subdivision.

- 1 4. Stormwater runoff from the development that is in excess of
2 the design volume must flow overland through a vegetative
3 filter designed in accordance with 15A NCAC 02H .1008
4 with a minimum length of 50 feet measured from mean high
5 water of Class SA waters.
- 6 5. The development contains a 50-foot-wide vegetative buffer
7 for new development activities and a 30-foot-wide vegetative
8 buffer for redevelopment activities. The width of a buffer is
9 measured horizontally from the normal pool elevation of
10 impounded structures, from the bank of each side of streams
11 or rivers, and from the mean high waterline of tidal waters,
12 perpendicular to the shoreline. The vegetative buffer may be
13 cleared or graded, but must be planted with, and maintained
14 in, grass or any other vegetative or plant material.
15 Furthermore, stormwater control best management practices
16 (BMPs), or stormwater control structures, with the exception
17 of wet detention ponds, may be located within this vegetative
18 buffer. The Division of Water ~~Quality~~ Resources may, on a
19 case by case basis, grant a minor variance from the vegetative
20 buffer requirements of this section pursuant to the procedures
21 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers
22 and filters required by this section and any other buffers or
23 filters required by State water quality or coastal management
24 rules or local government requirements may be met
25 concurrently and may contain, in whole or in part, coastal,
26 isolated, or 404 jurisdictional wetlands that are located
27 landward of the normal waterline.
- 28 c. Stormwater Discharges Prohibited. – All development activities,
29 including both low- and high-density projects, shall prohibit new
30 points of stormwater discharge to Class SA waters or an increase in
31 the volume of stormwater flow through conveyances or increase in
32 capacity of conveyances of existing stormwater conveyance systems
33 that drain to Class SA waters. Any modification or redesign of a
34 stormwater conveyance system within the contributing drainage
35 basin must not increase the net amount or rate of stormwater
36 discharge through existing outfalls to Class SA waters. The following
37 shall not be considered a direct point of stormwater discharge:
 - 38 1. Infiltration of the stormwater runoff from the design storm as
39 described in sub-sub-subdivision 3. of sub-subdivision b. of
40 subdivision (1) of this subsection.
 - 41 2. Diffuse flow of stormwater at a non-erosive velocity to a
42 vegetated buffer or other natural area, that is capable of
43 providing effective infiltration of the runoff from the design
44 storm as described in sub-sub-subdivision 3. of
45 sub-subdivision b. of subdivision (1) of this subsection.
46 Notwithstanding the other requirements of this section, the
47 infiltration mandated in this sub-sub-subdivision does not
48 require a minimum separation from the seasonal high-water
49 table.
 - 50 3. The discharge from a wet detention pond that is treated by a
51 secondary stormwater best management practice, provided

- 1 that both the wet detention pond and the secondary
2 stormwater best management practice meet the requirements
3 of this sub-subdivision.
- 4 d. Limitation on the Density of Development. – Development shall be
5 limited to a built upon area of twenty-five percent (25%) or less.
- 6 (2) Development Near Class SA Waters. – Development activities within
7 one-half mile of and draining to those waters classified by the Commission
8 as Class SA waters or within one-half mile of waters classified by the
9 Commission as Class SA waters and draining to unnamed freshwater
10 tributaries to Class SA waters shall meet the requirements of
11 sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The
12 extent of Class SA waters is limited to those waters that are determined to be
13 at least an intermittent stream based on a site stream determination made in
14 accordance with the procedures that are delineated in the Division of Water
15 Quality's "Identification Methods for the Origin of Intermittent and Perennial
16 Streams" prepared pursuant to Session Law 2001-404.
- 17 (3) Other Coastal Development. – Development activities within the Coastal
18 Counties except those areas described in subdivisions (1) and (2) of this
19 subsection shall meet all of the following requirements:
- 20 a. Low-Density Option: Development shall be permitted pursuant to
21 15A NCAC 02H .1003(d)(1) if the development meets all of the
22 following requirements:
- 23 1. The development has a built upon area of twenty-four percent
24 (24%) or less. A development project with an overall density
25 at or below the low-density threshold, but containing areas
26 with a density greater than the overall project density, shall be
27 considered low density as long as the project meets or
28 exceeds the requirements for low-density development and
29 locates the higher density in upland areas and away from
30 surface waters and drainageways to the maximum extent
31 practicable.
- 32 2. Stormwater runoff from the development is transported
33 primarily by vegetated conveyances. As used in this
34 sub-sub-subdivision, "conveyance system" shall not include a
35 stormwater collection system. Stormwater runoff from built
36 upon areas that is directed to flow through any wetlands shall
37 flow into and through these wetlands at a non-erosive
38 velocity.
- 39 3. The development contains a 50-foot-wide vegetative buffer
40 for new development activities and a 30-foot-wide vegetative
41 buffer for redevelopment activities. The width of a buffer is
42 measured horizontally from the normal pool elevation of
43 impounded structures, from the bank of each side of streams
44 or rivers, and from the mean high waterline of tidal waters,
45 perpendicular to the shoreline. The vegetative buffer may be
46 cleared or graded, but must be planted with, and maintained
47 in, grass or any other vegetative or plant material. The
48 Division of Water ~~Quality~~ Quality Resources may, on a case-by-case
49 basis, grant a minor variance from the vegetative buffer
50 requirements of this section pursuant to the procedures set out
51 in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters

- 1 required by this section and any other buffers or filters
2 required by State water quality or coastal management rules
3 or local government requirements may be met concurrently
4 and may contain, in whole or in part, coastal, isolated, or 404
5 jurisdictional wetlands that are located landward of the
6 normal waterline.
- 7 b. High-Density Option: Higher density developments shall be
8 permitted pursuant to 15A NCAC 02H .1003(d)(2) if the
9 development meets all of the following requirements:
- 10 1. The development has a built upon area of greater than
11 twenty-four percent (24%).
- 12 2. The development uses control systems that are any
13 combination of infiltration systems, wet detention ponds,
14 bioretention systems, constructed stormwater wetlands, sand
15 filters, rain barrels, cisterns, rain gardens or alternative
16 stormwater management systems designed in accordance with
17 15A NCAC 02H .1008.
- 18 3. Control systems must be designed to store, control, and treat
19 the stormwater runoff from all surfaces generated by one and
20 one-half inch of rainfall.
- 21 4. Stormwater runoff from built upon areas that is directed to
22 flow through any wetlands shall flow into and through these
23 wetlands at a non-erosive velocity.
- 24 5. A 50-foot-wide vegetative buffer for new development
25 activities and a 30-foot-wide vegetative buffer for
26 redevelopment activities. The width of a buffer is measured
27 horizontally from the normal pool elevation of impounded
28 structures, from the bank of each side of streams or rivers,
29 and from the mean high waterline of tidal waters,
30 perpendicular to the shoreline. The vegetative buffer may be
31 cleared or graded, but must be planted with, and maintained
32 in, grass or any other vegetative or plant material.
33 Furthermore, stormwater control best management practices
34 (BMPs), or stormwater control structures, with the exception
35 of wet detention ponds, may be located within this vegetative
36 buffer. The Division of ~~Water Quality Resources~~ may, on a
37 case by case basis, grant a minor variance from the vegetative
38 buffer requirements of this section pursuant to the procedures
39 set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers
40 and filters required by this section and any other buffers or
41 filters required by State water quality or coastal management
42 rules or local government requirements may be met
43 concurrently and may contain, in whole or in part, coastal,
44 isolated, or 404 jurisdictional wetlands that are located
45 landward of the normal waterline.
- 46 (4) Requirements for Structural Stormwater Controls. – Structural stormwater
47 controls required under this section shall meet all of the following
48 requirements:
- 49 a. Remove an eighty-five percent (85%) average annual amount of
50 Total Suspended Solids.

- b. For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- c. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- d. Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).
- e. For structural stormwater controls that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal highwater table is not practicable, the Division of Water ~~Quality~~ Resources may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in 15A NCAC 02H .1008(h). No minimum separation from the seasonal highwater table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

- (5) Certain Wetlands Excluded From Density Calculation. – For the purposes of this section, areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

"SECTION 2.(c) Requirements for Limited Residential Development in Coastal Counties. – For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than twelve percent (12%), that do not require a stormwater management permit under subsection (b) of this section, and that will add more than 10,000 square feet of built upon area, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded deed restrictions or protective covenants to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H .1008 to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

"SECTION 2.(d) Exclusions. – The requirements of this section shall not apply to any of the following:

- 1 (1) Activities of the North Carolina Department of Transportation that are
2 regulated in accordance with the provisions of the Department's National
3 Pollutant Discharge Elimination System (NPDES) Stormwater Permit.
- 4 (2) Development activities that are conducted pursuant to and consistent with
5 one of the following authorizations, or any timely renewal thereof, shall be
6 regulated by those provisions and requirements of 15A NCAC 02H .1005
7 that were effective at the time of the original issuance of the following
8 authorizations:
- 9 a. State Stormwater Permit issued under the provisions of 15A NCAC
10 02H .1005.
- 11 b. Stormwater Certification issued pursuant to 15A NCAC 02H .1000
12 prior to 1 December 1995.
- 13 c. A Coastal Area Management Act Major Permit.
- 14 d. 401 Certification that contains an approved Stormwater Management
15 Plan.
- 16 e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
- 17 f. A site-specific development plan as defined by
18 G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
- 19 g. A phased development plan approved pursuant to G.S. 153A-344.1
20 or G.S. 160A-385.1 that shows:
- 21 1. For the initial or first phase of development, the type and
22 intensity of use for a specific parcel or parcels, including at a
23 minimum, the boundaries of the project and a subdivision
24 plan that has been approved pursuant to G.S. 153A-330
25 through G.S. 153A-335 or G.S. 160A-371 through
26 G.S. 160A-376.
- 27 2. For any subsequent phase of development, sufficient detail so
28 that implementation of the requirements of this section to that
29 phase of development would require a material change in that
30 phase of the plan.
- 31 h. A vested right to the development pursuant to common law.
- 32 (3) Redevelopment activities that result in no net increase in built upon area and
33 provide stormwater control equal to the previous development.
- 34 (4) Development activities for which a complete Stormwater Permit Application
35 has been accepted by the Division of Water ~~Quality Resources~~ prior to the
36 effective date of this act, shall be regulated by the provisions and
37 requirements of 15A NCAC 02H .1005 that were effective at the time that
38 this application was accepted as complete by the Division of Water
39 ~~Quality Resources~~. For purposes of this subsection, a Stormwater Permit
40 Application is deemed accepted as complete by the Division of Water
41 ~~Quality Resources~~ when the application is assigned a permit number in the
42 Division's Basinwide Information Management System.
- 43 (5) Development activities for which only a minor modification of a State
44 Stormwater Permit is required shall be regulated by the provisions and
45 requirements of 15A NCAC 02H .1005 that were effective at the time of the
46 original issuance of the State Stormwater Permit. For purposes of this
47 subsection, a minor modification of a State Stormwater Permit is defined as
48 a modification that does not increase the net area of built upon area within
49 the project site or does not increase the overall size of the stormwater
50 controls that have been previously approved for that development activity.

1 (6) Municipalities designated as a National Pollutant Discharge Elimination
2 System (NPDES) Phase 2 municipality located within the 20 Coastal
3 Counties until such time as the NPDES Phase 2 Stormwater Permit expires
4 and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater
5 Permits for municipalities located within the 20 Coastal Counties, the
6 Department shall review the permits to determine whether the permits
7 should be amended to include the provisions of this section.

8"

9 **SECTION 57.(bb)** S.L. 2009-322 reads as rewritten:

10 **"SECTION 1.(a)** The Department of Environment and Natural Resources shall establish
11 standard stormwater control best management practices and standard process water treatment
12 processes or equivalent performance standards for composting operations that are required to
13 be permitted by the Division of Water ~~Quality Resources~~ in the Department and the Division of
14 Waste Management in the Department. These practices, processes, and standards shall be
15 developed for the purpose of protecting water quality by controlling and containing stormwater
16 that is associated with composting operations, by reducing the pollutant levels of process water
17 from composting operations, and by reducing the opportunities for generation of such waters.

18 **"SECTION 1.(b)** The Division of Water ~~Quality Resources~~ shall clarify that stormwater is
19 water that does not contact anything considered a feedstock, intermediate product, or final
20 product of composting operations. The Division of Water ~~Quality Resources~~ shall clarify that
21 wastewater is leachate and water that contacts feedstocks, intermediate products, or final
22 product, of composting operations. The clarifications shall incorporate available scientifically
23 valid information obtained from sampling and analyses of North Carolina composting facilities
24 and from valid representative data from other states. In addition, the Division of Water ~~Quality~~
25 ~~Resources~~ shall establish threshold quantities of feedstocks, intermediate products, and final
26 products above which water quality permitting will be required.

27 **"SECTION 1.(c)** The Department shall establish revised water quality permitting
28 procedures for the composting industry. The revised permitting procedures shall identify the
29 various circumstances that determine which water quality permit is required for various
30 composting activities. The Department shall determine whether selected low-risk subsets of the
31 composting industry may be suitable for expedited or reduced water quality permitting
32 procedures. The determination shall include consideration of the economic impact of regulatory
33 decisions.

34 **"SECTION 1.(d)** In developing the practices, processes, and standards and the revised
35 water quality permitting procedures required by this section, the Department shall review
36 practices, processes, and standards and permitting procedures adopted by other states and
37 similar federal programs.

38 **"SECTION 1.(e)** The Department shall form a Compost Operation Stakeholder Advisory
39 Group composed of representatives from the North Carolina Chapter of the United States
40 Composting Council, the North Carolina Association of County Commissioners, the North
41 Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the
42 North Carolina Chapter of the American Water Works Association-Water Environment
43 Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste
44 Association of North America, the North Carolina Septic Tank Association, and any individual
45 or group commenting to the Department on issues related to water quality at composting
46 operations. The Compost Operation Stakeholder Advisory Group shall be convened
47 periodically to provide input and assistance to the Department.

48 **"SECTION 1.(f)** The practices, processes, and standards and the revised permitting
49 procedures shall address the site size of an operation, the nature of the feedstocks composted,
50 the type of compost production method employed, the quantity and water quality of the
51 stormwater or process water associated with composting facilities, the water quality of the

1 receiving waters, as well as operation and maintenance requirements for the resulting standard
2 stormwater control best management practices and standard process water treatment processes.

3 **"SECTION 2.** Not later than December 31, 2009, the Department shall report to the
4 Environmental Review Commission on the progress of the implementation of the provisions of
5 this act and any recommendations from the Compost Operation Stakeholder Advisory Group
6 and other commenters. The Department shall periodically make other progress reports as the
7 Commission may subsequently direct.

8 **"SECTION 3.(a)** For the period of time between the effective date of this act and phase-in
9 provided by Section 3(d) of this act, permits for composting facilities shall be handled as
10 follows:

- 11 (1) The Division of Water ~~Quality-Resources~~ shall issue interim water quality
12 permit extensions to all composting facilities applying for a water quality
13 permit renewal until the revised final water quality permitting procedures are
14 phased in, as provided in Section 3(d) of this act. The issuance of interim
15 water quality permit extensions shall be contingent upon no significant
16 changes to the existing quantities, feedstocks, and composting methods
17 permitted by the Division of Waste Management. For any facility found to
18 be causing or contributing to a violation of water quality standards, the
19 Division of Water ~~Quality-Resources~~ may subsequently determine that the
20 facility is ineligible for continued coverage under an interim water quality
21 permit extension.
- 22 (2) For facilities renewing permits issued by the Division of Waste Management
23 prior to the phase-in provided in Section 3(d) of this act, but operating
24 without the appropriate water quality permits, the Division of Water ~~Quality~~
25 ~~Resources~~ will work with those facilities on a case-by-case basis to establish
26 appropriate permit coverage.
- 27 (3) New water quality permit applications filed after July 1, 2009, shall be
28 handled on a case-by-case basis.

29 **"SECTION 3.(b)** Not later than January 1, 2010, the Department shall request comments
30 and recommendations from the Compost Operation Stakeholder Advisory Group as to standard
31 stormwater control best management practices, standard process water treatment processes, and
32 performance standards and the elements of the revised water quality permitting procedures.

33 **"SECTION 3.(c)** Not later than January 1, 2011, the Department shall establish standard
34 stormwater control best management practices and standard process water treatment processes
35 or performance standards, including standard methods for the reduction in volume for both of
36 these waters.

37 **"SECTION 3.(d)** Not later than January 1, 2011, the Department shall begin the phase-in
38 of the revised water quality permitting procedures for the composting industry. Complete phase
39 in of the revised water quality permitting procedures shall be accomplished not later than
40 October 1, 2012.

41 **"SECTION 3.(e)** Water quality permits for the composting industry shall include a
42 reopener clause that may be used to revise permit conditions to reflect the results of the
43 stakeholder process.

44 **"SECTION 4.** This act is effective when it becomes law."

45 **SECTION 57.(cc)** Section 4(b) of S.L. 2010-180 reads as rewritten:

46 **"SECTION 4.(b)** In implementing the Surface Water Identification Training and
47 Certification Program established by G.S. 143-214.25A, as enacted by Section 4(a) of this act,
48 the Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural
49 Resources shall give priority to training and certifying the most highly qualified and
50 experienced personnel in each agency. The Division of Water ~~Quality-Resources~~ shall evaluate
51 the effectiveness of the Surface Water Identification Training and Certification Program and

1 shall submit an annual report of its findings and recommendations, if any, to the Environmental
2 Review Commission on or before October 1 of each year. The Division of Water ~~Quality~~
3 Resources shall submit the first report required by this section on or before October 1, 2011."

4 **SECTION 57.(dd)** Section 4 of S.L. 2005-190, as amended by Section 31 of S.L.
5 2006-59 and Section 12 of S.L. 2010-180, reads as rewritten:

6 "SECTION 4. **Other drinking water supply reservoirs.** – The Environmental
7 Management Commission shall not make any new or increased nutrient loading allocation to
8 any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater
9 discharge directly or indirectly into any impaired drinking water supply reservoir for which the
10 Division of Water ~~Quality-Resources~~ of the Department of Environment and Natural Resources
11 has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent
12 rules adopted by the Commission to implement the nutrient management strategy for that
13 reservoir become effective. The Commission shall report its progress in developing and
14 implementing nutrient management strategies for reservoirs to which this section applies to the
15 Environmental Review Commission by 1 April of each year beginning 1 April 2006."

16 **SECTION 57.(ee)** Section 13.4(b) of S.L. 2011-145 reads as rewritten:

17 "SECTION 13.4.(b) During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the
18 Groundwater Investigation Unit of the Division of Water ~~Quality-Resources~~ of the Department
19 of Environment and Natural Resources shall bid to contract to perform well drilling services for
20 any division within the Department of Environment and Natural Resources that needs to have
21 wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of
22 any other division or program responsibility, except for a particular instance when this would
23 be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to
24 any contract entered into under this section."

25 **SECTION 57.(ff)** Section 21 of Session Law 2011-394 reads as rewritten:

26 "SECTION 21. In order to ensure the ongoing delivery of services by the nonpoint source
27 pollution control programs of the Division of Forest Resources and the Division of Soil and
28 Water Conservation, the Division of Water ~~Quality-Resources~~ in the Department of
29 Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319
30 Nonpoint Source Management Program Base Grant funds to the Division of Forest Resources
31 and Division of Soil and Water Conservation, where consistent with the federal grant program
32 requirements, in an amount that is no less than the average annual amount of funding received
33 by each of those two Divisions over the two most-recent fiscal bienniums. In the event that the
34 level of Section 319 base grant funds received by the Department of Environment and Natural
35 Resources by the United States Environmental Protection Agency is increased or decreased in
36 any funding cycle, the level of funding received by the Division of Forest Resources and the
37 Division of Soil and Water Conservation shall be adjusted proportionally. Section 319
38 Nonpoint Source Management Program Competitive Grant funds shall consider water quality
39 benefit and be distributed in a fair and equitable manner based on the grant requirements and
40 the benefit. The Division of Water ~~Quality-Resources~~ will establish a Workgroup of Nonpoint
41 Source Agencies, including the Division of Forest Resources and the Division of Soil and
42 Water Conservation, which will consider the competitive grant project proposals. The
43 Workgroup will be given full input to the project funding decisions."

44 **SECTION 57.(gg)** G.S. 143-215.10F, as amended by S.L. 2013-131, reads as
45 rewritten:

46 "§ 143-215.10F. **Inspections.**

47 (a) Except as provided in subsection (b) of this section, the Division shall conduct
48 inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least
49 once a year to determine whether the system is causing a violation of water quality standards
50 and whether the system is in compliance with its animal waste management plan or any other
51 condition of the permit.

1 (b) As an alternative to the inspection program set forth in subsection (a) of this section,
2 the Division of Soil and Water Conservation of the Department of Agriculture and Consumer
3 Services shall conduct inspections of all animal operations that are subject to a permit under
4 G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of
5 water quality standards and whether the system is in compliance with its animal waste
6 management plan or any other condition of the permit. The alternative inspection program shall
7 be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L.
8 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and
9 Consumer Services shall establish procedures whereby resources within the local Soil and
10 Water Conservation Districts serving the counties are used for quick response to complaints
11 and reported problems previously referred only to the Division of Water ~~Quality Resources.~~"
12

13 **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,**
14 **ENVIRONMENTAL REVIEW COMMISSION, AND OTHERS TO STUDY REVIEW**
15 **OF ENGINEERING WORK**

16 **SECTION 58.(a)** The Department of Environment and Natural Resources, in
17 conjunction with the Departments of Transportation and Health and Human Services, and local
18 governments operating delegated permitting programs on behalf of the departments, shall study
19 their internal processes for review of applications and plans submitted for approval. In
20 particular, the departments, and local governments as applicable, shall examine: (i) standard
21 processes for each environmental permit program with respect to evaluation of applications and
22 plans submitted for approval, including the role professional engineers play in each permit
23 program in terms of direct review of applications or plans, or supervisory responsibilities for
24 review of applications and plans by other staff; (ii) mechanisms in place to ensure that staff
25 who are not professional engineers are not engaged in the unauthorized practice of engineering;
26 (iii) the standard scope of review within each permit program, including whether staff are
27 reviewing applications or plans solely on the basis of the application or plan's ability to satisfy
28 the requirements of the statute, rule, standard, or criterion against which the application or plan
29 is being evaluated, or whether staff are requiring revisions that exceed statutory or rulemaking
30 requirements when evaluating such permits or plans; (iv) opportunities to eliminate
31 unnecessary or superfluous revisions that may have resulted in the past from review processes
32 that exceeded requirements under law, and opportunities to otherwise streamline and improve
33 the review process for applications and plans submitted for approval.

34 **SECTION 58.(b)** The Department of Environment and Natural Resources, in
35 conjunction with the Departments of Transportation and Health and Human Services, and local
36 governments operating delegated permitting programs on behalf of the departments, shall
37 report their findings and recommendations to the Environmental Review Commission no later
38 than January 1, 2014.

39 **SECTION 58.(c)** The Environmental Review Commission shall study the matter,
40 with the assistance of the departments, applicable local governments, the North Carolina State
41 Board of Examiners for Engineers and Surveyors, and the Professional Engineers of North
42 Carolina, and report its findings and recommendations on the matter, including any legislative
43 proposals, to the 2014 General Assembly upon its convening.
44

45 **PART VI. SOLID WASTE REFORM PROVISIONS**

46
47 **MODIFICATION TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL**
48 **RESOURCES' AUTHORITY TO ISSUE PERMITS FOR SOLID WASTE**
49 **MANAGEMENT FACILITIES**

50 **SECTION 59.(a)** G.S. 130A-294 reads as rewritten:
51 **"§ 130A-294. Solid waste management program.**

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

4 ...
 5 (4) ...

6 c. The Department shall deny an application for a permit for a solid
 7 waste management facility if the Department finds that:

8 ...
 9 9. The cumulative impact of the proposed facility, when
 10 considered in relation to other similar impacts of facilities
 11 located or proposed in the community, would have a
 12 disproportionate adverse impact on a minority or low-income
 13 community protected by Title VI of the federal Civil Rights
 14 Act of 1964. This subdivision shall apply only to the extent
 15 required by federal law.

16"

17
 18 **MODIFICATIONS TO CERTAIN REQUIREMENTS GOVERNING SANITARY**
 19 **LANDFILLS INCLUDING: ENVIRONMENTAL IMPACT STUDIES, APPLICABLE**
 20 **BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES,**
 21 **ALTERNATIVE DAILY COVER, AND REQUIRED STUDIES FOR CERTAIN**
 22 **LANDFILL OWNERS AND OPERATORS**

23 **SECTION 59.1** G.S. 130A-295.6 reads as rewritten:

24 "**§ 130A-295.6. Additional requirements for sanitary landfills.**

25 (a) The applicant for a proposed sanitary landfill shall contract with a qualified third
 26 party, approved by the Department, Department shall to conduct a study of the environmental
 27 impacts of any proposed sanitary landfill-landfill, in conjunction with its application for a new
 28 permit as defined in sub-subdivisions a. through d. of subdivision (1) of subsection (b) of
 29 G.S. 130A-295.8. The study shall meet all of the requirements set forth in G.S. 113A-4 and
 30 rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, the
 31 Department shall publish notice of the draft environmental impact statement and shall hold a
 32 public hearing in the county where the landfill will be located no sooner than 30 days following
 33 the public notice. The Department shall consider the study of environmental impacts and any
 34 mitigation measures proposed by the applicant in deciding whether to issue or deny a permit.
 35 An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department
 36 to comply with the public notice and public hearing requirements of this subsection, this
 37 subsection including the costs of any special studies that may be required.

38 ...

39 (d) The Department shall not issue a permit to construct any disposal unit of a sanitary
 40 landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of
 41 an option to purchase the land on which the waste disposal unit will be located, (ii) the
 42 application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the
 43 application for a permit, any portion of the proposed waste disposal unit would be located
 44 within:

- 45 (1) Five miles of the outermost boundary of a National Wildlife Refuge.
- 46 (2) One mile of the outermost boundary of a State gameland owned, leased, or
 47 managed by the Wildlife Resources Commission pursuant to G.S. 113-306,
 48 prior to July 1, 2013, except as provided in subdivision (2a) of this
 49 subsection.
- 50 (2a) Five hundred feet of the outermost boundary of a State gameland owned,
 51 leased, or managed by the Wildlife Resources Commission pursuant to

- 1 G.S. 113-306, prior to July 1, 2013, when all of the following conditions
2 apply:
- 3 a. The waste disposal unit will only be permitted to accept construction
4 and demolition debris waste.
- 5 b. The disposal unit is located within the primary corporate limits of a
6 municipality located in a county with a population of less than
7 15,000.
- 8 c. All portions of the gameland within one mile of the disposal unit are
9 separated from the disposal unit by a primary highway designated by
10 the Federal Highway Administration as a U.S. Highway.
- 11 (3) Two miles of the outermost boundary of a component of the State Parks
12 System.
- 13 ...
- 14 (h) The following requirements apply to any sanitary landfill for which a liner is
15 required:
- 16 (1) A geomembrane base liner system shall be tested for leaks and damage by
17 methods approved by the Department that ensure that the entire liner is
18 evaluated.
- 19 (2) A leachate collection system shall be designed to return the head of the liner
20 to 30 centimeters or less within 72 hours. The design shall be based on the
21 precipitation that would fall on an empty cell of the sanitary landfill as a
22 result of a 25-year-24-hour storm event. The leachate collection system shall
23 maintain a head of less than 30 centimeters at all times during leachate
24 recirculation. The Department may require the operator to monitor the head
25 of the liner to demonstrate that the head is being maintained in accordance
26 with this subdivision and any applicable rules.
- 27 (3) All leachate collection lines shall be designed and constructed to
28 permanently allow cleaning and remote camera inspection. Remote camera
29 inspections of the leachate collection lines shall occur upon completion of
30 the construction and at least once every five years. Cleaning of leachate
31 collection lines found necessary for proper functioning and to address
32 buildup of leachate over the liner shall occur. ~~All leachate collection lines~~
33 ~~shall be cleaned at least once a year, except that the Department may allow~~
34 ~~leachate collection lines to be cleaned once every two years if: (i) the facility~~
35 ~~has continuous flow monitoring; and (ii) the permit holder demonstrates to~~
36 ~~the Department that the leachate collection lines are clear and functional~~
37 ~~based on at least three consecutive annual cleanings. Remote camera~~
38 ~~inspections of the leachate collection lines shall occur upon completion of~~
39 ~~construction, at least once every five years thereafter, and following the~~
40 ~~clearing of blockages.~~
- 41 (4) Any pipes used to transmit leachate shall provide dual containment outside
42 of the disposal unit. The bottom liner of a sanitary landfill shall be
43 constructed without pipe penetrations.
- 44 (h1) With respect to requirements for daily cover at sanitary landfills, once the
45 Department has approved use of an alternative method of daily cover for use at any sanitary
46 landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills
47 located within the State.
- 48 (h2) Studies and research and development pertaining to alternative disposal techniques
49 and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:
- 50 (1) The owner or operator of any sanitary landfill permitted to receive more than
51 240,000 tons of waste per year shall research the development of alternative

1 disposal technologies. In addition, the owner or operator shall allow access
2 to nonproprietary information and provide site resources for individual
3 research and development projects related to alternative disposal techniques
4 for the purpose of studies that may be conducted by local community or
5 State colleges and universities or other third-party developers or consultants.
6 The owner or operator shall report on research and development activities
7 conducted pursuant to this subdivision, and any results of these activities, to
8 the Department annually on or before July 1.

9 (2) The owner or operator of any sanitary landfill permitted to receive more than
10 240,000 tons of waste per year shall perform a feasibility study of landfill
11 gas-to-energy, or other waste-to-energy technology, to determine
12 opportunities for production of renewable energy from landfills in order to
13 promote economic development and job creation in the State. The owner or
14 operator shall initiate the study when sufficient waste is in place at the
15 landfill to produce gas, as determined by the United States Environmental
16 Protection Agency's Landfill Gas Emissions Model (LandGEM), and may
17 consult and coordinate with other entities to facilitate conduct of the study,
18 including local and State government agencies, economic development
19 organizations, consultants, and third-party developers. The study shall
20 specifically examine opportunities for returning a portion of the benefits
21 derived from energy produced from the landfill to the jurisdiction within
22 which the landfill is located in the form of direct supply of energy to the
23 local government and its citizens, or through revenue sharing with the local
24 government from sale of the energy, with revenues owing to the local
25 government credited to a fund specifically designated for economic
26 development within the jurisdiction. The owner or operator shall report on
27 its activities associated with the study, and any results of the study, to the
28 Department annually on or before July 1.

29"

30
31 **AMEND THE RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID**
32 **WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER**
33 **THAN "LEAK-PROOF," AND AMEND A STATUTE THAT REQUIRES VEHICLES**
34 **TO BE CONSTRUCTED AND LOADED TO PREVENT LEAKAGE**

35 **SECTION 59.2(a)** Definitions. – "Collection and Transport Rule" means 15A
36 NCAC 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section
37 and its implementation.

38 **SECTION 59.2(b)** Collection and Transport Rule. – Until the effective date of the
39 revised permanent rule that the Commission for Public Health is required to adopt pursuant to
40 Section 59.2(d) of this act, the Commission and the Department of Environment and Natural
41 Resources shall implement the Collection and Transport Rule, as provided in Section 59.2(c) of
42 this act.

43 **SECTION 59.2(c)** Implementation. – Notwithstanding any provision of the
44 Collection and Transport Rule, the Commission shall not require vehicles or containers used for
45 the collection and transportation of solid waste to be leak-proof; however, they may require that
46 these containers be designed and maintained to be leak-resistant in accordance with industry
47 standards.

48 **SECTION 59.2(d)** Additional Rule-Making Authority. – The Commission shall
49 adopt a rule to replace the Collection and Transport Rule. Notwithstanding G.S. 150B-19(4),
50 the rule adopted by the Commission pursuant to this section shall be substantively identical to
51 the provisions of Section 59.2(c) of this act. Rules adopted pursuant to this section are not

1 subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule adopted pursuant to this section
2 shall become effective, as provided in G.S. 150B-21.3(b1), as though 10 or more written
3 objections had been received, as provided by G.S. 150B-21.3(b2).

4 **SECTION 59.2(e)** Effective Date. – Section 59.2(c) of this act expires when
5 permanent rules to replace Section 59.2(c) of this act have become effective, as provided by
6 Section 59.2(d) of this act.

7 **SECTION 59.2(f)** G.S. 20-116(g)(1) reads as rewritten:

8 "**§ 20-116. Size of vehicles and loads.**

9 ...
10 (g) (1) No vehicle shall be driven or moved on any highway unless the vehicle is
11 constructed and loaded to prevent any of its load from falling, blowing,
12 dropping, sifting, leaking, or otherwise escaping therefrom, and the vehicle
13 shall not contain any holes, cracks, or openings through which any of its
14 load may escape. However, sand may be dropped for the purpose of securing
15 traction, or water or other substance may be sprinkled, dumped, or spread on
16 a roadway in cleaning or maintaining the roadway. For purposes of this
17 subsection, ~~load~~ the terms "load" and "leaking" ~~does do~~ not include water
18 accumulated from precipitation."
19

20 **AMEND THE DEFINITION OF "LEACHATE" TO EXCLUDE LIQUID ADHERING**
21 **TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS AND TRANSFER**
22 **STATIONS**

23 **SECTION 59.3** G.S. 130A-290 is amended by adding a new subdivision to read:

24 "(16a) "Leachate" means a liquid that has passed through or emerged from solid
25 waste and contains soluble, suspended, or miscible materials removed from
26 such waste. The term "leachate" does not include liquid adhering to tires of
27 vehicles leaving a sanitary landfill and transfer stations."
28

29 **AUTHORIZE: (1) CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM**
30 **OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE**
31 **OF THEIR DISPOSAL FACILITIES, AND (2) APPROPRIATIONS FROM A UTILITY**
32 **OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A**
33 **LANDFILL TO THE JURISDICTION'S GENERAL FUND IN CERTAIN**
34 **CIRCUMSTANCES**

35 **SECTION 59.4.(a)** G.S. 153A-292(b) reads as rewritten:

36 "(b) The board of county commissioners may impose a fee for the collection of solid
37 waste. The fee may not exceed the costs of collection.

38 The board of county commissioners may impose a fee for the use of a disposal facility
39 provided by the county. ~~The~~ Except as provided in this subsection, the fee for use may not
40 exceed the cost of operating the facility and may be imposed only on those who use the facility.
41 The fee may exceed those costs if the county enters into a contract with another local
42 government located within the State to accept the other local government's solid waste and the
43 county by ordinance levies a surcharge on the fee. The fee authorized by this paragraph may
44 only be used to cover the costs of operating the facility. The surcharge authorized by this
45 paragraph may be used for any purpose for which the county may appropriate funds. A fee
46 under this paragraph may be imposed only on those who use the facility. The fee for use may
47 vary based on the amount, characteristics, and form of recyclable materials present in solid
48 waste brought to the facility for disposal. A county may not impose a fee for the use of a
49 disposal facility on a city located in the county or a contractor or resident of the city unless the
50 fee is based on a schedule that applies uniformly throughout the county.

1 The board of county commissioners may impose a fee for the availability of a disposal
2 facility provided by the county. A fee for availability may not exceed the cost of providing the
3 facility and may be imposed on all improved property in the county that benefits from the
4 availability of the facility. A county may not impose an availability fee on property whose solid
5 waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a
6 county, a city, or a private contractor for the collection of solid waste includes a charge for the
7 availability and use of a disposal facility provided by the county. Property served by a private
8 contractor who disposes of solid waste collected from the property in a disposal facility
9 provided by a private contractor that provides the same services as those provided by the
10 county disposal facility is not considered to benefit from a disposal facility provided by the
11 county and is not subject to a fee imposed by the county for the availability of a disposal
12 facility provided by the county. To the extent that the services provided by the county disposal
13 facility differ from the services provided by the disposal facility provided by a private
14 contractor in the same county, the county may charge an availability fee to cover the costs of
15 the additional services provided by the county disposal facility.

16 In determining the costs of providing and operating a disposal facility, a county may
17 consider solid waste management costs incidental to a county's handling and disposal of solid
18 waste at its disposal facility, including the costs of the methods of solid waste management
19 specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the
20 availability or use of a disposal facility may be based on the combined costs of the different
21 disposal facilities provided by the county."

22 **SECTION 59.4.(b)** G.S. 159-13(b)(14) reads as rewritten:

23 "(b) The following directions and limitations shall bind the governing board in adopting
24 the budget ordinance:

25 ...

26 (14) No appropriation may be made from a utility or public service enterprise
27 fund to any other fund than the appropriate debt service fund unless the total
28 of all other appropriations in the fund equal or exceed the amount that will
29 be required during the fiscal year, as shown by the budget ordinance, to meet
30 operating expenses, capital outlay, and debt service on outstanding utility or
31 enterprise bonds or notes. A county may, upon a finding that a fund balance
32 in a utility or public service enterprise fund used for operation of a landfill
33 exceeds the requirements for funding the operation of that fund, including
34 closure and post-closure expenditures, transfer excess funds accruing due to
35 imposition of a surcharge imposed on another local government located
36 within the State for use of the disposal facility, as authorized by
37 G.S. 153A-292(b), to support the other services supported by the county's
38 general fund."

39 **SECTION 59.4.(c)** G.S. 160A-314.1 reads as rewritten:

40 "**§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid**
41 **waste fees.**

42 (a) A city may impose a fee for the collection of solid waste. The fee may not exceed
43 the costs of collection.

44 A city may impose a fee for the use of a disposal facility provided by the city. Except as
45 provided in this subsection, the fee for use may not exceed the cost of operating the facility.
46 The fee may exceed those costs if the city enters into a contract with another local government
47 located within the State to accept the other local government's solid waste and the city by
48 ordinance levies a surcharge on the fee. The fee authorized by this paragraph may only be used
49 to cover the costs of operating the facility. The surcharge authorized by this paragraph may be
50 used for any purpose for which the city may appropriate funds. A fee under this paragraph may
51 be imposed only on those who use the facility. The fee for use may vary based on the amount,

1 characteristics, and form of recyclable materials present in solid waste brought to the facility
2 for disposal.

3 (a1) In addition to a fee that a city may impose for collecting solid waste or for using a
4 disposal facility, a city may impose a fee for the availability of a disposal facility provided by
5 the city. A fee for availability may not exceed the cost of providing the facility and may be
6 imposed on all improved property in the city that benefits from the availability of the facility. A
7 city may not impose an availability fee on property whose solid waste is collected by a county,
8 a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private
9 contractor for the collection of solid waste includes a charge for the availability and use of a
10 disposal facility provided by the city. Property served by a private contractor who disposes of
11 solid waste collected from the property in a disposal facility provided by a private contractor
12 that provides the same services as those provided by the city disposal facility is not considered
13 to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the
14 city for the availability of a disposal facility provided by the city. To the extent that the services
15 provided by the city disposal facility differ from the services provided by the disposal facility
16 provided by a private contractor in the same city, the city may charge an availability fee to
17 cover the costs of the additional services provided by the city disposal facility.

18 In determining the costs of providing and operating a disposal facility, a city may consider
19 solid waste management costs incidental to a city's handling and disposal of solid waste at its
20 disposal facility. A fee for the availability or use of a disposal facility may be based on the
21 combined costs of the different disposal facilities provided by the city.

22 (b) A city may adopt an ordinance providing that any fee imposed under subsection (a)
23 or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property
24 taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment,
25 may be collected in any manner by which delinquent personal or real property taxes can be
26 collected. If an ordinance states that delinquent fees can be collected in the same manner as
27 delinquent real property taxes, the fees are a lien on the real property described on the bill that
28 includes the fee."

29 **SECTION 59.4(d)** G.S. 160A-314(a2) reads as rewritten:

30 "**§ 160A-314. Authority to fix and enforce rates.**

31 ...

32 (a2) A fee for the use of a disposal facility provided by the city may vary based on the
33 amount, characteristics, and form of recyclable materials present in solid waste brought to the
34 facility for disposal. This section does not prohibit a city from providing aid to low-income
35 persons to pay all or part of the cost of solid waste management services for those persons. A
36 city may, upon a finding that a fund balance in a utility or public service enterprise fund used
37 for operation of a landfill exceeds the requirements for funding the operation of that fund,
38 including closure and post-closure expenditures, transfer excess funds accruing due to
39 imposition of a surcharge imposed on another local government located within the State for use
40 of the disposal facility, as authorized by G.S. 160A-314.1, to be used to support the other
41 services supported by the city's general fund.

42"

43 **SECTION 59.4.(e)** G.S. 130A-294(b1) is amended by adding a new subdivision to
44 read:

45 "(2b) A local government may elect to include as part of a franchise agreement a
46 surcharge on waste disposed of in its jurisdiction by other local governments
47 located within the State. Funds collected by a local government pursuant to
48 such a surcharge may be used to support any services supported by the local
49 government's general fund"

50 **SECTION 59.4.(f)** This section becomes effective August 1, 2013, and Section
51 59.4(e) is applicable to franchise agreements executed on or after that date.

1
2 **PART VII. INDUSTRIAL COMMISSION**

3 **SECTION 60.(a)** G.S. 97-78(b) reads as rewritten:

4 "(b) The Commission may appoint an administrator whose duties shall be prescribed by
5 the ~~Commission, and who shall be subject to the State Personnel System.~~Commission. The
6 Commission may appoint an executive secretary whose duties shall be prescribed by the
7 Commission, ~~and who shall be subject to the State Personnel System~~ and who, upon entering
8 upon his duties, shall give bond in such sum as may be fixed by the Commission. The
9 Commission may also employ such clerical or other assistance as it may deem necessary, and
10 fix the compensation of its staff, except that the salaries of the administrator and the executive
11 secretary shall be fixed by subsection (b1) of this section. The compensation of Commission
12 staff shall be in keeping with the compensation paid to the persons employed to do similar
13 work in other State departments."

14 **SECTION 60.(b)** G.S. 97-79(b) reads as rewritten:

15 "(b) The Commission may appoint deputies who shall have the same power as members
16 of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter
17 orders, opinions, and awards based thereon as is possessed by the members of the Commission.
18 ~~The deputies shall be subject to the State Personnel System.~~Deputies appointed pursuant to this
19 subsection shall not be considered hearing officers within the meaning of G.S. 126-5(d)(7)."

20 **SECTION 60.(c)** This act becomes effective July 1, 2015.
21

22 **PART VIII. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

23 **SECTION 61.(a)** If any section or provision of this act is declared unconstitutional
24 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
25 than the part so declared to be unconstitutional or invalid.

26 **SECTION 61.(b)** Except as otherwise provided, this act is effective when it
27 becomes law.