

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 765

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/29/15

PROPOSED SENATE COMMITTEE SUBSTITUTE H765-PCS30399-ROf-21

Short Title: Regulatory Reform Act of 2015.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF
NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE
REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED
STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING
CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS
OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE REFORMS

REPEAL OBSOLETE STATUTES

SECTION 1.1. The following statutes are repealed:

- (1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.
- (2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.2.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-25.1. Burden of proof.

(a) Except as otherwise provided by law or by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by a preponderance of the evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing by a preponderance of the evidence that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."



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1 **SECTION 1.2.(b)** The Joint Legislative Administrative Procedure Oversight
2 Committee shall study whether there are other categories of contested cases in which the
3 burden of proof should be placed with the agency.

4 **SECTION 1.2.(c)** This section is effective when this act becomes law and applies
5 to contested cases commenced on or after that date.

6 7 **LEGISLATIVE APPOINTMENTS**

8 **SECTION 1.3.(a)** G.S. 120-121 is amended by adding two new subsections to
9 read:

10 "(e) The following applies in any case where the Speaker of the House of
11 Representatives or the President Pro Tempore of the Senate is directed by law to make a
12 recommendation for an appointment by the General Assembly, and the legislator is also
13 directed to make the recommendation in consultation with or upon the recommendation of a
14 third party:

15 (1) The recommendation or consultation is discretionary and is not binding upon
16 the legislator.

17 (2) The third party must submit the recommendation or consultation at least 60
18 days prior to the expiration of the term or within 10 business days from the
19 occurrence of a vacancy.

20 (3) Failure by the third party to submit the recommendation or consultation to
21 the legislator within the time periods required under this subsection shall be
22 deemed a waiver by the third party of the opportunity.

23 (f) The following applies in any case where the Speaker of the House of
24 Representatives or the President Pro Tempore of the Senate is directed by law to make a
25 recommendation for an appointment by the General Assembly, and the legislator is also
26 directed to make the recommendation from nominees provided by a third party:

27 (1) The third party must submit the nominees at least 60 days prior to the
28 expiration of the term or within 10 business days from the occurrence of a
29 vacancy.

30 (2) Failure by the third party to submit the nomination to the legislator within
31 the time periods required under this subsection shall be deemed a waiver by
32 the third party of the opportunity."

33 **SECTION 1.3.(b)** Article 16 of Chapter 120 of the General Statutes is amended by
34 adding a new section to read:

35 **"§ 120-124. Appointments made by legislators.**

36 (a) In any case where a legislator is called upon by law to appoint a member to a board
37 or commission upon the recommendation of or in consultation with a third party, the
38 recommendation or consultation is discretionary and is not binding upon the legislator. The
39 third party must submit the recommendation or consultation at least 60 days prior to the
40 expiration of the term or within 10 business days from the occurrence of a vacancy.

41 (b) In any case where a legislator is called upon by law to appoint a member to a board
42 or commission from nominees provided by a third party, the third party must submit the
43 nominees at least 60 days prior to the expiration of the term or within 10 business days from the
44 occurrence of a vacancy. This subsection does not apply to nominations made under
45 G.S. 120-99(a) or G.S. 120-100(b).

46 (c) Failure to submit the recommendation, consultation, or nomination within the time
47 periods required under this section shall be deemed a waiver by the third party of the
48 opportunity."

49 **SECTION 1.3.(c)** This section is effective when this act becomes law and applies
50 to recommendations, consultations, and nominations made on or after that date.

51

1 **ALLOW ATTORNEYS' FEES WHEN THE STATE IS THE PREVAILING PARTY IN**
2 **CERTAIN CIVIL ACTIONS AND CLARIFY AND STANDARDIZE THE**
3 **REQUIREMENTS TO AWARD ATTORNEYS' FEES IN ACTIONS INVOLVING THE**
4 **STATE**

5 **SECTION 1.4.(a) G.S. 6-19.1 reads as rewritten:**

6 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision in**
7 **certain actions involving the State.**

8 (a) Prevailing Party Is Not the State. – In any civil action, other than an adjudication for
9 the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board,
10 brought by the State or brought by a party who is contesting State action pursuant to
11 G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the
12 State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's
13 fees, including attorney's fees applicable to the administrative review portion of the case, in
14 contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the
15 appropriate agency of the State if:

- 16 (1) The court finds that the agency acted without substantial justification in
17 pressing its claim against the party; and
18 (2) The court finds that there are no special circumstances that would make the
19 award of attorney's fees unjust. ~~The party shall petition for the attorney's fees~~
20 ~~within 30 days following final disposition of the case. The petition shall be~~
21 ~~supported by an affidavit setting forth the basis for the request.~~

22 Nothing in this ~~section-subsection~~ shall be deemed to authorize the assessment of attorney's
23 fees for the administrative review portion of the case in contested cases arising under Article 9
24 of Chapter 131E of the General Statutes.

25 ~~Nothing in this section grants permission to bring an action against an agency otherwise~~
26 ~~immune from suit or gives a right to bring an action to a party who otherwise lacks standing to~~
27 ~~bring the action.~~

28 Any attorney's fees assessed against an agency of the State under this ~~section-subsection~~
29 shall be charged against the operating expenses of the agency and shall not be reimbursed from
30 any other source.

31 (b) Expired.

32 (c) Prevailing Party Is the State. – In any civil action or other proceeding, the court
33 must allow the State to recover reasonable attorneys' fees and costs if the State is the prevailing
34 party and the claim or issue involves one or both of the following:

- 35 (1) Contesting the State's ability to construct transportation improvements.
36 (2) Seeking relief based on environmental impact.

37 Reasonable attorneys' fees include attorneys' fees applicable to any administrative portion
38 of the case. The attorneys' fees must be taxed as court costs against any law firm seeking relief
39 against the State. Contracts between the law firm and named parties in the action to reimburse
40 the law firm for attorneys' fees are valid and enforceable. Law firms may avoid liability under
41 this subsection if the named parties post a bond for the payment of attorneys' fees and costs in
42 an amount determined by the presiding judge. Upon motion of either party, the presiding judge
43 may adjust the amount of the required bond at reasonable times.

44 (d) Petition and Award. – The prevailing party must petition for the attorneys' fees
45 within 30 days following final disposition of the case. The petition must be supported by an
46 affidavit setting forth the basis for the request. When the presiding judge determines that an
47 award of attorneys' fees is to be made under this section, the judge must issue a written order
48 including the factual basis and amount of attorneys' fees to be awarded.

49 (e) No Grant of Jurisdiction. – Nothing in this section grants permission to bring an
50 action against the State when otherwise immune from suit or gives a right to bring an action to
51 a party who otherwise lacks standing to bring the action.

1 (f) Definitions. – The following definitions apply in this section:

2 (1) Law firm. – Any entity or individual providing legal services in the action
3 against the State.

4 (2) State. – The State and its agencies as defined in G.S. 150B-2(1a)."

5 **SECTION 1.4.(b)** This section becomes effective September 1, 2015, and applies
6 to all actions or other proceedings filed on and after that date.

7 8 **OCCUPATIONAL LICENSING BOARD INVESTIGATORS AND INSPECTORS**

9 **SECTION 1.5.** Chapter 93B of the General Statutes is amended by adding a new
10 section to read:

11 **"§ 93B-8.2. Prohibit licensees from serving as investigators.**

12 No occupational licensing board shall contract with or employ a person licensed by the
13 board to serve as an investigator or inspector if the licensee is actively practicing in the
14 profession or occupation over which the board has jurisdiction. Nothing in this section shall
15 prevent a board from employing licensees who are not otherwise employed in the same
16 profession or occupation or for other purposes."

17 18 **NO FISCAL NOTE REQUIRED FOR LESS STRINGENT RULES**

19 **SECTION 1.6.(a)** G.S. 150B-21.3A(d) reads as rewritten:

20 "(d) Timetable. – The Commission shall establish a schedule for the review and
21 readoption of existing rules in accordance with this section on a decennial basis as follows:

22 ...

23 (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g.
24 of this section, once the final determination report becomes effective, the
25 Commission shall establish a date by which the agency must readopt the
26 rules. The Commission shall consult with the agency and shall consider the
27 agency's rule-making priorities in establishing the readoption date. The
28 agency may amend a rule as part of the readoption process. If a rule is
29 readopted without substantive ~~change~~, change or if the rule is amended to
30 impose a less stringent burden on regulated persons, the agency is not
31 required to prepare a fiscal note as provided by G.S. 150B-21.4."

32 **SECTION 1.6.(b)** This section is effective when this act becomes law and applies
33 to periodic review of existing rules occurring pursuant to G.S. 150B-21.3A on or after that date.

34 35 **APO TO MAKE RECOMMENDATIONS ON OCCUPATIONAL LICENSING BOARD** 36 **CHANGES**

37 **SECTION 1.7.** Pursuant to G.S. 120-70.101(3a), the Joint Legislative
38 Administrative Procedure Oversight Committee (APO) shall review the recommendations
39 contained in the Joint Legislative Program Evaluation Oversight Committee's report, entitled
40 "Occupational Licensing Agencies Should Not be Centralized, but Stronger Oversight is
41 Needed," to determine the best way to accomplish the recommendations contained in the report
42 and to improve oversight of occupational licensing boards. In conducting the review, APO shall
43 consult with occupational licensing boards, licensees, associations representing licensees, the
44 Department of Commerce, and other interested parties. The APO cochairs may establish
45 subcommittees to assist with various parts of the review, including determining whether
46 licensing authority should be continued for the 12 boards identified in the report. The APO
47 shall propose legislation to the 2016 Regular Session of the 2015 General Assembly.

48 49 **TECHNICAL CORRECTION**

50 **SECTION 1.8.** G.S. 20-116 reads as rewritten:

51 **"§ 20-116. Size of vehicles and loads.**

- 1 ...
 2 (g) ...
 3 (3) A truck, trailer, or other ~~vehicle~~:
 4 a. ~~Licensed~~ vehicle licensed for 7,500 pounds or less gross vehicle
 5 weight and loaded with rock, gravel, stone, or any other similar
 6 substance that could fall, blow, leak, or sift, or licensed for any gross
 7 vehicle weight and loaded with sand; or sand,
 8 b. ~~Licensed for 7,500 pounds or less gross vehicle weight and loaded~~
 9 ~~with rock, gravel, stone, or any other similar substance that could~~
 10 ~~fall, blow, leak, sift, or drop;~~
 11 shall not be driven or moved on any highway unless:
 12 a. The height of the load against all four walls does not extend above a
 13 horizontal line six inches below the top when loaded at the loading
 14 point;
 15 b. The load is securely covered by tarpaulin or some other suitable
 16 covering; or
 17 c. The vehicle is constructed to prevent any of its load from falling,
 18 dropping, sifting, leaking, blowing, or otherwise escaping therefrom.
 19"

20
 21 **PART II. BUSINESS REGULATION**

22
 23 **EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED**
 24 **PROPERTY**

25 **SECTION 2.1.** G.S. 93A-2(c)(1) reads as rewritten:

- 26 "(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:
 27 (1) Any partnership, corporation, limited liability company, association, or other
 28 business entity that, as owner or lessor, shall perform any of the acts
 29 aforesaid with reference to property owned or leased by them, where the acts
 30 are performed in the regular course of or as incident to the management of
 31 that property and the investment therein. The exemption from licensure
 32 under this subsection shall extend to the following persons when those
 33 persons are engaged in acts or services for which the corporation,
 34 partnership, limited liability company, or other business entity would be
 35 exempt hereunder:
 36 a. The officers and employees of an exempt corporation, the
 37 corporation.
 38 b. The general partners and employees of an exempt partnership, and
 39 the partnership.
 40 c. The managers and employees of an exempt limited liability company
 41 when said persons are engaged in acts or services for which the
 42 corporation, partnership, or limited liability company would be
 43 exempt hereunder.
 44 d. The owners of an exempt closely held business entity. For purposes
 45 of this subdivision, a closely held business entity is a limited liability
 46 company or a corporation with no more than two legal owners.
 47 e. The officers, managers, and employees of a closely held business
 48 entity owned by a person exempt under sub-subdivision d. of this
 49 subdivision, provided if the closely held business entity is not the
 50 owner or lessor of the property, it shall notify the Commission in
 51 writing annually with contact information for the business entity and

demonstrate available assets of at least fifty thousand dollars (\$50,000)."

MANUFACTURED HOME LICENSE/CRIMINAL HISTORY CHECK

SECTION 2.2. G.S. 143-143.10A reads as rewritten:

"§ 143-143.10A. Criminal history checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for initial licensure as a manufactured home manufacturer, dealer, salesperson, salesperson or set-up contractor.

...

(b) All applicants for initial licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. Applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. Each applicant is required to pay the designated service for the cost of the criminal record report. In the alternative, the Board may provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

...."

AMEND DEFINITION OF "EMPLOYEE" UNDER THE WORKERS' COMPENSATION ACT TO EXCLUDE VOLUNTEERS AND OFFICERS OF CERTAIN NONPROFIT CORPORATIONS AND ASSOCIATIONS

SECTION 2.3. G.S. 97-2(2) reads as rewritten:

"§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a

1 part-time basis, and including deputy sheriffs appointed to serve in an
2 emergency, but as to those so appointed, only during the continuation of the
3 emergency. The sheriff shall furnish to the board of county commissioners a
4 complete list of all deputy sheriffs named or appointed by him immediately
5 after their appointment and notify the board of commissioners of any
6 changes made therein promptly after such changes are made. Any reference
7 to an employee who has been injured shall, when the employee is dead,
8 include also the employee's legal representative, dependents, and other
9 persons to whom compensation may be payable: Provided, further, that any
10 employee, as herein defined, of a municipality, county, or of the State of
11 North Carolina, while engaged in the discharge of the employee's official
12 duty outside the jurisdictional or territorial limits of the municipality, county,
13 or the State of North Carolina and while acting pursuant to authorization or
14 instruction from any superior officer, shall have the same rights under this
15 Article as if such duty or activity were performed within the territorial
16 boundary limits of their employer.

17 ~~Every~~ Except as otherwise provided herein, every executive officer
18 elected or appointed and empowered in accordance with the charter and
19 bylaws of a corporation shall be considered as an employee of such
20 corporation under this Article.

21 Any such executive officer of a corporation may, notwithstanding any
22 other provision of this Article, be exempt from the coverage of the
23 corporation's insurance contract by such corporation's specifically excluding
24 such executive officer in such contract of insurance, and the exclusion to
25 remove such executive officer from the coverage shall continue for the
26 period such contract of insurance is in effect, and during such period such
27 executive officers thus exempted from the coverage of the insurance contract
28 shall not be employees of such corporation under this Article.

29 All county agricultural extension service employees who do not receive
30 official federal appointments as employees of the United States Department
31 of Agriculture and who are field faculty members with professional rank as
32 designated in the memorandum of understanding between the North
33 Carolina Agricultural Extension Service, North Carolina State University, A
34 & T State University, and the boards of county commissioners shall be
35 deemed to be employees of the State of North Carolina. All other county
36 agricultural extension service employees paid from State or county funds
37 shall be deemed to be employees of the county board of commissioners in
38 the county in which the employee is employed for purposes of workers'
39 compensation.

40 The term "employee" shall also include members of the Civil Air Patrol
41 currently certified pursuant to G.S. 143B-1031(a) when performing duties in
42 the course and scope of a State-approved mission pursuant to Subpart C of
43 Part 5 of Article 13 of Chapter 143B of the General Statutes.

44 "Employee" shall not include any person performing voluntary service as
45 a ski patrolman who receives no compensation for such services other than
46 meals or lodging or the use of ski tow or ski lift facilities or any combination
47 thereof.

48 "Employee" shall not include any person elected or appointed and
49 empowered as an executive officer, director, or committee member under the
50 charter, articles, or bylaws of a nonprofit corporation subject to Chapter
51 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization

1 exempt from federal income tax under section 501(c)(3) of the Internal
2 Revenue Code, who performs only voluntary service for the nonprofit
3 corporation, provided that the person receives no remuneration for the
4 voluntary service other than reasonable reimbursement for expenses incurred
5 in connection with the voluntary service. When a nonprofit corporation as
6 described herein employs one or more persons who do receive remuneration
7 other than reasonable reimbursement for expenses, then any volunteer
8 officers, directors, or committee members excluded from the definition of
9 "employee" by operation of this paragraph shall be counted as employees for
10 the sole purpose of determining the number of persons regularly employed
11 in the same business or establishment pursuant to G.S. 97-2(1). Other than
12 for the limited purpose of determining the number of persons regularly
13 employed in the same business or establishment, such volunteer nonprofit
14 officers, directors, or committee members shall not be "employees" under
15 the Act. Nothing herein shall prohibit a nonprofit corporation as described
16 herein from voluntarily electing to provide for workers' compensation
17 benefits in the manner provided in G.S. 97-93 for volunteer officers,
18 directors, or committee members excluded from the definition of
19 "employee" by operation of this paragraph. This paragraph shall not apply to
20 any volunteer firefighter, volunteer member of an organized rescue squad, an
21 authorized pickup firefighter when that individual is engaged in emergency
22 fire suppression activities for the North Carolina Forest Service, a duly
23 appointed and sworn member of an auxiliary police department organized
24 pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol
25 functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the
26 General Statutes, even if such person is elected or appointed and empowered
27 as an executive officer, director, or committee member under the charter,
28 articles, or bylaws of a nonprofit corporation as described herein.

29 Any sole proprietor or partner of a business or any member of a limited
30 liability company may elect to be included as an employee under the
31 workers' compensation coverage of such business if he is actively engaged in
32 the operation of the business and if the insurer is notified of his election to
33 be so included. Any such sole proprietor or partner or member of a limited
34 liability company shall, upon such election, be entitled to employee benefits
35 and be subject to employee responsibilities prescribed in this Article.

36 ~~Employee~~—"Employee" shall include an authorized pickup firefighter of
37 the North Carolina Forest Service of the Department of Agriculture and
38 Consumer Services when that individual is engaged in emergency fire
39 suppression activities for the North Carolina Forest Service. As used in this
40 section, "authorized pickup firefighter" means an individual who has
41 completed required fire suppression training as a wildland firefighter and
42 who is available as needed by the North Carolina Forest Service for
43 emergency fire suppression activities, including immediate dispatch to
44 wildfires and standby for initial attack on fires during periods of high fire
45 danger.

46 It shall be a rebuttable presumption that the term "employee" shall not
47 include any person performing services in the sale of newspapers or
48 magazines to ultimate consumers under an arrangement whereby the
49 newspapers or magazines are to be sold by that person at a fixed price and
50 the person's compensation is based on the retention of the excess of the fixed

1 price over the amount at which the newspapers or magazines are charged to
2 the person."
3

4 **PART III. STATE AND LOCAL GOVERNMENT REGULATION**

5 **REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY**

6 **SECTION 3.1.** Subsection 6A.14(a) of S.L. 2011-145 reads as rewritten:
7

8 **"SECTION 6A.14.(a)** Every executive branch agency within State government shall
9 develop a policy to limit the issuance and use of mobile electronic devices to the minimum
10 required to carry out the agency's mission. By September 1, 2011, each agency shall provide a
11 copy of its policy to the Chairs of the Appropriations Committee and the Appropriations
12 Subcommittee on General Government of the House of Representatives, the Chairs of the
13 Appropriations/Base Budget Committee and the Appropriations Committee on General
14 Government and Information Technology of the Senate, the Chairs of the Joint Legislative
15 Oversight Committee on Information Technology, the Fiscal Research Division, and the Office
16 of State Budget and Management.

17 State-issued mobile electronic devices shall be used only for State business. Agencies shall
18 limit the issuance of cell phones, smart phones, and any other mobile electronic devices to
19 employees for whom access to a mobile electronic device is a critical requirement for job
20 performance. The device issued and the plan selected shall be the minimum required to support
21 the employees' work requirements. This shall include considering the use of pagers in lieu of a
22 more sophisticated device. The requirement for each mobile electronic device issued shall be
23 documented in a written justification that shall be maintained by the agency and reviewed
24 annually. All State agency heads, in consultation with the Office of Information Technology
25 Services and the Office of State Budget and Management, shall document and review all
26 authorized cell phone, smart phone, and other mobile electronic communications device
27 procurement, and related phone, data, Internet, and other usage plans for and by their
28 employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State
29 employees and contractors are complying with agency policies and State requirements for their
30 use.

31 Beginning October 1, 2011, each agency shall report ~~quarterly~~ annually to the Chairs of the
32 House of Representatives Committee on Appropriations and the House of Representatives
33 Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations
34 and the Senate Appropriations Committee on General Government and Information
35 Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal
36 Research Division, and the Office of State Budget and Management on the following:

- 37 (1) Any changes to agency policies on the use of mobile devices.
- 38 (2) The number and types of new devices issued since the last report.
- 39 (3) The total number of mobile devices issued by the agency.
- 40 (4) The total cost of mobile devices issued by the agency.
- 41 (5) The number of each type of mobile device issued, with the total cost for each
42 type."
43

44 **GOOD SAMARITAN EXPANSION**

45 **SECTION 3.3.(a)** G.S. 14-56 reads as rewritten:

46 **"§ 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles,**
47 **trailers, aircraft, boats, or other watercraft.**

48 (a) If any person, with intent to commit any felony or larceny therein, breaks or enters
49 any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing
50 any goods, wares, freight, or other thing of value, or, after having committed any felony or
51 larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other

1 watercraft of any kind containing any goods, wares, freight, or other thing of value, that person
2 is guilty of a Class I felony. It is prima facie evidence that a person entered in violation of this
3 section if he is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or
4 other watercraft.

5 (b) It shall not be a violation of this section for any person to break or enter any railroad
6 car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind to provide assistance to
7 a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind if
8 one or more of the following circumstances exist:

9 (1) The person acts in good faith to access the person inside the railroad car,
10 motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to
11 provide first aid or emergency health care treatment or because the person
12 inside is, or is in imminent danger of becoming, unconscious, ill, or injured.

13 (2) It is reasonably apparent that the circumstances require prompt decisions and
14 actions in medical, other health care, or other assistance for the person inside
15 the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any
16 kind.

17 (3) The necessity of immediate health care treatment or removal of the person
18 from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft
19 of any kind is so reasonably apparent that any delay in the rendering of
20 treatment or removal would seriously worsen the physical condition or
21 endanger the life of the person."

22 **SECTION 3.3.(b)** This section becomes effective September 1, 2015, and applies
23 to offenses committed on or after that date.

24 **SECTION 3.4.(a)** Chapter 1 of the General Statutes is amended by adding a new
25 Article to read:

26 "Article 43F.

27 "Immunity for Damage to Vehicle.

28 **"§ 1-539.27. Immunity from civil liability for damage to railroad car, motor vehicle,**
29 **trailer, aircraft, boat, or other watercraft necessary for assistance.**

30 Any person who enters or attempts to enter any railroad car, motor vehicle, trailer, aircraft,
31 boat, or other watercraft of any kind shall not be liable in civil damages for any damage to the
32 railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind if one or more
33 of the following circumstances exist:

34 (1) The person acts in good faith to access a person inside the railroad car,
35 motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to
36 provide first aid or emergency health care treatment or because the person
37 inside is, or is in imminent danger of becoming, unconscious, ill, or injured.

38 (2) It is reasonably apparent that the circumstances require prompt decisions and
39 actions in medical care, other health care, or other assistance.

40 (3) The necessity of immediate health care treatment or removal of the person
41 from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft
42 of any kind is so reasonably apparent that any delay in the rendering of
43 treatment or removal would seriously worsen the physical condition or
44 endanger the life of the person.

45 This section shall not apply to any acts of gross negligence, wanton conduct, or intentional
46 wrongdoing."

47 **SECTION 3.4.(b)** This section becomes effective September 1, 2015, and applies
48 to causes of action arising on or after that date.

49
50 **AUTHORIZE DMV TO ISSUE PERMANENT PLATES FOR TRAILERS ATTACHED**
51 **TO MOTORCYCLES**

1 **SECTION 3.5.(a)** G.S. 20-84(b) is amended by adding a new subdivision to read:

2 "(20) A trailer used as an attachment to the rear of a motorcycle."

3 **SECTION 3.5.(b)** This section becomes effective July 1, 2015.

4
5 **STATUS FOR PROVIDERS OF MH/DD/SA SERVICES WHO ARE NATIONALLY**
6 **ACCREDITED**

7 **SECTION 3.7.** G.S. 122C-81 reads as rewritten:

8 "**§ 122C-81. National accreditation benchmarks.**

9 (a) As used in this section, the term:

10 (1) "National accreditation" applies to accreditation by an entity approved by the
11 Secretary that accredits mental health, developmental disabilities, and
12 substance abuse services.

13 (2) "Provider" applies to only those providers of services, including facilities,
14 requiring national accreditation, which services are designated by the
15 Secretary pursuant to subsection (b) of this section.

16 (b) The Secretary, through the Medicaid State Plan, Medicaid waiver, or rules adopted
17 by the Secretary, shall designate the mental health, developmental disabilities, and substance
18 abuse services that require national accreditation. In accordance with rules of the Commission,
19 the Secretary may exempt a provider that is accredited under this section and in good standing
20 with the national accrediting agency from undergoing any routine monitoring that is duplicative
21 of the oversight by the national accrediting agency.

22 ...

23 (e) The Commission may adopt rules establishing a procedure by which a provider that
24 is accredited under this section and in good standing with the national accrediting agency may
25 be exempt from undergoing any routine monitoring that is duplicative of the oversight by the
26 national accrediting agency. Any provider shall continue to be subject to inspection by the
27 Secretary, provided the inspection is not duplicative of inspections required by the national
28 accrediting agency. Rules adopted under this subsection may not waive any requirements that
29 may be imposed under federal law."

30
31 **CLARIFY THAT WHEN A NEW PERMIT OR TRANSITIONAL PERMIT IS ISSUED**
32 **FOR AN ESTABLISHMENT, ANY PREVIOUS PERMIT FOR THAT SAME**
33 **ESTABLISHMENT IN THAT LOCATION BECOMES VOID**

34 **SECTION 3.8.** G.S. 130A-248(c) reads as rewritten:

35 "(c) If ownership of an establishment is transferred or the establishment is leased, the
36 new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for
37 a transitional permit. A transitional permit may be issued upon the transfer of ownership or
38 lease of an establishment to allow the correction of construction and equipment problems that
39 do not represent an immediate threat to the public health. Upon issuance of a new permit or a
40 transitional permit for ~~an~~the same establishment, any previously issued permit for an
41 establishment in that location becomes void. This subsection does not prohibit issuing more
42 than one owner or lessee a permit for the same location if (i) more than one establishment is
43 operated in the same physical location and (ii) each establishment satisfies all of the rules and
44 requirements of subsection (g) of this section."

45
46 **OPEN AND FAIR COMPETITION WITH RESPECT TO THE MATERIALS USED IN**
47 **WASTEWATER, STORMWATER, AND OTHER WATER PROJECTS**

48 **SECTION 3.9.(a)** Article 8 of Chapter 143 of the General Statutes is amended by
49 adding a new section to read:

50 "**§ 143-129.10. Public entities shall consider all acceptable piping materials in**
51 **State-funded water, wastewater, or stormwater projects.**

1 (a) Consideration of All Acceptable Piping Materials Required. – A public entity shall
2 consider all acceptable piping materials before determining which piping material should be
3 used in the construction, development, financing, maintaining, rebuilding, improving, repairing,
4 procuring, or operating of a water, wastewater, or stormwater drainage project that is funded in
5 whole or in part with State funds unless sound engineering practices, as determined by a
6 professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes,
7 suggest that one type of acceptable piping material is more suitable for a particular project.

8 (b) Definitions. – The following definitions apply in this section:

9 (1) Acceptable piping material. – Piping material that meets or exceeds the
10 standards issued by the American Society for Testing and Materials, the
11 American Water Works Association, or the American Association of State
12 Highway & Transportation Officials.

13 (2) Public entity. – A State agency, county, city, sanitary district created under
14 Part 2 of Article 2 of Chapter 130A of the General Statutes, authority created
15 under Article 1 of Chapter 162A of the General Statutes, metropolitan
16 sewerage district created under Article 5 of Chapter 162A of the General
17 Statutes, county water and sewer district created under Article 6 of Chapter
18 162A of the General Statutes, or any other political subdivision of the State."

19 **SECTION 3.9.(b)** This section becomes effective October 1, 2015, and applies to
20 projects initiated on or after that date.

21 **LICENSED SURVEYOR TO MARK BOUNDARIES OF STATE PROPERTIES**

22 **SECTION 3.10.(a)** G.S. 146-33 reads as rewritten:

23 "**§ 146-33. State agencies to locate and mark boundaries of lands.**

24 (a) Every State agency shall locate and identify, and shall mark and keep marked, the
25 boundaries of all lands allocated to that agency or under its control. The Department of
26 Administration shall locate and identify, and mark and keep marked, the boundaries of all State
27 lands not allocated to or under the control of any other State agency. The chief administrative
28 officer of every State agency is authorized to contract with the Division of Adult Correction of
29 the Department of Public Safety for the furnishing, upon such conditions as may be agreed
30 upon from time to time between the Division of Adult Correction of the Department of Public
31 Safety and the chief administrative officer of that agency, of prison labor for use where feasible
32 in the performance of these duties.

33 (b) If a State agency contracts with a person who is not employed by the State to mark
34 or keep marked the boundaries of lands allocated to that agency, or under that agency's control,
35 that State agency shall use only a licensed professional engineer or surveyor."

36 **SECTION 3.10.(b)** This section becomes effective October 1, 2015, and applies to
37 surveys or markings conducted on or after that date.

38 **AMEND UNDERGROUND DAMAGE PREVENTION REVIEW BOARD,**

39 **ENFORCEMENT, AND CIVIL PENALTIES**

40 **SECTION 3.12.** G.S. 87-129 reads as rewritten:

41 "**§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

42 (a) ~~The Notification Center shall establish an~~ There is hereby established the
43 Underground Damage Prevention Review Board to review reports of alleged violations of this
44 Article. The members of the Board shall be appointed by the Governor. The Board shall consist
45 of ~~the following members:~~ 15 members as follows:

- 46 (1) A representative from the North Carolina Department of Transportation;
 - 47 (2) A representative from a facility contract locator;
 - 48 (3) A representative from the Notification Center;
 - 49 (4) A representative from an electric public utility;
- 50
51

- 1 (5) A representative from the telecommunications industry;
- 2 (6) A representative from a natural gas utility;
- 3 (7) A representative from a hazardous liquid transmission pipeline company;
- 4 (8) A representative recommended by the League of Municipalities;
- 5 (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or
- 6 operate facilities;
- 7 (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not
- 8 own or operate facilities;
- 9 (11) A surveyor licensed under Chapter 89C of the General Statutes;
- 10 (12) A representative from a rural water system;
- 11 (13) A representative from an investor-owned water system;
- 12 (14) A representative from an electric membership corporation; and
- 13 (15) A representative from a cable company.

14 (a1) Each member of the Board shall be appointed for a term of four years. Members of
15 the Board may serve no more than two consecutive terms. Vacancies in appointments made by
16 the Governor occurring prior to the expiration of a term shall be filled by appointment for the
17 unexpired term.

18 (a2) No member of the Board may serve on a case where there would be a conflict of
19 interest.

20 (a3) The Governor may remove any member at any time for cause.

21 (a4) Eight members of the Board shall constitute a quorum.

22 (a5) The Governor shall designate one member of the Board as chair.

23 (a6) The Board may adopt rules to implement this Article.

24 (b) The Notification Center shall transmit all reports of alleged violations of this Article
25 to the Board, including any information received by the Notification Center regarding the
26 report. ~~The Board shall meet at least quarterly to review all reports filed pursuant to~~
27 ~~G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after~~
28 ~~reviewing the report and any accompanying information, the Board determines that a violation~~
29 ~~of this Article has occurred, the Board shall notify the violating party in writing of its~~
30 ~~determination and the recommended penalty. The violating party~~

31 (b1) The Board shall review all reports of alleged violations of this Article and
32 accompanying information. If the Board determines that a person has violated any provision of
33 this Article, the Board shall determine the appropriate action or penalty to impose for each such
34 violation. Actions and penalties may include training, education, and a civil penalty not to
35 exceed two thousand five hundred dollars (\$2,500). The Board shall notify each person who is
36 determined to have violated this Article in writing of the Board's determination and the Board's
37 recommended action or penalty. A person determined to be in violation of this Article may
38 request a hearing before the Board, after which the Board may reverse or uphold its original
39 finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of
40 the recommended penalty, and the Utilities Commission shall issue an order imposing the
41 penalty.

42 (c) A ~~party-person~~ party-person determined by the Board under subsection ~~(b)-(b1)~~ (b)-(b1) of this section to
43 have violated this Article may ~~initiate~~ initiate ~~appeal the Board's determination by initiating an~~
44 ~~arbitration proceeding before the Utilities Commission. Commission within 30 days of the~~
45 ~~Board's determination. If the violating party elects to initiate an arbitration proceeding, the~~
46 ~~violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities~~
47 ~~Commission, and the Utilities Commission shall open a docket regarding the report. The~~
48 ~~Utilities Commission shall direct the parties enter into an arbitration process. The parties shall~~
49 ~~be responsible for selecting and contracting with the arbitrator. Upon completion of the~~
50 ~~arbitration process, the Utilities Commission shall issue an order encompassing the outcome of~~

1 the binding arbitration process, including a determination of fault, a penalty, and assessing the
2 costs of arbitration to the non-prevailing party. ~~Any party may~~

3 (c1) A person may timely appeal an order issued by the Utilities Commission pursuant to
4 this section to the superior court division of the General Court of Justice in the county where
5 the alleged violation of this Article occurred or in Wake County, for trial de novo. de novo
6 within 30 days of entry of the Utilities Commission's order. The authority granted to the
7 Utilities Commission within this section is limited to this section and does not grant the
8 Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the
9 General Statutes.

10 (d) ~~Any person who violates any provision of this Article shall be subject to a penalty~~
11 ~~as set forth in this subsection.~~ The provisions of this Article do not affect any civil remedies for
12 personal injury or property damage otherwise available to any person, except as otherwise
13 specifically provided for in this Article. The penalty provisions of this Article are cumulative to
14 and not in conflict with provisions of law with respect to civil remedies for personal injury or
15 property damage. The clear proceeds of any civil penalty assessed under this section shall be
16 used as provided in Section 7(a) of Article IX of the North Carolina Constitution. ~~The penalties~~
17 ~~for a violation of this Article shall be as follows:~~ In any arbitration proceeding before the
18 Utilities Commission, any actions and penalties assessed against any person for violation of this
19 Article shall include the actions and penalties set out in subsection (b1) of this section.

20 (1) ~~If the violation was the result of negligence, the penalty shall be a~~
21 ~~requirement of training, a requirement of education, or both.~~

22 (2) ~~If the violation was the result of gross negligence, the penalty shall be a civil~~
23 ~~penalty of one thousand dollars (\$1,000), a requirement of training, a~~
24 ~~requirement of education, or a combination of the three.~~

25 (3) ~~If the violation was the result of willful or wanton negligence or intentional~~
26 ~~conduct, the penalty shall be a civil penalty of two thousand five hundred~~
27 ~~dollars (\$2,500), a requirement of training, and a requirement of education."~~

29 CONFORM NORTH CAROLINA ALL-TERRAIN VEHICLE LAWS TO NATIONAL 30 SAFETY AND DESIGN STANDARDS FOR YOUTH OPERATORS

31 SECTION 3.13.(a) G.S. 20-171.15 reads as rewritten:

32 "§ 20-171.15. Age restrictions.

33 (a) It is unlawful for any parent or legal guardian of a person less than ~~eightsix~~ six years of
34 age to knowingly permit that person to operate an all-terrain vehicle.

35 (b) ~~It is unlawful for any parent or legal guardian of a person less than 12 years of age~~
36 ~~to knowingly permit that person to operate an all-terrain vehicle with an engine capacity of 70~~
37 ~~cubic centimeter displacement or greater.~~

38 (c) It is unlawful for any parent or legal guardian of a person less than 16 years of age
39 to knowingly permit that person to operate an all-terrain vehicle ~~with an engine capacity greater~~
40 ~~than 90 cubic centimeter displacement.~~ in violation of the Age Restriction Warning Label
41 affixed by the manufacturer as required by the applicable American National Standards
42 Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard.

43 (d) It is unlawful for any parent or legal guardian of a person less than 16 years of age
44 to knowingly permit that person to operate an all-terrain vehicle unless the person is under the
45 continuous visual supervision of a person 18 years of age or older while operating the
46 all-terrain vehicle.

47 (e) ~~Subsections (b) and Subsection (c) of this section do does not apply to any parent or~~
48 ~~legal guardian of a person born on or before August 15, 1997, who permits that person to~~
49 ~~operate an all-terrain vehicle and who establishes proof that the parent or legal guardian owned~~
50 ~~the all-terrain vehicle prior to August 15, 2005."~~

51 SECTION 3.13.(b) G.S. 20-171.17 reads as rewritten:

"§ 20-171.17. Prohibited acts by sellers.

No person shall knowingly sell or offer to sell an all-terrain vehicle:

- (1) For use by a person under the age of ~~eight~~six years.
- (2) ~~With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.~~In violation of the Age Restriction Warning Label affixed by the manufacturer as required by the applicable American National Standards Institute/Specialty Vehicle Institute of America (ANSI/SVIA) design standard for use by a person less than 16 years of age.
- (3) ~~With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age."~~

PART IV. ENVIRONMENTAL AND NATURAL RESOURCES REGULATION**ENVIRONMENTAL SELF-AUDIT PRIVILEGE AND LIMITED IMMUNITY**

SECTION 4.1.(a) Chapter 8 of the General Statutes is amended by adding a new Part to read:

Part 7D. Environmental Audit Privilege and Limited Immunity.

"§ 8-58.50. Purpose.

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Notwithstanding any other provisions of law, nothing in this Part shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Notwithstanding any other provision of law, any privilege granted by this Part shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself.

"§ 8-58.51. Definitions.

The following definitions apply in this Part:

- (1) "Department" means the Department of Environment and Natural Resources.
- (2) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.
- (3) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs, or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Part, an environmental audit does not include an environmental site assessment of a facility conducted solely in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.

- 1 (4) "Environmental audit report" means a document marked or identified as
2 such with a completion date existing either individually or as a compilation
3 prepared in connection with an environmental audit. An environmental audit
4 report may include field notes and records of observations, findings,
5 opinions, suggestions, recommendations, conclusions, drafts, memoranda,
6 drawings, photographs, computer-generated or electronically recorded
7 information, maps, charts, graphs, and surveys, provided the supporting
8 information is collected or developed for the primary purpose and in the
9 course of an environmental audit. An environmental audit report, when
10 completed, may include all of the following components:
11 a. An audit report prepared by an auditor, which may include the scope
12 and date of the audit and the information gained in the audit, together
13 with exhibits and appendices and may include conclusions,
14 recommendations, exhibits, and appendices.
15 b. Memoranda and documents analyzing any portion of the audit report
16 or issues relating to the implementation of an audit report.
17 c. An implementation plan that addresses correcting past
18 noncompliance, improving current compliance, or preventing future
19 noncompliance.
20 (5) "Environmental laws" means all provisions of federal, State, and local laws,
21 rules, and ordinances pertaining to environmental matters.

22 **"§ 8-58.52. Applicability.**

23 This Part applies to activities regulated under environmental laws, including all of the
24 following provisions of the General Statutes, and rules adopted thereunder:

- 25 (1) Article 7 of Chapter 74.
26 (2) Chapter 104E.
27 (3) Article 25 of Chapter 113.
28 (4) Articles 1, 4, and 7 of Chapter 113A.
29 (5) Article 9 of Chapter 130A.
30 (6) Articles 21, 21A, and 21B of Chapter 143.
31 (7) Part 1 of Article 7 of Chapter 143B.

32 **"§ 8-58.53. Environmental audit report; privilege.**

33 (a) An environmental audit report or any part of an environmental audit report is
34 privileged and, therefore, immune from discovery and is not admissible as evidence in civil or
35 administrative proceedings, except as provided in G.S. 8-58.54 and G.S. 8-58.56. Provided,
36 however, all of the following documents are exempt from the privilege established by this Part:

- 37 (1) Information obtained by observation of an enforcement agency.
38 (2) Information obtained from a source independent of the environmental audit.
39 (3) Documents, communication, data, reports, or other information required to
40 be collected, maintained, otherwise made available, or reported to an
41 enforcement agency or any other entity by environmental laws, permits,
42 orders, consent agreements, or as otherwise provided by law.
43 (4) Documents prepared either prior to the beginning of the environmental audit
44 or subsequent to the completion date of the audit report and, in all cases, any
45 documents prepared independent of the audit or audit report.
46 (5) Documents prepared as a result of multiple or continuous self-auditing
47 conducted in an effort to intentionally avoid liability for violations.
48 (6) Information that is knowingly misrepresented or misstated or that is
49 knowingly deleted or withheld from an environmental audit report, whether
50 or not included in a subsequent environmental audit report.

1 (7) Information in instances where the material shows evidence of
2 noncompliance with environmental laws, permits, orders, consent
3 agreements, and the owner or operator failed to either promptly take
4 corrective action or eliminate any violation of law identified during the
5 environmental audit within a reasonable period of time.

6 (b) If an environmental audit report or any part of an environmental audit report is
7 subject to the privilege provided for in subsection (a) of this section, no person who conducted
8 or participated in the audit or who significantly reviewed the audit report may be compelled to
9 testify regarding the audit report or a privileged part of the audit report except as provided for
10 in G.S. 8-58.53(d), 8-58.54, or 8-58.56.

11 (c) Nothing in this Part shall be construed to restrict a party in a proceeding before the
12 Industrial Commission from obtaining or discovering any evidence necessary or appropriate for
13 the proof of any issue pending in an action before the Commission, regardless of whether
14 evidence is privileged pursuant to this Part. Further, nothing in this Part shall be construed to
15 prevent the admissibility of evidence that is otherwise relevant and admissible in a proceeding
16 before the Industrial Commission, regardless of whether the evidence is privileged pursuant to
17 this Part. Provided, however, the Commission, upon motion made by a party to the proceeding,
18 may issue appropriate protective orders preventing disclosure of information outside of the
19 Commission's proceeding.

20 (d) Nothing in this Part shall be construed to circumvent the employee protection
21 provisions provided by federal or State law.

22 (e) The privilege created by this Part does not apply to criminal investigations or
23 proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the
24 privilege created by this Part shall continue to apply and is not waived in civil and
25 administrative proceedings and is not discoverable or admissible in civil or administrative
26 proceedings even if disclosed during a criminal proceeding.

27 **"§ 8-58.54. Waiver of privilege.**

28 (a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is
29 expressly waived in writing by the owner or operator of a facility at which an environmental
30 audit was conducted and who prepared or caused to be prepared the audit report as a result of
31 the audit.

32 (b) The audit report and information generated by the audit may be disclosed without
33 waiving the privilege established under G.S. 8-58.53 to all of the following persons:

34 (1) A person employed by the owner or operator or the parent corporation of the
35 audited facility.

36 (2) A legal representative of the owner or operator or parent corporation.

37 (3) An independent contractor retained by the owner or operator or parent
38 corporation to conduct an audit on or to address an issue or issues raised by
39 the audit.

40 (c) Disclosure of an audit report or information generated by the audit under all of the
41 following circumstances shall not constitute a waiver of the privilege established under
42 G.S. 8-58.53:

43 (1) Disclosure made under the terms of a confidentiality agreement between the
44 owner or operator of the facility audited and a potential purchaser of the
45 business or facility audited.

46 (2) Disclosure made under the terms of a confidentiality agreement between
47 governmental officials and the owner or operator of the facility audited.

48 (3) Disclosure made under the terms of a confidentiality agreement between a
49 customer, lending institution, or insurance company with an existing or
50 proposed relationship with the facility.

51 **"§ 8-58.55. Notification of audit.**

1 In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the
2 facility conducting the environmental audit shall, upon inspection of the facility by an
3 enforcement agency, or no later than 10 working days after completion of an agency's
4 inspection, notify the enforcement agency of the existence of any audit relevant to the subject
5 of the agency's inspection, as well as the beginning date and completion date of that audit. Any
6 environmental audit report shall include a signed certification from the owner or operator of the
7 facility that documents the date the audit began and the completion date of the audit.

8 **"§ 8-58.56. Revocation of privilege in civil and administrative proceedings.**

9 In a civil or administrative proceeding, an enforcement agency may seek by motion a
10 declaratory ruling on the issue of whether an environmental audit report is privileged. The court
11 shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set
12 forth in this section apply. In a civil proceeding, the court, after an in camera review, shall
13 revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of
14 the environmental audit report was sought after the effective date of this Part and either of the
15 following apply:

16 (1) The privilege is asserted for purposes of deception or evasion.

17 (2) The material shows evidence of significant noncompliance with applicable
18 environmental laws; the owner or operator of the facility has not promptly
19 initiated and pursued with diligence appropriate action to achieve
20 compliance with these environmental laws or has not made reasonable
21 efforts to complete any necessary permit application; and, as a result, the
22 owner or operator of the facility did not or will not achieve compliance with
23 applicable environmental laws or did not or will not complete the necessary
24 permit application within a reasonable period of time.

25 **"§ 8-58.57. Privilege in criminal proceedings.**

26 The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding.

27 **"§ 8-58.58. Burden of proof.**

28 A party asserting the privilege established under G.S. 8-58.53 has the burden of proving
29 that (i) the materials claimed as privileged constitute an environmental audit report as defined
30 by this Part and (ii) compliance has been achieved or will be achieved within a reasonable
31 period of time. A party seeking disclosure under G.S. 8-58.56 has the burden of proving the
32 condition for disclosure set forth in that section.

33 **"§ 8-58.59. Stipulations; declaratory rulings.**

34 The parties to a proceeding may at any time stipulate to entry of an order directing that
35 specific information contained in an environmental audit report is or is not subject to the
36 privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an
37 enforcement agency may seek a declaratory ruling from a court on the issue of whether the
38 materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be
39 revoked pursuant to G.S. 8-58.56.

40 **"§ 8-58.60. Construction of Part.**

41 Nothing in this Part limits, waives, or abrogates any of the following:

42 (1) The scope or nature of any statutory or common law privilege, including the
43 work-product privilege or the attorney-client privilege.

44 (2) Any existing ability or authority under State law to challenge privilege.

45 (3) An enforcement agency's ability to obtain or use documents or information
46 that the agency otherwise has the authority to obtain under State law adopted
47 pursuant to federally delegated programs.

48 **"§ 8-58.61. Voluntary disclosure; limited immunity from civil and administrative**
49 **penalties and fines.**

50 (a) An owner or operator of a facility is immune from imposition of civil and
51 administrative penalties and fines for a violation of environmental laws voluntarily disclosed

1 subject to the requirements and criteria set forth in this section. Provided, however, that waiver
2 of penalties and fines shall not be granted until the applicable enforcement agency has certified
3 that the violation was corrected within a reasonable period of time. If compliance is not
4 certified by the enforcement agency, the enforcement agency shall retain discretion to assess
5 penalties and fines for the violation.

6 (b) If a person or entity makes a voluntary disclosure of a violation of environmental
7 laws discovered through performance of an environmental audit, that person has the burden of
8 proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection
9 (c) of this section and (ii) that the person is therefore entitled to immunity from any
10 administrative or civil penalties associated with the issues disclosed. Nothing in this section
11 may be construed to provide immunity from criminal penalties.

12 (c) For purposes of this section, disclosure is voluntary if all of the following criteria
13 are met:

- 14 (1) The disclosure is made within 14 days following a reasonable investigation
15 of the violation's discovery through the environmental audit.
- 16 (2) The disclosure is made to an enforcement agency having regulatory
17 authority over the violation disclosed.
- 18 (3) The person or entity making the disclosure initiates an action to resolve the
19 violation identified in the disclosure in a diligent manner.
- 20 (4) The person or entity making the disclosure cooperates with the applicable
21 enforcement agency in connection with investigation of the issues identified
22 in the disclosure.
- 23 (5) The person or entity making the disclosure diligently pursues compliance
24 and promptly corrects the noncompliance within a reasonable period of time.

25 (d) A disclosure is not voluntary for purposes of this section if any of the following
26 factors apply:

- 27 (1) Specific permit conditions require monitoring or sampling records and
28 reports or assessment plans and management plans to be maintained or
29 submitted to the enforcement agency pursuant to an established schedule.
- 30 (2) Environmental laws or specific permit conditions require notification of
31 releases to the environment.
- 32 (3) The violation was committed intentionally, willfully, or through criminal
33 negligence by the person or entity making the disclosure.
- 34 (4) The violation was not corrected in a diligent manner.
- 35 (5) The violation posed or poses a significant threat to public health, safety, and
36 welfare; the environment; and natural resources.
- 37 (6) The violation occurred within one year of a similar prior violation at the
38 same facility, and immunity from civil and administrative penalties was
39 granted by the applicable enforcement agency for the prior violation.
- 40 (7) The violation has resulted in a substantial economic benefit to the owner or
41 operator of the facility.
- 42 (8) The violation is a violation of the specific terms of a judicial or
43 administrative order.

44 (e) If a person meets the burden of proving that the disclosure is voluntary, the burden
45 shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the
46 factors set forth in this section. The person claiming immunity from civil or administrative
47 penalties or fines under this section retains the ultimate burden of proving the violations were
48 voluntarily disclosed.

49 (f) A voluntary disclosure made pursuant to this section is subject to disclosure
50 pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the
51 General Statutes.

"§ 8-58.62. Additional limitations on exercise of privilege or immunity.

An owner or operator of a facility who makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit shall only be entitled to exercise of the privilege or immunity established by this Part once in a two-year period, not more than twice in a five-year period, and not more than three times in a 10-year period.

"§ 8-58.63. Preemption of local laws.

No local law, rule, ordinance, or permit condition may circumvent or limit the privilege established by this Part or the exercise of the privileges or the presumption and immunity established by this Part."

SECTION 4.1.(b) This section becomes effective July 1, 2015, and applies to environmental audits, as defined in G.S. 8-58.51, as enacted by subsection (a) of this section, that are conducted on or after that date.

REPEAL RECYCLING REQUIREMENTS FOR DISCARDED COMPUTER EQUIPMENT AND TELEVISIONS

SECTION 4.2.(a) Part 2H of Article 9 of Chapter 130A of the General Statutes is repealed.

SECTION 4.2.(b) G.S. 130A-309.09A(d)(8) is repealed.

PROHIBIT IMPLEMENTATION AND ENFORCEMENT OF FEDERAL STANDARDS FOR WOOD HEATERS AND FOR FUEL SOURCES THAT PROVIDE HEAT OR HOT WATER TO A RESIDENCE OR BUSINESS

SECTION 4.3.(a) G.S. 143-215.107 reads as rewritten:

"§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

...
(10) ~~To~~ Except as provided in subsections (h) and (i) of this section, to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

...
(h) With respect to any regulation adopted by the United States Environmental Protection Agency limiting emissions from wood heaters and adopted after May 1, 2014, neither the Commission nor the Department shall do any of the following:

(1) Issue rules limiting emissions from wood heaters to implement the federal regulations described in this subsection.
(2) Enforce against a manufacturer, distributor, or consumer the federal regulations described in this subsection.

(i) Neither the Commission nor the Department shall enforce any federal air emissions standard adopted by the United States Environmental Protection Agency after May 1, 2014, that would jeopardize the health, safety, or economic well-being of a citizen of this State through the regulation of fuel combustion that is used directly or indirectly to provide (i) hot water or comfort heating to a residence or (ii) comfort heating to a business."

SECTION 4.3.(b) G.S. 143-213 is amended by adding a new subdivision to read:

"(31) "Wood heater" means a fireplace, wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air furnace, or masonry wood heater or other similar appliance designed for heating a residence or business or for

1 heating water for use by a residence through the combustion of wood or
2 products substantially composed of wood."
3

4 **AMEND PROCESS FOR STATE ADOPTION OF FEDERAL AIR QUALITY**
5 **STANDARDS**

6 **SECTION 4.4.(a)** 15A NCAC 02D .0524(c) (New Source Performance Standards).

7 – Until the effective date of the revised permanent rule that the Environmental Management
8 Commission is required to adopt pursuant to Section 4.4(c) of this act, the Commission and the
9 Department of Environment and Natural Resources shall implement 15A NCAC 02D .0524(c)
10 (New Source Performance Standards) as provided in Section 4.4(b) of this act.

11 **SECTION 4.4.(b)** Implementation. – Notwithstanding 15A NCAC 02D .0524(c)
12 (New Source Performance Standards), the Commission shall not adopt a new source
13 performance standard promulgated in Part 60 of Title 40 of the Code of Federal Regulations
14 except by a three-fifths vote of the Commission. If the Commission adopts new source
15 performance standards promulgated in Part 60 of Title 40 of the Code of Federal Regulations as
16 provided in this section, those rules shall be subject to legislative review as provided in
17 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
18 G.S. 150B-21.3(b2).

19 **SECTION 4.4.(c)** Additional Rule-Making Authority. – The Environmental
20 Management Commission shall adopt a rule to amend 15A NCAC 02D .0524(c) (New Source
21 Performance Standards) consistent with Section 4.4(b) of this act. Notwithstanding
22 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
23 substantively identical to the provisions of Section 4.4(b) of this act. Rules adopted pursuant to
24 this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes.
25 Rules adopted pursuant to this section shall become effective as provided in
26 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
27 G.S. 150B-21.3(b2).

28 **SECTION 4.4.(d)** Sunset. – Section 4.4(b) of this act expires on the date that the
29 rule adopted pursuant to Section 4.4(c) of this act becomes effective.

30 **SECTION 4.5.(a)** 15A NCAC 02D .1111(c) (Maximum Achievable Control
31 Technology). – Until the effective date of the revised permanent rule that the Environmental
32 Management Commission is required to adopt pursuant to Section 4.5(c) of this act, the
33 Commission and the Department of Environment and Natural Resources shall implement 15A
34 NCAC 02D .1111(c) (Maximum Achievable Control Technology) as provided in Section
35 4.5(b) of this act.

36 **SECTION 4.5.(b)** Implementation. – Notwithstanding 15A NCAC 02D .1111(c)
37 (Maximum Achievable Control Technology), the Commission shall not adopt maximum
38 achievable control technology standards promulgated in Part 63 of Title 40 of the Code of
39 Federal Regulations except by a three-fifths vote of the Commission. If the Commission adopts
40 maximum achievable control technology standards promulgated in Part 63 of Title 40 of the
41 Code of Federal Regulations as provided in this section, those rules shall be subject to
42 legislative review as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
43 had been received as provided by G.S. 150B-21.3(b2).

44 **SECTION 4.5.(c)** Additional Rule-Making Authority. – The Environmental
45 Management Commission shall adopt a rule to amend 15A NCAC 02D .1111(c) (Maximum
46 Achievable Control Technology) consistent with Section 4.5(b) of this act. Notwithstanding
47 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
48 substantively identical to the provisions of Section 4.5(b) of this act. Rules adopted pursuant to
49 this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes.
50 Rules adopted pursuant to this section shall become effective as provided in

1 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
2 G.S. 150B-21.3(b2).

3 **SECTION 4.5.(d)** Sunset. – Section 4.5(b) of this act expires on the date that the
4 rule adopted pursuant to Section 4.5(c) of this act becomes effective.

5 **SECTION 4.6.(a)** 15A NCAC 02D .1110(b) (National Emissions Standards for
6 Hazardous Air Pollutants). – Until the effective date of the revised permanent rule that the
7 Environmental Management Commission is required to adopt pursuant to Section 4.6(c) of this
8 act, the Commission and the Department of Environment and Natural Resources shall
9 implement 15A NCAC 02D .1110(b) (National Emissions Standards for Hazardous Air
10 Pollutants) as provided in Section 4.6(b) of this act.

11 **SECTION 4.6.(b)** Implementation. – 15A NCAC 02D .1110(b) (National
12 Emissions Standards for Hazardous Air Pollutants), the Commission shall not adopt national
13 emissions standards for hazardous air pollutants promulgated in Part 61 of Title 40 of the Code
14 of Federal Regulations except by a three-fifths vote of the Commission. If the Commission
15 adopts national emissions standards for hazardous air pollutants promulgated in Part 61 of Title
16 40 of the Code of Federal Regulations as provided in this section, those rules shall be subject to
17 legislative review 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 4.6.(c)** Additional Rule-Making Authority. – The Environmental
20 Management Commission shall adopt a rule to amend 15A NCAC 02D .1110(b) (National
21 Emissions Standards for Hazardous Air Pollutants) consistent with Section 4.6(b) of this act.
22 Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section
23 shall be substantively identical to the provisions of Section 4.6(b) of this act. Rules adopted
24 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
25 Statutes. Rules adopted pursuant to this section shall become effective as provided in
26 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
27 G.S. 150B-21.3(b2).

28 **SECTION 4.6.(d)** Sunset. – Section 4.6(b) of this act expires on the date that the
29 rule adopted pursuant to Section 4.6(c) of this act becomes effective.

30 **SECTION 4.6A.** Effective January 1, 2016, the Environmental Management
31 Commission shall not enforce any federal standard that was adopted by reference pursuant to
32 15A NCAC 02D .0524(c), 15A NCAC 02D .1111(c), and 15A NCAC 02D .1110(b) until such
33 standards are readopted by the Commission as provided in Sections 4.4, 4.5, and 4.6 of this act.
34

35 **AMEND RISK-BASED REMEDIATION PROVISIONS**

36 **SECTION 4.7.(a)** G.S. 130A-310.65 reads as rewritten:

37 **"§ 130A-310.65. Definitions.**

38 As used in this Part:

39 ...

40 (4) "Contaminated industrial site" or "site" means any real property that meets
41 all of the following criteria:

- 42 a. The property is contaminated and may be subject to remediation
43 under any of the programs or requirements set out in
44 G.S. 130A-310.67(a).
45 b. The property is or has been used primarily for manufacturing or other
46 industrial activities for the production of a commercial product. This
47 includes a property used primarily for the generation of electricity.
48 ~~e. No contaminant associated with activities at the property is located~~
49 ~~off of the property at the time the remedial action plan is submitted.~~
50 d. No contaminant associated with activities at the property will migrate
51 to any adjacent properties above unrestricted use standards for the

~~contaminant~~contaminant, after the industrial site has been
remediated pursuant to the requirements of this Part.

...

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

...."

SECTION 4.7.(b) G.S. 130A-310.67 reads as rewritten:

"§ 130A-310.67. Applicability.

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

- (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.
- (2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.
- (3) The solid waste management program administered pursuant to Article 9 of Chapter 130A of the General Statutes.
- (4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.
- (5) The groundwater protection corrective action requirements adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

- (1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that ~~statute~~Part.
- (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that ~~statute~~Part.
- (3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through ~~(g)~~(g) and rules promulgated pursuant to that ~~statute~~.
- (4) The Coal Ash Management Act of 2014 under Part 2I of Article 9 of Chapter 130A of the General Statutes and rules promulgated pursuant to that Part.

~~(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011."~~

SECTION 4.7.(c) G.S. 130A-310.69(b)(11) reads as rewritten:

"§ 130A-310.69. Remedial investigation report; remedial action plans.

...

1 (b) A person who proposes to conduct remediation pursuant to this Part shall develop
2 and submit a proposed remedial action plan to the Department. A remedial action plan shall
3 provide for the protection of public health, safety, and welfare and the environment. A remedial
4 action plan shall do all of the following:

5 ...

- 6 (11) Provide for the imposition and recordation of land-use restrictions as
7 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,
8 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan
9 allows contamination in excess of the greater of unrestricted use standards or
10 background standards to remain on any real property or in groundwater that
11 underlies any real ~~property~~property on the industrial site."

12 **SECTION 4.7.(d)** G.S. 130A-310.71 reads as rewritten:

13 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

14 (a) The Department shall review and approve a proposed remedial action plan
15 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
16 out in this section. In its review of a proposed remedial action plan, the Department shall do all
17 of the following:

18 ...

- 19 (2) Determine whether the party conducting the remediation has adequately
20 demonstrated through modeling or other scientific means acceptable to the
21 Department that no contamination will migrate to adjacent property at levels
22 above unrestricted use ~~standards~~standards after the industrial site has been
23 remediated pursuant to the plan.
- 24 (3) Determine whether the proposed remedial action plan meets the
25 requirements of G.S. 130A-310.69.
- 26 (4) Determine whether the proposed remedial action plan meets the
27 requirements of any other applicable remediation program except those
28 pertaining to remediation standards.
- 29 (5) Establish the acceptable level or range of levels of risk to public health,
30 safety, and welfare and to the environment.
- 31 (6) Establish, for each contaminant, the maximum allowable quantity,
32 concentration, range, or other measures of contamination that will remain at
33 the contaminated site at the conclusion of the contaminant-reduction phase
34 of the remediation.
- 35 (7) Consider the technical performance, effectiveness, and reliability of the
36 proposed remedial action plan in attaining and maintaining compliance with
37 applicable remediation standards.
- 38 (8) Consider the ability of the person who proposes to remediate the site to
39 implement the proposed remedial action plan within a reasonable time and
40 without jeopardizing public health, safety, or welfare or the environment.
- 41 (9) Determine whether the proposed remedial action plan adequately provides
42 for the imposition and maintenance of engineering and institutional controls
43 and for sampling, monitoring, and reporting requirements necessary to
44 protect public health, safety, and welfare and the environment.
- 45 (10) Approve the circumstances under which no further remediation is required.
- 46 (11) For industrial sites proceeding with remediation under this Part at which
47 contaminants associated with activities of the industrial site have migrated to
48 any adjacent properties, determine whether the proposed remedial action
49 plan adequately provides for remediation of environmental contamination on
50 the adjacent properties to unrestricted use standards.

1 (b) The person who proposes a remedial action plan has the burden of demonstrating
2 with reasonable assurance that (i) any contamination associated with activities of the industrial
3 site that has migrated to adjacent properties will be remediated to unrestricted use standards on
4 the adjacent properties; (ii) contamination from the site will not migrate to adjacent property
5 above unrestricted use levels and standards after the industrial site has been remediated pursuant
6 to the remedial action plan; and (iii) that the remedial action plan is protective of public health,
7 safety, and welfare and the environment by virtue of its compliance with this Part. The
8 demonstration shall (i) take into account actions proposed in the remedial action plan that will
9 prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific
10 data.

11 (c) The Department may require a person who proposes a remedial action plan to
12 supply any additional information necessary for the Department to approve or disapprove the
13 plan.

14 (d) In making a determination on a proposed remedial action plan, the Department shall
15 consider the information provided by the person who proposes the remedial action plan as well
16 as information provided by local governments and adjoining landowners pursuant to
17 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
18 Department finds that the plan is protective of public health, safety, and welfare and the
19 environment and complies with the requirements of this Part. If the Department disapproves a
20 proposed remedial action plan, the person who submitted the plan may seek review as provided
21 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
22 disapprove a proposed remedial action plan within 120 days after a complete plan has been
23 submitted, the person who submitted the plan may treat the plan as having been disapproved at
24 the end of that time period."

25 **SECTION 4.7.(e)** Part 8 of Article 9 of Chapter 130A of the General Statutes is
26 amended by adding a new section to read:

27 **"§ 130A-310.68A. Remediation to unrestricted use standards required for contamination**
28 **on adjacent properties.**

29 Notwithstanding any other provision of this Part, for industrial sites proceeding with
30 remediation under this Part at which contaminants associated with activities of the industrial
31 site have migrated to any adjacent properties, remediation of environmental contamination on
32 the adjacent properties shall meet unrestricted use standards on those properties."

33 **SECTION 4.8.(a)** No later than January 1, 2016, the Department of Environment
34 and Natural Resources shall do all of the following:

- 35 (1) Develop internal processes to govern remediation of contaminated industrial
36 sites conducted under this Part that are consistent across all programs or
37 requirements identified in subsection (a) of G.S. 130A-310.67.
- 38 (2) Develop a coordinated program and processes for remediation of
39 contaminated industrial sites conducted under this Part that are subject to
40 more than one program or requirement identified in subsection (a) of
41 G.S. 130A-310.67.
- 42 (3) Develop reforms to expand the role, and otherwise enhance the use of,
43 registered environmental consultants approved to implement and oversee
44 voluntary remedial actions pursuant to this Part.

45 **SECTION 4.8.(b)** No later than April 1, 2016, the Department shall report to the
46 Environmental Review Commission on its activities conducted pursuant to subsection (a) of
47 this section, together with any pertinent findings or recommendations, including any legislative
48 proposals that it deems advisable.

49

1 **AMEND THE LAW GOVERNING BROWNFIELDS REDEVELOPMENT TO**
2 **EXTEND ELIGIBILITY UNDER THE PROGRAM TO BONA FIDE PROSPECTIVE**
3 **PURCHASERS, IN ACCORDANCE WITH FEDERAL LAW**

4 **SECTION 4.9.(a)** G.S. 130A-310.31(b)(10) reads as rewritten:

5 **"§ 130A-310.31. Definitions.**

6 (a) Unless a different meaning is required by the context or unless a different meaning
7 is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310
8 apply throughout this Part.

9 (b) Unless a different meaning is required by the context:

10 ...

11 (10) "~~Prospective developer~~" ~~means any person with a bona fide, demonstrable~~
12 ~~desire to either buy or sell a brownfields property for the purpose of~~
13 ~~developing or redeveloping that brownfields property and who did not cause~~
14 ~~or contribute to the contamination at the brownfields property.~~ includes "bona
15 fide prospective purchasers," "contiguous property owners," and "innocent
16 landowners," as those terms are defined under the Small Business Liability
17 Relief and Brownfields Revitalization Act (Pub. L. No. 107-118, 115 stat.
18 2356), 42 U.S.C. § 9601."

19 **SECTION 4.9.(b)** This section becomes effective July 1, 2015, and applies to
20 Notices of Intent to Redevelop a Brownfields Property filed on or after that date.

21
22 **ELIMINATE OUTDATED FEES RELATED TO SOLID WASTE MATTERS**

23 **SECTION 4.10.(a)** G.S. 105-102.6 is repealed.

24 **SECTION 4.10.(b)** G.S. 130A-309.17(d) and (i) are repealed.

25
26 **REPEAL ENERGY AUDIT REQUIREMENTS**

27 **SECTION 4.11.** G.S. 143-64.12 reads as rewritten:

28 **"§ 143-64.12. Authority and duties of the Department; State agencies and State**
29 **institutions of higher learning.**

30 (a) The Department of Environment and Natural Resources through the State Energy
31 Office shall develop a comprehensive program to manage energy, water, and other utility use
32 for State agencies and State institutions of higher learning and shall update this program
33 annually. Each State agency and State institution of higher learning shall develop and
34 implement a management plan that is consistent with the State's comprehensive program under
35 this subsection to manage energy, water, and other utility use, and that addresses any findings
36 or recommendations resulting from the energy audit required by subsection (b1) of this section.
37 The energy consumption per gross square foot for all State buildings in total shall be reduced
38 by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy
39 consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher
40 learning shall update its management plan biennially and include strategies for supporting the
41 energy consumption reduction requirements under this subsection. Each community college
42 shall submit to the State Energy Office a biennial written report of utility consumption and
43 costs. Management plans submitted biennially by State institutions of higher learning shall
44 include all of the following:

- 45 (1) Estimates of all costs associated with implementing energy conservation
46 measures, including pre-installation and post-installation costs.
- 47 (2) The cost of analyzing the projected energy savings.
- 48 (3) Design costs, engineering costs, pre-installation costs, post-installation costs,
49 debt service, and any costs for converting to an alternative energy source.
- 50 (4) An analysis that identifies projected annual energy savings and estimated
51 payback periods.

1 (a1) State agencies and State institutions of higher learning shall carry out the
2 construction and renovation of facilities in such a manner as to further the policy set forth under
3 this section and to ensure the use of life-cycle cost analyses and practices to conserve energy,
4 water, and other utilities.

5 (b) The Department of Administration shall develop and implement policies,
6 procedures, and standards to ensure that State purchasing practices improve efficiency
7 regarding energy, water, and other utility use and take the cost of the product over the
8 economic life of the product into consideration. The Department of Administration shall adopt
9 and implement Building Energy Design Guidelines. These guidelines shall include energy-use
10 goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on
11 building systems and technologies. The Department of Administration shall modify the design
12 criteria for construction and renovation of facilities of State buildings and State institutions of
13 higher learning buildings to require that a life-cycle cost analysis be conducted pursuant to
14 G.S. 143-64.15.

15 (b1) The Department of Administration, as part of the Facilities Condition and
16 Assessment Program, shall identify and recommend energy conservation maintenance and
17 operating procedures that are designed to reduce energy consumption within the facility of a
18 State agency or a State institution of higher learning and that require no significant expenditure
19 of funds. Every State agency or State institution of higher learning shall implement these
20 recommendations. Where energy management equipment is proposed for any facility of a State
21 agency or of a State institution of higher learning, the maximum interchangeability and
22 compatibility of equipment components shall be required. ~~As part of the Facilities Condition
23 and Assessment Program under this section, the Department of Administration, in consultation
24 with the State Energy Office, shall develop an energy audit and a procedure for conducting
25 energy audits. Every five years the Department shall conduct an energy audit for each State
26 agency or State institution of higher learning, and the energy audits conducted shall serve as a
27 preliminary energy survey. The State Energy Office shall be responsible for system-level
28 detailed surveys.~~

29 ~~(b2) The Department of Administration shall submit a report of the energy audit required
30 by subsection (b1) of this section to the affected State agency or State institution of higher
31 learning and to the State Energy Office. The State Energy Office shall review each audit and, in
32 consultation with the affected State agency or State institution of higher learning, incorporate
33 the audit findings and recommendations into the management plan required by subsection (a)
34 of this section.~~

35 ...

36 (j) The State Energy Office shall submit a report by December 1 of every
37 odd-numbered year to the Joint Legislative Energy Policy Commission describing the
38 comprehensive program to manage energy, water, and other utility use for State agencies and
39 State institutions of higher learning required by subsection (a) of this section. The report shall
40 also contain the following:

- 41 (1) A comprehensive overview of how State agencies and State institutions of
42 higher learning are managing energy, water, and other utility use and
43 achieving efficiency gains.
- 44 (2) Any new measures that could be taken by State agencies and State
45 institutions of higher learning to achieve greater efficiency gains, including
46 any changes in general law that might be needed.
- 47 (3) A summary of the State agency and State institutions of higher learning
48 management plans required by subsection (a) of this section ~~and the energy
49 audits required by subsection (b1) of this section.~~
- 50 (4) A list of the State agencies and State institutions of higher learning that did
51 and did not submit management plans required by subsection (a) of this

1 ~~section and a list of the State agencies and State institutions of higher~~
2 ~~learning that received an energy audit.~~section.

- 3 (5) Any recommendations on how management plans can be better managed
4 and implemented."
5

6 **DELETE OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES**
7 **REPORTING REQUIREMENTS**

8 **SECTION 4.12.(a)** G.S. 113-175.6 is repealed.

9 **SECTION 4.12.(b)** G.S. 113-182.1(e) reads as rewritten:

10 **"§ 113-182.1. Fishery Management Plans.**

11 ...

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

25 **SECTION 4.12.(c)** G.S. 143B-279.15 is repealed.

26 **SECTION 4.12.(d)** G.S. 143B-289.44(d) is repealed.

27 **SECTION 4.12.(e)** G.S. 159I-29 is repealed.

28 **SECTION 4.12.(f)** Section 2.3 of S.L. 2007-485 is repealed.
29

30 **ON-SITE WASTEWATER AMENDMENTS AND CLARIFICATIONS**

31 **SECTION 4.14.(a)** G.S. 130A-334 reads as rewritten:

32 **"§ 130A-334. Definitions.**

33 The following definitions shall apply throughout this Article:

34 (1) "Accepted wastewater system" has the same meaning as in G.S. 130A-343.

35 ~~(4)~~(1a) "Construction" means any work at the site of placement done for the purpose
36 of preparing a residence, place of business or place of public assembly for
37 initial occupancy, or subsequent additions or modifications which increase
38 sewage flow.

39 (1b) "Conventional wastewater system" has the same meaning as in
40 G.S. 130A-343.

41 ~~(1a)~~(1c) "Department" means the Department of Health and Human Services.

42 ~~(4b)~~(1d) "Ground absorption system" means a system of tanks, treatment units,
43 nitrification fields, and appurtenances for wastewater collection, treatment,
44 and subsurface disposal.

45 (2) Repealed by Session Laws 1985, c. 462, s. 18.

46 (2a) "Industrial process wastewater" means any water-carried waste resulting
47 from any process of industry, manufacture, trade, or business.

48 (2b) "Licensed soil scientist" has the same meaning as in G.S. 89F-3.

49 (3) "Location" means the initial placement for occupancy of a residence, place
50 of business or place of public assembly.

- 1 (3a) "Maintenance" means normal or routine maintenance including replacement
2 of broken pipes, cleaning, or adjustment to an existing wastewater system.
- 3 (4), (5) Repealed by Session Laws 1985, c. 462, s. 18.
- 4 (6) "Place of business" means a store, warehouse, manufacturing establishment,
5 place of amusement or recreation, service station, office building or any
6 other place where people work.
- 7 (7) "Place of public assembly" means a fairground, auditorium, stadium, church,
8 campground, theater or any other place where people assemble.
- 9 (7a) "Plat" means a property survey prepared by a registered land surveyor,
10 drawn to a scale of one inch equals no more than 60 feet, that includes: the
11 specific location of the proposed facility and appurtenances, the site for the
12 proposed wastewater system, and the location of water supplies and surface
13 waters. "Plat" also means, for subdivision lots approved by the local
14 planning authority if a local planning authority exists at the time of
15 application for a permit under this Article, a copy of the subdivision plat that
16 has been recorded with the county register of deeds and is accompanied by a
17 site plan that is drawn to scale.
- 18 (7b) "Pretreatment" means any biological, chemical, or physical process or
19 system for improving wastewater quality and reducing wastewater
20 constituents prior to final treatment and disposal in a subsurface wastewater
21 system and includes, but is not limited to aeration, clarification, digestion,
22 disinfection, filtration, separation, and settling.
- 23 (7c) "Private option permit" means approval of an on-site wastewater system by a
24 professional engineer who has both expertise and education in civil or
25 environmental engineering and who has designed the wastewater system
26 acting under the authority of the owner thereof.
- 27 (7d) "Professional engineer" has the same meaning as in G.S. 89C-3.
- 28 (8) "Public or community wastewater system" means a single system of
29 wastewater collection, treatment and disposal owned and operated by a
30 sanitary district, a metropolitan sewage district, a water and sewer authority,
31 a county or municipality or a public utility.
- 32 (9) "Relocation" means the displacement of a residence or place of business
33 from one site to another.
- 34 (9a) "Repair" means the extension, alteration, replacement, or relocation of
35 existing components of a wastewater system.
- 36 (10) "Residence" means a private home, dwelling unit in a multiple family
37 structure, hotel, motel, summer camp, labor work camp, manufactured
38 home, institution or any other place where people reside.
- 39 (10a) "Secretary" means the Secretary of Environment and Natural Resources.
- 40 (11) Repealed by Session Laws 1992, c. 944, s. 3.
- 41 (12) "Septic tank system" means a subsurface wastewater system consisting of a
42 settling tank and a subsurface disposal field.
- 43 (13) "Sewage" means the liquid and solid human body waste and liquid waste
44 generated by water-using fixtures and appliances, including those associated
45 with foodhandling. The term does not include industrial process wastewater
46 or sewage that is combined with industrial process wastewater.
- 47 (13a) "Site plan" means a drawing not necessarily drawn to scale that shows the
48 existing and proposed property lines with dimensions, the location of the
49 facility and appurtenances, the site for the proposed wastewater system, and
50 the location of water supplies and surface waters.

1 (14) "Wastewater" means any sewage or industrial process wastewater
2 discharged, transmitted, or collected from a residence, place of business,
3 place of public assembly, or other places into a wastewater system.

4 (15) "Wastewater system" means a system of wastewater collection, treatment,
5 and disposal in single or multiple components, including a ground
6 absorption system, privy, septic tank system, public or community
7 wastewater system, wastewater reuse or recycle system, mechanical or
8 biological wastewater treatment system, any other similar system, and any
9 chemical toilet used only for human waste. A wastewater system located on
10 multiple adjoining lots or tracts of land under common ownership or control
11 shall be considered a single system for purposes of permitting under this
12 Article."

13 **SECTION 4.14.(b)** G.S. 130A-335 reads as rewritten:

14 **"§ 130A-335. Wastewater collection, treatment and disposal; rules.**

15 (a) A person owning or controlling a residence, place of business or a place of public
16 assembly shall provide an approved wastewater system. Except as may be allowed under
17 another provision of law, all wastewater from water-using fixtures and appliances connected to
18 a water supply source shall discharge to the approved wastewater system. A wastewater system
19 may include components for collection, treatment and disposal of wastewater.

20 (a1) Any proposed site for a residence, place of business, or a place of public assembly
21 located in an area that is not served by an approved wastewater system for which a new
22 wastewater system is proposed may be evaluated for soil conditions and site features by a
23 licensed soil scientist. For purposes of this subsection, "site features" include topography and
24 landscape position; soil characteristics (morphology); soil wetness; soil depth; restrictive
25 horizons; available space; and other applicable factors that involve accepted public health
26 principles.

27 (b) All wastewater systems shall either (i) be regulated by the Department under rules
28 adopted by the Commission or (ii) conform with the private option permit criteria set forth in
29 G.S. 130A-336.1 and under rules adopted by the Commission except for the following
30 wastewater systems that shall be regulated by the Department under rules adopted by the
31 Environmental Management Commission:

32 (1) Wastewater collection, treatment, and disposal systems designed to
33 discharge effluent to the land surface or surface waters.

34 (2) Wastewater systems designed for groundwater remediation, groundwater
35 injection, or landfill leachate collection and disposal.

36 (3) Wastewater systems designed for the complete recycle or reuse of industrial
37 process wastewater.

38 (4) Gray water systems as defined in G.S. 143-350.

39 (c) A wastewater system subject to approval under rules of the Commission shall be
40 reviewed and approved under rules of a local board of health in the following circumstances:

41 (1) The local board of health, on its own motion, has requested the Department
42 to review its proposed rules concerning wastewater systems; and

43 (2) The local board of health has adopted by reference the wastewater system
44 rules adopted by the Commission, with any more stringent modifications or
45 additions deemed necessary by the local board of health to protect the public
46 health; and

47 (3) The Department has found that the rules of the local board of health
48 concerning wastewater collection, treatment and disposal systems are at least
49 as stringent as rules adopted by the Commission and are sufficient and
50 necessary to safeguard the public health.

1 (c1) The rules adopted by the Commission for wastewater systems approved under the
2 private option permit criteria pursuant to G.S. 130A-336.1 shall be, at a minimum, as stringent
3 as the rules for wastewater systems established by the Commission.

4 (d) The Department may, upon its own motion, upon the request of a local board of
5 health or upon the request of a citizen of an affected county, review its findings under
6 subsection (c) of this section.

7 The Department shall review its findings under subsection (c) of this section upon
8 modification by the Commission of the rules applicable to wastewater systems. The
9 Department may deny, suspend, or revoke the approval of local board of health wastewater
10 system rules upon a finding that the local wastewater rules are not as stringent as rules adopted
11 by the Commission, are not sufficient and necessary to safeguard the public health, or are not
12 being enforced. Suspension and revocation of approval shall be in accordance with
13 G.S. 130A-23.

14 (d1) The Department or owner of a wastewater system may file a written complaint with
15 the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules
16 and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing
17 failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to
18 this Article. The Department or owner of a wastewater system may file a written complaint
19 with the North Carolina Board of Licensed Soil Scientists in accordance with rules and
20 procedures adopted by the Board pursuant to Chapter 89F of the General Statutes citing failure
21 of a licensed soil scientist to adhere to the rules adopted by the Commission pursuant to this
22 Article.

23 "

24 **SECTION 4.14.(c)** Article 11 of Chapter 130A of the General Statutes is amended
25 by adding a new section to read:

26 **"§ 130A-336.1. Alternative process for wastewater system approvals.**

27 (a) Private Option Permit Authorized. – A professional engineer may, under the legal
28 authority of the owner of a proposed wastewater system who wishes to utilize the private
29 option permit, prepare drawings, specifications, plans, and reports that are certified and
30 stamped with the professional engineer's seal for the design, construction, operation, and
31 maintenance of the wastewater system in accordance with this section and rules adopted
32 thereunder.

33 (b) Notice of Intent to Construct. – Prior to commencing or assisting in the
34 construction, siting, or relocation of a wastewater system, the owner of a proposed wastewater
35 system who wishes to utilize the private option permit, or a professional engineer authorized as
36 the legal representative of the owner, shall submit to the local health department with
37 jurisdiction over the location of the proposed wastewater system a notice of intent to construct
38 a wastewater system utilizing the private permit option. The Department shall develop a
39 common form for use as the notice of intent to construct that includes all of the following:

40 (1) The owner's name, address, e-mail address, and telephone number.

41 (2) The professional engineer's name, address, e-mail address, and telephone
42 number.

43 (3) Certified copy of the wastewater system owner's contract with the
44 professional engineer.

45 (4) For both the professional engineer and the licensed soil scientist, proof of
46 errors and omissions insurance coverage or other appropriate liability
47 insurance that has policy limits of not less than one million dollars
48 (\$1,000,000) per claim and that shall remain in force as applicable:

49 a. Two years following the date on which a professional engineer
50 delivers an engineering report pursuant to subdivision (k)(1) of this
51 section to the owner of the wastewater system; or

1 b. Two years following the date on which a licensed soil scientist
2 delivers a soils report to the owner of the wastewater system.

3 (5) A description of the facility the proposed site is to serve and any factors that
4 would affect the wastewater load.

5 (6) The type of proposed wastewater system and its location.

6 (7) The design wastewater flow and characteristics.

7 (8) Any proposed landscape, site, drainage, or soil modifications.

8 (9) A soil evaluation that is conducted and signed and sealed by a licensed soil
9 scientist.

10 (10) A plat, as defined in G.S. 130A-334(7a).

11 (c) Completeness Review for Notice of Intent to Construct. – The local health
12 department shall determine whether a notice of intent to construct, as required pursuant
13 subsection (b) of this section, is complete within 14 days after the local health department
14 receives the notice of intent to construct. A determination of completeness means that the
15 notice of intent to construct includes all of the required components. If the local health
16 department determines that the notice of intent to construct is not complete, the department
17 shall notify the owner or the professional engineer of the components needed to complete the
18 notice. The owner or professional engineer may submit additional information to the
19 department to cure the deficiencies in the notice. The local health department shall make a final
20 determination as to whether the notice of intent to construct is complete within 10 days after the
21 department receives the additional information from the owner or professional engineer. If the
22 department fails to act within any time period set out in this subsection, the owner or
23 professional engineer may treat the failure to act as a denial of the completeness of the notice of
24 intent and may challenge the denial as provided in Chapter 150B of the General Statutes.

25 (d) Submission of Notice of Intent to Construct to Department for Certain Systems. –
26 Prior to commencing in the construction, siting, or relocation of a wastewater system designed
27 (i) for the collection, treatment, and disposal of industrial process wastewater or (ii) to treat
28 greater than 3,000 gallons per day, the owner of a proposed wastewater system who wishes to
29 utilize the private option permit, or a professional engineer authorized as the legal
30 representative of the owner, shall provide to the Department a duplicate copy of the notice of
31 intent to construct submitted to the local health department required pursuant to subsection (b)
32 of this section.

33 (e) Site Design, Construction, and Activities. –

34 (1) The professional engineer designing the proposed wastewater system shall
35 use recognized principles and practices of engineering and applicable rules
36 of the Commission in the calculations and design of the wastewater system.
37 The investigations and findings of the professional engineer shall include, at
38 a minimum, the information required in rules adopted by the Commission
39 pursuant to G.S. 130A-335(e). The professional engineer may, at the
40 engineer's discretion, employ wastewater system technologies not yet
41 approved in this State.

42 (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater
43 system shall employ a licensed soil scientist to evaluate soil conditions and
44 site features.

45 (3) The professional engineer designing the proposed wastewater system shall
46 be responsible and accountable for all aspects of the construction and
47 installation of the wastewater system, including the selection and oversight
48 of an on-site wastewater system contractor certified pursuant to Article 5 of
49 Chapter 90A of the General Statutes.

50 (4) In addition to the requirements of this section, the owner and professional
51 engineer designing the proposed wastewater system shall comply with all

1 other applicable federal, State, and local laws, regulations, rules, and
2 ordinances.

3 (f) Liability. – The licensed soil scientist evaluating the soils at the site of the proposed
4 wastewater system shall assume all liability for the findings of the soil scientist's initial soil
5 evaluation and final soils report. The professional engineer designing the proposed wastewater
6 system shall assume all liability for the engineer's scope of work in the design, calculation,
7 construction and installation, and requirements for the development of the operation and
8 management plan for the wastewater system. The owner of the wastewater system shall assume
9 all liability for the proper operation and management of the wastewater system. The
10 Department, the Department's authorized agents, or local health departments shall have no
11 liability for wastewater systems approved under a private option permit. After the owner of the
12 wastewater system has commenced operation of the system pursuant to subsection (m) of this
13 section, neither the professional engineer nor the licensed soil scientist shall be held liable for
14 any damages that result from any unapproved changes made to the wastewater system by the
15 owner.

16 (g) Inspections. – The local health department may, at any time, conduct a site visit of
17 the wastewater system.

18 (h) Local Authority. – This section shall not relieve the owner or operator of a
19 wastewater system from complying with any and all modifications or additions to rules adopted
20 by the local health department to protect public health pursuant to G.S. 130A-335(c). The local
21 health department shall notify the owner or operator of the wastewater system of any issues of
22 compliance related to such modifications or additions.

23 (i) Operations and Management. –

24 (1) The professional engineer designing the wastewater system shall establish a
25 written operations and management program based on the size and
26 complexity of the wastewater system and shall provide the owner with the
27 operations and management program.

28 (2) The professional engineer shall assist the owner in the owner's selection of a
29 water pollution control system operator. The owner shall enter into a
30 contract with a water pollution control system operator certified pursuant to
31 Part 1 of Article 3 of Chapter 90A of the General Statutes and who is
32 selected from the list of certified operators maintained by the Division of
33 Water Resources in the Department of Environment and Natural Resources
34 for operation and maintenance of the system in accordance with rules
35 adopted by the Commission.

36 (3) Any person who owns or controls the property upon which the wastewater
37 system is located shall be responsible for the continued adherence to the
38 operations and management program established by the professional
39 engineer developed pursuant to subdivision (1) of this subsection.

40 (j) Postconstruction Conference. – The professional engineer designing the wastewater
41 system shall hold a postconstruction conference with the owner of the wastewater system; the
42 licensed soil scientist who performed the soils evaluation for the wastewater system; the
43 contractor, certified pursuant to Article 5 of Chapter 90A of the General Statutes, who installed
44 the wastewater system; the certified operator of the wastewater system, if any; and
45 representatives from the local health department and, as applicable, the Department. The
46 postconstruction conference shall include start-up of the wastewater system and any required
47 verification of system design or system components.

48 (k) Required Documentation. –

49 (1) At the completion of the postconstruction conference conducted pursuant to
50 subsection (j) of this section, the professional engineer who designed the
51 wastewater system shall deliver to the owner signed, sealed, and dated

1 certified copies of the engineer's report, which, for purposes of this section,
2 shall include (i) the evaluation of soil conditions and site features as
3 prepared by the licensed soil scientist; (ii) design and construction
4 specifications; (iii) operator's management program manual that includes a
5 copy of the contract entered into with the certified water pollution control
6 system operator required pursuant to subsection (i) of this section; and (iv)
7 any reports and findings related to the design and installation of the
8 wastewater system.

9 (2) Upon reviewing the authorized professional engineer's report, the owner of
10 the wastewater system shall sign and notarize the report as having been
11 received.

12 (l) Reporting Requirements. –

13 (1) The owner of the wastewater system shall deliver to the local health
14 department (i) a certified copy of the authorized professional engineer's
15 report, (ii) a copy of the operations and management program, (iii) the fee
16 required pursuant to subsection (n) of this section, and (iv) a notarized letter
17 that documents the owner's acceptance of the system from the professional
18 engineer.

19 (2) The owner of any wastewater system subject to subsection (d) of this section
20 shall deliver to the Department certified copies of the engineer's report, as
21 described in subdivision (1) of this subsection.

22 (m) Authorization to Operate. – Upon receipt of the documents and fees required
23 pursuant to subdivision (1) of subsection (l) of this section, the local health department shall
24 issue the owner a letter of confirmation that states the documents and information contained
25 therein have been received and that the wastewater system may operate in accordance with
26 rules adopted by the Commission.

27 (n) Fees. – The local health department may assess a fee of up to ten percent (10%) of
28 the fees established to obtain an improvement permit, an authorization to construct, or an
29 operations permit within the health department's on-site wastewater program. Fees shall be
30 used by the local health department to conduct site inspections, to support the department's staff
31 participation at postconstruction conference meetings, and to archive the private permit with
32 the county register of deeds or other recordation of the wastewater system as required.

33 (o) Change in System Ownership. – A wastewater system authorized pursuant to this
34 section shall not be affected by change in ownership of the site for the wastewater system,
35 provided both the site for the wastewater system and the facility the system serves are
36 unchanged and remain under the ownership or control of the person currently owning the
37 wastewater system.

38 (p) Rule Making. – The Commission shall adopt rules to implement to the provisions of
39 this section.

40 (q) Reports. – The Department shall report to the Environmental Review Commission
41 and the Joint Legislative Oversight Committee on Health and Human Services on or before
42 January 1, 2017, and annually thereafter, on the implementation and effectiveness of this
43 section. For the report due on or before January 1, 2017, the Department shall specifically
44 evaluate whether (i) the private option permit resulted in a reduction in the length of time
45 improvement permits or authorizations to construct are pending; (ii) the private option permit
46 resulted in increased system failures or other adverse impacts; and (iii) the private option
47 permit resulted in new or increased environmental impacts. The Department may include
48 recommendations, including any legislative proposals, in its reports to the Commission and
49 Committee."

50 **SECTION 4.14.(d)** G.S. 130A-338 reads as rewritten:

1 "§ 130A-338. Authorization for wastewater system construction required before other
2 permits to be issued.

3 Where construction, location or relocation is proposed to be done upon a residence, place of
4 business or place of public assembly, no permit required for electrical, plumbing, heating, air
5 conditioning or other construction, location or relocation activity under any provision of
6 general or special law shall be issued until an authorization for wastewater system construction
7 has been issued under ~~G.S. 130A-336~~G.S. 130A-336, or authorization has been obtained under
8 ~~G.S. 130A-337(e)~~G.S. 130A-337(c), or a decision on the completeness of the notice of intent
9 to construct is made by the local health department pursuant to G.S. 130A-336.1(c)."

10 SECTION 4.14.(e) G.S. 130A-339 reads as rewritten:

11 "§ 130A-339. Limitation on electrical service.

12 No person shall allow permanent electrical service to a residence, place of business or place
13 of public assembly upon construction, location or relocation until the official electrical
14 inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that
15 the required improvement permit authorization for wastewater system construction and an
16 operation permit or authorization under G.S. 130A-337(c) or the decision on the completeness
17 of the notice of intent to construct made by the local health department pursuant to
18 G.S. 130A-336.1(b1) has been obtained. Temporary electrical service necessary for
19 constructing a residence, place of business or place of public assembly can be provided upon
20 compliance with G.S. 130A-338."

21 SECTION 4.14.(f) The Commission for Public Health, in consultation with the
22 Department of Health and Human Services, local health departments, and stakeholders
23 representing the wastewater system industry, shall study the minimum on-site wastewater
24 system inspection frequency established pursuant to Table V(a) in 15A NCAC 18A .1961 to
25 evaluate the feasibility and desirability of eliminating duplicative inspections of on-site
26 wastewater systems. In the conduct of its study, the Commission shall consider (i) the
27 compliance history of wastewater systems, including whether operators' reports and laboratory
28 reports are in compliance with Article 11 of Chapter 130A of the General Statutes and the rules
29 adopted pursuant to that Article; (ii) alternative inspection frequencies, including the use of
30 remote Web-based monitoring for alarm and compliance notification; (iii) whether the required
31 verification visit conducted by local health departments shows a statistically significant
32 justification for duplicative costs to the owner of the wastewater system; (iv) methods for
33 notifications of changes to and expirations of operations contracts; and (v) methods for local
34 health departments to provide certified operator management for sites that are not under
35 contract with a water pollution control system operator certified pursuant to Part 1 of Article 3
36 of Chapter 90A of the General Statutes. The Commission shall report its findings and
37 recommendations, including any legislative proposals, to the Environmental Review
38 Commission and the Joint Legislative Oversight Committee on Health and Human Services on
39 or before January 1, 2016.

40 SECTION 4.14.(g) G.S. 130A-336 reads as rewritten:

41 "§ 130A-336. Improvement permit and authorization for wastewater system construction
42 required.

43 (a) Any proposed site for a residence, place of business, or place of public assembly in
44 an area not served by an approved wastewater system shall be evaluated by either (i) the local
45 health department in accordance with rules adopted pursuant to this Article.Article or (ii) by a
46 professional engineer or licensed soil scientist acting within the engineer's or soil scientist's
47 scope of work, as applicable, and pursuant to the conditions of the private option permit in
48 G.S. 130A-336.1. An improvement permit ~~shall be issued in compliance with the rules adopted~~
49 ~~pursuant to this Article.~~ An improvement permit issued by a local health department shall
50 include:

- 1 (1) ~~For permits that are valid without expiration, a plat or, for permits that are~~
2 ~~valid for five years, A plat or a site plan.~~
3 (2) A description of the facility the proposed site is to serve.
4 (3) The proposed wastewater system and its location.
5 (4) The design wastewater flow and characteristics.
6 (5) The conditions for any site modifications.
7 (6) Any other information required by the rules of the Commission.

8 ~~The Neither the improvement permit nor the authorization for wastewater system construction~~
9 ~~shall not be affected by change in of ownership of the site for the wastewater system provided~~
10 ~~both the site for the wastewater system and the facility the system serves are unchanged and~~
11 ~~remain under the ownership or control of the person owning the facility. The improvement~~
12 ~~permit and the authorization for wastewater system construction shall remain valid once issued,~~
13 ~~without expiration, provided the design wastewater flow and characteristics and the description~~
14 ~~of the proposed facility the wastewater system will serve remains unchanged. No person shall~~
15 ~~commence or assist in the construction, location, or relocation of a residence, place of business,~~
16 ~~or place of public assembly in an area not served by an approved wastewater system unless an~~
17 ~~improvement permit and an authorization for wastewater system construction are obtained from~~
18 ~~the local health department. department unless acting within the conditions and criteria of a~~
19 ~~private option permit pursuant to G.S. 130A-336.1. This requirement shall not apply to a~~
20 ~~manufactured residence exhibited for sale or stored for later sale and intended to be located at~~
21 ~~another site after sale.~~

22 (b) The local health department shall issue an authorization for wastewater system
23 construction authorizing work to proceed and the installation or repair of a wastewater system
24 when it has determined after a field investigation that the system can be installed and operated
25 in compliance with this Article and rules adopted pursuant to this Article. ~~This authorization for~~
26 ~~wastewater system construction shall be valid for a period equal to the period of validity of the~~
27 ~~improvement permit and may be issued at the same time the improvement permit is issued. No~~
28 ~~person shall commence or assist in the installation, construction, or repair of a wastewater~~
29 ~~system unless an improvement permit and an authorization for wastewater system construction~~
30 ~~have been obtained from the Department or the local health department. department unless~~
31 ~~acting within the conditions and criteria of a private option permit pursuant to~~
32 ~~G.S. 130A-336.1. No improvement permit or authorization for wastewater system construction~~
33 ~~shall be required for maintenance of a wastewater system. The Department and the local health~~
34 ~~department may impose conditions on the issuance of an improvement permit and an~~
35 ~~authorization for wastewater system construction.~~

36 (b1) The local health department shall maintain a database of proposed wastewater
37 systems for which both the improvement permit and construction authorization have been
38 obtained but no commencement of activity related to the construction or installation of the
39 wastewater system was undertaken during the five years immediately following the approval of
40 the improvement permit and construction authorization. For those wastewater systems
41 identified in accordance with this subsection, the local health department shall notify the
42 applicant of alternative wastewater system technologies and options that may be employed by
43 the applicant in lieu of the system already permitted and authorized by the department.

44 (c) Unless the Commission otherwise provides by rule, plans, and specifications for all
45 wastewater systems designed for the collection, treatment, and disposal of industrial process
46 wastewater shall be reviewed and approved by the Department prior to the issuance of an
47 authorization for wastewater system construction by the local health department.

48 (d) If a local health department repeatedly fails to issue or deny improvement permits
49 for conventional or accepted septic tank systems within 60 ~~days of days, or within 90 days for~~
50 provisional or innovative systems, after receiving completed applications for the permits, then

1 the Department of Environment and Natural Resources may withhold public health funding
2 from that local health department."

3 **SECTION 4.14.(h)** G.S. 130A-342 reads as rewritten:

4 **"§ 130A-342. Residential wastewater treatment systems.**

5 (a) Individual residential wastewater treatment systems that are approved and listed in
6 accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I
7 residential wastewater treatment systems, as set out in Standard 40 of the National Sanitation
8 Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules
9 adopted by the Commission. The Commission may establish standards in addition to those set
10 by the National Sanitation Foundation, Inc.

11 (b) A permitted system with a design flow of less than 1,500 gallons per day shall be
12 operated and maintained by a certified wastewater treatment facility operator by a person who
13 is a Subsurface Water Pollution Control System Operator as certified by the Water Pollution
14 Control System Operators Certification Commission and authorized by the manufacturer of the
15 individual residential wastewater treatment system. The Commission may establish additional
16 standards for wastewater systems with a design flow of 1,500 gallons or greater per day.

17 (c) Each county, in which one or more residential wastewater treatment systems
18 permitted pursuant to this section are in use, shall document the performance of each system
19 and report the results to the Department annually."

20 **SECTION 4.14.(i)** This section is effective when this act becomes law, and the
21 Commission for Public Health shall adopt or amend rules pursuant to Sections 4.14(a) through
22 4.14(e) of this act no later than June 1, 2016. No person shall utilize the private permit option
23 authorized pursuant to G.S. 130A-336.1, as enacted by Section 4.14(c) of this act, however,
24 until such time as the rules adopted by the Commission pursuant to Section 4.14(c) of this act
25 become effective.

26 **AMEND APPROVAL OF ON-SITE WASTEWATER SYSTEMS**

27 **SECTION 4.15.(a)** G.S. 130A-343 reads as rewritten:

28 **"§ 130A-343. Approval of on-site subsurface wastewater systems.**

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

30 (1) "Accepted wastewater dispersal system" means any subsurface wastewater
31 dispersal system, other than a conventional wastewater system, ~~or any~~
32 ~~technology, device, or component of a wastewater system~~ that: (i) has been
33 previously approved as an innovative wastewater dispersal system by the
34 Department; (ii) has been in general use in this State as an innovative
35 wastewater dispersal system for more than five years; and (iii) has been
36 approved by the Commission for general use or use in one or more specific
37 applications. An accepted wastewater dispersal system may be approved for
38 use in applications for which a conventional wastewater system is
39 unsuitable. The Commission may impose any design, operation,
40 maintenance, monitoring, and management requirements on the use of an
41 accepted wastewater dispersal system that it determines to be appropriate.

42 (2) "~~Controlled demonstration~~Provisional wastewater system" means any
43 wastewater system or any technology, device, or component of a wastewater
44 system that, on the basis of (i) research acceptable research, ~~is approved by~~
45 ~~to the Department or (ii) approval of the wastewater system by a nationally~~
46 recognized certification body for a period that exceeds one year for research,
47 testing, or trial use under actual field conditions in this State pursuant to a
48 protocol that has been approved by the Department.

49 (3) "Conventional wastewater system", "conventional sewage system", or
50 "conventional septic tank system" means a subsurface wastewater system
51

1 that consists of a traditional septic or settling tank and a gravity-fed
 2 subsurface ~~disposal~~ dispersal field that uses washed natural stone or gravel
 3 ~~or crushed stone~~ of approved size and grade and piping to distribute effluent
 4 to soil in one or more nitrification trenches and that does not include any
 5 other appurtenance.

6 (4) "~~Experimental wastewater system~~" means ~~any wastewater system or any~~
 7 ~~technology, device, or component of a wastewater system that is approved~~
 8 ~~by the Department for research, testing, or limited trial use under actual field~~
 9 ~~conditions in this State pursuant to a protocol that has been approved by the~~
 10 ~~Department.~~

11 (5) "Innovative wastewater system" means any wastewater system, other than a
 12 conventional wastewater system, provisional wastewater system, or any
 13 technology, device, or component of a wastewater system ~~that~~ that either:

14 a. ~~(i) has~~ Has been demonstrated to perform in a manner equal or
 15 superior to a conventional wastewater system; ~~(ii) is~~ constructed of
 16 materials whose physical and chemical properties provide the
 17 strength, durability, and chemical resistance to allow the system to
 18 withstand loads and conditions as required by rules adopted by the
 19 Commission; and ~~(iii) has~~ been approved by the Department for
 20 general use or for one or more specific applications.

21 b. Remains on a list of the applicable nationally recognized standards
 22 for a period that exceeds two years and satisfies the treatment limits
 23 adopted by the Department.

24 An innovative wastewater system may be approved for use in applications
 25 for which a conventional wastewater system is unsuitable. The Department
 26 may impose any design, operation, maintenance, monitoring, and
 27 management requirements on the use of an innovative wastewater system
 28 that it determines to be appropriate. A wastewater system approved by a
 29 nationally recognized certification body and in compliance with the ongoing
 30 verification program of such body may submit a sampling protocol for
 31 innovative system approval that reduces the data sets required for such
 32 approval by fifty percent (50%). Such an application shall include all of the
 33 data associated with the nationally recognized certification body's
 34 verification of the system's performance.

35 (6) "Nationally recognized certification body" means NSF International; the
 36 International Association of Plumbing and Mechanical Officials; the Bureau
 37 of Normalization of Quebec; or another certification body for wastewater
 38 systems or system components accredited by the American National
 39 Standards Institute or the Standards Council of Canada.

40 (b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for
 41 the approval and permitting of ~~experimental, controlled demonstration,~~ innovative,
 42 conventional, provisional, and accepted wastewater systems. The rules shall address the criteria
 43 to be considered prior to issuing ~~a permit~~ an approval for a system, requirements for
 44 preliminary design plans and specifications that must be submitted, methodology to be used,
 45 standards for monitoring and evaluating the system, research evaluation of the system, the plan
 46 of work for monitoring system performance and maintenance, and any additional matters the
 47 Commission ~~deems appropriate.~~ determines are necessary for verification of the performance of
 48 a wastewater system or system component.

49 ~~Approved Systems.~~ Procedure for Modifications or Revocations. – The
 50 Department may modify, suspend, or revoke the approval of a wastewater system if the
 51 Department determines that the approval is based on false, incomplete, or misleading

1 information or if the Department finds that modification, suspension, or revocation is necessary
2 to protect public health, safety, or welfare. The Department shall provide a listing of all
3 approved ~~experimental, controlled demonstration, innovative, provisional, and accepted~~
4 wastewater systems to the local health departments annually, and ~~more frequently, when the~~
5 ~~Department makes a final agency decision related to the approval of a wastewater system or the~~
6 ~~Commission adopts rules related to the~~ notify the local health departments within 30 days of
7 any modification or revocation of an approval of a wastewater system-system or system
8 component.

9 (d) Evaluation Protocols. – The Department shall approve one or more nationally
10 recognized protocols for the evaluation of ~~on-site subsurface~~ wastewater systems. Any protocol
11 approved by the Department shall specify a minimum number of sites that must be evaluated
12 and the duration of the evaluation period. At the request of a manufacturer of a wastewater
13 system, the Department may approve an alternative protocol for use in the evaluation of the
14 performance of the manufacturer's wastewater system. A protocol for the evaluation of ~~an~~
15 ~~on-site subsurface~~ a wastewater system approved by the Department pursuant to this section is
16 a scientific standard within the meaning of G.S. 150B-2(8a)h.

17 (e) ~~Experimental Systems.~~ – A manufacturer of a wastewater system that is intended for
18 ~~on-site subsurface use may apply to the Department to have the system evaluated as an~~
19 ~~experimental wastewater system as provided in this subsection. The manufacturer shall submit~~
20 ~~a proposal for evaluation of the system to the Department. The proposal for evaluation shall~~
21 ~~include the design of the system, a description of any laboratory or field research or testing that~~
22 ~~will be used to evaluate the system, a description of the research or testing protocol, and the~~
23 ~~credentials of the independent laboratory, consultant, or other entity that will be conducting the~~
24 ~~research or testing on the system. The proposal may include an evaluation of research and~~
25 ~~testing conducted in other states to the extent that the research and testing involves soil types,~~
26 ~~climate, hydrology, and other relevant conditions that are comparable to conditions in this State~~
27 ~~and if the research or testing was conducted pursuant to a protocol acceptable to the~~
28 ~~Department. The manufacturer shall enter into a contract for an evaluation of the performance~~
29 ~~of the experimental wastewater system with an independent laboratory, consultant, or other~~
30 ~~entity that has expertise in the evaluation of wastewater systems and that is approved by the~~
31 ~~Department. The manufacturer may install up to 50 experimental systems pursuant to a~~
32 ~~protocol approved by the Department on sites that are suitable for a conventional wastewater~~
33 ~~system and that have a repair area of sufficient size to allow installation of a conventional~~
34 ~~wastewater system, an approved innovative wastewater system, or an accepted wastewater~~
35 ~~system if the experimental wastewater system fails to perform properly.~~

36 (f) ~~Controlled Demonstration Provisional Systems.~~ – A manufacturer of a wastewater
37 system ~~intended for on-site subsurface use may apply to the Department to have the system~~
38 ~~evaluated as a controlled demonstration wastewater system as provided in this subsection.~~
39 provisionally approved for use in this State. Any wastewater system approved based on its
40 approval by a nationally recognized certification body must be designed and installed in a
41 manner consistent with the system evaluated and approved by the nationally recognized
42 certification body. The manufacturer shall submit a proposal for evaluation of the system to the
43 Department. The proposal shall contain procedures for obtaining specified information
44 necessary to achieve innovative status upon completion of the provisional status. The proposal
45 for evaluation shall include the design of the system, a description of any laboratory or field
46 research or testing that will be used to evaluate the system, a description of the research or
47 testing protocol, and the credentials of the independent laboratory, consultant, or other entity
48 that will be conducting the research or testing on the system. ~~If the system was evaluated as an~~
49 ~~experimental system under subsection (e) of this section, the proposal shall include the results~~
50 ~~of the evaluation.~~ The proposal may include an evaluation of research and testing conducted in
51 other states to the extent that the research and testing involves soil types, climate, hydrology,

1 and other relevant conditions that are comparable to conditions in this State and if the research
2 or testing was conducted pursuant to a protocol acceptable to the Department. The
3 manufacturer shall enter into a contract for an evaluation of the performance of the controlled
4 demonstration wastewater system with an independent laboratory, consultant, or other entity
5 that has expertise in the evaluation of wastewater systems and that is approved by the
6 Department. The manufacturer may install up to 200 ~~controlled demonstration~~ provisional
7 wastewater systems ~~pursuant to a protocol approved by the Department~~ on sites that are
8 suitable for a conventional wastewater system and that have a repair area of sufficient size to
9 allow installation of a conventional wastewater system, an approved innovative wastewater
10 system, or an accepted wastewater system if the ~~controlled demonstration~~ provisional
11 wastewater system fails to perform properly. If the ~~controlled demonstration~~ provisional
12 wastewater system is intended for use on sites that are not ~~suitable, or that are provisionally~~
13 suitable, suitable for a conventional wastewater system, the Department may approve the
14 installation of the ~~controlled demonstration~~ provisional wastewater system if the Department
15 determines that the manufacturer can provide an acceptable alternative method for collection,
16 treatment, and ~~disposal-dispersal~~ of the wastewater. The Department shall approve applications
17 for provisional systems based on approval by a nationally recognized certification body within
18 90 days of receipt of a complete application. A manufacturer that chooses to remove its product
19 from the nationally recognized standard during the provisional approval may continue its
20 application in this State pursuant to requirements and procedures established by the
21 Department.

22 (g) Innovative Systems. – A manufacturer of a wastewater system for on-site subsurface
23 use ~~that has been evaluated as an experimental~~ may apply for and be considered for innovative
24 system status by the Department in one of the following ways:

25 (1) If the wastewater system has been approved as a provisional wastewater
26 system pursuant to subsection (f) of this section, the manufacturer may apply
27 to have the system approved as an innovative wastewater system based on
28 successful completion of the evaluation protocols established pursuant to
29 subsection (d) of this section. ~~wastewater system as provided in subsection~~
30 ~~(e) of this section or that has been evaluated as a controlled demonstration~~
31 ~~wastewater system as provided in subsection (f) of this section may apply to~~
32 ~~the Department to have the system approved as an innovative wastewater~~
33 ~~system as provided in this subsection.~~

34 (2) ~~A manufacturer of a~~ If the wastewater system for on-site subsurface use that
35 has not been evaluated or approved as an experimental ~~a provisional~~
36 ~~wastewater system or as a controlled demonstration wastewater system~~
37 pursuant to subsection (f) of this section, the manufacturer may also apply to
38 the Department to have the system approved as an innovative wastewater
39 system on the basis of comparable research and testing conducted in other
40 states. The manufacturer shall provide the Department with the data and
41 findings of all evaluations of the performance of the system that have been
42 conducted in any state by or on behalf of the manufacturer. The
43 manufacturer shall also provide the Department with a summary of the data
44 and findings of all other evaluations of the performance of the system that
45 are known to the manufacturer.

46 (3) If the wastewater system has not been evaluated or approved as a provisional
47 system pursuant to subsection (f) of this section, but has been evaluated
48 under protocol established by a nationally recognized certification body for
49 at least two consecutive years, has been found to perform acceptably based
50 on the criteria of the protocol, and is designed and will be installed in a
51 manner consistent with the system evaluated and approved by the nationally

1 recognized certification body, the manufacturer may apply to have the
2 system approved as an innovative wastewater system.

3 Within 30 days of receipt of the initial application, the Department shall either (i) notify the
4 manufacturer of any items necessary to complete the application or (ii) notify the manufacturer
5 that its application is complete. The Department shall publish a notice that the manufacturer has
6 submitted an application under this subsection in the North Carolina Register and may provide
7 additional notice to the public via the Internet or by other means. The Department shall receive
8 public comment on the application for at least 30 days after the date the notice is published in
9 the North Carolina Register. In making a determination under this subsection, the Department
10 shall consider the data, findings, and recommendations submitted by the manufacturer and all
11 public comment. The Department may also consider any other information that the Department
12 determines to be relevant. The Department shall determine: (i) whether the system performs in
13 a manner equal or superior to a conventional wastewater ~~system;~~system, in terms of structural
14 integrity, treatment, and hydraulic performance; (ii) whether the system is constructed of
15 materials whose physical and chemical properties provide the strength, durability, and chemical
16 resistance to allow the system to withstand loads and conditions as required by rules adopted by
17 the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any
18 conditions and limitations related to the use of the system. The Department shall make the
19 determinations required by this subsection and approve or deny the application within ~~180-90~~
20 days after the Department receives a complete application from a manufacturer. If the
21 Department fails to act on the application within 180 days, 90 days of the notice of receipt of the
22 complete application, the manufacturer may treat the application as denied and challenge the
23 denial by filing a contested case as provided in Article 3 of Chapter 150B of the General
24 Statutes. If the Department approves an innovative wastewater system, the Department shall
25 notify the manufacturer of the approval and specify the circumstances in which use of the
26 system is appropriate and any conditions and limitations related to the use of the system.

27 (g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A
28 manufacturer of a wastewater trench system may petition the Commission to have the
29 wastewater trench system approved as an innovative wastewater system as provided in this
30 subsection.

31 (1) The Commission shall approve a wastewater trench system as an innovative
32 wastewater system if it finds that there is clear, convincing, and cogent
33 evidence that the wastewater trench system is functionally equivalent to a
34 wastewater trench system that is approved as an accepted wastewater
35 system. A wastewater trench system shall be considered functionally
36 equivalent to an accepted wastewater trench system if the performance
37 characteristics of the wastewater trench system satisfy all of the following
38 requirements:

- 39 a. The physical properties and chemical durability of the materials from
40 which the wastewater trench system is constructed are equal to or
41 superior to the physical properties and chemical durability of the
42 materials from which the accepted wastewater trench system is
43 constructed.
- 44 b. The permeable sidewall area and bottom infiltrative area of the
45 wastewater trench system are equal to or greater than the permeable
46 sidewall area and bottom infiltrative area of the accepted wastewater
47 trench system at a field-installed size.
- 48 c. The wastewater trench system utilizes a similar method and manner
49 of function for the conveyance and application of effluent as the
50 accepted wastewater trench system.

- 1 d. The structural integrity of the wastewater trench system is equal to or
2 superior to the structural integrity of the accepted wastewater trench
3 system.
- 4 e. The wastewater trench system shall provide a field installed system
5 storage volume equal to or greater than the field installed system
6 storage volume of the accepted wastewater trench system.
- 7 (2) As part of its petition, the manufacturer shall provide to the Commission all
8 of the following information:
- 9 a. Specifications of the wastewater trench system.
- 10 b. Data necessary to demonstrate that the wastewater trench system is
11 functionally equivalent to a wastewater trench system that is
12 approved as an accepted wastewater system.
- 13 c. A certified statement from an independent, third-party professional
14 engineer or testing laboratory that, based on verified documentation,
15 the wastewater trench system is functionally equivalent to an
16 accepted wastewater system.
- 17 (3) Approval of a wastewater trench system as an innovative wastewater system
18 shall not be conditioned on the manufacturer of the wastewater trench
19 system having operational systems installed in the State.
- 20 (4) The Commission shall authorize the use of a wastewater trench system as an
21 innovative wastewater system in the same applications as the accepted
22 wastewater trench system.
- 23 (5) The Commission shall not include conditions and limitations in the approval
24 of a wastewater trench system as an innovative wastewater system that are
25 not included in the approval of the accepted wastewater trench system.
- 26 (h) Accepted Wastewater Dispersal Systems. – A manufacturer of an innovative
27 wastewater dispersal system that has been in general use in this State for ~~more than~~ a minimum
28 of five years may petition the Commission to have the system designated as an accepted
29 wastewater system as provided in this subsection. The manufacturer shall provide the
30 Commission with the data and findings of all prior evaluations of the performance of the
31 ~~system.~~ system in this State and other states referenced in the petition, including disclosure of
32 any conditions found to result in unacceptable structural integrity, treatment, or hydraulic
33 performance. In addition, the manufacturer shall provide the Commission with information
34 sufficient to enable the Commission to fully evaluate the performance of the system in this
35 State for at least the five-year period immediately preceding the petition. The Commission shall
36 designate a wastewater system as an accepted wastewater system only if it finds that there is
37 clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at
38 the time the Department approved the system as an innovative wastewater system and (ii) that
39 the system performs in a manner that is equal or superior to a conventional wastewater system
40 under actual field conditions in this State. The Commission shall specify the circumstances in
41 which use of the system is appropriate and any conditions and limitations related to the use of
42 the system.
- 43 (i) ~~Miscellaneous Provisions.~~ Nonproprietary Wastewater Systems. –
- 44 (1) ~~In evaluating applications for approval under this section, the Department~~
45 ~~may consult with persons who have special training and experience related~~
46 ~~to on-site subsurface wastewater systems and may form a technical advisory~~
47 ~~committee for this purpose. However, the Department is responsible for~~
48 ~~making timely and appropriate determinations under this section.~~
- 49 (2) The Department may initiate a review of a nonproprietary wastewater
50 system and approve the system for ~~on-site subsurface use as an experimental~~
51 ~~wastewater system, a controlled demonstration wastewater system, as a~~

1 provisional wastewater system or an innovative wastewater system without
 2 having received an application from a manufacturer. The Department may
 3 recommend that the Commission designate a nonproprietary wastewater
 4 system as an accepted wastewater system without having received a petition
 5 from a manufacturer.

6 ~~(j) Warranty Required in Certain Circumstances.—The Department shall not approve a~~
 7 ~~reduction of the total nitrification trench length for an innovative wastewater system or~~
 8 ~~accepted wastewater system handling untreated septic tank effluent of more than twenty five~~
 9 ~~percent (25%) as compared to the total nitrification trench length required for a 36 inch wide~~
 10 ~~conventional wastewater system unless the manufacturer of the innovative wastewater system~~
 11 ~~or accepted wastewater system provides a performance warranty for the nitrification trench~~
 12 ~~system to each owner or purchaser of the system for a warranty period of at least five years~~
 13 ~~from the date on which the wastewater system is placed in operation. The warranty shall~~
 14 ~~provide that the manufacturer shall provide all material and labor that may be necessary to~~
 15 ~~provide a fully functional wastewater system. The Commission shall establish minimum terms~~
 16 ~~and conditions for the warranty required by this subsection. This subsection shall not be~~
 17 ~~construed to require that a manufacturer warrant a wastewater system that is not properly sized~~
 18 ~~to meet the design load required for a particular use, that is improperly installed, or that is~~
 19 ~~improperly operated and maintained.~~

20 (j1) Clarification With Respect to Certain Dispersal Media. – In considering the
 21 application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic
 22 aggregate particles as a septic effluent dispersal medium for approval of the system under this
 23 section, neither the Commission nor the Department may condition, delay, or deny the approval
 24 based on the particle or bulk density of the expanded polystyrene material. With respect to
 25 approvals already issued by the Department or Commission that include conditions or
 26 requirements related to the particle or bulk density of expanded polystyrene material, the
 27 Commission or Department, as applicable, shall promptly reissue all such approvals with the
 28 conditions and requirements relating to the density of expanded polystyrene material
 29 permanently deleted while leaving all other terms and conditions of the approval intact.

30 (k) Fees. – The Department shall collect the following fees under this section:

31 (1) Review of an alternative protocol	
32 under subsection (d) of this section	\$1,000.00
33 (2) Review of an experimental system	\$3,000.00
34 (3) Review of a controlled demonstration <u>provisional</u> system	\$3,000.00
35 (4) Review of an innovative system	\$3,000.00
36 (5) Review of an accepted system	\$3,000.00
37 (6) Review of a residential wastewater treatment	
38 system pursuant to G.S. 130A-342	\$1,500.00
39 (7) Review of a component <u>or device required</u> of a system	\$ 100.00
40 (8) Modification to approved <u>accepted, provisional, or</u>	\$1,000.00
41 innovative system	

42 (l) On-Site Wastewater System Account. – The On-Site Wastewater System Account is
 43 established as a nonreverting account within the Department. Fees collected pursuant to this
 44 section shall be placed in the On-Site Wastewater System Account and shall be applied only to
 45 the costs of implementing this section."

46 **SECTION 4.15.(b)** The Commission for Public Health shall review and amend its
 47 rules to implement Section 4.15(a) of this act.

48 **SECTION 4.15.(c)** Beginning October 1, 2015, and every quarter thereafter until
 49 all rules required pursuant to Sections 4.14 and 4.15 of this act are adopted or amended, the
 50 Commission for Public Health shall submit written reports as to its progress on adopting or
 51 amending rules as required by Sections 4.14 and 4.15 of this act to the Environmental Review

1 Commission and the Joint Legislative Oversight Committee on Health and Human Services.
2 The Commission shall supplement the written reports required by this subsection with
3 additional written and oral reports as may be requested by the Environmental Review
4 Commission and the Joint Legislative Oversight Committee on Health and Human Services.
5 The Commission shall submit the written reports required by this subsection whether or not the
6 General Assembly is in session at the time the report is due.

7 **SECTION 4.15.(d)** The Commission for Public Health, in consultation with the
8 Department of Health and Human Services, local health departments, and stakeholders
9 representing the wastewater system industry, shall study the costs and benefits of requiring
10 treatment standards greater than those listed by nationally recognized standards, including the
11 recorded advantage of such higher treatment standards for the protection of the public health
12 and the environment. The Commission shall report its findings and recommendations,
13 including any legislative proposals, to the Environmental Review Commission and the Joint
14 Legislative Oversight Committee on Health and Human Services on or before January 1, 2016.
15

16 **CONTESTED CASES FOR AIR PERMITS**

17 **SECTION 4.17.** G.S. 143-215.108 reads as rewritten:

18 "**§ 143-215.108. Control of sources of air pollution; permits required.**

19 ...
20 (e) A permit ~~applicant, permittee, or third party~~applicant or permittee who is
21 dissatisfied with a decision of the Commission on a permit application may commence a
22 contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission
23 notifies the applicant or permittee of its decision. If the permit ~~applicant, permittee, or third~~
24 ~~party~~applicant or permittee does not file a petition within the required time, the Commission's
25 decision on the application is final and is not subject to review. The filing of a petition under
26 this subsection will stay the Commission's decision until resolution of the contested case.

27 (e1) A person other than a permit applicant or permittee who is a person aggrieved by
28 the Commission's decision on a permit application may commence a contested case by filing a
29 petition under G.S. 150B-23 within 30 days after the Commission provides notice of its
30 decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on
31 a publicly available Web site. The filing of a petition under this subsection does not stay the
32 Commission's decision except as ordered by the administrative law judge under
33 G.S. 150B-33(b).

34"
35

36 **AMEND ISOLATED WETLANDS LAW**

37 **SECTION 4.18.(a)** For the purposes of implementing Section .1300 of Subchapter
38 2H of Chapter 2 of Title 15A of the North Carolina Administrative Code (Discharges to
39 Isolated Wetlands and Isolated Waters), the isolated wetlands provisions of Section .1300 shall
40 apply only to a Basin Wetland or Bog and no other wetland types as described in the North
41 Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland
42 Functional Assessment Team, version 4.1 October 2010 that are not jurisdictional wetlands
43 under the federal Clean Water Act. The isolated wetlands provisions of Section .1300 shall not
44 apply to an isolated man-made ditch or pond constructed for stormwater management purposes,
45 any other man-made isolated pond, or any other type of isolated wetland, and the Department
46 of Environment and Natural Resources shall not regulate such water bodies under Section
47 .1300.

48 **SECTION 4.18.(b)** The Environmental Management Commission may adopt rules
49 to amend Section .1300 of Subchapter 2H of Chapter 2 of Title 15A of the North Carolina
50 Administrative Code consistent with subsection (a) of this section.

51 **SECTION 4.18.(c)** Section 54 of S.L. 2014-120 reads as rewritten:

1 "SECTION 54.(a) Until the effective date of the revised permanent rule that the
2 Environmental Management Commission is required to adopt pursuant to Section 54(c) of this
3 act, the Commission and the Department of Environment and Natural Resources shall
4 implement 15A NCAC 02H .1305 (Review of Applications) as provided in Section 54(b) of
5 this act.

6 "SECTION 54.(b) Notwithstanding 15A NCAC 02H .1305 (Review of Applications), all
7 of the following shall apply to the implementation of 15A NCAC 02H .1305:

8 (1) The amount of impacts of isolated wetlands under 15A NCAC 02H
9 .1305(d)(2) shall be less than or equal to one acre of isolated wetlands east
10 of I-95 for the entire project and less than or equal to 1/3 acre of isolated
11 wetlands west of I-95 for the entire project.

12 (2) Mitigation requirements for impacts to isolated wetlands shall only apply to
13 the amount of impact that exceeds the threshold set out in subdivision (1) of
14 this section. The mitigation ratio for impacts of ~~greater than one acre~~
15 exceeding the threshold for the entire project under 15A NCAC 02H
16 .1305(g)(6) shall be 1:1 and may be located on the same parcel.

17 (3) ~~For purposes of Section 54(b) of this section, "isolated wetlands" means a~~
18 ~~Basin Wetland or Bog as described in the North Carolina Wetland~~
19 ~~Assessment User Manual prepared by the North Carolina Wetland~~
20 ~~Functional Assessment Team, version 4.1 October, 2010, that are not~~
21 ~~jurisdictional wetlands under the federal Clean Water Act. An "isolated~~
22 ~~wetland" does not include an isolated man-made ditch or pond constructed~~
23 ~~for stormwater management purposes or any other man-made isolated pond.~~

24 (4) Impacts to isolated wetlands shall not be combined with the project impacts
25 to 404 jurisdictional wetlands or streams for the purpose of determining
26 when impact thresholds that trigger a mitigation requirement are met.

27 "SECTION 54.(c) The Environmental Management Commission shall adopt rules to
28 amend 15A NCAC 02H .1300 through 15A NCAC 02H .1305 consistent with Section 54(b) of
29 this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this
30 subsection shall be substantively identical to the provisions of Section 54(b) of this act. Rules
31 adopted pursuant to this subsection are not subject to Part 3 of Article 2A of Chapter 150B of
32 the General Statutes. Rules adopted pursuant to this subsection shall become effective as
33 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
34 provided by G.S. 150B-21.3(b2).

35 "SECTION 54.(d) The Department of Environment and Natural Resources shall study (i)
36 how the term "isolated wetland" has been previously defined in State law and whether the term
37 should be clarified in order to provide greater certainty in identifying isolated wetlands; (ii) the
38 surface area thresholds for the regulation of mountain bog isolated wetlands, including whether
39 mountain bog isolated wetlands should have surface area regulatory thresholds different from
40 other types of isolated wetlands; and (iii) whether impacts to isolated wetlands should be
41 combined with the project impacts to jurisdictional wetlands or streams for the purpose of
42 determining when impact thresholds that trigger a mitigation requirement are met. The
43 Department shall report its findings and recommendations to the Environmental Review
44 Commission on or before November 1, 2014.

45 "SECTION 54.(e) This section is effective when it becomes law. Section 54(b) of this act
46 expires on the date that rules adopted pursuant to Section 54(c) of this act become effective."
47

48 AMEND COASTAL STORMWATER REQUIREMENTS

49 SECTION 4.19.(a) Section 2(b) of S.L. 2008-211 reads as rewritten:

50 "SECTION 2.(b) Requirements for Certain Nonresidential and Residential Development
51 in the Coastal Counties. – All nonresidential development activities that occur within the

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

15 (1) Development Near Outstanding Resource Waters (ORW). – Development
16 activities within the Coastal Counties and located within 575 feet of the
17 mean high waterline of areas designated by the Commission as Outstanding
18 Resource Waters (ORW) ~~shall meet the requirements of 15A NCAC 02H~~
19 ~~.1007 (Stormwater Requirements: Outstanding Resource Waters) and shall~~
20 be permitted as follows:

21 a. Low-Density Option. – Development shall be permitted pursuant to
22 15A NCAC 02H .1003(d)(1) if the development meets all of the
23 following requirements:

- 24 1. The development has a built upon area of ~~twelve percent~~
25 ~~(12%)~~ twenty-four percent (24%) or less. A development
26 project with an overall density at or below the low-density
27 threshold, but containing areas with a density greater than the
28 overall project density, shall be considered low-density as
29 long as the project meets or exceeds the requirements for
30 low-density development and locates the higher density
31 development in upland areas and away from surface waters
32 and drainageways to the maximum extent practicable.
- 33 2. Stormwater runoff from the development is transported
34 primarily by vegetated conveyances. As used in this
35 sub-sub-subdivision, "conveyance system" shall not include a
36 stormwater collection system. Stormwater runoff from built
37 upon areas that is directed to flow through any wetlands shall
38 flow into and through these wetlands at a non-erosive
39 velocity.
- 40 3. The development contains a 50-foot-wide vegetative buffer
41 for new development activities and a 30-foot-wide vegetative
42 buffer for redevelopment activities. The width of a buffer is
43 measured horizontally from the normal pool elevation of
44 impounded structures, from the bank of each side of streams
45 or rivers, and from the mean high waterline of tidal waters,
46 perpendicular to the shoreline. The vegetative buffer may be
47 cleared or graded, but must be planted with and maintained in
48 grass or any other vegetative or plant material. The Division
49 of Water Quality may, on a case-by-case basis, grant a minor
50 variance from the vegetative buffer requirements of this
51 section pursuant to the procedures set out in 15A NCAC 02B

- 1 .0233(9)(b). Vegetative buffers and filters required by this
2 section and any other buffers or filters required by State water
3 quality or coastal management rules or local government
4 requirements may be met concurrently and may contain, in
5 whole or in part, coastal, isolated, or 404 jurisdictional
6 wetlands that are located landward of the normal waterline.
- 7 b. High-Density Option. – Development shall be permitted pursuant to
8 15A NCAC 02H .1003(d)(2) if the development meets all of the
9 following requirements:
- 10 1. The development has a built upon area of greater than ~~twelve~~
11 ~~percent (12%),~~ twenty-four percent (24%).
 - 12 2. The development has no direct outlet channels or pipes to
13 Class SA waters unless permitted in accordance with 15A
14 NCAC 02H .0126. Stormwater runoff from built upon areas
15 that is directed to flow through any wetlands shall flow into
16 and through these wetlands at a non-erosive velocity.
 - 17 3. The development utilizes control systems that are any
18 combination of infiltration systems, bioretention systems,
19 constructed stormwater wetlands, sand filters, rain barrels,
20 cisterns, rain gardens or alternative low impact development
21 stormwater management systems designed in accordance with
22 15A NCAC 02H .1008 to control and treat the runoff from all
23 surfaces generated by one and one-half inches of rainfall, or
24 the difference in the stormwater runoff from all surfaces from
25 the predevelopment and postdevelopment conditions for a
26 one-year, 24-hour storm, whichever is greater. Wet detention
27 ponds may be used as a stormwater control system to meet
28 the requirements of this sub-sub-subdivision, provided that
29 the stormwater control system fully complies with the
30 requirements of this sub-subdivision. If a wet detention pond
31 is used within one-half mile of Class SA waters, installation
32 of a stormwater best management practice in series with the
33 wet detention pond shall be required to treat the discharge
34 from the wet detention pond. Secondary stormwater best
35 management practices that are used in series with another
36 stormwater best management practice do not require any
37 minimum separation from the seasonal high water table.
38 Alternatives as described in 15A NCAC 02H .1008(h) may
39 also be approved if they meet the requirements of this
40 sub-subdivision.
 - 41 4. Stormwater runoff from the development that is in excess of
42 the design volume must flow overland through a vegetative
43 filter designed in accordance with 15A NCAC 02H .1008
44 with a minimum length of 50 feet measured from mean high
45 water of Class SA waters.
 - 46 5. The development contains a 50-foot-wide vegetative buffer
47 for new development activities and a 30-foot-wide vegetative
48 buffer for redevelopment activities. The width of a buffer is
49 measured horizontally from the normal pool elevation of
50 impounded structures, from the bank of each side of streams
51 or rivers, and from the mean high waterline of tidal waters,

perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water Quality may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

...."
SECTION 4.19.(b) Section 2(c) of S.L. 2008-211 reads as rewritten:

"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%)~~, twenty-four percent (24%), 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 4.19.(c) As necessary to comply with federal stormwater management requirements, the rescission of designations of local governments within the 20 Coastal Counties as Phase 2 municipalities pursuant to Section 3 of S.L. 2008-211 is repealed.

SECTION 4.19.(d) This section becomes effective January 1, 2016.

EXEMPT LINEAR UTILITY PROJECTS FROM CERTAIN ENVIRONMENTAL REGULATIONS

SECTION 4.21. Article 17 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-351. Exempt linear utility projects from certain environmental regulations.

Except as required by federal law, activities related to the construction, maintenance, or removal of a linear utility project shall be exempt from regulation by an agency authorized to implement and enforce State and federal environmental laws. For purposes of this section, "linear utility project" means an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, or natural gas pipeline. For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

- (1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.
- (2) The Environmental Management Commission created pursuant to G.S. 143B-282.
- (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- (8) The North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.
- (9) The North Carolina Oil and Gas Commission created pursuant to G.S. 143B-293.1."

REPEAL DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IDLING RULES

SECTION 4.24. The Secretary of Environment and Natural Resources shall repeal 15A NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions) on or before December 1, 2015. Until the effective date of the repeal of the rule required pursuant to this section, the Secretary, the Department of Environment and Natural Resources, the Environmental Management Commission, or any other political subdivision of the State shall not implement or enforce 15A NCAC 02D .1010 (Heavy-Duty Vehicle Idling Restrictions).

AMBIENT AIR MONITORING

SECTION 4.25.(a) The Department of Environment and Natural Resources shall review its ambient air monitoring network and, in the next annual monitoring network plan submitted to the United States Environmental Protection Agency, shall request the removal of any ambient air monitors not required by applicable federal laws and regulations.

SECTION 4.25.(b) No later than September 1, 2016, the Department of Environment and Natural Resources shall discontinue all ambient air monitors not required by applicable federal laws and regulations if approval from the United States Environmental Protection Agency is not required for the discontinuance.

SECTION 4.25.(c) Nothing in this section is intended to prevent the Department from installing temporary ambient air monitors as part of an investigation of a suspected violation of air quality rules, standards, or limitations or in response to an emergency situation causing an imminent danger to human health and safety.

SECTION 4.25.(d) The Division of Air Quality, Department of Environment and Natural Resources, shall report to the Environmental Review Commission no later than November 1, 2016, on the status of the ambient air monitoring network and the Division's implementation of the requirements of this section.

DIVISION OF AIR QUALITY NOTICE REQUIREMENTS

SECTION 4.27. G.S. 143-215.110 reads as rewritten:

1 **"§ 143-215.110. Special orders.**

2 (a) Issuance. – The Commission is hereby empowered, after the effective date of
3 standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to
4 time to modify or revoke) a special order or other appropriate instrument, to any person whom
5 it finds responsible for causing or contributing to any pollution of the air within the area for
6 which standards have been established. Such an order or instrument may direct such person to
7 take or refrain from taking such action, or to achieve such results, within a period of time
8 specified by such special order, as the Commission deems necessary and feasible in order to
9 alleviate or eliminate such pollution. The Commission is authorized to enter into consent
10 special orders, assurances of voluntary compliance or other similar documents by agreement
11 with the person responsible for pollution of the air, subject to the provisions of subsection (a1)
12 of this section regarding proposed orders, and such consent order, when entered into by the
13 Commission after public review, shall have the same force and effect as a special order of the
14 Commission issued pursuant to hearing.

15 (a1) Public Notice and Review of Consent Orders.

16 (1) The Commission shall give notice of a proposed consent order to the proper
17 State, interstate, and federal agencies, to interested persons, and to the
18 public. The Commission may also provide any other data it considers
19 appropriate to those notified. The Commission shall prescribe the form and
20 content of the notice. The notice shall be given at least ~~45~~30 days prior to
21 any final action regarding the consent order. Public notice shall be given by
22 publication of the notice ~~one time in a newspaper having general circulation~~
23 ~~within the county in which the pollution originates~~for 30 days on the
24 regulatory agency Web site.

25 (2) Any person who desires a public meeting on any proposed consent order
26 may request one in writing to the Commission within 30 days following date
27 of the notice of the proposed consent order. The Commission shall consider
28 all such requests for meetings. If the Commission determines that there is
29 significant public interest in holding a meeting, the Commission shall
30 schedule a meeting and shall give notice of such meeting at least 30 days in
31 advance to all persons to whom notice of the proposed consent order was
32 given and to any other person requesting notice. At least 30 days prior to the
33 date of meeting, the Commission shall also have a copy of the notice of the
34 meeting published ~~at least one time in a newspaper having general~~
35 ~~circulation within the county in which the pollution originates~~for 30 days on
36 the regulatory agency Web site. The Commission shall prescribe the form
37 and content of notices under this subsection.

38"

39
40 **DISCLOSURE OF PERSONAL IDENTIFYING INFORMATION**

41 **SECTION 4.29.(a)** G.S. 143-254.5 reads as rewritten:

42 **"§ 143-254.5. Disclosure of personal identifying information.**

43 Social security numbers and identifying information obtained by the Commission shall be
44 treated as provided in G.S. 132-1.10. For purposes of this section, "identifying information"
45 also includes a person's mailing address, residence address, e-mail address, date of birth, and
46 telephone number."

47 **SECTION 4.29.(b)** G.S. 143B-289.52(h) reads as rewritten:

48 "(h) Social security numbers and identifying information obtained by the Commission or
49 the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of
50 this subsection, "identifying information" also includes a person's mailing address, residence
51 address, e-mail address, date of birth, and telephone number."

1
2 **PROVIDE REGULATORY RELIEF BY INCREASING THRESHOLDS FOR**
3 **MITIGATION OF LINEAR STREAM IMPACTS**

4 **SECTION 4.30.(a)** The Environmental Management Commission shall amend its
5 rules for water quality certifications (15A NCAC 2H .0501 through 2H .0507) to provide for all
6 of the following:

7 (1) With respect to mitigation required for activities that result in the loss of a
8 perennial stream or an ephemeral/intermittent stream, the requirement of
9 mitigation by the U.S. Army Corps of Engineers for less than 300 linear feet
10 of streambed shall not be considered to be the mitigation required by the
11 water quality certification, unless the Commission makes a specific finding
12 based upon ecological, hydrological, or other scientific data that total,
13 critical, and irreversible damage to existing uses of the stream will occur if
14 no mitigation is required.

15 (2) In cases where more than 300 linear feet of streambed are lost, the
16 Commission shall require mitigation at a one-to-one ratio only for the
17 number of feet of streambed lost above 300 linear feet.

18 **SECTION 4.30.(b)** The Environmental Management Commission shall adopt
19 temporary rules to implement this section no later than September 30, 2015. The Commission
20 shall also adopt permanent rules to implement this section.

21
22 **PROHIBIT THE REQUIREMENT OF MITIGATION FOR IMPACTS TO**
23 **INTERMITTENT STREAMS**

24 **SECTION 4.31.(a)** Article 21 of Chapter 143 of the General Statutes is amended
25 by adding a new section to read:

26 "**§ 143-214.7C. Prohibit the requirement of mitigation for impacts to intermittent**
27 **streams.**

28 Except as required by federal law and notwithstanding any other provision of State law, the
29 Department of Environment and Natural Resources shall not require mitigation for impacts to
30 an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined
31 channel that has all of the following characteristics:

32 (1) It contains water for only part of the year, typically during winter and spring
33 when the aquatic bed is below the water table.

34 (2) The flow of water in the intermittent stream may be heavily supplemented
35 by stormwater runoff.

36 (3) It often lacks the biological and hydrological characteristics commonly
37 associated with the conveyance of water."

38 **SECTION 4.31.(b)** The Department of Environment and Natural Resources and
39 the Environmental Management Commission shall amend their rules so that the rules are
40 consistent with the provisions of G.S. 143-214.7C, as enacted by subsection (a) of this section.

41
42 **PIGEON HUNTING**

43 **SECTION 4.32.** G.S. 113-129(15a) reads as rewritten:

44 "(15a) Wild Birds. – Migratory game birds; upland game birds; and all
45 undomesticated feathered vertebrates. ~~The~~Except as otherwise provided in
46 this subdivision, the Wildlife Resources Commission may by regulation list
47 specific birds or classes of birds excluded from the definition of wild birds
48 based upon the need for protection or regulation in the interests of
49 conservation of wildlife resources. Pigeons are wild birds."

50
51 **WILDLIFE RESOURCES COMMISSION STUDIES**

1 **SECTION 4.33.(a)** The Wildlife Resources Commission shall review the methods
2 and criteria by which it adds, removes, or changes the status of animals on the State protected
3 animal list as defined in G.S. 113-331 and compare these to federal regulations and the
4 methods and criteria of other states in the region. The Commission shall also review the
5 policies by which the State addresses introduced species and make recommendations for
6 improving these policies, including impacts associated with hybridization that occurs among
7 federally listed, State-listed, and nonlisted animals.

8 **SECTION 4.33.(b)** The Wildlife Resources Commission shall report its findings
9 and recommendations to the Environmental Review Commission by March 1, 2016.

10 **SECTION 4.34.(a)** The Wildlife Resources Commission shall establish a coyote
11 management plan to address the impacts of coyotes in this State and the threats that coyotes
12 pose to citizens, industries, and populations of native wildlife species within the State.

13 **SECTION 4.34.(b)** The Wildlife Resources Commission shall report its findings
14 and recommendations, including any proposed legislation to address overpopulation of coyotes,
15 to the Environmental Review Commission by March 1, 2016.

16 **SECTION 4.35.(a)** The Wildlife Resources Commission shall establish a pilot
17 coyote management assistance program in Mitchell County. In implementing the program, the
18 Commission shall document and assess private property damage associated with coyotes;
19 evaluate effectiveness of different coyote control methodologies, including lethal removal; and
20 evaluate potential for a scalable statewide coyote assistance program.

21 **SECTION 4.35.(b)** The Wildlife Resources Commission shall submit an interim
22 report on the progress of the pilot program to the Environmental Review Commission by
23 March 1, 2016. The Wildlife Resources Commission shall submit a final report on the results of
24 the pilot program, including any proposed legislation, to the Environmental Review
25 Commission by January 1, 2017.

26 27 **ANIMAL WELFARE HOTLINE AND COURT FEE TO SUPPORT THE** 28 **INVESTIGATION OF ANIMAL CRUELTY VIOLATIONS**

29 **SECTION 4.36.(a)** Article 1 of Chapter 114 of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 114-8.7. Reports of animal cruelty and animal welfare violations.**

32 (a) The Attorney General shall establish a hotline, to be known as the "NC Pets We
33 Care Hotline," to receive reports of allegations of animal cruelty or violations of the Animal
34 Welfare Act, Article 3 of Chapter 19A of the General Statutes, against animals under private
35 ownership, by means including telephone, electronic mail, and Internet Web site. The Attorney
36 General shall periodically publicize the hotline telephone number, electronic mail address,
37 Internet Web site address, and any other means by which the Attorney General may receive
38 reports of allegations of animal cruelty or violations of the Animal Welfare Act. Any individual
39 who makes a report under this section shall disclose his or her name and telephone number and
40 any other information the Attorney General may require.

41 (b) When the Attorney General receives allegations involving activity that the Attorney
42 General determines may involve cruelty to animals under private ownership in violation of
43 Article 47 of Chapter 14 of the General Statutes, the allegations shall be referred to the
44 appropriate local animal control authority for the unit or units of local government within
45 which the violations are alleged to have occurred. When the Attorney General receives
46 allegations involving activity that the Attorney General determines may involve violations of
47 the Animal Welfare Act, the allegations shall be referred to the Department of Agriculture and
48 Consumer Services. The Attorney General shall record the total number of reports received on
49 the hotline and the number of reports received against any individual on the hotline."

50 **SECTION 4.36.(b)** G.S. 7A-304(a) is amended by adding a new subdivision to
51 read:

1 **"§ 7A-304. Costs in criminal actions.**

2 (a) In every criminal case in the superior or district court, wherein the defendant is
3 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
4 prosecuting witness, the following costs shall be assessed and collected. No costs may be
5 assessed when a case is dismissed. Only upon entry of a written order, supported by findings of
6 fact and conclusions of law, determining that there is just cause, the court may (i) waive costs
7 assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8),
8 (8a), (11), (12), or (13) of this section.

9 ...
10 (14) For support of law enforcement in the investigation of violations of Article
11 47 of Chapter 14 of the General Statutes and Animal Welfare Act violations,
12 the district or superior court judge shall, upon conviction of the defendant,
13 order payment of the sum of two hundred fifty dollars (\$250.00) to be
14 remitted to the general fund of the local governmental unit that investigated
15 the crime to be used for local animal control authorities."

16 **SECTION 4.36.(c)** Section 4.36(b) of this act becomes effective January 1, 2016,
17 and applies to fees assessed or collected on or after that date. The remainder of this section is
18 effective when this act becomes law.

19
20 **AMEND STORMWATER MANAGEMENT LAW**

21 **SECTION 4.37.(a)** Section 3 of S.L. 2013-82 reads as rewritten:

22 "SECTION 3. The Environmental Management Commission shall adopt rules
23 implementing Section 2 of this act no later than ~~July 1, 2016~~ November 1, 2016."

24 **SECTION 4.37.(b)** G.S. 143-214.7 reads as rewritten:

25 **"§ 143-214.7. Stormwater runoff rules and programs.**

26 ...
27 (b2) For purposes of implementing ~~stormwater programs~~, State stormwater programs and
28 local stormwater programs approved pursuant to subsection (d) of this section, all of the
29 following shall apply:

30 (1) ~~"built-upon area"~~ "Built-upon area" means impervious surface and partially
31 impervious surface to the extent that the partially impervious surface does
32 not allow water to infiltrate through the surface and into the subsoil.
33 "Built-upon area" does not include a slatted deck or the water area of a
34 swimming pool.

35 (2) Vegetative buffers adjacent to intermittent streams shall be measured from
36 the center of the streambed.

37 (3) The volume, velocity, and discharge rates of water associated with the
38 one-year, 24-hour storm and the difference in stormwater runoff from the
39 predevelopment and postdevelopment conditions for the one-year, 24-hour
40 storm shall be calculated using any acceptable engineering hydrologic and
41 hydraulic methods.

42 (4) Development may occur within a vegetative buffer if the development
43 complies with all applicable State and federal stormwater management
44 requirements and State requirements for protection of watersheds, control
45 and prevention of sedimentation and erosion, and reduction and control of
46 the pollutant loading that caused impaired water designations to be
47 established by the Commission.

48 (5) The requirements that apply to development activities within one-half mile
49 of and draining to Class SA waters or within one-half mile of Class SA
50 waters and draining to unnamed freshwater tributaries shall not apply to
51 development activities and associated stormwater discharges that do not

1 occur within one-half mile of and draining to Class SA waters or are not
2 within one-half mile of Class SA waters and draining to unnamed freshwater
3 tributaries.

4 ...
5 (d) The Commission shall review each stormwater management program submitted by
6 a State agency or unit of local government and shall notify the State agency or unit of local
7 government that submitted the program that the program has been approved, approved with
8 modifications, or disapproved. The Commission shall approve a program only if it finds that
9 the standards of the program equal ~~or exceed~~ those of the model program adopted by the
10 Commission pursuant to this ~~section~~ section and any other model program or regulatory
11 requirement that the Commission applies to local governments for protection of water supply
12 watersheds, control of erosion and sedimentation, and permits and programs to address
13 impairments of water quality standards and uses.

14"

15 **SECTION 4.37.(c)** No later than January 1, 2016, a State agency or local
16 government that implements a stormwater management program approved pursuant to
17 subsection (d) of G.S. 143-214.7 shall submit its current stormwater management program or a
18 revised stormwater management program to the Environmental Management Commission. No
19 later than July 1, 2016, the Environmental Management Commission shall review and act on
20 each of the submitted stormwater management programs in accordance with subsection (d) of
21 G.S. 143-214.7, as amended by this section.

22 **SECTION 4.37.(d)** The Environmental Review Commission, with the assistance
23 of the Department of Environment and Natural Resources, shall review the current status of
24 State statutes, session laws, rules, and guidance documents related to the management of
25 stormwater in the State. The Commission shall specifically examine whether State statutes,
26 session laws, rules, and guidance documents related to the management of stormwater in the
27 State should be recodified or reorganized in order to clarify State law for the management of
28 stormwater. The Commission shall submit legislative recommendations, if any, to the 2016
29 Regular Session of the 2015 General Assembly.

30 **STUDY FLOOD ELEVATIONS AND BUILDING HEIGHT REQUIREMENTS**

31 **SECTION 4.38.** The Department of Insurance, the Department of Public Safety,
32 and the Building Code Council shall jointly study how flood elevations and building heights for
33 structures are established and measured in the coastal region of the State. The Departments and
34 the Council shall specifically consider how flood elevations and coastal building height
35 requirements affect flood insurance rates and how height calculation methods might be made
36 more consistent and uniform in order to provide flood insurance rate relief. In conducting this
37 study, the Departments and the Council shall engage a broad group of stakeholders, including
38 property owners, local governments, representatives of the surveying industry, and
39 representatives of the development industry. No later than January 1, 2016, the Departments
40 and the Council shall jointly submit the results of their study, including any legislative
41 recommendations, to the 2015 General Assembly.

42 **PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

43 **SECTION 5.1.** If any section or provision of this act is declared unconstitutional or
44 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
45 the part declared to be unconstitutional or invalid.

46 **SECTION 5.2.** Except as otherwise provided, this act is effective when it becomes
47 law.
48
49