

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 71
House Committee Substitute Favorable 5/24/16
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Proposed Conference Committee Substitute S71-PCCS45507-RI-3

Short Title: Comm'n Appointment Modifications.

(Public)

Sponsors:

Referred to:

February 12, 2015

A BILL TO BE ENTITLED

1 AN ACT TO (1) REQUIRE A COAL COMBUSTION RESIDUALS IMPOUNDMENT OWNER
2 TO PROVIDE PERMANENT ALTERNATIVE WATER SUPPLIES FOR RESIDENTS IN
3 AREAS SURROUNDING COAL COMBUSTION RESIDUALS SURFACE
4 IMPOUNDMENTS; (2) EXTEND THE PERIOD FOR PUBLIC COMMENT AND REVIEW
5 OF PROPOSED RISK CLASSIFICATIONS FOR COAL COMBUSTION RESIDUALS
6 SURFACE IMPOUNDMENTS; AND (3) MODIFY APPOINTMENTS TO THE COAL ASH
7 MANAGEMENT COMMISSION, THE MINING COMMISSION, AND THE OIL AND
8 GAS COMMISSION, IN ACCORD WITH THE HOLDING OF *MCCRORY V. BERGER*.

9
10 Whereas, the Coal Ash Management Act of 2014 required the owner of a coal
11 combustion residuals surface impoundment to sample and analyze the water quality of drinking
12 water supply wells in areas surrounding coal combustion residuals surface impoundments and, if
13 the sampling and water quality analysis indicated that water from a drinking water supply well
14 exceeded groundwater quality standards for constituents associated with the presence of the
15 impoundment, required the owner to replace the contaminated drinking water supply well with an
16 alternate supply of potable drinking water and an alternate supply of water that is safe for other
17 household uses; and

18 Whereas, the Department of Environmental Quality recently reported that well water of
19 residents living nearby coal ash residuals impoundments met federal requirements for safe
20 drinking water, but the General Assembly nonetheless recognizes that confusion and worry has
21 persisted with these residents in the aftermath of testing conducted by the Department of
22 Environmental Quality and issuance of "do-not-drink advisories" by the Department of Health and
23 Human Services, even after many of these advisories were subsequently withdrawn; and

24 Whereas, the General Assembly concludes that the owner of a coal combustion
25 residuals surface impoundment should establish permanent alternative water supplies for residents
26 in areas surrounding coal combustion residuals surface impoundments, to alleviate their concerns
27 about availability of clean, safe, pure, and wholesome water; and

28 Whereas, in 2014 the General Assembly developed and enacted groundbreaking
29 legislation, the Coal Ash Management Act, to comprehensively address the issue of proper
30 management of coal ash residuals impoundments in the State for the protection of public health,
31 safety, and welfare; the environment; and natural resources; and

32 Whereas, the Coal Ash Management Act of 2014 set forth closure requirements based
33 on a comprehensive assessment of a site's risk, taking into account a number of factors, including:



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- 1 (1) Any hazards to public health, safety, or welfare resulting from the
2 impoundment.
- 3 (2) The structural condition and hazard potential of the impoundment.
- 4 (3) The proximity of surface waters to the impoundment and whether any surface
5 waters are contaminated or threatened by contamination as a result of the
6 impoundment.
- 7 (4) Information concerning the horizontal and vertical extent of soil and
8 groundwater contamination for all contaminants confirmed to be present in
9 groundwater in exceedance of groundwater quality standards and all significant
10 factors affecting contaminant transport.
- 11 (5) The location and nature of all receptors and significant exposure pathways.
- 12 (6) The geological and hydrogeological features influencing the movement and
13 chemical and physical character of the contaminants.
- 14 (7) The amount and characteristics of coal combustion residuals in the
15 impoundment.
- 16 (8) Whether the impoundment is located within an area subject to a 100-year flood;
17 and

18 Whereas, the Coal Ash Management Act of 2014 conclusively designated eight coal
19 combustion residuals surface impoundments as high-priority, including two impoundments each at
20 the following facilities: the Dan River Steam Station, the Riverbend Steam Station, the Asheville
21 Steam Electric Generating Plant, and the Sutton Plant; and,

22 Whereas, the Executive Branch agency tasked with developing proposed classifications
23 based on risk, the Department of Environmental Quality, issued proposed classifications on May
24 18, 2016, which designated all other coal combustion residuals surface impoundments located in
25 the State as intermediate priority; and

26 Whereas, upon issuance of the proposed classifications, the Department of
27 Environmental Quality requested that the General Assembly allow the Department an additional
28 18 months to enable the Department to reconsider the proposed classifications, indicating that
29 "work that is already either planned or underway could significantly change the risk posed by the
30 ponds"; and

31 Whereas, upon issuance of the proposed classifications, the Secretary of Environmental
32 Quality stated that the Coal Ash Management Act of 2014 did "not allow for revisions to the
33 classifications based on new information about a pond's risk to public health and the
34 environment"; and

35 Whereas, the Secretary of Environmental Quality further stated that "making decisions
36 based on incomplete information could lead to the expenditure of billions of dollars when
37 spending millions now would provide equal or better protection"; and

38 Whereas, the General Assembly concurs that accurate classification of risk for coal
39 combustion residuals surface impoundments is essential to appropriate management of the
40 impoundments; and

41 Whereas the General Assembly created the Coal Ash Management Commission as an
42 integral part of the Coal Ash Management Act of 2014 to provide oversight to the Department of
43 Environmental Quality in establishment of risk classifications and closure plans for all coal
44 combustion residuals surface impoundments; and

45 Whereas, in reviewing a classification proposed by the Department of Environmental
46 Quality, the Coal Ash Management Act of 2014 directed the Coal Ash Management Commission
47 to evaluate all information submitted in accordance with the Coal Ash Management Act of 2014
48 related to the proposed classifications, and any other information the Coal Ash Management
49 Commission deemed relevant; and

50 Whereas, in reviewing a classification proposed by the Department of Environmental
51 Quality, the Act directed the Coal Ash Management Commission to approve a proposed

1 classification only if the Commission determined that the classification accurately reflected the
2 level of risk posed by the coal combustion residuals surface impoundment; and

3 Whereas, a mechanism existed under the Coal Ash Management Act of 2014, as
4 enacted, to allow sufficient time for the State to properly assess accurate risk for impoundments
5 given that the Act (i) authorized the Commission to consider all information submitted pursuant to
6 the law, and any other information the Commission deemed relevant, (ii) required that the
7 Commission approve plans that accurately reflected the level of risk posed by an impoundment,
8 and (iii) established no deadline for the Commission to issue final approval of an accurate
9 classification; and

10 Whereas, closure methods under the Coal Ash Management Act of 2014 cannot be
11 developed, approved, or implemented until accurate risk classifications for the impoundments
12 have been finalized; and

13 Whereas, the General Assembly believes addressing the issue of proper management of
14 coal combustion residuals surface impoundments is too pressing to grant a blanket extension of
15 finalization of risk classifications of the impoundments for 18 months, while recognizing that
16 accurate classifications of impoundments is imperative for timely and proper closure of coal ash
17 impoundments; and

18 Whereas, the General Assembly established the Coal Ash Management Commission in
19 2014, to be comprised of individuals qualified with particular experience and expertise, including
20 requirements for appointments of individuals who are representatives of an electric membership
21 corporation or that have a background in power supply resource planning and engineering,
22 individuals that have experience in economic development, and individuals that have expertise in
23 determining and evaluating the costs associated with electricity generation and establishing the
24 rates associated with electricity consumption, in order to facilitate thorough examination and
25 sound decision making on complex and wide-reaching issues surrounding coal ash management,
26 facets of which are beyond the jurisdictional responsibilities of the Department of Environmental
27 Quality; and

28 Whereas, in *McCrorry v. Berger*, the North Carolina Supreme Court expressed concerns
29 that the General Assembly retained a majority of appointments to the Coal Ash Management
30 Commission under the Coal Ash Management Act of 2014 and held the appointments provisions
31 violated the separation of powers clause of the Constitution of North Carolina; but stated that "the
32 appointments clause does not prohibit the General Assembly from appointing statutory officers,
33 and the General Assembly can appoint them in many instances"; and

34 Whereas, the Court expressed other separation of powers concerns that although the
35 Coal Ash Management Commission was administratively located within the Division of
36 Emergency Management of the Department of Public Safety, the Commission was directed to
37 exercise all of its power and duties independently and was not subject to the supervision, direction,
38 or control of the Division or Department; and

39 Whereas, Section 5 of Article III of the North Carolina Constitution ascribes to the
40 General Assembly the power to assign functions, powers, and duties to the Executive Branch; and

41 Whereas, in accord with the authority given to it under Section 5 of Article III of the
42 North Carolina Constitution, the General Assembly enacted the Coal Ash Management
43 Commission, and other statutorily created commissions, with varying functions, powers, and
44 duties; and

45 Whereas, Section 11 of Article III of the North Carolina Constitution provides that all
46 administrative departments, agencies, and offices of the State and their respective functions,
47 powers, and duties shall be allocated by law, and further provides that regulatory, quasi-judicial,
48 and temporary agencies may, but need not, be allocated within a principal department; and

49 Whereas, allocations of the functions, powers, and duties of administrative agencies, by
50 law, is the province and responsibility of the General Assembly through the aforementioned

1 provisions of the Constitution of North Carolina and Article II of the State's Constitution
2 establishing the purpose and power of the legislative branch; and

3 Whereas, the General Assembly intends to reconstitute the membership of the Coal
4 Ash Management Commission in accord with the Court's holding so that the authority of the Coal
5 Ash Management Commission established in 2014 to finalize accurate risk classifications, based
6 on evaluation of all information the Commission deems necessary to achieve accurate
7 classifications, can be exercised without further delay for the protection of public health, safety,
8 and welfare; the environment; or natural resources for the benefit of all citizens of North Carolina;
9 and

10 Whereas, the Court also expressed concerns that the General Assembly retained a
11 majority of appointments to the Oil and Gas Commission and the Mining Commission and held
12 the appointments provisions violated the separation of powers clause of the Constitution of North
13 Carolina but stated that "the appointments clause does not prohibit the General Assembly from
14 appointing statutory officers, and the General Assembly can appoint them in many instances"; and

15 Whereas, the General Assembly intends to reconstitute the membership of the Oil and
16 Gas Commission and the Mining Commission in accordance with the Court's holding; Now,
17 therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.(a)** G.S. 130A-309.211 is amended by adding a new subsection to read:

20 "**(c1)** Provision of Permanent Water Supply. – As soon as practicable, but no later than
21 October 1, 2017, the owner of a coal combustion residuals surface impoundment shall execute a
22 memorandum of agreement or other binding agreement with the Department of Environmental
23 Quality to establish permanent replacement water supplies for (i) each household that has a
24 drinking water supply well located within one-half mile radius from the established compliance
25 boundary of a coal combustion residuals impoundment, and is not separated from the
26 impoundment by the mainstem of a river, as that term is defined under G.S. 143-215.22G, or other
27 body of water that would prevent the migration of contaminants through groundwater from the
28 impoundment to a well and (ii) each household that has a drinking water supply well that is
29 located in an area in which contamination resulting from constituents associated with the presence
30 of a coal combustion residuals impoundment is expected to migrate, as demonstrated by
31 groundwater modeling, and hydrogeologic, geologic, and geotechnical investigations of the site,
32 conducted in accordance with the requirements of G.S. 130A-309.214(a)(4) and the results of
33 other modeling or investigations that are submitted pursuant to G.S. 130A-309.213(b)(4).
34 Preference shall be given to permanent replacement water supplies by connection to public water
35 supplies; however, if the State Water Infrastructure Authority determines that connection to a
36 public water supply to a particular household would be cost-prohibitive, the State Water
37 Infrastructure Authority shall authorize provision of a permanent replacement water supply to that
38 household through installation of a filtration system. For households for which filtration systems
39 are installed, the impoundment owner shall be responsible for periodic required maintenance of
40 the filtration system. No later than September 1, 2017, an impoundment owner shall submit
41 information on permanent replacement water supplies proposed to be provided to each household
42 to the State Water Infrastructure Authority, including, at a minimum, the type of permanent water
43 supply proposed; the location of the household and its proximity to the nearest connection point to
44 a public water supply; projected cost of the permanent water supply option proposed for the
45 household; and if proposing to connect to a public water supply, a binding written agreement with
46 that public water supplier. Projects involving permanent replacement water supplies by connection
47 to public water supplies shall be deemed approved for this purpose. Nothing in this section shall
48 be construed to obviate the need for other federal, State, and local permits and approvals. The
49 Department of Environmental Quality shall expedite any State permits and approvals required for
50 such projects. For projects involving installation of a filtration system, the State Water
51 Infrastructure Authority shall evaluate information submitted by the impoundment owner to

1 determine whether connection to a public water supply is cost-prohibitive and render a decision to
2 approve or disapprove the plan, including written findings of fact, no later than December 1,
3 2017."

4 **SECTION 1.(b)** This section is effective when it becomes law. Requirements for
5 establishment of a permanent alternative water supply under subsection (a) of this section shall
6 apply only to households with drinking water supply wells in existence on the date this act
7 becomes effective.

8 **SECTION 1.1.(a)** G.S. 130A-309.214 reads as rewritten:

9 **"§ 130A-309.214. Closure of coal combustion residuals surface impoundments.**

10 ...

11 (g) Notwithstanding any other requirement for closure under this section or Part, no later
12 than December 1, 2016, an impoundment owner shall submit plans to the Department of
13 Environmental Quality to make at least 2.5 million tons of coal combustion residuals per year
14 available for beneficial use for addition to concrete. At least fifty percent (50%) of the coal
15 combustion residuals made available for beneficial use shall be removed from the current
16 inventory of coal combustion residuals. Facilities that are receiving or have received coal
17 combustion residuals from other sites will be the sites from which the coal combustion residuals
18 inventory will be used first. No later than June 1, 2018, an impoundment owner shall begin to
19 supply such coal combustion residuals for beneficial use in accordance with this subsection."

20 **SECTION 1.1.(b)** This section is effective when it becomes law.

21 **SECTION 2.(a)** G.S. 130A-309.202 reads as rewritten:

22 **"§ 130A-309.202. Coal Ash Management Commission.**

23 (a) Creation. – In recognition of the complexity and magnitude of the issues associated
24 with the management of coal combustion residuals and the proper closure and remediation of coal
25 combustion residuals surface impoundments, the Coal Ash Management Commission is hereby
26 established.

27 (b) ~~Membership.—The Commission shall consist of nine members as follows:~~

- 28 (1) ~~One appointed by the General Assembly upon recommendation of the President~~
29 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
30 ~~time of appointment be a resident of the State.~~
- 31 (2) ~~One appointed by the General Assembly upon recommendation of the President~~
32 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
33 ~~time of appointment have special training or scientific expertise in waste~~
34 ~~management, including solid waste disposal, hauling, or beneficial use.~~
- 35 (3) ~~One appointed by the General Assembly upon recommendation of the President~~
36 ~~Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the~~
37 ~~time of appointment be a licensed physician or a person with experience in~~
38 ~~public health.~~
- 39 (4) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
40 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
41 ~~the time of appointment be a member of a nongovernmental conservation~~
42 ~~interest.~~
- 43 (5) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
44 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
45 ~~the time of appointment have special training or scientific expertise in waste~~
46 ~~management, including solid waste disposal, hauling, or beneficial use, or is a~~
47 ~~representative of or on the faculty of a State college or university that conducts~~
48 ~~coal ash research.~~
- 49 (6) ~~One appointed by the General Assembly upon recommendation of the Speaker~~
50 ~~of the House of Representatives in accordance with G.S. 120-121 who shall at~~
51 ~~the time of appointment be a representative of an electric membership~~

1 ~~corporation organized under Article 2 of Chapter 117 of the General Statutes~~
2 ~~and have a background in power supply resource planning and engineering.~~

3 ~~(7) One appointed by the Governor who shall at the time of appointment have~~
4 ~~experience in economic development.~~

5 ~~(8) One appointed by the Governor who shall at the time of appointment have~~
6 ~~expertise in determining and evaluating the costs associated with electricity~~
7 ~~generation and establishing the rates associated with electricity consumption.~~

8 ~~(9) One appointed by the Governor who shall at the time of appointment be a~~
9 ~~person with experience in science or engineering in the manufacturing sector.~~

10 (b1) Membership. – The Commission shall consist of seven members as follows:

11 (1) One appointed by the Governor subject to confirmation by the General
12 Assembly, who shall at the time of appointment have special training or
13 scientific expertise in waste management, including solid waste disposal,
14 hauling, or beneficial use.

15 (2) One appointed by the Governor subject to confirmation by the General
16 Assembly, who shall at the time of appointment be a licensed physician or a
17 person with experience in public health.

18 (3) One appointed by the Governor subject to confirmation by the General
19 Assembly, who shall at the time of appointment be a representative of an
20 electric membership corporation organized under Article 2 of Chapter 117 of
21 the General Statutes and have a background in power supply resource planning
22 and engineering.

23 (4) One appointed by the Governor subject to confirmation by the General
24 Assembly, who shall at the time of appointment have expertise in determining
25 and evaluating the costs associated with electricity generation and establishing
26 the rates associated with electricity consumption.

27 (5) One appointed by the Governor subject to confirmation by the General
28 Assembly, who shall at the time of appointment be a person with experience in
29 science or engineering in hydrology or geology.

30 (6) One appointed by the General Assembly upon recommendation of the Speaker
31 of the House of Representatives in accordance with G.S. 120-121, who is a
32 representative of a nongovernmental conservation interest.

33 (7) One appointed by the General Assembly upon recommendation of the President
34 Pro Tempore of the Senate in accordance with G.S. 120-121, who shall at the
35 time of appointment be a resident of the State.

36 (b2) Process for Appointments by the Governor. – The Governor shall transmit to the
37 presiding officers of the Senate and the House of Representatives, within four weeks of the
38 convening of the session of the General Assembly in the year for which the terms in question are
39 to expire, the names of the persons to be appointed by the Governor and submitted to the General
40 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
41 subsection when the General Assembly is not in session, the member may be appointed and serve
42 on an interim basis pending confirmation by the General Assembly. For the purpose of this
43 subsection, the General Assembly is not in session only (i) prior to convening of the regular
44 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
45 die adjournment of the Regular Session.

46 (c) Chair. – The Governor shall appoint the Chair of the Commission from among the
47 Commission's members, and that person shall serve at the pleasure of the Governor. The Chair
48 shall serve two-year terms. The Governor shall make:

49 (1) The initial appointment of the Chair no later than ~~October 1, 2014.~~ July 1, 2016.
50 If the initial appointment is not made by that date, the Chair shall be elected by
51 a vote of the membership; and

1 (2) Appointments of a subsequent Chair, including appointments to fill a vacancy
2 of the Chair created by resignation, dismissal, death, or disability of the Chair,
3 no later than 30 days after the last day of the previous Chair's term. If an
4 appointment of a subsequent Chair is not made by that date, the Chair shall be
5 elected by a vote of the membership.

6 (d) Vacancies. – ~~Any appointment to fill a vacancy on the Commission created by the~~
7 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
8 ~~term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional~~
9 ~~term if, at the time of the reappointment, the member qualifies for membership on the Commission~~
10 ~~under subdivisions (7) through (9) of subsection (b) of this section. In case of death, incapacity,~~
11 ~~resignation, or vacancy for any other reason in the office of any member appointed by the~~
12 ~~Governor, prior to the expiration of the member's term of office, the name of the successor shall be~~
13 ~~submitted by the Governor within four weeks after the vacancy arises to the General Assembly for~~
14 ~~confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for~~
15 ~~any other reason in the office of any member appointed~~ Appointments by the General Assembly
16 Assembly, shall be made in accordance with G.S. 120-121, and vacancies in those appointments
17 shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists when the General
18 Assembly is not in session, and the appointment is deemed urgent by the Governor, the member
19 may be appointed by the Governor and serve on an interim basis pending confirmation or
20 appointment by the General Assembly, as applicable. An appointment to fill a vacancy shall be for
21 the unexpired balance of the term.

22 (e) Removal. – The Governor shall have the power to remove any member of the
23 Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the
24 provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

25 (f) Powers and Duties. – The Commission shall have all of the following powers and
26 duties:

- 27 (1) To review and approve the classification of coal combustion residuals surface
28 impoundments required by G.S. 130A-309.213.
- 29 (2) To review and approve Coal Combustion Residuals Surface Impoundment
30 Closure Plans as provided in G.S. 130A-309.214.
- 31 (3) To review and make recommendations on the provisions of this Part and other
32 statutes and rules related to the management of coal combustion residuals.
- 33 (4) To undertake any additional studies as requested by the General Assembly.

34 (g) Reimbursement. – The members of the Commission shall receive per diem and
35 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

36 (h) Quorum. – ~~Five~~ Four members of the ~~Commission~~ Commission, at least three of whom
37 must be gubernatorial appointees, shall constitute a quorum for the transaction of business.

38 (i) Staff. – The Commission is authorized and empowered to employ staff as the
39 Commission may determine to be necessary for the proper discharge of the Commission's duties
40 and responsibilities. The Chair of the Commission shall organize and direct the work of the
41 Commission staff. The salaries and compensation of all such personnel shall be fixed in the
42 manner provided by law for fixing and regulating salaries and compensation by other State
43 agencies. The Chair, within allowed budgetary limits and as allowed by law, shall authorize and
44 approve travel, subsistence, and related expenses of such personnel incurred while traveling on
45 official business. All State agencies, including the constituent institutions of The University of
46 North Carolina, shall provide information and support to the Commission upon request.

47 (j) Repealed by Session Laws 2015-9, s. 1.1, effective April 27, 2015.

48 (k) Covered Persons; Conflicts of Interest; Disclosure. – All members of the Commission
49 are covered persons for the purposes of Chapter 138A of the General Statutes, the State
50 Government Ethics Act. As covered persons, members of the Commission shall comply with the
51 applicable requirements of the State Government Ethics Act, including mandatory training, the

1 public disclosure of economic interests, and ethical standards for covered persons. Members of the
2 Commission shall comply with the provisions of the State Government Ethics Act to avoid
3 conflicts of interest. The Governor may require additional disclosure of potential conflicts of
4 interest by members. The Governor may promulgate criteria regarding conflicts of interest and
5 disclosure thereof for determining the eligibility of persons under this subsection, giving due
6 regard to the requirements of federal legislation, and, for this purpose, may promulgate rules,
7 regulations, or guidelines in conformance with those established by any federal agency
8 interpreting and applying provisions of federal law.

9 (l) Meetings. – The Commission shall meet at least once every two months and may hold
10 special meetings at any time and place within the State at the call of the Chair or upon the written
11 request of at least five members.

12 (m) Reports. – The Commission shall submit quarterly written reports as to its operation,
13 activities, programs, and progress to the Environmental Review Commission. The Commission
14 shall supplement the written reports required by this subsection with additional written and oral
15 reports as may be requested by the Environmental Review Commission. The Commission shall
16 submit the written reports required by this subsection whether or not the General Assembly is in
17 session at the time the report is due.

18 (n) ~~Administrative Location; Independence. Location.~~ – The Commission shall be
19 administratively located in the Division of Emergency Management of the Department of Public
20 ~~Safety.~~ Safety, the head of which is the Secretary of Public Safety, who, as provided in
21 G.S. 143B-602, has powers and duties as delegated to the Secretary by the Governor and conferred
22 on the Secretary by the Constitution and laws of this State. ~~The Commission shall exercise all of~~
23 ~~its powers and duties independently and shall not be subject to the supervision, direction, or~~
24 ~~control of the Division or Department.~~

25 (o) Terms of Members. – Members of the Commission shall serve terms of ~~six~~ four years,
26 beginning effective ~~July 1~~ January 1 of the year of ~~appointment.~~ appointment, and terminate on
27 December 31 of the year of expiration. At the expiration of each member's term, the appointing
28 authority shall replace the member with a new member of like qualifications for a term of four
29 years. A member shall continue to serve until the member's successor is duly confirmed and
30 qualified but such holdover shall not affect the expiration date of such succeeding term. In order to
31 establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or
32 as soon as feasible thereafter, and expire as follows:

33 (1) The initial appointments made by the Governor:

34 a. Pursuant to subdivision (b1)(1) of this section shall expire December 31,
35 2020.

36 b. Pursuant to subdivision (b1)(2) of this section shall expire December 31,
37 2020.

38 c. Pursuant to subdivision (b1)(3) of this section shall expire December 31,
39 2020.

40 d. Pursuant to subdivision (b1)(4) of this section shall expire December 31,
41 2019.

42 e. Pursuant to subdivision (b1)(5) of this section shall expire December 31,
43 2019.

44 (2) The initial appointment made by the General Assembly upon recommendation
45 of the Speaker of the House of Representatives pursuant to subdivision (b1)(6)
46 of this section shall expire December 31, 2018.

47 (3) The initial appointment made by the General Assembly upon recommendation
48 of the President Pro Tempore of the Senate pursuant to subdivision (b1)(7) of
49 this section shall expire December 31, 2018."

50 **SECTION 2.(b)** G.S. 130A-309.213 reads as rewritten:

51 **"§ 130A-309.213. Prioritization of coal combustion residuals surface impoundments.**

1 (a) As soon as practicable, but no later than December 31, 2015, the Department shall
2 develop proposed classifications for all coal combustion residuals surface impoundments,
3 including active and retired sites, for the purpose of closure and remediation based on these sites'
4 risks to public health, safety, and welfare; the environment; and natural resources and shall
5 determine a schedule for closure and required remediation that is based on the degree of risk to
6 public health, safety, and welfare; the environment; and natural resources posed by the
7 impoundments and that gives priority to the closure and required remediation of impoundments
8 that pose the greatest risk. In assessing the risk, the Department shall evaluate information
9 received pursuant to G.S. 130A-309.211 and G.S. 130A-309.212 and any other information
10 deemed relevant and, at a minimum, consider all of the following:

- 11 (1) Any hazards to public health, safety, or welfare resulting from the
12 impoundment.
- 13 (2) The structural condition and hazard potential of the impoundment.
- 14 (3) The proximity of surface waters to the impoundment and whether any surface
15 waters are contaminated or threatened by contamination as a result of the
16 impoundment.
- 17 (4) Information concerning the horizontal and vertical extent of soil and
18 groundwater contamination for all contaminants confirmed to be present in
19 groundwater in exceedance of groundwater quality standards and all significant
20 factors affecting contaminant transport.
- 21 (5) The location and nature of all receptors and significant exposure pathways.
- 22 (6) The geological and hydrogeological features influencing the movement and
23 chemical and physical character of the contaminants.
- 24 (7) The amount and characteristics of coal combustion residuals in the
25 impoundment.
- 26 (8) Whether the impoundment is located within an area subject to a 100-year flood.
- 27 (9) Any other factor the Department deems relevant to establishment of risk.

28 (b) The Department shall issue a proposed classification for each coal combustion
29 residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of
30 this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed
31 classification has been issued, the Department shall issue a written declaration, including findings
32 of fact, documenting the proposed classification. The Department shall provide for public
33 participation on the proposed risk classification as follows:

- 34 (1) The Department shall make copies of the written declaration issued pursuant to
35 this subsection available for inspection as follows:
 - 36 a. A copy of the declaration shall be provided to the local health director.
 - 37 b. A copy of the declaration shall be provided to the public library located
38 in closest proximity to the site in the county or counties in which the site
39 is located.
 - 40 c. The Department shall post a copy of the declaration on the Department's
41 Web site.
 - 42 d. The Department shall place copies of the declaration in other locations
43 so as to assure the reasonable availability thereof to the public.
- 44 (2) The Department shall give notice of the written declaration issued pursuant to
45 this subsection as follows:
 - 46 a. A notice and summary of the declaration shall be published weekly for a
47 period of three consecutive weeks in a newspaper having general
48 circulation in the county or counties where the site is located.
 - 49 b. Notice of the written declaration shall be given by first-class mail to
50 persons who have requested such notice. Such notice shall include a
51 summary of the written declaration and state the locations where a copy

- 1 of the written declaration is available for inspection. The Department
2 shall maintain a mailing list of persons who request notice pursuant to
3 this section.
- 4 c. Notice of the written declaration shall be given by electronic mail to
5 persons who have requested such notice. Such notice shall include a
6 summary of the written declaration and state the locations where a copy
7 of the written declaration is available for inspection. The Department
8 shall maintain a mailing list of persons who request notice pursuant to
9 this section.
- 10 (3) No later than 60 days after issuance of the written declaration, the Department
11 shall conduct a public meeting in the county or counties in which the site is
12 located to explain the written declaration to the public. The Department shall
13 give notice of the hearing at least 15 days prior to the date thereof by all of the
14 following methods:
- 15 a. Publication as provided in subdivision (1) of this subsection, with first
16 publication to occur not less than 30 days prior to the scheduled date of
17 the hearing.
- 18 b. First-class mail to persons who have requested notice as provided in
19 subdivision (2) of this subsection.
- 20 c. Electronic mail to persons who have requested notice as provided in
21 subdivision (2) of this subsection.
- 22 (4) At least 30 days from the latest date on which notice is provided pursuant to
23 subdivision (2) of this subsection shall be allowed for the receipt of written
24 comment on the written declaration prior to issuance of a final risk
25 classification. At least 20 days will be allowed for receipt of written comment
26 following a hearing conducted pursuant to subdivision (3) of this subsection
27 prior to issuance of a final risk classification.
- 28 (c) ~~Within 30 days of the receipt~~After receipt of all written comment as required by
29 subdivision (4) of subsection (b) of this section, the Department shall submit a proposed
30 classification for a coal combustion residuals surface impoundment to the Coal Ash Management
31 Commission established pursuant to ~~G.S. 130A-309.202~~. G.S. 130A-309.202 as soon as legally
32 practicable but no later than 10 days after all appointments have been made pursuant to
33 G.S. 130A-309.202(b1). The Commission shall evaluate all information submitted in accordance
34 with this Part related to the proposed ~~classification~~ classification, including memorandums of
35 agreement or other binding agreements to provide permanent replacement water supplies in
36 accordance with the requirements of G.S. 130A-309.211 to reduce potential risks to public health,
37 safety, and welfare, and any other information the Commission deems relevant. The Commission
38 shall only approve the proposed classification if it determines that the classification was developed
39 in accordance with this section and that the classification accurately reflects the level of risk posed
40 by the coal combustion residuals surface impoundment. The Commission shall issue its
41 determination in writing, including findings in support of its ~~determination~~ determination, which
42 shall constitute a final decision of the Commission for purposes of an appeal under Article 3 of
43 Chapter 150B of the General Statutes. If the ~~Commission~~ Commission, appointed as provided by
44 G.S. 130A-309.202(b1), fails to act on a proposed classification within ~~60~~ 120 days of receipt of
45 the proposed classification, the proposed classification shall be deemed ~~approved~~ disapproved. If
46 a proposed classification is deemed disapproved on the basis that a final decision, including a
47 written determination with findings of facts, has not been issued by the Commission prior to
48 expiration of the 120-day period, the Commission may extend the deadline for no more than 120
49 days if necessary for adequate review of a proposed classification. Parties aggrieved by a final
50 decision of the Commission pursuant to this subsection may appeal the decision as provided under
51 Article 3 of Chapter 150B of the General Statutes. A classification deemed disapproved as a result

1 of the Commission's failure to act within the 120-day review period, and, if applicable, a
2 subsequent 120-day review period resulting from an extension issued by the Commission to allow
3 additional review shall not constitute a final decision of the Commission for purposes of an appeal
4 under Article 3 of Chapter 150B of the General Statutes."

5 **SECTION 2.(c)** Notwithstanding the provisions of G.S. 130A-309.202(b2) and
6 G.S. 130A-309.202(o), as enacted and amended by Section 2(a) of this act, no later than 30 days
7 after the date this act becomes law, the Governor shall transmit to the presiding officers of the
8 Senate and the House of Representatives, the names of the persons nominated by the Governor for
9 appointment to the Coal Ash Management Commission pursuant to G.S. 130A-309.202(b1), as
10 enacted by Section 2(a) of this act, for confirmation by the General Assembly by joint resolution.

11 **SECTION 2.(d)** Notwithstanding G.S. 130A-309.213(c) and G.S. 130A-309.214(d),
12 the Environmental Management Commission shall assume all powers and duties for review and
13 approval of proposed classifications for all coal combustion residuals surface impoundments and
14 closure plans for all coal combustion residuals surface impoundments pursuant to those sections, if
15 (i) upon expiration of the period established for public comment set forth in Section 2(f) of this
16 act, the Coal Ash Management Commission has not been appointed as provided by
17 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) if at any point a court of
18 competent jurisdiction issues a temporary or permanent order enjoining the authority, operation, or
19 activities of the Coal Ash Management Commission appointed as provided by
20 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or issues any other decision or
21 order that prevents the Commission from carrying out its statutory duties.

22 **SECTION 2.(e)** No classification for any coal combustion residuals surface
23 impoundment, regardless of when such classification was issued, shall be construed to be deemed
24 approved or final, or implemented as such by the Department of Environmental Quality, until the
25 classification is approved by the (i) Coal Ash Management Commission, as appointed pursuant to
26 G.S. 130A-309.202(b1), as enacted by Section 2(a) of this act, or (ii) the Environmental
27 Management Commission, if applicable, pursuant to Section 2(d) of this act.

28 **SECTION 2.(f)** Notwithstanding G.S. 130A-309.213, the Department of
29 Environmental Quality shall do all of the following:

- 30 (1) Extend the period for receipt of public comment on the written declarations for
31 proposed classifications for all coal combustion residuals surface
32 impoundments until August 1, 2016, consider any comments, information, and
33 data received during this period, including memorandums of agreement or other
34 binding agreements to provide permanent replacement water supplies in
35 accordance with the requirements of G.S. 130A-309.211, as amended by
36 Section 1(a) of this act, to reduce potential risks to public health, safety, and
37 welfare; and incorporate any comments, information, and data necessary for
38 issuance of a classification that accurately reflects the level of risk posed by the
39 coal combustion residuals surface impoundment.
- 40 (2) No later than September 1, 2016, submit a proposed classification for review
41 and approval to the (i) Coal Ash Management Commission, as appointed
42 pursuant to G.S. 130A-309.202(b1), as enacted by subsection (a) of this section,
43 or (ii) the Environmental Management Commission, if applicable, pursuant to
44 subsection (d) of this section.

45 **SECTION 2.(g)** Up to five receipt-supported positions are created in the Division of
46 Emergency Management of the Department of Public Safety to carry out the duties in
47 G.S. 130A-309.202. There is appropriated a sum of up to four hundred thousand dollars
48 (\$400,000) to the Coal Ash Management Commission from the Coal Combustion Residuals
49 Management Fund cash balance on June 30, 2016, to fund said positions or for the purpose of
50 executing contractual arrangements for engineering or other consulting services the Commission
51 determines are necessary or advisable to render requisite information and expertise on coal ash

1 management issues or otherwise support the Commission's work. The positions shall be used to
2 provide assistance to the Coal Ash Management Commission established by G.S. 130A-309.202,
3 as enacted by Section 2(a) of this act. The Division of Emergency Management in the Department
4 of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal
5 Ash Management Commission. The Division of Emergency Management in the Department of
6 Public Safety shall provide support to the Commission until the staff of the Commission is hired,
7 including the designation of an individual to serve as an interim executive director of the staff.
8 Provided, however, that if the Environmental Management Commission assumes all powers and
9 duties for review and approval of proposed classifications for all coal combustion residuals surface
10 impoundments and closure plans for all coal combustion residuals surface impoundments pursuant
11 to Section 2(d) of this act, then funds to be appropriated pursuant to this section shall instead be
12 appropriated to the Environmental Management Commission, which funds shall be used solely to
13 support the work of the Commission to review and approve proposed classifications and proposed
14 closure plans.

15 **SECTION 2.(h)** This section is effective when it becomes law.

16 **SECTION 3.(a)** G.S. 143B-291 reads as rewritten:

17 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;
18 compensation; quorum; services.**

19 (a) Repealed by 2014-4, s. 5(a), effective July 31, 2015.

20 (a1) Members, Selection. – The North Carolina Mining Commission shall consist of eight
21 members appointed as follows:

22 (1) One member who is the chair of the North Carolina State University Minerals
23 Research Laboratory Advisory Committee.

24 (2) The State Geologist, ex officio and nonvoting.

25 (3) One member appointed by the Governor subject to confirmation by the General
26 Assembly, who is a representative of the mining industry.

27 (4) One member appointed by the Governor subject to confirmation by the General
28 Assembly, who is a representative of the mining industry.

29 (5) One member appointed by the ~~General Assembly upon recommendation of the~~
30 ~~Speaker of the House of Representatives~~ Governor subject to confirmation by
31 the General Assembly who is a representative of the mining industry.

32 (6) One member appointed by the ~~General Assembly upon recommendation of the~~
33 ~~President Pro Tempore of the Senate~~ Governor subject to confirmation by the
34 General Assembly who is a representative of the mining industry.

35 (7) One member appointed by the General Assembly upon recommendation of the
36 Speaker of the House of Representatives in accordance with G.S. 120-121, who
37 is a ~~member of~~ representative of a nongovernmental conservation
38 ~~interests~~ interest.

39 (8) One member appointed by the General Assembly upon recommendation of the
40 President Pro Tempore of the Senate in accordance with G.S. 120-121, who is a
41 ~~member of~~ representative of a nongovernmental conservation interests-interest.

42 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
43 presiding officers of the Senate and the House of Representatives, within four weeks of the
44 convening of the session of the General Assembly in the year for which the terms in question are
45 to expire, the names of the persons to be appointed by the Governor and submitted to the General
46 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
47 subsection when the General Assembly is not in session, the member may be appointed and serve
48 on an interim basis pending confirmation by the General Assembly. For the purpose of this
49 subsection, the General Assembly is not in session only (i) prior to convening of the regular
50 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
51 die adjournment of the regular session.

1 (b) Terms. – The term of office of a member of the Commission is ~~six years~~four years,
2 beginning effective January 1 of the year of appointment and terminating on December 31 of the
3 year of expiration. At the expiration of each member's term, the appointing authority shall replace
4 the member with a new member of like qualifications for a term of ~~six~~four years. ~~The term of the~~
5 ~~member appointed under subdivision (5) of subsection (a1) of this section shall expire on June 30~~
6 ~~of years that precede by one year those years that are evenly divisible by six. The term of members~~
7 ~~appointed under subdivisions (3) and (6) of subsection (a1) of this section shall expire on June 30~~
8 ~~of years that follow by one year those years that are evenly divisible by six. The term of members~~
9 ~~appointed under subdivisions (4) and (7) of subsection (a1) of this section shall expire on June 30~~
10 ~~of years that follow by three years those years that are evenly divisible by six. Upon the expiration~~
11 ~~of a six year term, a member may continue to serve until a successor is appointed and duly~~
12 ~~qualified as provided by G.S. 128-7.~~In order to establish regularly overlapping terms, initial
13 appointments shall be made effective June 1, 2016, or as soon as feasible thereafter, and expire as
14 follows:

15 (1) The initial appointments made by the Governor:

16 a. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
17 2020.

18 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
19 2020.

20 c. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
21 2019.

22 d. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
23 2019.

24 (2) The initial appointment made by the General Assembly upon recommendation
25 of the Speaker of the House of Representatives pursuant to subdivision (a1)(7)
26 of this section shall expire December 31, 2018.

27 (3) The initial appointment made by the General Assembly upon recommendation
28 of the President Pro Tempore of the Senate pursuant to subdivision (a1)(8) of
29 this section shall expire December 31, 2018.

30 (c) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason
31 in the office of any member appointed by the Governor, prior to the expiration of the member's
32 term of office, the name of the successor shall be submitted by the Governor within four weeks
33 after the vacancy arises to the General Assembly for confirmation by the General Assembly. In
34 case of death, incapacity, resignation, or vacancy for any other reason in the office of any member
35 appointed by the General Assembly, vacancies in those appointments shall be filled in accordance
36 with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not in session, and
37 the appointment is deemed urgent by the Governor, the member may be appointed by the
38 Governor and serve on an interim basis pending confirmation or appointment by the General
39 Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired balance of
40 the term.

41 (d) Removal. – The Governor may remove any member of the Commission from office for
42 misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

43 (e) Compensation. – The members of the Commission shall receive per diem and
44 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

45 (f) Quorum. – A majority of the Commission shall constitute a quorum for the transaction
46 of business.

47 (g) Staff. – All clerical and other services required by the Commission shall be supplied by
48 the Secretary of Environmental Quality."

49 **SECTION 3.(b)** Notwithstanding the provisions of G.S. 143B-291(a2) and
50 G.S. 143B-291(b), as enacted and amended by Section 3(a) of this act, no later than 30 days after
51 the date this act becomes law, the Governor shall transmit to the presiding officers of the Senate

1 and the House of Representatives the names of the persons nominated by the Governor for
2 appointment to the Mining Commission pursuant to G.S. 143B-291(a1), as enacted by Section
3 3(a) of this act, for confirmation by the General Assembly by joint resolution. Upon failure of the
4 Governor to submit names as provided herein by December 1, 2016, the Lieutenant Governor
5 shall make such appointments, and if such appointments made by the Lieutenant Governor occur
6 when the General Assembly is not in session, the member may be appointed and serve on an
7 interim basis pending confirmation by the General Assembly.

8 **SECTION 3.(c)** This section is effective when it becomes law.

9 **SECTION 4.(a)** G.S. 143B-293.2 reads as rewritten:

10 **"§ 143B-293.2. North Carolina Oil and Gas Commission – members; selection; removal;
11 compensation; quorum; services.**

12 (a) Repealed by Session Laws 2014-4, s. 4(a), effective July 31, 2015.

13 (a1) **Members Selection.** – The North Carolina Oil and Gas Commission shall consist of
14 nine members appointed as follows:

15 (1) One appointed by the ~~General Assembly upon recommendation of the Speaker~~
16 ~~of the House of Representatives~~ Governor subject to confirmation by the
17 General Assembly who, at the time of initial appointment, is an elected official
18 of a municipal government located in a region of North Carolina that has oil
19 and gas potential. A person serving in this seat may complete a term on the
20 Commission even if the person is no longer serving as an elected official of a
21 municipal government but may not be reappointed to a subsequent term.

22 (2) One appointed by the General Assembly upon recommendation of the Speaker
23 of the House of Representatives in accordance with G.S. 120-121, who shall be
24 a geologist with experience in oil and gas exploration and development.

25 (3) One appointed by the General Assembly upon recommendation of the Speaker
26 of the House of Representatives in accordance with G.S. 120-121, who is a
27 ~~member~~ representative of a nongovernmental conservation interest.

28 (4) One appointed by the ~~General Assembly upon recommendation of the President~~
29 ~~Pro Tempore of the Senate~~ Governor subject to confirmation by the General
30 Assembly who, at the time of initial appointment, is a member of a county
31 board of commissioners of a county located in a region of North Carolina that
32 has oil and gas potential. A person serving in this seat may complete a term on
33 the Commission even if the person is no longer serving as county commissioner
34 but may not be reappointed to a subsequent term.

35 (5) One appointed by the General Assembly upon recommendation of the President
36 Pro Tempore of the Senate in accordance with G.S. 120-121, who is a
37 ~~member~~ representative of a nongovernmental conservation interest.

38 (6) One appointed by the General Assembly upon recommendation of the President
39 Pro Tempore of the Senate in accordance with G.S. 120-121, who shall be an
40 engineer with experience in oil and gas exploration and development.

41 (7) One appointed by the Governor subject to confirmation by the General
42 Assembly, who shall be a representative of a publicly traded natural gas
43 company.

44 (8) One appointed by the Governor subject to confirmation by the General
45 Assembly, who shall be a licensed attorney with experience in legal matters
46 associated with oil and gas exploration and development.

47 (9) One appointed by the Governor subject to confirmation by the General
48 Assembly, with experience in matters related to public health.

49 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
50 presiding officers of the Senate and the House of Representatives, within four weeks of the
51 convening of the session of the General Assembly in the year for which the terms in question are

1 to expire, the names of the persons to be appointed by the Governor and submitted to the General
2 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
3 subsection when the General Assembly is not in session, the member may be appointed and serve
4 on an interim basis pending confirmation by the General Assembly. For the purpose of this
5 subsection, the General Assembly is not in session only (i) prior to convening of the regular
6 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after sine
7 die adjournment of the regular session.

8 (b) Terms. – The term of office of members of the Commission is ~~three years~~four years,
9 beginning effective January 1 of the year of appointment and terminating on December 31 of the
10 year of expiration. A member may be reappointed to no more than two consecutive
11 ~~three year~~four-year terms. The term of a member who no longer meets the qualifications of their
12 respective appointment, as set forth in subsection ~~(a)~~(a1) of this section, shall terminate but the
13 member may continue to serve until a new member who meets the qualifications is appointed. ~~The~~
14 ~~terms of members appointed under subdivisions (1), (4), and (7) of subsection (a1) of this section~~
15 ~~shall expire on June 30 of years evenly divisible by three. The terms of members appointed under~~
16 ~~subdivisions (2), (5), and (8) of subsection (a1) of this section shall expire on June 30 of years that~~
17 ~~precede by one year those years that are evenly divisible by three. The terms of members~~
18 ~~appointed under subdivisions (3), (6), and (9) of subsection (a1) of this section shall expire on~~
19 ~~June 30 of years that follow by one year those years that are evenly divisible by three. In order to~~
20 ~~establish regularly overlapping terms, initial appointments shall be made effective June 1, 2016, or~~
21 ~~as soon as feasible thereafter, and expire as follows:~~

22 (1) The initial appointments made by the Governor:

- 23 a. Pursuant to subdivision (a1)(1) of this section shall expire December 31,
24 2020.
25 b. Pursuant to subdivision (a1)(4) of this section shall expire December 31,
26 2020.
27 c. Pursuant to subdivision (a1)(7) of this section shall expire December 31,
28 2020.
29 d. Pursuant to subdivision (a1)(8) of this section shall expire December 31,
30 2019.
31 e. Pursuant to subdivision (a1)(9) of this section shall expire December 31,
32 2019.

33 (2) The initial appointments made by the General Assembly upon recommendation
34 of the Speaker of the House of Representatives:

- 35 a. Pursuant to subdivision (a1)(2) of this section shall expire December 31,
36 2018.
37 b. Pursuant to subdivision (a1)(3) of this section shall expire December 31,
38 2019.

39 (3) The initial appointments made by the General Assembly upon recommendation
40 of the President Pro Tempore of the Senate:

- 41 a. Pursuant to subdivision (a1)(5) of this section shall expire December 31,
42 2018.
43 b. Pursuant to subdivision (a1)(6) of this section shall expire December 31,
44 2019.

45 (c) ~~Vacancies; Removal from Office.~~Vacancies. – In case of death, incapacity,
46 resignation, or vacancy for any other reason in the office of any member appointed by the
47 Governor, prior to the expiration of the member's term of office, the name of the successor shall be
48 submitted by the Governor within four weeks after the vacancy arises to the General Assembly for
49 confirmation by the General Assembly. In case of death, incapacity, resignation, or vacancy for
50 any other reason in the office of any member appointed by the General Assembly, vacancies in
51 those appointments shall be filled in accordance with G.S. 120-122. If a vacancy arises or exists

1 when the General Assembly is not in session, and the appointment is deemed urgent by the
2 Governor, the member may be appointed by the Governor and serve on an interim basis pending
3 confirmation or appointment by the General Assembly, as applicable. An appointment to fill a
4 vacancy shall be for the unexpired balance of the term.

5 (c1) Removal. –

6 (1) ~~Any appointment by the Governor to fill a vacancy on the Commission created by the~~
7 ~~resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired~~
8 ~~term.~~ The Governor shall have the power to remove any member of the Commission from office
9 for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13
10 of the Executive Organization Act of 1973.

11 (2) ~~Members appointed by the President Pro Tempore of the Senate and the Speaker of the~~
12 ~~House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those~~
13 ~~appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of~~
14 ~~Article VI of the North Carolina Constitution, a member may continue to serve until a successor is~~
15 ~~duly appointed.~~

16 (d) Compensation. – The members of the Commission shall receive per diem and
17 necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

18 (e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction
19 of business.

20 (f) Staff. – All staff support required by the Commission shall be supplied by the Division
21 of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

22 (g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be
23 established under G.S. 143B-293.6, the chair may establish other committees from members of the
24 Commission to address specific issues as appropriate. No member of a committee may hear or
25 vote on any matter in which the member has an economic interest. A majority of a committee shall
26 constitute a quorum for the transaction of business.

27 (h) Office May Be Held Concurrently With Others. – Membership on the Oil and Gas
28 Commission is hereby declared to be an office that may be held concurrently with other elective or
29 appointive offices in addition to the maximum number of offices permitted to be held by one
30 person under G.S. 128-1.1."

31 **SECTION 4.(b)** Notwithstanding the provisions of G.S. 143B-293.2(a1) and
32 G.S. 143B-293.2(b), as enacted and amended by Section 4(a) of this act, no later than 30 days after
33 the date this act becomes law the Governor shall transmit to the presiding officers of the Senate
34 and the House of Representatives, the names of the persons nominated by the Governor for
35 appointment to the Oil and Gas Commission pursuant to G.S. 143B-293.2(a1), as enacted by
36 Section 4(a) of this act, for confirmation by the General Assembly by joint resolution. Upon
37 failure of the Governor to submit names as provided herein by December 1, 2016, the Lieutenant
38 Governor shall make such appointments, and if such appointments made by the Lieutenant
39 Governor occur when the General Assembly is not in session, the member may be appointed and
40 serve on an interim basis pending confirmation by the General Assembly.

41 **SECTION 4.(c)** For purposes of the rules set forth in 15A NCAC 05H (Oil and Gas
42 Conservation Rules), modifications made to the Oil and Gas Commission under Section 4(a) of
43 this act shall, pursuant to G.S. 150B-21.7, be construed to (1) have repealed authority to adopt
44 such rules given to previously constituted commissions and (2) transferred the authority to adopt
45 such rules to the Oil and Gas Commission as modified by Section 4(a) of this act. Therefore,
46 pursuant to G.S. 150B-21.7, rules set forth in 15A NCAC 05H (Oil and Gas Conservation Rules)
47 shall be effective until the Oil and Gas Commission, as modified Section 4(a) of this act, amends
48 or repeals the rules.

49 **SECTION 4.(d)** This section is effective when it becomes law.

1 **SECTION 5.** The provisions of this act shall be severable, and if any phrase, clause,
2 sentence, or provision is declared to be unconstitutional or otherwise invalid, the validity of the
3 remainder of this act shall not be affected thereby.

4 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes law.