

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 374
Committee Substitute Favorable 4/5/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H374-PCS10379-SUxfr-28

Short Title: Business Freedom Act.

(Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
3 LABOR LAWS OF NORTH CAROLINA; CODIFYING THE CAROLINA STAR
4 PROGRAM IN THE DEPARTMENT OF LABOR; AND MAKING VARIOUS
5 CHANGES TO THE LAWS GOVERNING BUSINESSES.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. DEPARTMENT OF LABOR TECHNICAL CHANGES**

9 **SECTION 1.(a)** G.S. 95-25.5(a) reads as rewritten:

10 "(a) No youth under 18 years of age shall be employed by any employer in any
11 occupation without a youth employment certificate unless specifically exempted. The
12 Commissioner of Labor shall prescribe regulations for youths and employers concerning the
13 issuance, maintenance and revocation of certificates. Certificates will be issued, ~~subject to~~
14 ~~review by the Department of Labor, by county directors of social services and such of their~~
15 ~~designees as are approved by the Commissioner; provided, the Commissioner may also issue~~
16 ~~certificates, issued by the Commissioner, both directly and electronically."~~

17 **SECTION 1.(b)** G.S. 95-117 reads as rewritten:

18 **"§ 95-117. Definitions.**

19 Each word or term defined in this Article has the meaning indicated in this section, unless a
20 different meaning is plainly required by the context.

21 (1) Annual gross volume. – The gross receipts a person or passenger tramway
22 receives from all types of sales made and business done during a 12-month
23 period.

24 (1)(2) ~~"Commissioner"~~ means the Commissioner. – The Commissioner of Labor of
25 the State of North Carolina.

26 (2)(3) ~~"Industry"~~ means activities ~~Industry.~~ – Activities of all those persons in the
27 State who own, manage, or direct the operation of passenger tramways.

28 (3)(4) ~~"Operator"~~ means any Operator. – Any person, firm, corporation, or
29 organization which owns, manages, or directs the operation of a passenger
30 tramway. "Operator" may apply to the State or any political subdivision or
31 instrumentality thereof.

32 (5) Owner. – Any person or authorized agent of such person who owns a
33 passenger tramway or in the event the passenger tramway is leased, the
34 lessee. The term owner shall also include the State of North Carolina or any
35 political subdivision thereof or any unit of local government.



(4)(6) ~~"Passenger tramway" means a Passenger tramway. – A device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. "Passenger tramway" shall include~~ The term includes any of the following devices:

- a. ~~"Chairlift," a Chairlift. – A type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;~~ devices.
- a1. ~~"Conveyor," a Conveyor. – A type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.~~
- a2. Funicular. – A system in which passengers are transported in or on carriers that are supported and guided by a level or inclined guideway and propelled by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location.
- a3. Gondola. – An enclosed cabin attached to a cable that mechanically transports people or cargo.
- b. ~~"J bar, T bar or platter pull, so called and similar types of devices or means of transportation J bar, T bar, or platter pull. – Devices which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;~~ spans.
- c. ~~"Multicar aerial passenger tramway," a Multicar aerial passenger tramway. – A device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device;~~ device.
- d. ~~"Rope tow," a Rope tow. – A type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar devices;~~ device.
- e. ~~"Skimobile," a Skimobile. – A device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device;~~ device.
- f. ~~"Two-car aerial passenger tramway," a Two-car aerial passenger tramway. – A device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device.~~

(7) Person. – Any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government."

SECTION 1.(c) Article 15 of Chapter 95 of the General Statutes is amended by adding the following new sections to read:

"§ 95-125.1. Operation of unsafe device.

No person shall operate, permit to be operated, or use any device subject to the provisions of this Article if the person knows or reasonably should know that the operation or use of the device will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

"§ 95-125.2. Reports required.

(a) The owner of any device regulated under the provisions of this Article, or the owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every occurrence involving the device when either of the following occurs:

- (1) Death or injury requiring medical treatment, other than first aid, by a physician. For the purposes of this section, "first aid" means (i) the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters, or contusions or (ii) performing a diagnostic procedure, including examination and X rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel.
- (2) Damage to the device indicating a substantial defect in design, mechanics, structure, or equipment that affects the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) of this section has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(c) No person, after an occurrence specified in subsection (a) of this section, shall do either of the following:

- (1) Operate, attempt to operate, use, or move or attempt to move such device or part thereof without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (2) Remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The Department must initiate its investigation within 24 hours of being notified.

"§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.

(a) Any person who violates G.S. 95-118 (Registration required; application procedures) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars (\$1,250) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-120.1 (Liability insurance) or G.S. 95-125.2 (Reports required) is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated and used.

(c) Any person who violates G.S. 95-125.1 (Operation of unsafe device) is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so operated and used.

(d) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the annual gross volume of the person being charged, the gravity of the violation, the good faith of the person, and the record of previous violations.

(e) The Commissioner's determination of the amount of the penalty is final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedures Act.

(f) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides or, if a

1 corporation is involved, in the county wherein the violation occurred, a certified copy of a final
2 order of the Commissioner unappealed form, or of a final order of the Commissioner affirmed
3 upon appeal. Upon such filing, the clerk of said court shall enter judgment in accordance with
4 the final order and notify the parties. The judgment shall have the same effect, and all
5 proceedings in relation to the judgment shall thereafter be the same, as though the judgment
6 had been rendered in a suit duly heard and determined by the superior court of the General
7 Court of Justice.

8 (g) Any person who willfully violates any provision of this Article and that violation
9 causes the serious injury or death of any person, then the person is guilty of a Class E felony,
10 which shall include a fine.

11 (h) Nothing in this section prevents any prosecuting officer of the State of North
12 Carolina from proceeding against a person who violates this Article on a prosecution charging
13 any degree of willful or culpable homicide."

14 **SECTION 1.(d)** G.S. 95-174 reads as rewritten:

15 **"§ 95-174. Definitions.**

16 (a) "Chemical manufacturer" ~~shall mean~~ means a manufacturing facility classified in
17 ~~Standard Industrial Classification (SIC) Codes 20 through 39~~ North American Industry
18 Classification System (NAICS) Codes 31 through 33 where chemicals are produced for use or
19 distribution in North Carolina.

20 (b) "Chemical name" ~~shall mean~~ means the scientific designation of a chemical in
21 accordance with the nomenclature system developed by the International Union of Pure and
22 Applied Chemistry (IUPAC), or the Chemical Abstracts Service (CAS) rules of nomenclature
23 or a name which will clearly identify the chemical for the purpose of conducting a hazard
24 evaluation.

25 (c) "Common name" ~~shall mean~~ means any designation or identification such as a code
26 name, code number, trade name, brand name or generic name used to identify a chemical other
27 than by its chemical name.

28 (d) "Distributor" ~~shall mean~~ means any business, other than a chemical manufacturer or
29 importer, which supplies hazardous chemicals to other distributors or to purchasers.

30 (e) "Employee" ~~shall mean~~ means any person who is employed by an employer under
31 normal operating conditions.

32 (f) "Employer" means a person engaged in business who has employees, including the
33 State and its political subdivisions but excluding an individual whose only employees are
34 domestic workers or casual laborers who are hired to work at the individual's residence.

35 (g) "Facility" ~~shall mean~~ means one or more establishments, factories, or buildings
36 located at one contiguous site in North Carolina.

37 (h) "Fire Chief" ~~shall mean~~ means Fire Chief or Fire Marshall, or Emergency Response
38 Coordinator in the absence of a Fire Chief or Fire Marshall for the appropriate local fire
39 department.

40 (i) Repealed by Session Laws 1987, c. 489, s. 1.

41 (j) "Fire Department" ~~shall mean~~ means the fire department having jurisdiction over the
42 facility.

43 (k) "Hazardous chemical" ~~shall mean~~ means any element, chemical compound or
44 mixture of elements and/or compounds which is a physical hazard or health hazard as defined
45 in subsection (c) of the OSHNC Standard or a hazardous substance as defined in standards
46 adopted by the Occupational Safety and Health Division of the North Carolina Department of
47 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

48 (l) "Hazardous Substance List" ~~shall mean~~ means the list required by G.S. 95-191.

49 (m) "Hazardous substance trade secret" means any formula, plan, pattern, device,
50 process, production information, or compilation of information, which is not patented, which is
51 known only to the employer, the employer's licensees, the employer's employees, and certain

1 other individuals, and which is used or developed for use in the employer's business, and which
2 gives the employer possessing it the opportunity to obtain a competitive advantage over
3 businesses who do not possess it, or the secrecy of which is certified by an appropriate official
4 of the federal government as necessary for national defense purposes. The chemical name and
5 Chemical Abstracts Service number of a substance shall be considered a trade secret only if the
6 employer can establish that the identity or composition of the substance cannot be readily
7 ascertained without undue expense by analytical techniques, laboratory procedures, or other
8 lawful means available to a competitor.

9 (n) "Label" ~~shall mean~~ means any written, printed, or graphic material displayed on or
10 affixed to containers of hazardous chemicals.

11 (o) "Manufacturing facility" ~~shall mean~~ means a facility classified in ~~SIC Codes 20~~
12 ~~through 39~~ NAICS Code 31 through 33 which manufactures or uses a hazardous chemical or
13 chemicals in North Carolina.

14 (p) ~~"Material Safety"~~ "Safety Data Sheets" or ~~"MSDS"~~ "SDS" means
15 chemical information sheets adopted by the Occupational Safety and Health Division of the
16 North Carolina Department of Labor in Title 13, Chapter 7 of the North Carolina
17 Administrative Code (13 NCAC 7).

18 (q) "Nonmanufacturing facility" ~~shall mean~~ means any facility in North Carolina other
19 than a facility in ~~SIC Code 20 through 39~~, NAICS Code 31 through 33, the State of North
20 Carolina (and its political subdivisions) and volunteer emergency service organizations whose
21 members may be exposed to chemical hazards during emergency situations.

22 (r) "OSHNC Standard" ~~shall mean~~ means the current Hazard Communication Standard
23 adopted by the Occupational Safety and Health Division of North Carolina Department of
24 Labor in Title 13, Chapter 7 of the North Carolina Administrative Code (13 NCAC 7).

25 (s) "Storage and Container" ~~shall have~~ has the ordinary meaning however it does not
26 include pipes used in the transfer of substances or the fuel tanks of ~~self-propelled~~ self-propelled
27 internal combustion vehicles."

28 **SECTION 1.(e)** G.S. 95-191(a) reads as rewritten:

29 "(a) All employers who manufacture, process, use, store, or produce hazardous
30 chemicals, shall compile and maintain a Hazardous Substance List which shall contain all of
31 the following information for each hazardous chemical stored in the facility in quantities of 55
32 gallons or 500 pounds, whichever is greater:

33 (1) The chemical name or the common name used on the ~~MSDS~~ SDS or
34 container ~~label~~; label.

35 (2) The maximum amount of the chemical stored at the facility at any time
36 during a year, using the following ranges:

37 Class A, which ~~shall include~~ includes quantities of less than 55 gallons or
38 500 ~~pounds~~; pounds.

39 Class B, which ~~shall include~~ includes quantities of between 55 gallons to
40 550 gallons, and quantities of between 500 pounds and 5,000 ~~pounds~~;
41 ~~and~~ pounds.

42 Class C, which ~~shall include~~ includes quantities of between 550 gallons and
43 5500 gallons, and quantities between 5,000 pounds and 50,000 ~~pounds~~;
44 ~~and~~ pounds.

45 Class D, which ~~shall include~~ includes quantities of greater than 5500 gallons
46 or 50,000 ~~pounds~~; ~~and~~ pounds.

47 (3) The area in the facility in which the hazardous chemical is normally stored
48 and to what extent the chemical may be stored at altered temperature or
49 pressure."

50 **SECTION 1.(f)** G.S. 95-192 reads as rewritten:

51 "**§ 95-192. ~~Material safety~~ Safety data sheets.**

1 (a) Chemical manufacturers and distributors shall provide ~~material~~-safety data sheets
2 (~~MSDS's~~)(SDSs) to manufacturing and nonmanufacturing purchasers of hazardous chemicals
3 in North Carolina for each hazardous chemical purchased.

4 (b) Employers shall maintain the most current ~~MSDS~~-SDS received from manufacturers
5 or distributors for each hazardous chemical purchased. If an ~~MSDS~~-SDS has not been provided
6 by the manufacturer or distributor for chemicals on the Hazardous Substance List at the time
7 the chemicals are received at the facility, the employer shall request one in writing from the
8 manufacturer or distributor within 30 days after receipt of the chemical. If the employer does
9 not receive an ~~MSDS~~-SDS within 30 days after his written request, he shall notify the
10 Commissioner of Labor of the failure by manufacturer or distributor to provide the
11 ~~MSDS~~-SDS."

12 **SECTION 1.(g)** G.S. 95-194 reads as rewritten:

13 "**§ 95-194. Emergency information.**

14 ...

15 (d) Employers shall provide to the Fire Chief, upon written request of the Fire Chief, a
16 copy of the ~~MSDS~~-SDS for any chemical on the Hazardous Substance List.

17 ...

18 (f) The Fire Chief shall make information from the Hazardous Substance List, the
19 emergency response plan, and ~~MSDS's~~-SDSs available to members of the Fire Department
20 having jurisdiction over the facility and to personnel responsible for preplanning emergency
21 response, police, medical or fire activities, but shall not otherwise distribute or disclose (or
22 allow the disclosure of) information not available to the public under G.S. 95-208. Such
23 persons receiving such information shall not disclose the information received and shall use
24 such information only for the purpose of preplanning emergency response, police, medical or
25 fire activities.

26"

27 **SECTION 1.(h)** G.S. 95-208 reads as rewritten:

28 "**§ 95-208. Community information on hazardous chemicals.**

29 (a) Any person in North Carolina may request in writing from the employer a list of
30 chemicals used or stored at the facility. The request shall include the name and address of the
31 person making the request and a statement of the purpose for the request. If the person is
32 requesting the list on behalf of or for the use of an organization, partnership, or corporation, he
33 shall also disclose the name and business address of such organization, partnership, or
34 corporation. The request may include, at the option of the employer, a statement to the effect
35 that the information will be used only for the purpose stated. The employer shall furnish to the
36 person making the request a list containing, at a minimum, all chemicals included on the
37 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
38 ~~MSDS~~-SDS for each chemical for which an ~~MSDS~~-SDS is available and is requested.
39 Whenever an employer has withheld a chemical under the provisions of G.S. 95-197 from the
40 information provided under G.S. 95-208, the employer must state that the information is being
41 withheld and, upon request, must provide the ~~MSDS~~-SDS for the chemical. Additional
42 information may be furnished to the person making the request at the option of the employer.
43 The employer shall provide, at a fee not to exceed the cost of reproducing the materials, the
44 materials requested within 10 working days of the date the employer receives the written
45 request for information.

46 (b) If the employer fails or refuses to provide the information required under subsection
47 (a) of this section, the person requesting the information may request in writing that the
48 Commissioner of Labor review the request. The Commissioner of Labor may conduct an
49 investigation in the same manner as provided in G.S. 95-195(b). Following the investigation,
50 the Commissioner shall make appropriate findings. Either the employer or the person making
51 the initial request may request an administrative hearing pursuant to Chapter 150B of the

1 General Statutes. This request for an administrative hearing shall be submitted to the
2 Commissioner of Labor within 30 days following the Commissioner making his findings. The
3 Commissioner of Labor shall within 30 days of receiving the request hold an administrative
4 hearing to consider the request for information under subsection (a) of this section. This
5 hearing shall be held as provided for in G.S. Chapter 150B, Article 3. If the Commissioner of
6 Labor finds that the request complies with the requirements of subsection (a) of this section, the
7 Commissioner of Labor shall direct that the employer provide to the person making the request
8 a list containing, at a minimum, all chemicals used or stored at the facility included on the
9 Hazardous Substance List, the class of each chemical as defined in G.S. 95-191(a)(2), and an
10 ~~MSDS-SDS~~ for each chemical for which an ~~MSDS-SDS~~ is available and is requested and may
11 in his discretion assess civil penalties as provided in G.S. 95-195(c); provided that it shall be a
12 defense to such disclosure if the employer proves that the information has been requested
13 directly or indirectly by, or in behalf of, a competitor of the employer, or that such information
14 is a Hazardous Substance Trade Secret, or that the request did not comply with the
15 requirements of subsection (a) of this section.

16 (c) Any order by the Commissioner of Labor under subsection (b) of this section shall
17 be subject to judicial review as provided under G.S. Chapter 150B, Article 4."

18 **SECTION 1.(i)** G.S. 95-216 reads as rewritten:

19 "**§ 95-216. Exemptions.**

20 Notwithstanding any language to the contrary, the provisions of this Article shall not apply
21 to chemicals in or on any of the following:

- 22 (1) Hazardous substances while being transported in interstate commerce into or
23 through this ~~State~~; State.
- 24 (2) Products intended for personal consumption by employees in the
25 ~~facilities~~; facilities.
- 26 (3) Retail food sale establishments and all other retail trade establishments in
27 ~~Standard Industrial Classification Codes 53 through 59, North American~~
28 Industry Classification System Codes 44 through 45, exclusive of processing
29 and repair areas, except that the employer must comply with the provisions
30 of G.S. 95-194(a)(i); G.S. 95-194(a)(i).
- 31 (4) Any food, food additive, color additive, drug or cosmetic as such terms are
32 defined in the Federal Food, Drug and Cosmetic Act (~~21 U.S.C. 301 et~~
33 ~~seq.~~); (21 U.S.C. § 301 et seq.).
- 34 (5) A laboratory under the direct supervision or guidance of a technically
35 qualified individual provided that:
 - 36 a. Labels on containers of incoming chemicals shall not be removed or
37 defaced;
 - 38 b. ~~MSDS's-SDSs~~ received by the laboratory shall be maintained and
39 made accessible to employees and students;
 - 40 c. The laboratory is not used primarily to produce hazardous chemicals
41 in bulk for commercial purposes; and
 - 42 d. The laboratory operator complies with the provisions of
43 ~~G.S. 95-194(a)(i); G.S. 95-194(a)(i).~~
- 44 (6) Any farming operation which employs 10 or fewer full-time employees,
45 except that if any hazardous chemical in an amount in excess of 55 gallons
46 or 500 pounds, whichever is greater, is normally stored at the farming
47 operation, the employer must comply with the provisions of
48 ~~G.S. 95-194(a)(i); and G.S. 95-194(a)(i).~~
- 49 (7) Any distilled spirits, tobacco, and untreated wood ~~products; and products.~~
- 50 (8) Medicines used directly in patient care in health care facilities and health
51 care facility laboratories."

1 **SECTION 1.(j)** Section 1(c) of this part becomes effective October 1, 2017, and
2 applies to violations occurring and offenses committed on or after that date. The remainder of
3 this part becomes effective July 1, 2017.
4

5 **PART II. DEPARTMENT OF LABOR/CAROLINA STAR PROGRAM**

6 **SECTION 2.(a)** G.S. 95-127 is amended by adding a new subdivision to read:

7 "(2a) Carolina Star Program. – A voluntary program designed to recognize work
8 sites that implement effective safety and health management systems and
9 that meet standards adopted by the Commissioner pursuant to G.S. 95-157.
10 The Carolina Star Program is inclusive of four distinct programs, which
11 includes the following: Carolina Star, Rising Star, Building Star, and Public
12 Sector Star."

13 **SECTION 2.(b)** Article 16 of Chapter 95 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 95-157. Carolina Star Program.**

16 (a) The Commissioner may adopt rules for the operation of the Carolina Star Program
17 in a manner that will promote safe and healthy workplaces throughout the State. The rules for
18 the Carolina Star Program adopted by the Commissioner shall pertain to the following matters:

- 19 (1) Upper management leadership and active and meaningful employee
20 involvement.
- 21 (2) Systematic assessment of occupational hazards.
- 22 (3) Comprehensive hazard prevention, control, and mitigation programs.
- 23 (4) Employee safety and health training.
- 24 (5) Annual safety and health program evaluation.
- 25 (6) Star Annual Report.
- 26 (7) Attendance and active participation on Carolina Star Safety Conference
27 Regional Teams and conference related activities.

28 (b) Applications for participation in the Carolina Star Program shall be submitted by the
29 workplace's management. Applications shall include documentation establishing to the
30 satisfaction of the Commissioner that the employer meets all standards for Carolina Star
31 Program participation.

32 (c) The Department shall provide for on-site evaluations, as resources allow, by
33 Carolina Star Program evaluation teams of each workplace that has applied to participate in the
34 Carolina Star Program to determine if the applicant's workplace complies with the standards for
35 Carolina Star Program participation.

36 (d) A workplace's continued participation in the Carolina Star Program shall be
37 conditioned on meeting the requirements and expectations established by the Carolina Star
38 Program Policies and Procedures Manual, Star Annual Report, and successful completion of
39 periodic on-site evaluations conducted by the Carolina Star Program evaluation team.

40 (e) During periods in which a workplace is a participant in the Carolina Star Program,
41 the workplace shall be exempt from inspections under G.S. 95-136; however, this exception
42 shall not apply to inspections or investigations of the workplace arising from complaints,
43 referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases."

44 **SECTION 2.(c)** A workplace that was a participant in the uncodified Carolina Star
45 Program prior to July 1, 2017, may continue as a participant in the Carolina Star Program
46 established pursuant to G.S. 95-157, as enacted by this act. On and after July 1, 2017, the
47 continued participation by that workplace in the Carolina Star Program shall be conditioned
48 upon the workplace's ability to meet the requirements and expectations established by all
49 guidelines for participation in the Carolina Star Program adopted by the Commissioner under
50 G.S. 95-157.

51 **SECTION 2.(d)** This part becomes effective July 1, 2017.

1
2 **PART III. OTHER CHANGES RELATED TO LAWS GOVERNING BUSINESSES**

3
4 **LANDFILL/LIFE OF SITE**

5 **SECTION 3.(a)** Section 3.2(a) of S.L. 2017-10 is repealed.

6 **SECTION 3.(b)** Section 3.2(e) of S.L. 2017-10, reads as rewritten:

7 "**SECTION 3.2.(e)** Subsection (a) of this section applies to franchise agreements
8 ~~(i) executed on or after October 1, 2015, and (ii) executed on or before October 1, 2015, only if~~
9 ~~all parties to a valid and operative agreement consent to modify the agreement for the purpose~~
10 ~~of extending the agreement's duration of the life of site of the landfill for which the agreement~~
11 ~~was executed, and public notice and hearing is provided for such modification in compliance~~
12 ~~with the requirements of G.S. 130A-294(b1)(3).2015."~~

13 **SECTION 3.(c)** G.S. 130A-294 reads as rewritten:

14 "...

15 (a2) Permits for sanitary landfills and transfer stations shall be issued for the life-of-site
16 of the facility unless ~~revoked as otherwise provided under this Article or upon the expiration of~~
17 ~~any local government franchise required for the facility pursuant to subsection (b1) of this~~
18 ~~section. revoked.~~ For purposes of this section, "life-of-site" means the period from the initial
19 receipt of solid waste at the facility until ~~the Department approves final closure of the facility.~~
20 the facility reaches its final permitted elevations, which period shall not exceed 60 years.
21 Permits issued pursuant to this subsection shall take into account the duration of any permits
22 previously issued for the facility and the remaining capacity at the facility.

23 (a3) In order to preserve long-term disposal capacity, a life-of-site permit issued for a
24 sanitary landfill shall survive the expiration of a local government approval or franchise. In
25 order to preserve any economic benefits included in the franchise, the County may extend the
26 franchise under the same terms and conditions for the term of the life-of-site permit. The
27 extension of the franchise hereby shall not trigger the requirements for a new permit, a major
28 permit modification, or a substantial amendment to the permit.

29 ...

30 (b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this
31 section, a "substantial amendment" means either:

32 ...

33 (2) A person who intends to apply for a new permit for a sanitary landfill shall
34 obtain, prior to applying for a permit, a franchise for the operation of the
35 sanitary landfill from each local government having jurisdiction over any
36 part of the land on which the sanitary landfill and its appurtenances are
37 located or to be located. A local government may adopt a franchise
38 ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a
39 sanitary landfill shall (i) be granted for the life-of-site of the landfill, but for
40 a period not to exceed 60 years, and (ii) include all of the following:

- 41 a. A statement of the population to be served, including a description of
42 the geographic area.
- 43 b. A description of the volume and characteristics of the waste stream.
- 44 c. A projection of the useful life of the sanitary landfill.
- 45 d. Repealed by Session Laws 2013-409, s. 8, effective August 23, 2013.
- 46 e. The procedures to be followed for governmental oversight and
47 regulation of the fees and rates to be charged by facilities subject to
48 the franchise for waste generated in the jurisdiction of the franchising
49 entity.
- 50 f. A facility plan for the sanitary landfill that shall include the
51 boundaries of the proposed facility, proposed development of the

1 facility site, the boundaries of all waste disposal units, final
 2 elevations and capacity of all waste disposal units, the amount of
 3 waste to be received per day in tons, the total waste disposal capacity
 4 of the sanitary landfill in tons, a description of environmental
 5 controls, and a description of any other waste management activities
 6 to be conducted at the facility. In addition, the facility plan shall
 7 show the proposed location of soil borrow areas, leachate facilities,
 8 and all other facilities and infrastructure, including ingress and egress
 9 to the facility.

10 (3) Prior to the award of a franchise for the construction or operation of a
 11 sanitary landfill, the board of commissioners of the county or counties in
 12 which the sanitary landfill is proposed to be located or is located or, if the
 13 sanitary landfill is proposed to be located or is located in a city, the
 14 governing board of the city shall conduct a public hearing. The board of
 15 commissioners of the county or counties in which the sanitary landfill is
 16 proposed to be located or is located or, if the sanitary landfill is proposed to
 17 be located or is located in a city, the governing board of the city shall
 18 provide at least 30 days' notice to the public of the public hearing. The notice
 19 shall include a summary of all the information required to be included in the
 20 franchise, and shall specify the procedure to be followed at the public
 21 hearing. The applicant for the franchise shall provide a copy of the
 22 application for the franchise that includes all of the information required to
 23 be included in the franchise, to the public library closest to the proposed
 24 sanitary landfill site to be made available for inspection and copying by the
 25 public. The requirements of this subdivision shall not apply to franchises
 26 extended pursuant to subsection (a3) of this section.

27"

28
 29 **PROTECT NC UTILITY RATEPAYERS**

30 **SECTION 4.(a)** G.S. 130A-309.216 reads as rewritten:

31 **"§ 130A-309.216. Ash beneficiation projects.**

32 (a) On or before January 1, 2017, an impoundment owner shall (i) identify, at a
 33 minimum, impoundments at two sites located within the State with ash stored in the
 34 impoundments on that date that is suitable for processing for cementitious purposes and (ii)
 35 enter into a binding agreement for the installation and operation of an ash beneficiation project
 36 at each site capable of annually processing 300,000 tons of ash to specifications appropriate for
 37 cementitious products, with all ash processed to be removed from the impoundment(s) located
 38 at the sites. As soon as legally practicable thereafter, the impoundment owner shall apply for all
 39 permits necessary for the ash beneficiation projects from the Department. The Department shall
 40 expedite any State permits and approvals required for such projects. No later than 24 months
 41 after issuance of all necessary permits, operation of both ash beneficiation projects shall be
 42 commenced. An impoundment owner shall use commercially reasonable efforts to produce
 43 300,000 tons of ash to specifications appropriate for cementitious products from each project.

44 ~~(b) On or before July 1, 2017, an impoundment owner shall (i) identify an~~
 45 ~~impoundment at an additional site located within the State with ash stored in the impoundment~~
 46 ~~on that date that is suitable for processing for cementitious purposes and (ii) enter into a~~
 47 ~~binding agreement for the installation and operation of an ash beneficiation project capable of~~
 48 ~~annually processing 300,000 tons of ash to specifications appropriate for cementitious products,~~
 49 ~~with all ash processed to be removed from the impoundment(s) located at the site. As soon as~~
 50 ~~legally practicable thereafter, the impoundment owner shall apply for all permits necessary for~~
 51 ~~the ash beneficiation project from the Department. The Department shall expedite any State~~

1 ~~permits and approvals required for such projects. No later than 24 months after issuance of all~~
2 ~~necessary permits, operation of the ash beneficiation project shall be commenced. An~~
3 ~~impoundment owner shall use commercially reasonable efforts to produce 300,000 tons of ash~~
4 ~~to specifications appropriate for cementitious products from the project.~~

5 (c) Notwithstanding any deadline for closure provided by G.S. 130A-309.214, any
6 impoundment classified as intermediate- or low-risk that is located at a site at which an ash
7 beneficiation project is installed, operating, and processing at least 300,000 tons of ash annually
8 from the impoundment, shall be closed no later than December 31, 2029."

9 **SECTION 4.(b)** The Environmental Management Commission shall conduct a
10 study to determine if (i) there is a projected unmet annual demand in North Carolina and
11 contiguous states of at least 300,000 tons of additional ash beneficiated to specifications
12 appropriate for cementitious products over that to be supplied by the ash beneficiation projects
13 required pursuant to G.S. 130A-309.216 and (ii) if such demand is projected to exist, whether
14 the installation and operation of an additional ash beneficiation project is commercially viable
15 to meet such demand in that the costs associated with the project are less than any revenues
16 derived from the sale of processed ash. In conducting this study, the Environmental
17 Management Commission shall consider both of the following:

- 18 (1) The impact of the two ash beneficiation projects required pursuant to
19 G.S. 130A-309.216.
- 20 (2) The availability of ash appropriate for cementitious products from other
21 suppliers, including beneficiation projects in other states.

22 For purposes of the study, (i) the Commission shall assume a twenty percent (20%) cement
23 replacement rate for beneficiated fly ash in order to determine the projected unmet annual
24 demand for ash in North Carolina and contiguous states and (ii) "costs associated with the
25 project" includes costs for acquiring and improving land for the project, costs of equipment for
26 the project, costs of construction and installation, costs of operation of the project, and the costs
27 of transportation of raw materials or finished goods to or from sellers or purchasers when those
28 costs are borne by the impoundment owner.

29 The Environmental Management Commission shall report its findings and
30 recommendations, including any legislative proposals, to the Environmental Review
31 Commission no later than July 1, 2018."
32

33 **BUILDING CODE EXEMPTION**

34 **SECTION 5.(a)** Notwithstanding any provision of the North Carolina State
35 Building Code to the contrary, if a lot line or public way exists between a single city-owned lot
36 and a single privately owned lot, a parking garage that extends across the lot line or public way
37 between the two lots may be constructed as if the city-owned lot has been combined with the
38 privately owned lot such that there is no lot line or public way between them.

39 **SECTION 5.(b)** This section shall apply only to municipalities with a population
40 of more than 250,000.

41 **SECTION 5.(c)** This section expires June 30, 2020.
42

43 **CLARIFY DEFINITION OF COMMERCIAL REAL ESTATE/BROKER LIEN**

44 **SECTION 6.** G.S. 44A-24.2(3) reads as rewritten:

45 "(3) Commercial real estate. – Any real property or interest therein, whether
46 freehold or nonfreehold, which at the time the property or interest is made
47 the subject of an agreement for broker services:

- 48 a. Is lawfully used primarily for sales, office, research, institutional,
49 agricultural, forestry, warehouse, manufacturing, industrial, or
50 mining purposes or for multifamily residential purposes involving
51 five or more dwelling units;

- 1 b. May lawfully be used for any of the purposes listed in
 2 sub-subdivision (3)a. of this section by a zoning ordinance adopted
 3 pursuant to the provisions of Article 18 of Chapter 153A or Article
 4 19 of Chapter 160A of the General Statutes or which is the subject of
 5 an official application or petition to amend the applicable zoning
 6 ordinance to permit any of the uses listed in sub-subdivision (3)a. of
 7 this section which is under consideration by the government agency
 8 with authority to approve the amendment; or
 9 c. Is in good faith intended to be immediately used for any of the
 10 purposes listed in sub-subdivision (3)a. of this section by the parties
 11 to any contract, lease, option, or offer to make any contract, lease, or
 12 option."

14 **PRESSURE VESSEL EXCLUSION**

15 **SECTION 7.** G.S. 95-69.10(b)(8) reads as rewritten:

- 16 "(8) Any of the following pressure vessels that do not exceed the listed
 17 limitations if the vessel is not equipped with a quick actuating closure:
 18 a. Five cubic feet in volume and 250 psig.
 19 b. Three cubic feet in volume and 350 psig.
 20 c. One and one-half cubic feet in volume and 600 psig.
 21 d. An inside diameter of six inches with no limitation on pressure.
 22 e. Five cubic feet in volume when the pressure vessel is constructed and
 23 operated on the same real property zoned industrial and where its
 24 operation is undertaken using commercially acceptable safety
 25 precautions for the application."

27 **WASTEWATER SYSTEM PERMIT EXTENSION**

28 **SECTION 8.** G.S. 130A-336 is amended by adding a new subsection to read:

29 "(b1) An improvement permit or authorization for wastewater system construction issued
 30 by a local health department from January 1, 2000, to January 1, 2015, which has not been
 31 acted on and would have otherwise expired, shall remain valid until January 1, 2020, without
 32 penalty, unless there are changes in the hydraulic flows or wastewater characteristics from the
 33 original local health department evaluation. Permits are transferrable with ownership of the
 34 property. Permits shall retain the site, soil evaluations, and construction conditions of the
 35 original permit."

37 **MODIFY SCRAP TIRE TAX**

38 **SECTION 9.(a)** G.S. 105-187.15 reads as rewritten:

39 **"§ 105-187.15. Definitions.**

40 The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not
 41 include lease or rental, and the following definitions apply to this Article:

- 42 (1) Scrap tire. – A tire that is no longer suitable for its original, intended purpose
 43 because of wear, damage, or defect.
 44 (2) Tire. – A continuous solid or pneumatic rubber covering encircling a wheel.
 45 (3) Used tire. – A tire other than a new tire and includes retreaded or recapped
 46 tires."

47 **SECTION 9.(b)** G.S. 105-187.16 reads as rewritten:

48 **"§ 105-187.16. Tax imposed.**

49 (a) Levy. ~~– A privilege tax is imposed on a tire retailer at a percentage rate of the sales~~
 50 ~~price of for each new and used tire sold at retail by the retailer. A privilege tax is imposed on a~~
 51 tire retailer and on a tire wholesale merchant ~~at a percentage rate of the sales price of for each~~

1 new or used tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer
 2 for placement on a vehicle offered for sale, lease, or rental by the retailer or wholesale
 3 merchant. An excise tax is imposed on a new or used tire purchased for storage, use, or
 4 consumption in this State or for placement in this State on a vehicle offered for sale, lease, or
 5 rental. ~~This excise tax is a percentage rate of the purchase price of the tire.~~ These taxes are in
 6 addition to all other taxes.

7 (b) ~~Rate. Tax. – The percentage rate of the taxes tax~~ imposed by subsection (a) of this
 8 section is a flat dollar amount as set by the following table; the rate table and is based on the
 9 bead diameter of the new or used tire sold or purchased:

<u>Bead Diameter of Tire</u>	<u>Percentage Rate Tax</u>
Less than 20 inches	2% <u>\$1.00</u>
At least 20 inches	1% <u>\$2.00"</u>

10 **SECTION 9.(c)** G.S. 105-187.17 reads as rewritten:

11 **"§ 105-187.17. Administration.**

12 The privilege tax this Article imposes on a tire retailer who sells new or used tires at retail
 13 is an additional State sales ~~tax tax~~, and the excise tax this Article imposes on the storage, use,
 14 or consumption of a new or used tire in this State is an additional State use tax. Except as
 15 otherwise provided in this Article, these taxes shall be collected and administered in the same
 16 manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5
 17 of this Chapter, the additional State sales tax paid when a new or used tire is sold is a credit
 18 against the additional State use tax imposed on the storage, use, or consumption of the same
 19 tire.
 20

21 The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant
 22 who sell new or used tires for placement in this State on a vehicle offered for sale, lease, or
 23 rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes
 24 on a new or used tire purchased for placement in this State on a vehicle offered for sale, lease,
 25 or rental shall, to the extent practical, be collected and administered as if they were additional
 26 State sales and use taxes. The privilege tax paid when a new or used tire is sold for placement
 27 on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the
 28 purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or
 29 rental."
 30

31 **SECTION 9.(d)** G.S. 105-187.18(a) reads as rewritten:

32 "(a) The taxes imposed by this Article do not apply to:

33 (1) Bicycle tires and other tires for vehicles propelled by human power.

34 (2) ~~Recapped tires.~~

35 (3) Tires sold for placement on newly manufactured vehicles."
 36

37 **SECTION 9.(e)** G.S. 130A-309.54 reads as rewritten:

38 **"§ 130A-309.54. Use of scrap tire tax proceeds.**

39 Article 5B of Chapter 105 imposes a tax on new and used tires to provide funds for
 40 the disposal of scrap tires, for the cleanup of inactive hazardous waste sites under Part 3 of this
 41 Article, and for all the purposes for which the Bernard Allen Memorial Emergency Drinking
 42 Water Fund may be used under G.S. 87-98. A county may use proceeds of the tax distributed to
 43 it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or
 44 for the abatement of a nuisance pursuant to G.S. 130A-309.60."
 45

46 **SECTION 9.(f)** This section becomes effective October 1, 2017, and applies to
 47 sales or purchases of new or used tires on or after that date.

48 **REDUCE COST AND REGULATORY BURDEN/HOSPITAL CONSTRUCTION**

49 **SECTION 10.(a)** Definitions. – For purposes of this section and its
 50 implementation:

- 1 (1) Commission or Medical Care Commission. – The Medical Care Commission
2 created by Part 10 of Article 3 of Chapter 143B of the General Statutes.
- 3 (2) Hospital Facilities Rules. – Means all of the following:
4 a. 10A NCAC 13B .6001 – Physical Plant: Location.
5 b. 10A NCAC 13B .6002 – Physical Plant: Roads and Parking.
6 c. 10A NCAC 13B .6104 – General Requirements: Access and Safety.
7 d. 10A NCAC 13B .6201 – Construction Requirements: Medical,
8 Surgical, and Post-Partum Care Unit.
9 e. 10A NCAC 13B .6202 – Construction Requirements: Special Care
10 Unit.
11 f. 10A NCAC 13B .6203 – Construction Requirements: Neonatal Level
12 I and Level II Nursery Unit.
13 g. 10A NCAC 13B .6204 – Construction Requirements: Neonatal Level
14 III and Level IV Nursery.
15 h. 10A NCAC 13B .6205 – Construction Requirements: Psychiatric
16 Unit.
17 i. 10A NCAC 13B .6206 – Construction Requirements: Surgical
18 Department Requirements.
19 j. 10A NCAC 13B .6207 – Construction Requirements: Obstetrical
20 Department Requirements.
21 k. 10A NCAC 13B .6209 – Construction Requirements: Emergency
22 Services.
23 l. 10A NCAC 13B .6210 – Construction Requirements: Imaging
24 Services.
25 m. 10A NCAC 13B .6211 – Construction Requirements: Laboratory
26 Services.
27 n. 10A NCAC 13B .6212 – Construction Requirements: Morgue.
28 o. 10A NCAC 13B .6213 – Construction Requirements: Pharmacy
29 Services.
30 p. 10A NCAC 13B .6214 – Construction Requirements: Dietary
31 Services.
32 q. 10A NCAC 13B .6215 – Construction Requirements:
33 Administration.
34 r. 10A NCAC 13B .6216 – Construction Requirements: Medical
35 Records Services.
36 s. 10A NCAC 13B .6217 – Construction Requirements: Central
37 Medical and Surgical Supply Services.
38 t. 10A NCAC 13B .6218 – Construction Requirements: General
39 Storage.
40 u. 10A NCAC 13B .6219 – Construction Requirements: Laundry
41 Services.
42 v. 10A NCAC 13B .6220 – Construction Requirements: Physical
43 Rehabilitation Services.
44 w. 10A NCAC 13B .6221 – Construction Requirements: Engineering
45 Services.
46 x. 10A NCAC 13B .6222 – Construction Requirements: Waste
47 Processing.
48 y. 10A NCAC 13B .6223 – Construction Requirements: Details and
49 Finishes.
50 z. 10A NCAC 13B .6224 – Construction Requirements: Elevator
51 Requirements.

- 1 aa. 10A NCAC 13B .6225 – Construction Requirements: Mechanical
2 Requirements.
3 bb. 10A NCAC 13B .6226 – Construction Requirements: Plumbing and
4 Other Piping Systems Requirements.
5 cc. 10A NCAC 13B .6227 – Construction Requirements: Electrical
6 Requirements.
7 (3) Guidelines. – The American Society for Healthcare Engineering's Facility
8 Guidelines Institute "Guidelines for Design and Construction of Hospitals
9 and Outpatient Facilities."

10 **SECTION 10.(b)** Repeal Hospital Facilities Rules. – The Secretary of Health and
11 Human Services and the Medical Care Commission shall repeal the Hospital Facilities Rules
12 within 120 days after this act becomes law.

13 **SECTION 10.(c)** Implementation and Rule-Making Authority. – Before the
14 effective date of the repeal of the Hospital Facilities Rules required pursuant to subsection (b)
15 of this section, the Medical Care Commission shall adopt temporary rules to replace the
16 Hospital Facilities Rules and incorporate by reference all applicable rules, standards, and
17 requirements of the most current edition of the Guidelines. If temporary rules are not adopted
18 before the repeal of the Hospital Facilities Rules required pursuant to subsection (b) of this
19 section, the Commission shall utilize the 2014 Edition of the Guidelines until such time as
20 temporary rules are adopted. Furthermore, the Commission shall adopt permanent rules
21 pursuant to this section.

22 **SECTION 10.(d)** Additional Rule-Making Authority. – The Medical Care
23 Commission shall adopt rules to replace the Hospital Facilities Rules. Notwithstanding
24 G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall conform to
25 the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not
26 subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant
27 to this section shall become effective as provided in subsection (b1) of G.S. 150B-21.3 as
28 though 10 or more written objections had been received as provided by subsection (b2) of
29 G.S. 150B-21.3. Furthermore, rules adopted pursuant to this section shall be exempt from the
30 provisions of Chapter 150B of the General Statutes that require the preparation of fiscal notes
31 for any rule proposed to incorporate the Guidelines by reference.

32 **SECTION 10.(e)** Exemption From Periodic Review. – Until such time as the
33 Hospital Facilities Rules are repealed pursuant to subsection (b) of this section, the Hospital
34 Facilities Rules shall be exempt from the periodic review process required pursuant to
35 G.S. 150B-21.3A.

36 **SECTION 10.(f)** This section is effective when it becomes law and applies to any
37 licensee or prospective applicant who seeks to make specified types of alterations or additions
38 to its hospital facilities or to construct new hospital facilities and who submits plans and
39 specifications to the Department of Health and Human Services pursuant to Article 5 of
40 Chapter 131E of the General Statutes on or after January 1, 2016.

41 **STORMWATER RUNOFF/AIRPORTS**

42 **SECTION 11.** G.S. 143-214.7 reads as rewritten:

43 "**§ 143-214.7. Stormwater runoff rules and programs.**

44 ...

45 (c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory
46 Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), neither the
47 Department ~~shall not nor any local government shall~~ require the use of stormwater retention
48 ponds, stormwater detention ponds, or any other stormwater control measure that promotes
49 standing water in order to comply with this ~~section~~ section, or in order to comply with any local
50 ordinance adopted under G.S. 143-214.5, at public airports that support commercial air carriers
51

1 or general aviation services. Development projects located within five statute miles from the
2 farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July
3 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention
4 ponds, or any other stormwater control measure that promotes standing water in order to
5 comply with this ~~section~~section or with any local ordinance. Existing stormwater retention
6 ponds, stormwater detention ponds, or any other stormwater control measure that promotes
7 standing water in order to comply with this ~~section~~section, or with any local ordinance, and
8 that is located at a public airports-airport or that are is within five statute miles from the farthest
9 edge of an airport operations area may be replaced with alternative measures included in the
10 Division of Water Resources' Best Management Practice Manual chapter on airports. In order
11 to be approved by the Department, alternative measures or management designs that are not
12 expressly included in the Division of Water Resources' Best Management Practice Manual shall
13 provide for equal or better stormwater control based on the pre- and post-development
14 hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention
15 ponds, or any other stormwater control measure that promotes standing water shall be
16 considered a minor modification to the State general stormwater permit-permit, and a variance
17 to allow any replacement shall be considered a minor variance under any local government
18 ordinance adopted under G.S. 143-214.5.

19 (c4) The Department and local governments shall deem runways, taxiways, and any
20 other areas that provide for overland stormwater flow that promote infiltration and treatment of
21 stormwater into grassed buffers, shoulders, and grass swales permitted pursuant to the State
22 post-construction stormwater ~~requirements~~requirements and to be in compliance with any local
23 government water supply watershed management protection ordinance adopted under
24 G.S. 143-214.5."

25 26 DEQ AND EMC CONTESTED CASES

27 SECTION 12.(a) Article 3 of Chapter 150B of the General Statutes is amended by
28 adding a new section to read:

29 "§ 150B-31.2. Contested cases for certain decisions of the Department of Environmental 30 Quality and the Environmental Management Commission.

31 (a) Application. – This section applies only to contested cases filed at the Office of
32 Administrative Hearings that involve the issuance of a permit, license, authorization,
33 certificate, certification, or other approval or action by the Department of Environmental
34 Quality or the Environmental Management Commission, where the Department or Commission
35 is required to or chooses to accept public comment. To the extent any provision in this section
36 conflicts with another provision in this Article, this section controls.

37 (b) Filing. – If a party timely files a petition for a contested case challenging a decision
38 by the Department or Commission pursuant to G.S. 150B-23, the party shall simultaneously
39 serve a copy of the petition on the Department or Commission that made the decision, and the
40 Department or Commission shall transmit to the Office of Administrative Hearings a complete
41 copy of the administrative record created in support of the decision, which shall include all of
42 the following:

- 43 (1) Any application materials and all related or supporting materials submitted
44 by the applicant in support of the application at any time prior to the
45 challenged decision.
- 46 (2) All memoranda, electronic messages, meeting notes, and other public record
47 documents created or received by the Department or Commission pertaining
48 to the application and the final decision.
- 49 (3) All written comments submitted by any person regarding the application,
50 including any supporting materials provided therewith.

1 (c) Standing. – No party shall have standing to bring a contested case or seek judicial
2 review regarding a decision governed by this section unless one of the following applies:

3 (1) The party is the original applicant for issuance of a permit, license,
4 authorization, certificate, certification, or other approval or action by the
5 Department or Commission.

6 (2) The party is a person aggrieved that either (i) raised each basis for its
7 contested case with the Department or Commission prior to the decision and
8 with sufficient particularity for the Department or Commission to evaluate
9 the merit of the basis or (ii) demonstrates that it could not have raised a
10 particular basis prior to the decision.

11 (d) Review. – Review of the decision shall be based on the administrative record
12 provided under subsection (b) of this section, and an administrative law judge shall not
13 consider any fact, document, or other evidence that is not contained within the administrative
14 record unless the administrative law judge determines that both of the following apply:

15 (1) The party seeking to introduce the nonrecord material raised the issue to
16 which the material is directed during the public comment period or prior to
17 the final decision of the Department or Commission.

18 (2) The nonrecord material was unavailable during the public comment period
19 or prior to the final decision of the Department or Commission."

20 **SECTION 12.(b)** This section becomes effective January 1, 2019, and applies to
21 any contested case that involves issuance of a permit, license, authorization, certificate,
22 certification, or other approval or action by the Department or Commission for which the
23 application was received by the Department or Commission on or after that date.
24

25 **PART IV. EFFECTIVE DATE**

26 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
27 law.