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(handout)

from the studies bill (H773)

PART XX. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO
28 STUDY IMPLEMENTATION OF STATE AND FEDERAL RULES RELATED TO
29 EMISSIONS OF TOXIC AIR POLLUTANTS (McElraft)

30 SECTION 20.1. The Department of Environment and Natural Resources shall
31 study implementation of State and federal rules related to emissions of toxic air pollutants. The
32 study shall include:

33 (1) Identification of the permitted sources in North Carolina that emit toxic air
34 pollutants as identified in rules adopted by the Environmental Management
35 Commission and the permitted sources that emit hazardous air pollutants
36 regulated under federal rules set out in 40 C.F.R. Parts 61 and 63 as
37 amended.

38 (2) An explanation of the scope of the federal program regulating hazardous air
39 pollutants as compared to the State air toxics program, including any
40 differences in the sources and pollutants regulated under each program.

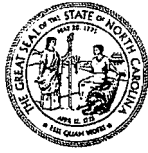
41 (3) A comparison of how the State and federal programs take public health
42 impacts into consideration.

43 (4) An analysis of any co-benefits of installing pollution control equipment
44 required to comply with federal rules in reducing emissions of toxic air
45 pollutants regulated under the state air toxics program.

46 (5) A description of the additional pollution controls, operating conditions,
47 modeling, or other measures required as a result of applying State air toxics
48 rules to a source regulated under 40 C.F.R. Parts 61 and 63 as amended,
49 including the incremental costs and benefits of those additional controls,
50 measures, or modeling.

1 (6) Any other information relevant to an evaluation of the State air toxics
2 program as applied to sources regulated under 40 C.F.R. Parts 61 and 63 as amended.

3 SECTION 20.2. In conducting the study, the Department shall request input from
4 industries and utilities that have permitted sources of air pollutants regulated under 40 C.F.R.
5 Parts 61 and 63 as amended or under State air toxics rules; local government; and individuals or
6 agencies with expertise in the environmental and public health effects of those pollutants. The
7 Department shall report the results of its study, including any recommendations for legislation,
8 to the Environmental Review Commission of the General Assembly no later than May 1, 2012.



North Carolina General Assembly
Senate Chamber
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September 6, 2011

COMMITTEES:

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STATE & LOCAL GOVERNMENT

BY HAND DELIVERY

The Honorable Roy Cooper
Attorney General of North Carolina
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27603

Re: Ownership of the Submerged Bed of the Yadkin
River at the Site of the Yadkin Hydroelectric
Project

Dear Mr. Attorney General:

I have been following the State of Montana's lawsuit against a Montana public utility over the ownership of submerged riverbed lands lying under the flowing waters of a federally licensed hydropower project in that State. As you probably know, the State of Montana prevailed in this case at trial and was awarded a judgment declaring it to be the owner of the submerged riverbed property. The trial court also awarded the State a judgment for over \$40 million in back rents from the utility company defendant that had built dams on the State's riverbed property some years prior to the lawsuit.

Following an appeal of the trial court's decision by the utility company defendant, the Montana Supreme Court affirmed the trial court's decision. The case is now before the United States Supreme Court, which recently issued a writ of certiorari in the case.

I would not favor this type of legal challenge to the ownership of riverbed property in this State where the federally licensed hydropower operator is a North Carolina public utility because



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utilities are statutorily charged with operating in the public interest and are heavily regulated by the Utilities Commission. In fact, I am considering introducing legislation that would grant an easement to North Carolina public utilities that are federally licensed hydropower operators, so that they could operate their hydropower projects without fear that the State might ever assert a claim against them based on their use of riverbed lands that do or might belong to the State.

That said, I note that Alcoa Power Generating, Inc. ("APGI"), the federally licensed operator of the Yadkin Hydroelectric Project, is not a public utility of this or any other State and that it is not regulated by the North Carolina Utilities Commission. Indeed, insofar as I can determine, APGI is not regulated in any meaningful way by any State agency and it appears to sell the electricity that it generates from its use of the Yadkin River largely on the open market outside this State, and it apparently remits the bulk of the profits it makes from its use of the Yadkin River to its parent corporation, Alcoa Corporation, in Pittsburgh, Pennsylvania.

In short, I and others do not see how APGI's or Alcoa Corporation's use of the State's second largest river system results in any meaningful benefit to the State or its people.

With this backdrop in mind, I would like to know the opinion of the Attorney General of the State on the following issues:

1. Under the Public Trust Doctrine as enunciated by the North Carolina Supreme Court and any applicable federal law relating to the definition of "navigable waters," does the State of North Carolina own the bed beneath the 'navigable waters' in the state?
2. Does the state own the riverbed underneath the 38-mile stretch of the Yadkin River that makes up the Yadkin Hydroelectric Project?
3. If so, has the State ever effectively conveyed this riverbed property to APGI, Alcoa Corporation or anyone else?
4. Does the federal doctrine of preemption or any other federal doctrine or law prevent the State from being able to successfully sue APGI and/or Alcoa Corporation for a declaratory judgment holding that the State is the legal owner of the bed of the Yadkin River along the 38-mile stretch of that river that makes up the Yadkin Hydroelectric Project?

The answers to these questions will be most helpful to me and other members of the General Assembly in our deliberations over whether to introduce proposed legislation concerning the bed of the Yadkin River in the area of the Yadkin Hydroelectric Project.

Should you or any member of your staff have any questions concerning this letter or the questions set forth above, please do not hesitate to let me know.

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Thank you for your assistance in this matter.

Sincerely yours,

Fletcher L. Hartsell, Jr.
Senator, 36th Senatorial District

AP STYLE — Cheat Sheet

Academic Degrees

If mention of degrees is necessary to establish someone's credentials, the preferred form is to avoid an abbreviation and use instead a phrase such as: John Jones, who has a doctorate in psychology.

Use an apostrophe in bachelor's degree, a master's, etc.

Use such abbreviations as B.A., M.A., LL.D. and Ph.D. only when the need to identify many individuals by degree on first reference would make the preferred form cumbersome. Use these abbreviations only after a full name never after just a last name.

When used after a name, an academic abbreviation is set off by commas: Daniel Moynihan, Ph.D., spoke.

Do not precede a name with a courtesy title for an academic degree and follow it with the abbreviation for the degree in the same reference:

Wrong: Dr. Pam Jones, Ph.D.

Right: Dr. Pam Jones, a chemist.

When in doubt about the proper abbreviation for a degree, follow the first listing in Webster's New World Dictionary.

Academic Departments

Use lowercase except for words that are proper nouns or adjectives: the department of history, the history department, the department of English, the English department.

Academic Titles

Capitalize and spell out formal titles such as chancellor, chairman, etc., when they precede a name. Lowercase elsewhere.

Lowercase modifiers such as department in department Chairman Jerome Wiesner.

Ages

Always use figures. Ages expressed as adjectives before a noun or as substitutes for a noun use hyphens.

i.e. A 5-year-old boy, but the boy is 5 years old. The woman is in her 30s. The woman, 26, has a daughter 2 months old. The law is 8 years old.

Alumni

ALUMNI? ALUMNUS? ALUMNA? ALUMNAE?

Alumnus is masculine singular (but is often used in referring to either male or female)

Pronounce "uh-lum (rhymes with yum) nus," (rhymes with us).

i.e. In speaking to a graduate of VMI, "Deb, so you're an alumnus of VMI?"

Alumna is feminine singular.

Pronounce "alum-nuh." Rhymes with first sound you hear as you start to say "Ugh!"

i.e. To a Hollins woman, "I see from your resume that you are an alumna of Hollins?"

Alumni is masculine plural.

Pronounce "alum-neye" (or long i).

i.e. To the graduating class at VMI, "Congratulations, you are now all officially alumni of this institution." Likewise, to the graduating class at CNU, "Congratulations, you are now all alumni of CNU."

Alumnae is feminine plural.

Pronounce "alum-knee."

To the graduates of Norma's alma mater, Marion College, a Lutheran school for women that closed its doors (sob, sob) after over 100 years, "So, all you wonderful-in-every-way, brilliant, and gorgeous women are alumnae of Marion?"

Composition Titles

Apply guidelines to book titles, movie titles, opera titles, play titles, poem titles, song titles, titles of lectures, speeches and works of art. Capitalize the principal words, including prepositions and conjunctions of four or more letters. Capitalize the article if it is the first or last word in the title.

Put quotation marks around the names of all such works except the Bible and books of reference.

i.e. "The New York Times"

Encyclopedia Britannica

Numerals

Figures or words?

Spell out first through ninth when they indicate sequence in time or location: first base, the First Amendment, he was first in line. Starting with 10th use figures.

Spell out whole numbers below 10, use figures for 10 and above.

i.e. They had a fleet of 10 station wagons and two buses.

Some Punctuation and usage examples

-Act 1, Scene 2

-a five-year-old girl

-a 5-4 court decision

-2nd District Court

-the 1980s, the '80s

Percent

i.e. He said 50 percent of the membership was there.

He said 50 percent of the members were there.

Titles

In general, confine capitalization to formal titles used directly before an individual's name.

i.e. Pope Paul, President Bush

Lowercase and spell out titles when they are not used with an individual's name

i.e. the vice president, Nelson Rockefeller, declined to run again.

REMEMBER—LESS IS BEST! USE CAPITALIZATION AND PUNCTUATION FRUGALLY!