

1997

**HOUSE
ENVIRONMENT**

MINUTES

**HOUSE STANDING COMMITTEE ON
ENVIRONMENT
1997 Session**

**Rep. Rick Eddins, Co-Chair
Rep. Dewey Hill, Co-Chair
Rep. Cindy Watson, Co-Chair**

**Dorie Monroe, Committee Clerk
Virginia McCann, Committee Clerk
Ebern Watson, Committee Clerk**

HOUSE COMMITTEE ON ENVIRONMENT

1997-98 SESSION

CHAIRS



Rep. Eddins



Rep. Hill



Rep. Watson

MEMBERS



Rep. Baddour



Rep. Brown



Rep. Cole



Rep. Culp



Rep. Gamble.



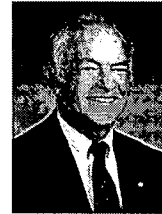
Rep. Gardner



Rep. Gulley



Rep. Hackney



Rep. Hall



Rep. Hightower



Rep. Kinney



Rep. McComas



Rep. McCombs



Rep. Mitchell



Rep. Mosley



Rep. Neely



Rep. Nichols



Rep. Preston



Rep. Warner



Rep. Warwick



Rep. Weatherly



RMM: Rep. Yongue

**HOUSE COMMITTEE ON ENVIRONMENT
1997-98 SESSION**

Member/Clerk	Tel. #	Office	Seat
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Dorie Monroe	3-6739	1219	
Dewey Hill, Chair	3-5830	1309	21
Ginny McMann		1309	
Cindy Watson, Chair	5-3015	417-C	19
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Phil Baddour	3-5903	502	119
Sandra Webster			
Nelson Cole	3-5779	1218	45
Suzanne Smith			
Arlie Culp	3-5865	1010	62
Wareta Lord			
John Gamble	5-3021	416B	72
Jackie Pittman			
Charlotte Gardner	5-3017	417B	7
Barbara Hocutt			
Jim Gulley	3-5860	1307	98
Lucille Carter			
Joe Hackney	3-5752	1321	69
Emily Reynolds			
Bobby Hall	3-5906	637	87
Billie Stevens			
Foyle Hightower	3-5778	541	82
Susan Burleson			
Ted Kinney	3-5867	527A	116
Soraya Dunnigan			
Danny McComas	3-5758	2123	63
Rita Quinn			
Gene McCombs	3-5881	514	10
Suzanne Erskine			
Frank Mitchell	3-5959	638	9
Susan Thompson			
Jane Mosley	3-5781	2221	106
Gennie Thurlow			
Chuck Neely	5-3001	420	29
Betty Harrison			
John Nichols	5-9644	616	66
Bonnie Jones			
Jean Preston	5-3026	403	38
Alice Falcone			
Alex Warner	3-5806	1420	81
Ann Stancil			
Nurham Warwick	3-5886	1015	113
Carolyn Honeycutt			
John Weatherly	3-5849	503	61
Debbie Puckett			
Douglas Yougue	3-5823	1305	94
Jenny Umstead			
STAFF ATTORNEYS			
Sherrie Evans-Stanton	3-2578	545	
George Givens	3-2578	545	
Jeffrey Hudson	3-2578	545	

House Environment Committee

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House Environment Committee

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NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session

HOUSE: ENVIRONMENT

Valid Through 6-AUG-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 16	HALL	NO ANIMAL WASTE SYS. IN FLOODPLAINS	*S -REF TO COM ON AGRICUL&	02-03-97	03-05-97
H 85	MORGAN	SWINE FARM SITING ACT	*H -CAL PURSUANT RULE 36 (A)	02-10-97	03-24-97
H 133	SMITH	TRANSFER MARINE FISHERIES	H -REF TO COM ON ENVIRON	02-13-97	
H 188=	CULP	ENVIRONMENTAL TECH. CORRECTIONS	*S -REF TO COM ON AGRICUL&	02-17-97	04-16-97
H 189=	CULP	DRINKING WATER AMENDS	R -CH. SL 97-0030	02-17-97	03-26-97
H 194=	CULP	STATE REVOLVING WATER FUND ACCOUNT	*R -CH. SL 97-0206	02-17-97	03-26-97
H 211=	CULP	AMEND ENVIRONMENTAL LAWS-2	*H -REF TO COM ON RULES	02-17-97	04-16-97
H 214=	NICHOLS	INCREASE ERC MEMBERSHIP	H -REF TO COM ON ENVIRON	02-17-97	
H 215=	NICHOLS	BACKUP POWER FOR WASTEWATER SYS.	H -REF TO COM ON ENVIRON	02-17-97	
H 216=	NICHOLS	CLEAN WATER TRUST FUND/LOANS OK	H -REF TO COM ON ENVIRON	02-17-97	
H 224=	WEATHERLY	USE OF INACTIVE HAZARDOUS SITES	*H -RE-REF COM ON RULES	02-17-97	04-23-97
H 225=	WEATHERLY	DRY-CLEANING SOLVENT CLEAN-UP ACT	*H -CONCURRED IN S/COM SUB	02-17-97	05-22-97
H 226=	HACKNEY	SOLID WASTE PERMIT REQUIREMENTS	H -REF TO COM ON ENVIRON	02-17-97	
H 227=	HACKNEY	INACTIVE HAZ. SITES RECORDATION	*S -CONF COM APPOINTED	02-17-97	04-09-97
H 228=	HACKNEY	INACTIVE HAZ. SITES INFO	H -REF TO COM ON ENVIRON	02-17-97	
H 229=	HACKNEY	INACTIVE HAZARDOUS SITES REPORTS	H -REF TO COM ON ENVIRON	02-17-97	
H 239	MITCHELL	ENVIRON. MANAGEMENT MEMBERSHIP	H -PRES. TO GOV. 08-01	02-17-97	04-03-97
H 242=	MITCHELL	SCRAP TIRE DISPOSAL TAX AMENDMENTS	*H -RE-REF COM ON FINANCE	02-17-97	03-26-97
H 245=	MITCHELL	WETLANDS RESTORATION FUNDS	*H -RE-ASSIGNED TO APP-CAP	02-17-97	03-26-97
H 247=	MITCHELL	ENVIRONMENTAL AUDITS	H -REF TO COM ON ENVIRON	02-17-97	
H 260=	GRAY	CONSERVATION EASEMENTS/TAX CREDIT	*R -CH. SL 97-0226	02-17-97	03-26-97
H 262=	NICHOLS	NITROGEN LIMIT FOR CERTAIN WATERS	H -REF TO COM ON ENVIRON	02-17-97	
H 274	MITCHELL	LOW PRESSURE PIPE EMERG. FUND-2	*H -ASSIGNED TO APP-NTEC	02-19-97	07-14-97
H 302	HUNTER H	WILDLIFE/RABIES EMERGENCY	*H -CONCURRED IN S/COM SUB	02-24-97	04-30-97
H 338	CULP	PESTICIDE APPLICATOR TESTING	H -REF TO COM ON ENVIRON	02-26-97	
H 357	MITCHELL	GENERAL ANIMAL WASTE PERMITS	*H -RE-REF COM ON FINANCE	02-27-97	04-24-97
H 375	REDWINE	FISHERIES REFORM ACT	H -REF TO COM ON ENVIRON	03-03-97	
H 475=	HURLEY	WASTEWATER IMPROVEMENT PERMITS	H -REF TO COM ON ENVIRON	03-10-97	
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	03-10-97	04-03-97
H 701=	ROGERS	IRRIGATION SYST. DESIGN	H -REF TO COM ON ENVIRON	03-31-97	

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

HOUSE: ENVIRONMENT

Valid Through 6-AUG-1997

1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 771	REDWINE	SANITARY DISTRICT STAGGERED TERMS	R -CH. SL 97-0117	04-03-97	04-23-97
H 787	SMITH	CORE SOUND SHELLFISH LEASES-2	H -REF TO COM ON ENVIRON	04-03-97	
H 788	SMITH	CORE SOUND SHELLFISH LEASES	H -REF TO COM ON ENVIRON	04-03-97	
H 900	WATSON	NITROGEN LIMIT/CLEAN WATER FUND	*S -REF TO COM ON AGRICUL&	04-08-97	04-23-97
H 974	WRIGHT	IMPROVE ANIMAL WASTE MANAGEMENT	H -REF TO COM ON ENVIRON	04-16-97	
H1009=	MORRIS	NOTICE OF HAZARDOUS DISCHARGE	*S -REF TO COM ON AGRICUL&	04-21-97	04-30-97
H1032	ALLRED	AUTHORIZE LANDFILL LINER	*H -PRES. TO GOV. 07-30	04-21-97	04-24-97
H1032	ALLRED	AUTHORIZE LANDFILL LINER	*H -PRES. TO GOV. 07-30	07-03-97	07-17-97
H1090	REDWINE	BEACH RENOURISH/RESERVE FUNDS	H -REF TO COM ON ENVIRON	04-21-97	
H1097	PRESTON	FISHERIES REFORM ACT-2	*S -RE-REF COM ON APPROPR	04-21-97	04-23-97
H1121	MCCOMAS	BROWNFIELD PROPERTY REUSE ACT	*R -CH. SL 97-0357	04-21-97	05-14-97
H1203	INSKO	STATE-LOCAL WATER QUALITY PLANS	H -REF TO COM ON ENVIRON	05-05-97	
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*H -CAL PURSUANT RULE 36 (A)	04-09-97	07-21-97
S 125=	ODOM	BROWNFIELDS/PROPERTY USE RESTRICT	*S -RATIFIED	04-28-97	06-30-97
S 126=	ODOM	SOLID WASTE PERMIT REQUIREMENTS	*R -CH. SL 97-0027	03-17-97	04-03-97
S 138=	ODOM	DRINKING WATER AMENDMENTS	H -REF TO COM ON ENVIRON	03-10-97	
S 140=	ODOM	INCREASE ERC MEMBERSHIP	R -CH. SL 97-0031	03-04-97	04-03-97
S 150=	COOPER	INACTIVE HAZARDOUS SITES REPORTS	R -CH. SL 97-0028	03-17-97	04-03-97
S 151=	COOPER	INACTIVE HAZARDOUS SITES INFO	R -CH. SL 97-0053	04-07-97	04-09-97
S 178=	HORTON	AMEND NATURAL HERITAGE TRUST FUND	*H -PRES. TO GOV. 07-29	06-12-97	07-03-97
S 245	LEDBETTER	INSTALLMENT PURCHASE/SEWER DIST.	*H -REF TO COM ON ENVIRON	04-30-97	
S 379	EAST	SOLID WASTE OPERATOR COURSE EXEMPT	*H -REF TO COM ON ENVIRON	05-26-97	
S 516	BALLANCE	LEAD-BASED PAINT MGMT.	*H -REF TO COM ON ENVIRON	06-11-97	
S 918=	PHILLIPS	NOTICE OF HAZARDOUS DISCHARGE	*H -RE-REF COM ON RULES	05-01-97	08-04-97
S 947	COCHRANE	AMEND INTERBASIN TRANSFERS	*H -CAL PURSUANT RULE 36 (A)	05-01-97	07-03-97

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MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
February 19, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on February 19, 1997, at 12:00 Noon. Representative Rick Eddins presided at the meeting and the following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. Nelson Cole, Rep. Arlie Culp, Rep. Charlotte Gardner, Rep. Jim Gulley, Rep. Joe Hackney, Rep. Bobby Hall, Rep. Foyle Hightower, Rep. Ted Kinney, Rep. Danny McComas, Rep. Gene McCombs, Rep. Frank Mitchell, Rep. Jane Mosley, Rep. Chuck Neely, Rep. John Nichols, Rep. Jean Preston, Rep. Alex Warner, Rep. Nurham Warwick, Rep. John Weatherly, Rep. Douglas Yongue

There were twenty-four visitors.

The pages were introduced as follows:

Gregory Chickneas - Wake County
Bill Herring - Harnett County

Representative Eddins introduced the staff to the Committee:

Co-Counsels: George F. Givens, Sherri Evans-Stanton, Jeff W. Hudson.

The meeting was turned over to George Givens and Sherri-Evans Stanton, committee co-counsel, who gave an outline of the work of the interim study committees and oversight commissions, and gave an oversight of the issues that are likely to come before the Committee during the 1997-98 session (See Attachment 1).

HB 16, AN ACT TO PROHIBIT THE CONSTRUCTION OF (1) NEW ANIMAL WASTE MANAGEMENT SYSTEMS THAT MUST BE PERMITTED AND (2) EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD was explained by Representative Bobby Hall (Attachment II).

Representative Hall explained that this is a short bill that simply says there will not be any lagoons placed in the flood plains. He moved that the bill be adopted. Representative Hall indicated that Steve Teddar of the Department of Environment, Health and Natural Resources suggested that the bill be amended to make the intent clear that the land within the floodplain could be used for irrigation but not for construction for permanent structures. He stated that you can't put them in a wet plain but that the plain but that land could be used for spray purposes. Representative Hall moved to amend the bill on Page

1, Lines 11-13 as follows: "No component of an animal waste management system for which a permit is required under this section, other than a land application site, shall be considered on land that is subject to flooding by a 100-year flood." (Attachment III).

Representative Hackney suggested that the last part of the bill where it says, "shall be constructed on land that is subject to flooding by a 100-year flood" is a little ambiguous and probably should say, "constructed on land located within the 100-year flood plain because the maps are available showing where the 100-year floodplain is.

Representative Hackney offered a perfecting amendment to Amendment 1 by deleting the words, "subject to flooding by a 100-year flood," and by substituting the words, "located within the 100-year floodplain." (Attachment IV).

Representative Baddour questioned whether the original bill allowed someone to build a lagoon up one foot above or at the 100-year floodplain and still have spray fields that would be within the floodplain. The perfected amendment offered by Representative Hackney would not allow lagoons in floodplains under any circumstances.

Mr. Dewey Botts of the Department of Soil and Water Conservation explained that a lagoon could not be built there, no matter how high you build it.

Representative Hackney stated that the 100-year floodplain is a defined thing and if you say, "within the 100-year floodplain" it would be better.

Representative Weatherly inquired if all of the floodplains within the entire state are designated on published maps or is it a legal definition or delineation? It was the consensus that the federal flood maps put out by the federal government are for every county in the state. Representative Warwick questioned how many counties in the state would be affected by this and approximately what acreage or square mileage would be involved. According to Mr. Botts, there is no answer at this time and it may be a judgment opinion.

George Givens, Committee Co-counsel explained that this bill only applies to new and expanding animal waste systems, and not to existing systems that don't wish to expand.

The Committee voted to approve Amendment I and the Perfecting Amendment. Representative Hall offered a technical amendment on Page 1, Line 14, by deleting the word "a section", and substituting the word, "act". The Technical Amendment was voted on and adopted (Attachment V).

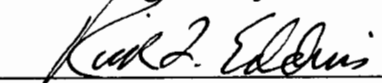
Representative Nichols said that Preston Howard stated that DEHNR already has the authority to restrict not only animal operations but also wastewater systems in the flood plains.

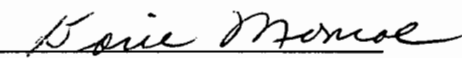
Colleen Sullins, in the Division of Water Quality, said the regulations for wastewater treatment require that any facilities located in the 100-year floodplain be protected from inundation under the 100-year storm event. Ms. Sullins said the Division also requires soil samples to make sure the soils are appropriate. If the soils are wet soils with the land application systems they may not be allowed to be used in permitting.

Representative Nichols wanted to confirm this information with Preston Howard.

Representative Hall commented that a note from the attorney who drafted the bill indicated that currently lagoons can be placed in the 100-year floodplain. And of course my bill is to stop that. That's what the bill is all about.

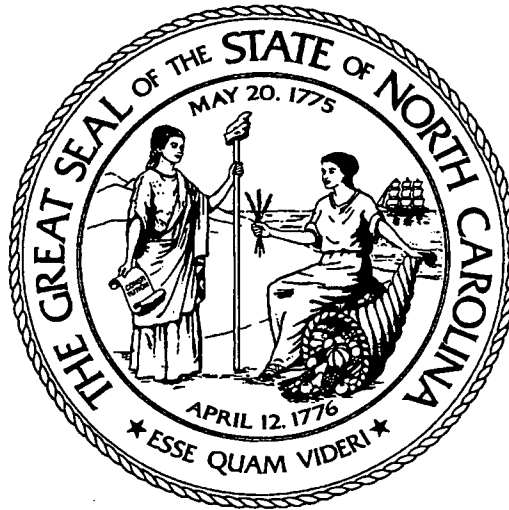
The meeting was adjourned at 1:00 PM.


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

Background and Briefing Material House Environment Committee

1997 General Assembly



House Environment Committee Cochairs

Representative Rick Eddins

Representative Dewey Hill

Representative Cynthia B. Watson

House Environment Committee Staff

George F. Givens

Sherri Evans-Stanton

Jeff W. Hudson

19 February 1997

Background and Briefing Material

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1996 Second Extra Session

Research Division Subject Area Assignments

Environment

Generally

George Givens
Sherri Evans-Stanton
Jeff Hudson
Barbara Riley

Air Pollution

George Givens
Jeff Hudson

Coastal Area Management

Sherri Evans-Stanton
George Givens
Jeff Hudson
Barbara Riley

Forests--see Natural Resources

Hazardous Wastes

George Givens
Jeff Hudson

Marine Resources--see Marine and Water Resources

Mining

George Givens
Jeff Hudson

Natural Resources--see that heading

Radioactive Wastes

George Givens
Steve Rose

Solid Waste

George Givens
Jeff Hudson

Toxic/Hazardous Substances in Workplace-- see Labor

Transportation of Hazardous Materials

Giles Perry

Underground Storage Tanks

George Givens
Jeff Hudson

Wetlands

Sherri Evans-Stanton
George Givens
Jeff Hudson
Barbara Riley

Water Quality

Sherri Evans-Stanton
George Givens
Jeff Hudson

Marine and Water Resources

Generally

Sherri Evans-Stanton
Jeff Hudson
Barbara Riley

Aquaculture

Jeff Hudson

Aquariums

Coastal (Saltwater) Fishing Licenses

Coastal Management--see Environment

Fishery Management

Fishing

Seafood

Water and Riparian Rights--see Property

Natural Resources

Generally

Barbara Riley
George Givens

Endangered Species

Fishing--see Marine and Water Resources

Forests/Forestry

Hunting

Parks and Recreation

Walker Reagan

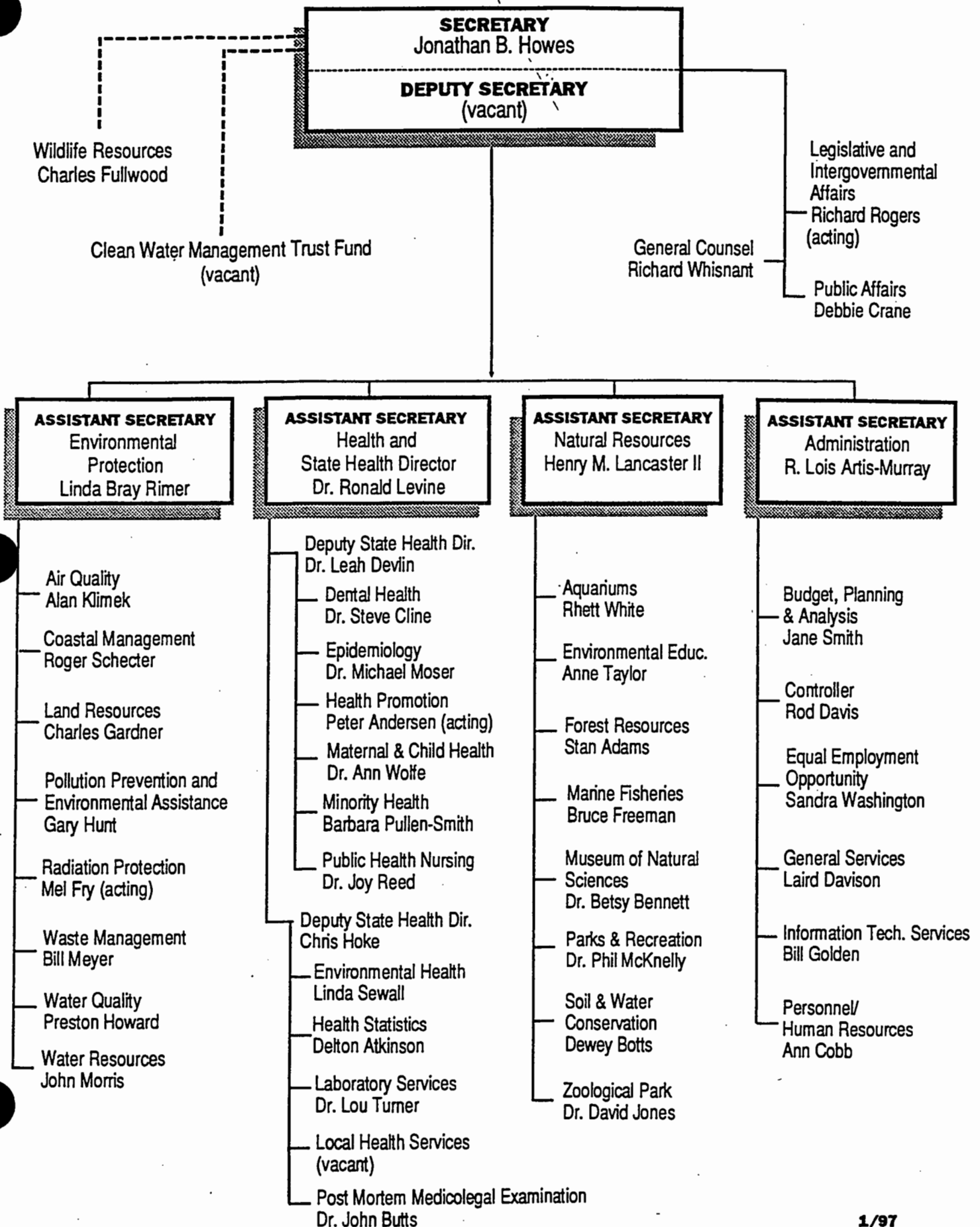
Wildlife

Barbara Riley
Tim Hovis

Zoos

Department of Environment, Health, & Natural Resources

Organization Chart



Emerging Issues, Hot Topics, and Trends in Legislative Issues: **Environment**

Coastal Issues

(Sherri Evans-Stanton and Jeff Hudson -- 733-2578)

Moratorium Steering Committee Recommendations

The 1994 General Assembly enacted legislation to create a two year moratorium on new vessel, crab, and shellfish licenses as well as non-vessel endorsements to sell fish. The moratorium was subsequently extended and is scheduled to expire on June 30, 1997. In conjunction with the creation of the moratorium, the 1994 General Assembly created the Moratorium Steering Committee, charged with undertaking a comprehensive study of the fisheries program. The Committee submitted its recommendations to the Joint Legislative Commission on Seafood and Aquaculture on November 1, 1996. The following summary highlights some of the major recommendations of the Moratorium Steering Committee.

Licensing

A three tiered licensing system described as follows: (1) a limited number of Standard Commercial Fishing Licenses entitling their holders to harvest and sell coastal fisheries resources, (2) a Commercial Gear Recreational License entitling its holder to use limited amounts of commercial gear to harvest coastal fishery resources, and (3) a Coastal Recreational Fishing License entitling its holder to use traditional recreational gear.

Gear and Habitat

Fishery Management Plans would be developed for all commercially and recreationally significant species or fisheries. Habitat Protection Plans would prohibit net functional loss in each critical fishery habitat.

Marine Fisheries Commission and Division of Marine Fisheries

The size of the Marine Fisheries Commission would be reduced from seventeen to nine members. The members would represent specific geographic areas and interests and would be bound by more stringent conflict of interest rules.

Law Enforcement

The criminal penalties for violation of fisheries laws would be increased, and a Violation Points System would be implemented.

Shellfish Working Group Recommendations (Jeff Hudson – 733-2578)

The Shellfish Working Group was established as a subcommittee of the Joint Legislative Commission on Seafood and Aquaculture, charged with studying various issues surrounding the shellfish leasing program and public shellfishing. The Working Group has recommended a Human Use Mapping Pilot Project for Core Sound and an expansion of the Shellfish Mapping Program in order to develop more accurate data for resource management and a reduction in user conflicts. The Working Group has also recommended placing a temporary limit on the growth of new shellfish leases throughout the State. Finally, this group has recommended a continuation of the study of issues surrounding public shellfishing and the shellfish leasing program.

Water Quality

(George F. Givens, Sherri Evans-Stanton, and Jeff Hudson – 733-2578)

Backup Power for Wastewater Systems and Siting in Flood Plains

In the aftermath of Hurricanes Fran and Bertha, a number of proposals were developed to protect water quality from the consequences of weather emergencies. One such proposal would require that, as a condition of permitting, new and expanding wastewater systems maintain an independent backup source of power on-site. This requirement would also be phased-in for existing wastewater systems. A second proposal would prohibit the siting of new or the expansion of existing wastewater treatment systems and animal waste management systems in flood plains.

Reduction of Nitrogen Loading in Surface Waters

High levels of nitrogen in some of the State's surface waters, particularly in the Neuse River, are believed to have contributed to a number of serious water quality problems resulting in events such as fish kills and algal blooms. In order to address this problem in the Neuse River Basin, the 1995 General Assembly enacted legislation in the 1996 Session that establishes a goal of reducing the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of 30% of the average load for the period 1991 through 1995 by the year 2001.

In addition to this goal, a proposal has been developed that would require all wastewater treatment systems statewide to employ advanced waste treatment measures in order to reduce the level of total nitrogen in treated water to a maximum annual average of 3mg/l. A number of recent reports have highlighted problems in the Cape Fear River similar to those of the Neuse River.

Water Quality Proposals Extension

Proposals to protect water quality in other river basins, such as that of the Cape Fear River, may be forthcoming. Legislation to protect and restore water quality in the Neuse River basin may be used as a model for the Cape Fear and other river basins.

Animal Waste Management Systems

In 1996, the General Assembly enacted legislation to implement the recommendations of the Blue Ribbon Study Commission on Agricultural Waste. This legislation establishes an animal waste management system permitting program designed to protect water quality. It is anticipated that the 1997 General Assembly will continue to monitor activities related to animal waste management systems in the State in order to protect health and water quality.

Water Supply Watershed Protection Act

(George Givens – 733-2578)

The 1989 General Assembly enacted the Water Supply Watershed Protection Act, which requires the Environmental Management Commission to adopt rules for the classification of water supply watersheds and establish minimum Statewide requirements for each such classification to protect water supplies. The Act also requires every local government that has jurisdiction over any portion of water supply watershed to adopt a local water supply watershed management and protection ordinance. The impact of these requirements on development, which falls mainly in the mountain and piedmont regions of the State, has resulted in continued legislative interest in this program. Two water supply watersheds have been exempted from the act by separate legislative enactments in 1993 and 1995. These exemptions and the Water Supply Watershed Protection Act itself have raised various constitutional issues. These issues include whether the act lacks sufficient guidance so that it constitutes an unconstitutional delegation of legislative power to the Environmental Management Commission and whether the exemptions are unconstitutional local acts respecting health, sanitation, or the abatement of nuisances. These issues are now before the North Carolina Supreme Court in the case Town of Spruce Pine v. Avery County which will probably be decided sometime during the first half of 1997. Depending upon the outcome of that case, there could be further legislative activity regarding the Water Supply Watershed Protection Act in 1997. In any event, controversy regarding the act underscores the importance of clarity in drafting, particularly in providing guidance to administrative agencies and rulemaking bodies.

Rehabilitation Of Abandoned Industrial Sites

(George F. Givens and Jeff Hudson – 733-2578)

In many urban areas of our State, older industrial sites are abandoned or underused due to fear of contamination and the liability that might arise under federal law as a consequence of contamination. There has been discussion of developing a "Brown Fields" initiative to address this fear. Such an initiative could allow a potential user or developer of an industrial site to work with officials in determining what liability might arise from a particular use or development of a site and how that liability might be limited.

Organization Of Environmental Entities – Environmental Cabinet

(Sherri Evans-Stanton, George F. Givens, and Jeff Hudson – 733-2578)

Due to concerns about the lack of coordination between different environmental entities within State government, there has been discussion about how to encourage greater communication among these entities and how to develop a more comprehensive approach to environmental protection. One proposal addressing this issue would create an Environmental Cabinet in the Office of the Governor consisting of the Governor, as Chair; the Secretary of Environment, Health, and Natural Resources; and the Chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission. This body would recommend action to take a comprehensive view of protecting the environment.

SUMMARIES OF SUBSTANTIVE RATIFIDE LEGISLATION

1996 Regular Session
1996 First Extra Session
1996 Second Extra Session

Environment and Natural Resources

Wetlands Restoration Program/Funds (Chapter 18, Section 27.4; HB 53, Section 27.4; Second Extra Session 1996): Section 27.4 of Chapter 18 of the Second Extra Session establishes the Wetlands Restoration Program in the Department of Environment, Health, and Natural Resources as a nonregulatory statewide program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities.

Under a new G.S. 143-214.11, all compensatory mitigation required by section 404 permits or authorizations issued by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans developed by the Department. The emphasis of mitigation is on replacing functions within the same river basin unless it can be demonstrated that restoration of other areas would be more beneficial to the overall purpose of the program.

Under a new G.S. 143-214.12, a Wetlands Restoration Fund is established as a nonreverting fund to provide a repository for monetary contributions and donations or dedications of interests in real property to promote the purposes of the Wetlands Restoration Program. An applicant may choose to contribute to the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements if the contributions will meet the mitigation requirements of the U.S. Army Corps of Engineers. The Department shall provide an itemized statement that accounts for each payment into the Fund.

The Department must report to the Environmental Review Commission on an annual basis by November 1 on progress in implementing the Wetlands Restoration Program and its use of funds. The report shall document statewide wetlands losses and gains and compensatory mitigation performed. In addition, the Environmental Review Commission shall study private mitigation banks and compare those mitigation banks with the Wetlands Restoration Program and shall report its findings and recommendations to the 1997 General Assembly. (See Private Mitigation Banks in the summary of environmental studies.)

For the 1996-97 fiscal year, \$9,200,000 will be transferred from the Clean Water Management Trust Fund to the Wetlands Restoration Fund.

Section 27.4 became effective July 1, 1996.

Clean Water Management Trust Fund (Chapter 18, Section 27.6; HB 53, Section 27.6; Second Extra Session 1996): Section 27.6 of Chapter 18 of the Second Extra Session adds a new Article 13A to Chapter 113 of the General Statutes to establish the Clean Water Management Trust Fund. The Fund will be administered by an independent, statewide Board of Trustees. A detailed summary follows:

G.S. 113-145.1. Purpose. The purpose of the Fund is to help finance projects that address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters,

including urban drinking water supplies. In addition to the environmental and recreational benefits, the General Assembly believes that these efforts will enhance wildlife and marine fisheries habitats in this State.

G.S. 113-145.2. Definitions. This section defines various terms.

G.S. 113-145.3. Clean Water Management Trust Fund. This section establishes the Clean Water Management Trust Fund as a nonreverting fund in the Office of the State Treasurer. Money from the Fund may be used for the following purposes:

1. To acquire land for riparian buffers and to establish a network of greenways for environmental, educational, and recreational use.
2. To acquire conservation easements or other interests in real property.
3. To coordinate with other programs to gain the most public benefit while protecting and improving water quality.
4. To restore previously degraded lands.
5. To repair failing waste treatment systems if an application has been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and was denied and the repair is not for the purpose of expanding the system to accommodate future growth with a priority given to economically distressed local governments.
6. To repair and eliminate failing septic tank systems, and illegal drainage connections with a priority in funding to economically distressed local governments.
7. To improve stormwater controls and management practices.
8. To facilitate planning that targets reductions in surface water pollution.
9. To fund operating expenses of the Board of Trustees, not to exceed 2% of the budget or \$850,000, whichever is less.

G.S. 113-145.4. Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement. Applicants for grants may include: State agencies; a local government or political subdivision of the State; or a nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of State environmental and natural resources. The Board of Trustees may require a match of up to 20% of the amount of the grant awarded.

G.S. 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities. The Board of Trustees shall be composed of 18 members (six appointed by the Governor, six by the President Pro Tempore of the Senate and six by the Speaker of the House of Representatives). Members shall be appointed to staggered four-year terms. Trustees shall meet at least twice a year and shall receive the per diem, subsistence expenses, and travel expenses as provided by statute.

G.S. 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and duties. The Board of Trustees shall develop criteria for awarding grants that include:

1. The significant enhancement and conservation of water quality.
2. The objectives of basinwide management plans for river basins.
3. The promotion of regional integrated ecological networks.
4. The specific areas targets as being environmentally sensitive.
5. The geographic distribution of funds as appropriate.
6. The preservation of water resources with significant recreational value and uses.
7. The development of a network of greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

G.S. 113-145.7. Clean Water Management Trust Fund: Executive Director and staff. The Board of Trustees shall hire an Executive Director, who shall serve at

the pleasure of the Board. Subject to approval by the Board, the Executive Director may employ additional clerical and other assistants, as necessary.

G.S. 113-145.8. Clean Water Management Trust Fund: Advisory Council. The Advisory Council is composed of the following: (1) Commissioner of Agriculture; (2) Chair of the Wildlife Resources Commission; (3) Secretary of Environment, Health, and Natural Resources; and (4) Secretary of Commerce. The Advisory Council shall advise the Board of Trustees with regard to allocations made from the Fund.

In addition, a new section has been added to Chapter 143 of the General Statutes. G.S. 143-15.3B will establish the Clean Water Management Trust Fund and will direct the State Controller to reserve 6.5% of any unreserved credit balance remaining in the General Fund at the end of each fiscal year for this Fund.

For the 1996-97 fiscal year only, \$9,200,000 of the approximate \$39,900,000 shall be transferred to the Wetlands Restoration Fund to implement that program.

Section 27.6 became effective on June 30, 1996.

Lower Neuse River Basin Association Funds (Chapter 18, Section 27.8; HB 53, Section 27.8; Second Extra Session 1996): Section 27.8 of Chapter 18 of the Second Extra Session appropriates \$2,000,000 to the Lower Neuse River Basin Association to be allocated as grants to local governments in the Neuse River basin to assist in complying with the Neuse River Nutrient Sensitive Water Management Strategy Plan. Funds are contingent on the adoption of the Plan by the Environmental Management Commission by June 30, 1997.

The Lower Neuse River Basin Association shall report to the Environmental Review Commission by October 15, 1996 and quarterly thereafter on grants awarded for projects and on the effectiveness of these projects in reducing pollution in the Neuse River basin.

Section 27.8 became effective July 1, 1996.

Transfer the Geodetic Survey Section to the Office of State Planning (Chapter 18, Section 27.9A; HB 53, Section 27.9A; Second Extra Session 1996): Section 27.9A of Chapter 18 of the Second Extra Session moves the 22 positions, support, and equipment in the Geodetic Survey Section of the Division of Land Resources, Department of Environment, Health, and Natural Resources to the Office of State Planning in the Office of the Governor. Section 27.9A became effective July 1, 1996.

Hazardous Waste Reports (Chapter 18, Section 27.10; HB 53, Section 27.10; Second Extra Session 1996): Section 27.10 of Chapter 18 of the Second Extra Session provides that, beginning in 1997, the Department of Environment, Health, and Natural Resources shall report on the generation, storage, treatment, and disposal of hazardous waste no more often than is required under federal law. Federal law requires a report every two years; the Department of Environment, Health, and Natural Resources has been reporting annually. This change results in a decrease in recurring appropriations of \$69,568 and the elimination of two positions. Section 27.10 became effective 1 July 1996.

Drinking Water Waiver Program (Chapter 18, Section 27.11; HB 53, Section 27.11; Second Extra Session 1996): Section 27.11 of Chapter 18 of the Second Extra Session requires the Department of Environment, Health, and Natural Resources to establish a drinking water waiver program within the Division of Environmental Health. The program will enable the Division to seek and qualify for additional waivers from federal drinking water regulations. The program will also include a study to determine which drinking water contaminants do not present a significant health risk and which water systems are not susceptible to particular contaminants. The Division will report the progress of the program to the Fiscal Research Division, the Environmental Review

Commission, and the Legislative Research Commission Study Committee on Water Issues not later than December 15, 1996. Section 27.11 became effective July 1, 1996.

Reserve for Permitting and Inspecting Animal Waste Management Systems (Chapter 18, Section 27.13; HB 53, Section 27.13; Second Extra Session 1996): Section 27.13 of Chapter 18 of the Second Extra Session appropriates \$1,550,766 to the Department of Environment, Health, and Natural Resources to be placed in a reserve to establish and support positions to conduct permitting, inspection, and enforcement activities for animal waste management systems consistent with the regulatory program established under Chapter 626 of the 1996 (Regular Session) Session Laws.

Subsection (b) requires that the Department submit quarterly status reports beginning October 15, 1996 to the Environmental Review Commission and the Fiscal Research Division concerning the following: (1) number of permits for animal waste management systems; (2) number of operations reviews and reinspections of animal waste management systems conducted by the Division of Soil and Water Conservation; (3) number of compliance inspections and follow-up inspections conducted by the Division of Water Quality; (4) the average length of time for each category of reviews and inspections; and (5) the number of violations found during each category of review and inspection.

Section 27.13 became effective July 1, 1996.

Accountability for Certain State Agriculture Cost Share Funding (Chapter 18, Section 27.22; HB 53, Section 27.22; Second Extra Session 1996): See AGRICULTURE.

Prohibit Transfer of Positions from Soil and Water Conservation to Water Quality (Chapter 18, Section 27.23; HB 53, Section 27.23; Second Extra Session 1996): Section 27.23 of Chapter 18 of the Second Extra Session prohibits the Department of Environment, Health, and Natural Resources from transferring any positions established in this act for the Division of Soil and Water to the Division of Water Quality. Section 27.23 became effective July 1, 1996.

Adopt-A-Beach (Chapter 18, Section 27.24; HB 53, Section 27.24; Second Extra Session 1996): Section 27.24 of Chapter 18 of the Second Extra Session adds a new Article 69 to Chapter 143 of the General Statutes to create the Adopt-A-Beach Program within the Department of Environment, Health, and Natural Resources. The purpose of the program is to educate citizens and increase their awareness of the need to keep the State's coastline clean and free of trash, while at the same time generating data on the volume and contents of beach pollution. As part of a pilot program, the Department of Environment, Health, and Natural Resources will select five ocean sites and two sound-side sites to be cleaned up and maintained monthly. Each site will be assigned to an organization and each organization will be recognized at its site by an identifying sign. This program will be expanded to accommodate increased participation.

The Department will report to the Environmental Review Commission by March 15, 1997 and annually thereafter on the program's progress. The Department may adopt rules to implement the program. Of the funds appropriated to the Department, \$30,000 is allocated to implement the program.

Section 27.24 became effective July 1, 1996.

Straight Pipe Elimination Amnesty Program (Chapter 18, Section 27.26; HB 53, Section 27.26; Second Extra Session 1996) [Note that Chapter 18 contains two sections numbered 27.26.]: Section 27.26 of Chapter 18 of the Second Extra Session requires the Department of Environment, Health, and Natural Resources to establish a program

for the elimination of domestic sewage or wastewater discharges from direct (straight pipes) and from overland flow of failing septic systems. The program will initially focus on (1) the identification and elimination of discharges into streams to be used or currently used for public water supplies, (2) an amnesty period to end December 31, 1997, during which violations of State rules and laws regarding domestic sewage and wastewater discharges identified as a result of this program may be reported and addressed without incurring legal consequences; and (3) a public education effort regarding the program and the amnesty period.

Of the funds appropriated to the Department, \$117,500 in recurring funds and \$12,500 in nonrecurring funds is allocated for two positions responsible for carrying out this program and for other operating costs. The Department will report to the Environmental Review Commission and the Fiscal Research Division beginning October 15, 1996 and quarterly thereafter, regarding the implementation of this program.

Section 27.26 became effective July 1, 1996.

Aboveground Storage Tanks Inspection and Monitoring (Chapter 18, Section 27.30; HB 53, Section 27.30; Second Extra Session 1996): Section 27.30 of Chapter 18 of the Second Extra Session appropriates \$200,000 to the Department of Environment, Health, and Natural Resources to continue periodic inspections at major oil terminal facilities, as defined in G.S. 143-215.77, in Mecklenburg County (the facilities located at Paw Creek) to determine whether oil or any other hazardous substance is being discharged into the environment and to monitor air, water, and soil quality.

The Department of Environment, Health, and Natural Resources shall report to the Environmental Review Commission beginning 1 October 1996 and quarterly thereafter on its inspection and monitoring activities.

Section 27.30 became effective 1 July 1996.

Wastewater System Improvement Permits (Chapter 18, Section 27.31; HB 53, Section 27.31; Second Extra Session 1996): Section 27.31 of Chapter 18 of the Second Extra Session makes technical and clarifying changes to Chapter 585 of the 1995 Session Laws (1996 Regular Session) concerning Wastewater System Improvement Permits. Section 27.31 became effective July 1, 1996.

Core Sound/Description of Area A for Shellfish Lease Moratorium (Chapter 18, Section 27.33; HB 53, Section 27.33; Second Extra Session 1996): Section 27.33 of Chapter 18 of the Second Extra Session amends Section 3 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) to provide a metes and bounds description by reference to latitude and longitude of the area of Core Sound in which a moratorium on new shell fish cultivation leases is imposed until July 1, 1997. Section 27.33 became effective July 1, 1996.

Environmental Technical Corrections (Chapter 18, Section 27.34; HB 53, Section 27.34; Second Extra Session 1996): Section 27.34 of Chapter 18 of the Second Extra Session makes conforming and technical changes to legislation enacted during the 1996 Regular Session to reflect the first phase of the restructuring of the Department of Environment, Health, and Natural Resources, specifically the formation of the Division of Water Quality and the elimination of the former Division of Environmental Management. Section 27.34 became effective 1 July 1996.

Ensure Legislative Review of Certain Rules (Chapter 18, Section 27.36; HB 53, Section 27.36; Second Extra Session 1996): Section 27.36 of Chapter 18 of the Second Extra Session provides that G.S. 150B-21.3(c) does not apply beyond 1 January 2000 to a rule that extends the date set in 15A NCAC 13B.1627(c)(10)(A) for the closure of an unlined municipal solid waste landfill. Under the existing rule, unlined

landfills are required to close by 1 January 1998. G.S. 150B-21.3(c) allows the Governor to make a permanent rule effective earlier than would otherwise be the case if the Governor finds that the rule is necessary to protect public health, safety, or welfare. The effect of Section 27.36 is to prohibit the Governor from making effective any rule change that would allow operation of unlined landfills beyond 1 January 2000. Section 27.36 became effective 1 July 1996.

Operation of Permit Information Center (Chapter 18, Section 27.37; HB 53, Section 27.37; Second Extra Session 1996): Section 27.37 of Chapter 18 of the Second Extra Session authorizes the Department of Environment, Health, and Natural Resources to operate the Permit Information Center (from available funds) in order to improve permit applications, provide guidance materials, provide applicant and citizen training, and for other purposes. The budget adjustments proposed by the Governor recommended an appropriation to fund the Center. However, the General Assembly did not make such an appropriation. Without the specific legislative approval for the operation of the Center granted by Section 27.37, the operation of the Center would have been prohibited under the Executive Budget Act because the General Assembly had considered, but failed to approve, an appropriation for that purpose. Section 27.37 became effective 1 July 1996.

STUDIES

Legislative Research Commission Studies

Section 2.1 of the Studies Act of 1996 (Chapter 17; SB 46; Second Extra Session 1996) authorizes the **Legislative Research Commission** to study the following issues related to the **Department of Environment, Health, and Natural Resources**:

- (1) Reorganization of the Department of Environment, Health, and Natural Resources.
- (2) Duplication in or inconsistencies between State and federal environmental regulations.
- (3) Alternative permitting and compliance mechanisms.
- (4) Other issues relating to the administration and enforcement of State and federal environmental laws, regulations, policies, and programs.

Independent Studies, Boards, Etc.

Fishing Licenses Moratorium Steering Committee (Chapter 551; HB 1078; Regular Session 1996): The Moratorium Steering Committee is continued and shall make its final report to the Joint Legislative Commission on Seafood and Aquaculture by November 1, 1996. The Commission shall report to the 1997 General Assembly.

State Ports Study Commission (Chapter 18, Sec. 26.10; HB 53, Sec. 26.10; Second Extra Session 1996; and Chapter 17; Part XII; SB 46, Part XII; Second Extra Session 1996): The **State Ports Study Commission** is continued and shall make a final report upon the convening of the 1997 General Assembly.

Abandoned Lagoons/Animal Facilities Environmental Impacts (Chapter 18, Sec. 27.12; HB 53, Sec. 27.12; Second Extra Session 1996): A legislative study commission shall study the environmental impacts of animal waste lagoons and animal facilities that have been closed or abandoned or are inactive in order to determine the extent and scope of problems associated with these structures, to identify potential solutions, to identify scientifically and environmentally effective methods of closure of

the structures in the future, and to determine the advisability of providing incentives for the proper management of abandoned animal waste lagoons and animal facilities. This study commission shall report to the 1997 General Assembly, Environmental Review Commission, and Fiscal Research Division by 1 January 1997.

Studies Referred to Departments, Agencies, Etc.

The Department of Environment, Health, and Natural Resources shall study options for the **privatization of the leaking petroleum underground storage cleanup program** and shall report to the Environmental Review Commission by 1 November 1996. (Chapter 648, Sec. 5; SB 1317, Sec. 5; Regular Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study **economically feasible odor control technologies**. The Board shall report to the Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.3; HB 53, Sec. 27.3; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study the **groundwater impacts of lagoons**. The Board shall report to Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.7; HB 53, Sec. 27.7; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall contract with a research institution to study **atmospheric nitrogen reaching the Neuse estuary**, to develop strategies to reduce the most significant sources of nitrogen, and to improve water quality. The Board shall report to Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.9; HB 53, Sec. 27.9; Second Extra Session 1996)

Section 27.32 of Chapter 18 of the Second Extra Session requires the **Department of Environment, Health, and Natural Resources** to report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997 and July 1, 1997 on: (1) Departmental reorganization and efficiency; (2) actions taken by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission to coordinate and consolidate activities; (3) progress on protecting and restoring water quality in the Neuse River Basin and in nutrient sensitive waters, including implementation of animal waste management system permits.

This Section also requires the Primary Investigator or Researcher receiving funding from the State to report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997 and July 1, 1997 on studies of: (1) odor control technology; (2) sources of nitrogen through isotope markers; (3) groundwater impacts of lagoons; (4) atmospheric deposition of nitrogen in the Neuse Estuary; and (5) alternative animal waste technologies.

Section 27.32 became effective July 1, 1996. (Chapter 18, Section 27.32; HB 53, Section 27.32; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study **alternative animal waste technologies** and report to

Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.35; HB 53, Sec. 27.35; Second Extra Session 1996)

Studies Referred to Existing Commissions

Joint Legislative Commission on Seafood and Aquaculture (Chapter 547; HB 1074; Regular Session 1996): The Joint Legislative Commission on Seafood and Aquaculture shall study the **shellfish lease program** and consider the following issues:

1. Preservation of areas used substantially by commercial and recreational fishermen.
2. Establishment of a maximum percentage of available water body for leases.
3. Restrictions on shellfish lease sizes and whether leases may be contiguous.
4. Production requirements.
5. Evaluation of profitability of leases after period of time.
6. Any other related issues.

The Commission shall report to the 1997 General Assembly.

Environmental Review Commission (Chapter 626, Sec. 12; SB 1217, Sec. 12; Regular Session 1996): The Environmental Review Commission shall **evaluate the animal waste permitting, inspection, and enforcement program** created by Chapter 626, including whether to transfer this responsibility to the Division of Soil and Water Conservation. The Commission may report to the General Assembly by the first day of the 1997 Regular Session and shall report before the first day of the 1998 Regular Session.

Joint Legislative Commission on Seafood and Aquaculture (Chapter 17; Part VIII; SB 46, Part VIII; Second Extra Session 1996): The Joint Legislative Commission on Seafood and Aquaculture shall study the **feasibility of creating a Fishermen's Disaster Relief Fund** to provide financial assistance to fishermen for damage to fishery resources caused by natural or man-made disasters. The Commission shall report to the 1997 General Assembly upon its convening.

Environmental Review Commission (Chapter 18, Sec. 27.4(e); HB 53, Sec. 27.4(e); Second Extra Session 1996): The Environmental Commission shall study **private mitigation banks** in comparison with the Wetlands Restoration Program. The Environmental Review Commission shall report to the 1997 General Assembly.

march 5, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

HOUSE BILL 16

unfavorable

1

Short Title: No Animal Waste Systems in Floodplains.

(Public)

Sponsors: Representatives Hall; Aldridge, Davis, Dickson, Gulley, Hardy, Hill, H. Hunter, McComas, McMahan, Shubert and Watson.

Referred to: Environment.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE CONSTRUCTION OF (1) NEW ANIMAL WASTE
3 MANAGEMENT SYSTEMS THAT MUST BE PERMITTED AND (2)
4 EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS
5 SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 143-215.10C(b) reads as rewritten:
8 "(b) An animal waste management system shall be designed, constructed, and
9 operated so that the animal operation served by the animal waste management system
10 does not cause pollution in the waters of the State except as may result because of
11 rainfall from a storm event more severe than the 25-year, 24-hour storm. No animal
12 waste management system for which a permit is required under this section shall be
13 constructed on land that is subject to flooding by a 100-year flood."
14 Section 2. This section is effective when it becomes law and applies to
15 new animal waste management systems for which construction commences on or after
16 that date and to expansions of such existing systems for which construction
17 commences on or after that date.



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Memorandum

February 19, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Assistant Committee Counsel

SUBJECT: House Bill 16 (No Animal Waste Systems in Floodplains)

Section 1.

Section 1 of this bill amends G.S. 143-215.10C(b) to prohibit construction of animal waste management systems for which a permit is required under G.S. 143-215.10C(a) on land subject to flooding by a 100-year flood.

"Animal waste management system" is defined by G.S. 143-215.10B(3) as a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste. A permit is required for an animal waste management system that serves an animal operation.

"Animal operation" is defined by G.S. 143-215.10B(1) as any agricultural farming activity involving 250 or more swine; 100 or more confined cattle; 75 or more horses; 1,000 or more sheep; or 30,000 or more confined poultry with a liquid animal waste management system. A public livestock market or sale regulated under Articles 35 and 35A of Chapter 106 of the General Statutes, however, is not considered an animal operation.

"A 100-year flood" is defined by the Natural Resources Conservation Service as a flood produced by a rainfall event that statistically will be equaled, or exceeded, only once every 100 years.

Section 2.

Section 2 makes this act effective when it becomes law. This act applies to animal waste management systems for which construction of new systems or expansion of existing systems commences on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 16
Committee Substitute Favorable 3/5/97

Short Title: No Liquid Animal Waste/Floodplains.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE CONSTRUCTION OF CERTAIN COMPONENTS
3 OF LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS WITHIN THE ONE
4 HUNDRED-YEAR FLOODPLAIN.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143-215.10C(b) reads as rewritten:

7 "(b) An animal waste management system shall be designed, constructed, and
8 operated so that the animal operation served by the animal waste management system
9 does not cause pollution in the waters of the State except as may result because of
10 rainfall from a storm event more severe than the 25-year, 24-hour storm. No
11 component of a liquid animal waste management system for which a permit is
12 required under this section, other than a land application site, shall be constructed on
13 land that is located within the 100-year floodplain."

14 Section 2. This act is effective when it becomes law and applies to any
15 new liquid animal waste management system where construction commences on or
16 after the date this act becomes law and to any expansion of an existing system where
17 construction commences on or after the date this act becomes law.



7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 16

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H16V1-ALD-002.02

Date _____, 1997

Comm. Sub. [NO]
Amends Title [NO]
First Edition



Representative Hall

- 1 moves to amend the bill on page 1, lines 11 through 13
- 2 by rewriting those lines to read:
- 3
- 4 "rainfall from a storm event more severe than the 25-year, 24-hour
- 5 storm. No component of an animal waste management system for which
- 6 a permit is required under this section, other than a land
- 7 application site, shall be constructed on land that is subject to
- 8 flooding by a 100-year flood."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

(Please type or use ballpoint pen)

H. B. No. 16

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

Amendment #

moves to amend the bill on page 1, line 7 and 8by deleting the words "subjectto flooding by a 100-year flood.and substituting the words"located within the 100-yearfloodplain."SIGNED Heck

ADOPTED _____

FAILED _____

TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 16

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H16V1-ART-001.01

Date _____, 1997

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative _____

1 moves to amend the bill on page 1, line 14
2 by deleting the word "section" and substituting the word "act".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 16 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE CONSTRUCTION OF
(1) NEW ANIMAL WASTE MANAGEMENT SYSTEMS THAT MUST BE PERMITTED
AND (2) EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS
SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (# _____), ☒ which changes the title,
unfavorable as to original bill (Committee-Substitute-Bill # _____), (and recommendation
~~that the committee-substitute bill # _____ be re-referred to the Committee on _____.~~)

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

VISITOR REGISTRATION

ENVIRONMENT COMMITTEE

FEBRUARY 19, 1997

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
<i>R. Rogers</i>	<i>EHNR</i>
<i>G. Thorpe</i>	<i>EHNR</i>
<i>C. Sullivan</i>	<i>EHNR</i>
<i>D. Whitten</i>	<i>EHNR</i>
<i>Diane Cherry</i>	<i>EHNR</i>
<i>Diane Winnet</i>	<i>EGHS</i>
<i>LINDA RIMER</i>	<i>DEHNR</i>
<i>Tom BEAN</i>	<i>NC Wildlife Federation</i>
<i>Michelle Nowlin</i>	<i>Southern Environmental Law Center</i>
<i>Donald Harris</i>	<i>LEP</i>
<i>TANJA VUJIC</i>	<i>NCEDF</i>
<i>WA Her Cherry</i>	<i>NC Pork Council</i>
<i>Roger Bone</i>	<i>Bone + Assoc - Pork Council</i>
<i>Suzanne Williams</i>	<i>Boney Assoc - Pork Council</i>
<i>Laura Hartsell</i>	<i>MCIC</i>
<i>Jonathan Breeden</i>	<i>Citizen</i>
<i>A.B. Swindell, IV</i>	<i>BFI</i>
<i>John Kustin</i>	<i>Hunter & Williams</i>
<i>Ann Brubaker</i>	<i>UNC Gen Admin - NC State - Ag Pgm</i>
<i>Peter Daniel</i>	<i>NCPA</i>
<i>George Everett</i>	<i>MCIC</i>
<i>Michelle Cook</i>	<i>Weyerhaeuser</i>
<i>Kim Smith</i>	<i>NCHM</i>
<i>Ed Regan</i>	<i>NCACC</i>

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **ENVIRONMENT** will meet as follows:

DAY & DATE: **Wednesday, February 26, 1997**

TIME: **12:00 Noon**

LOCATION: **Rm. 643 LOB**

The following bills will be considered (Bill # & Short Title):

HB 16 - No Animal Waste in Floodplain
HB 85 - Environmentally Sound Policy Act
HB 189 - Drinking Water/Conform with Fed. Law
HB 194 - State Revolving Water Fund Account

Respectfully,

Representative Rick Eddins
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 PM on Friday, February 21, 1997.

____Principal Clerk
____Reading Clerk - House Chamber

Dorie Monroe (Committee Clerk)

AGENDA

HOUSE COMMITTEE ON ENVIRONMENT

Wednesday, February 26, 1997

12:00 P.M.

Room 643 LOB

OPENING REMARKS

Rep. Dewey L. Hill, Chairman

BILLS TO BE CONSIDERED:

HB 16 No Animal Waste Sys. In Floodplains

HB 85 Swine Farm Siting Act

HB 189 Drinking Water Amends

HB 194 State Revolving Water Fund Account

ADJOURNMENT

HOUSE COMMITTEE ON ENVIRONMENT

Minutes: February 26, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building at 12:00 noon. Rep. Dewey L. Hill presided over the meeting. Those members in attendance were: Rep. Rick Eddins; Rep. Cindy Watson; Rep. Phil Baddour; Rep. John Brown; Rep. Nelson Cole; Rep. Arlie Culp; Rep. John R. Gamble; Rep. Charlotte Gardner; Rep. Jim Gully; Rep. Joe Hackney; Rep. Bobby Hall; Rep. Foyle Hightower; Rep. Ted Kinney; Rep. Danny McComas; Rep. Gene McCombs; Rep. Frank Mitchell; Rep. Jane Mosley; Rep. Chuck Neely; Rep. John Nichols; Rep. Jean Preston; Rep. Alex Warner; Rep. Nurham Warwick; Rep. John Weatherly; and Rep. Douglas Yongue.

Chairman Hill called the meeting to order at 12:10 P.M. and introduced Laura Harvey and Becky Jorgenson of Wake County who were serving as pages for the General Assembly. Chairman Hill welcomed everyone and stated that the committee had two bills on the agenda today, and that he particularly wanted to hear from the folks who were in attendance for HB 85.

Chairman Hill called upon Rep. Bobby Hall to speak on behalf of HB 16, AN ACT TO PROHIBIT THE CONSTRUCTION OF (1) NEW ANIMAL WASTE MANAGEMENT SYSTEMS THAT MUST BE PERMITTED AND (2) EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD. Rep. Hall stated that committee staff had prepared a committee substitute which was distributed to the members. (See Attachment A). Rep. Hall called lines 12 and 13 of the substitute to the members attention. Rep. Hall moved for adoption of the Proposed Committee Substitute H16-PCSA173 for consideration and the motion carried. Rep. Hackney had some questions regarding the substitute, and Committee Counsel, Mr. George Givens, stated that this substitute simply incorporated the amendments that were adopted at the last meeting as well as Rep. Hall's amendment, Rep. Hackney's amendment to that, and the technical amendment.

Rep. Mitchell indicated that he had questions particularly with regard to loafing sheds for cattle and whether those sheds would be included in the definition of animal waste management systems. Chairman Hill called upon Mr. Preston Howard, Director of Water Quality who stated that as he read this bill it would not be barred from the floodplain. Rep. Mitchell asked Mr. Dewey Botts, Director of Soil and Water Conservation if loafing sheds would be barred, and Mr. Botts stated that they would indeed be barred because 'animal waste management system' means a combination of

structures and practices that provide for the collection, treatment, storage, or land application of animal waste. There was further discussion on this issue, and Rep. Mitchell stated that he felt the farmers were being hit on once again, and he indicated that he wanted to have an amendment drafted to prohibit only lagoons that are not protected by a berm in a floodplain.

Chairman Hill called upon Rep. Watson who asked Mr. Preston Howard, Director, Division of Water Quality, if in fact all the laws were in place to legally enforce all the best in SB 1217, and Mr. Howard stated that they were. Rep. Watson had a further question with regard to the quality of our rivers, and Mr. Howard stated that our rivers are not as clean as they need to be. This legislation would aid our rivers, but not address the entire issue.


Rep. Hill called upon staff to read the Mitchell amendment (Attachment B). There continued to be further questions and discussion, and at this point Chairman Hill asked Rep. Hall to displace his bill.

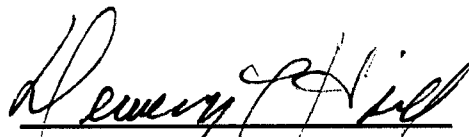
Chairman Hill called upon Rep. Morgan to speak on behalf of his bill, HB 85, AN AC TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT. Please see Attachment "C" for Rep. Morgan's remarks. Upon conclusion of Rep. Morgan's remarks he further stated that travel and tourism was a \$200 million dollar industry in Moore County, and asked Chairman Hill if the department could speak to the committee concerning that. Chairman Hill stated that he wanted to hear from a representative of the pork industry as well as someone from the travel and tourism industry.

Chairman Hill called upon Mr. Whitley Stephenson, President of the North Carolina Pork Council, Inc. Please see Attachment "D" for Mr. Stephenson's remarks. Upon conclusion of Mr. Stephenson's remarks, Chairman Hill called upon Mr. Jerry Hancock, General Counsel of the North Carolina Travel and Tourism Coalition. Mr. Hancock stated that because emotions run high on this issue, he felt it important to clarify his industry's position. Mr. Hancock complimented the swine industry, and stated that his industry wanted the committee to know that Rep. Morgan's bill is filled with subjects that require in depth consideration by this committee. Mr. Hancock stated that many issues remain before us, and one in particular is the issue of siting. He further stated that the position of his industry's is that the issue of siting should be a local issue. He further stated this his industry has a great deal of difficulty understanding why intensive livestock operations are basically the only business operations that are exempt by statute from local zoning. He further stated that this exemption virtually forces local commissioners to civil disobedience. In conclusion he stated that Rep. Morgan's bill deserves serious consideration by this committee, and hearings if necessary.

Chairman Hill thanked all those in attendance, and informed the committee that Rep. Hall's bill would be referred to a subcommittee.

Respectfully submitted:


Virginia M. McCann
Committee Clerk


Rep. Dewey L. Hill
Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 16
Proposed Committee Substitute H16-PCSA173

Short Title: No Animal Waste Systems in Floodplains.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE CONSTRUCTION OF (1) NEW ANIMAL WASTE
3 MANAGEMENT SYSTEMS THAT MUST BE PERMITTED AND (2)
4 EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS
5 SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143-215.10C(b) reads as rewritten:

8 "(b) An animal waste management system shall be designed, constructed, and
9 operated so that the animal operation served by the animal waste management system
10 does not cause pollution in the waters of the State except as may result because of
11 rainfall from a storm event more severe than the 25-year, 24-hour storm. No
12 component of an animal waste management system for which a permit is required
13 under this section, other than a land application site, shall be constructed on land
14 that is located within the 100-year floodplain."

15 Section 2. This act is effective when it becomes law and applies to new
16 animal waste management systems for which construction commences on or after that
17 date and to expansions of such existing systems for which construction commences on
18 or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment B

(Please type or use ballpoint pen)

EDITION No. 1 (PCSA173)H. B. No. 16DATE 26 Feb 1997

S. B. No. _____

Amendment No. 4
(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Mitchell
Sen.)1 moves to amend the bill on page 1, line 3 2 through 5

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:4
5 " AN ACT TO PROHIBIT THE
6 CONSTRUCTION OR EXPANSION OF
7 LAGOONS THAT MUST BE PERMITTED
8 AND THAT ARE LOCATED WITHIN
9 THE 100-YEAR FLOODPLAIN.", and10
11 on page 1, lines 12 and 13
12 by rewriting those lines to read:13
14 " lagoon for which a permit is
15 required under the section that
16 is not banned, shall be
17 constructed on land".

18

19

SIGNED W. E. Mitchell

ADOPTED _____ FAILED _____ TABLED _____

Many of you know that North Carolina enacted landmark legislation during this past Session to regulate animal operations. I say "landmark" from the standpoint that we went from virtually no regulation, with no permits or inspections required to a system of permits, inspections, and operation reviews for animal operations. As an example, effective January 1st of this year, these animal operations will be required to obtain permits on a phased-in basis.

I supported the recommendations of the Blue Ribbon Study Commission on Agricultural Waste, but I do not believe they go far enough to protect water quality and the environment.

I am extremely troubled by the recent proliferation of large-scale hog farm operations and the impact these operations may have on our rivers, streams, and the environment. I strongly believe that a distinction must be drawn between farming and the mass production of swine. House Bill 85 is designed to treat large intensive animal feeding operations in the same manner as our industries are treated and, therefore, subject to more stringent regulations.

While most of our swine industry is comprised of good, honest people, I am outraged by the number of large-scale swine operations that rushed in at the last minute to complete site evaluations during a three-month grace period in order to avoid the permitting requirements. I am told that, in some cases, landowners completed site evaluations during this grace period with no intention of building swine operations. Once the evaluations were completed, the landowner sold the property.

Now, the swine industry will tell you that we should wait until the current regulations have been implemented before additional regulations are enacted. They will also tell you that North Carolina's regulations are so tough that they have virtually shut down expansion or growth of the swine industry and will severely impact our economy.

I am here to tell you that other major pork producing states including Iowa and South Carolina have far more stringent regulations on the books than North Carolina. I do not believe that our rivers and streams, or our quality of life can wait.

My bill establishes the Environmentally Sound Policy Act of 1997 ("ESP") and provides a menu of options to protect health and the environment. Many of these proposals have been enacted in other states including, South Carolina, and Iowa. House Bill 85 offers the following choices:

1. Defines "intensive animal feeding operations" as an operation with a design capacity of more than 800,000 pounds, steady state live weight.
2. Increases the setbacks to protect recreational use, the environment, and water quality. These increased setbacks are similar to those enacted in South Carolina.
3. Increases setbacks from 500 feet from property boundary for any size operation to 1500 feet from property line for swine operations with over 1,000,000 pounds of Steady State Live Weight. These increased setbacks were supported by the Governor during the 1996 Session.
4. Prohibits a new or expanding swine house or lagoon from locating in a 100-year floodplain unless protected from flooding as provided for in regulations of the Federal Emergency Management Agency and the National Flood

Responses to misinformation prepared by the NC Pork Council:

Floodplain: House Bill does not "ban new or expanding farms in the 100 year floodplain" if protected from flooding as provided for in the regulations of the Federal Emergency Management Agency and the National Flood Insurance Program on Floodplain Management. The Pork Council may have confused your bill with House Bill 16.

Notice provisions: The Dept. of Environment, Health, and Natural Resources is only required to conduct a hearing at the applicant's expense if: (1) the permit is for an intensive animal feeding operation; and (2) the Department receives at least 20 written requests.

"The bill does not 'grandfather in' existing operations in most instances". It is not the intent of this bill to impact existing operations. The only provisions that are retroactively effective are those concerning intensive animal feeding operations. I have asked that an amendment be prepared to clarify that language.

"This bill will put many existing farmers out of business." This is absolutely false and is being used as a scare tactic to oppose the bill. The purpose of this bill is to address the recent proliferation of intensive swine operations and to establish measures to protect the environment and the beauty within our State.

Insurance Program on Floodplain Management. This language tracks South Carolina's siting requirements.

5. Requires more stringent public notice after a site evaluation has been completed and before the farm site is modified.
6. Addresses emission of undesirable levels of odor in outdoor recreational areas.
7. Clarifies the authority of local health departments to adopt health-based ordinances that regulate intensive animal operations. (Section 3 of bill).
8. Removes the county zoning prohibition with respect to intensive animal feeding operations. (Section 5)
9. Establishes a one-year moratorium as set forth in Section 7 of the bill.

My goal is to offer a menu of options that may be enacted to balance the economic benefits of intensive swine operations with the need to protect the health and environment of our citizens.

To: Whitley Stephenson

Post-It Fax Note	7671	Date	# of pages 2
To: <i>Genny McCann</i>	From: <i>W. Stephenson</i>	Co./Dept.	Co.
Phone #	Phone # 989-8878	Fax # 733-2599	Fax # 989-8448

2-28-97 9:47am p. 2 of 3

Attachment "B"

**Remarks to the Environmental Committee
NC House of Representatives
February 26, 1997**

**Whitley Stephenson
President - North Carolina Pork Council**

I am a second generation pork producer from Johnston County. I have mixed emotions about HB 85. I see positive points in it such as, removing hog facilities from 100 year flood plains and redefining intensive animal operations using the same language and weight numbers as the EPA. Also, I see as a positive some type of setback from a defined outdoor recreational area (such as golf courses)

However, if this bill passes in it's entirety, it will mean there will be no third generation pork producer in my family because it will end the pork production business in North Carolina over time and deny young rural families the opportunity to stay on their family farm by removing a potential source of income. It will send a business elsewhere that generates over 1.8 billion dollars in sales, creates 47,000 jobs and 70 million dollars in tax revenue.

Why do I believe this? Because this is not a local bill. Aside from the moratorium which would affect Moore County and maybe a few others, this bill has statewide implications.

It would give county health boards and county commissioners regulatory and zoning authority. This could lead to tremendous confusion by creating one hundred different sets of standards and regulations.

The bill would remove Intensive Livestock operations from a bona fide farm definition only on the basis of size, while not giving credit to new technology that would make these operations more environmentally friendly.

It would increase setbacks from property lines from the current 500 feet to 1500 feet for larger units. The 500' setback has already ruled out the majority of available sites for new facilities and has all but sealed the fate of many smaller existing farms that need to expand to stay efficient and competitive. These setbacks would all but guarantee that any new farms built would be very large and would totally rule out any small family farm's ability to diversify and stay on the farm.

The bill has a section to address odors. This section is extremely vague and broad. It is open to entirely too much subjective interpretation. I realize that swine operations produce odors. That is why researchers at universities and private

cont.

Remarks to the Environmental Committee
NC House of Representatives

To: Whitley Stephenson

From: Lu-Ann Coe lcoe@hogslat.com

2-28-97 9:47am p. 3 of 3

2

February 26, 1997**Whitley Stephenson
President - North Carolina Pork Council**

businesses across this state and county are spending time and money every day to address the problem with a scientific approach not from an individuals opinion as this bill would do.

The last General Assembly took major steps in regulating our industry. These regulations have only been at work for less than three months. Shouldn't we wait and see what affect these changes have before we regulate a business out of existence?

Furthermore, an Isotope study was funded to identify nitrogen sources in our waterways. Would it not be appropriate to see what results this study yields before condemning the swine industry to a slow death?

Let's look at this bill as an opportunity to focus on the real issue of water quality and bring everyone to the table to address the issue - not just the pork industry. The bottom line is everyone contributes to the water quality problems in this state

- The homeowner who applies fertilizer to his lawn**
- The hardware store that sells 10-10-10 to de-ice sidewalks**
- The golf courses that heavily fertilize greens and fairways**
- Agriculture**
- Industrial discharges**
- City sewage discharges.**

We need to bring all those together that have an impact on water quality and look at the total picture and not continue to single out the pork industry. We are here to be a part of the solution. Our livestock and our families depend on clean water.

VISITOR REGISTRATION SHEET

ENVIRONMENT

February 24, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
R. Paul Williams	NCHSTA
Marion Powell	Lee's NC
Dan Wilkes	Hog Slat - Newton Grove, NC
Kim J. Stryman	Hog Slat - Newton Grove, NC
Diana Blackman	Hog Slat - Newton Grove, NC
Don Hines	Hog Slat Inc PO Box 300 Newton Grove, NC 28866
Martha Westbrook	Hog Slat Inc - Newton Grove, NC
Jimmy Hightower	Cahane Farms, Clinton, NC
Law J. Darr	Cahane Farms, Clinton, NC
M. AWE	LAWN.
Deborah Johnson	Prestage Farms
Greg Stephens	Prestage Farms Clinton NC
Hubert J. J. J. J.	Cahane Farms Clinton NC
John Darr	Prestage Farms Clinton NC
Bane Mitchell	6450 Point Cashell Rd Atkinson NC
Jim J. J. J.	NAME
Link Small	NC DEH, DEHNR
Margaret Quinn	Quinn Farm
Bennie Watson	N.C. F.C.
Rick Rouse	Hog Slat
C.V. Downing	C.V. Downing & Sons (Prestage)
Aileen Jernigan	
Tim Grady	Hog Slat
Kimberly Jernigan	Hog Slat - Newton Grove, NC
Ronnie C. Mathis	Triple M Inc. - Clinton, NC
Rhonda Jessup	Carroll's Foods, Inc.
Jerry Graham	Prestage FARM Council NC
Melissa N. Miles	Hog Slat - Newton Grove, NC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Wickie Lucas	CONTRACT GARDNER FARMER
Scott Carroll	Contract Sow Farm Coharie Dunn, NC
Veronica Robinson	Hog Slat Inc, Newton Grove NC
Billy Henning	Hog Slat Inc, Newton Grove, N.C.
Li Ann Coe	Hog Slat Inc PO Box 300 Newton Grove NC 28366
Stan Hutchins	Hog Slat Inc, Newton Grove, NC
George Schwartz	Hog Slat Inc, Newton Grove, N.C.
Billy R Daugherty	Pork Farmer 3 D FARMS
Jay Custer	Hog Slat Inc, Newton Grove, N.C.
Garry Harrell	Contract grower TDM
Robert Sen	Contract grower Prestige
Jack Archer	TDM FARMS
Steve Walbe	TDM Grower
Danny Champion	Hog Slat Inc, Newton Grove NC.
Cornell Vann	Hog Slat Inc, Newton Grove NC.
Jimmy Bros	Prestige Farms Clinton, N.C.
Kenneth Bradshaw	Prestige Farms Clinton N.C.
Charley Lynn	Murphy Family Farms Rose Hill, NC
Mike Hall	Murphy Family Farms Rose Hill, N.C.
Donna Willis	Murphy Family Farms Rose Hill, N.C.
Edith Herring	Murphy Family Farms Rose Hill N.C.
Penelope Boykin	Murphy Family Farms Rose Hill, NC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Robert B...	Boone + Assoc / Park Council
Jonathan Breen	Citizen
James Bellamy	N.C. Farm Bureau
Virginia R. Bellamy	N.C. Farm Bureau
John Cyrus	N.C. State Grange
Louise Folen	
Lance Dundas	
Kelly Lambert	Purvis Farms
Carolyn Lambert	Citizen from Moore Co.
Melinda Moore	Purvis Farms
Ralph Wolford	Purvis Farms
Greg Brower	Purvis Farms
Randy Baughn	Purvis Farms
Lee Underwood	Purvis Farms
Jessica Miles	N.C. Public Water Supply Section
Tarlo Nelson	MFC
Curt Watkin	Hog Slat Inc.
Anne Watkins	Hog Slat Inc.
Craig Fisher	Contract Grower
Ray L. Lowe	Associate II
Diane Cherry	N.C. DEHNR
Fredrick Short	Whisper Farms, Clinton NC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Michael J. Rose

Contract grower - Murphy Farms -

Sonya Johnson

ENVIRONMENTAL RESOURCES - BROWNS OF CAROLINA

Nelson Waters

Coharie Farms

Joe Youvo

COHARIE FARMS

Wayne Ammons

Coharie Farms

Charles Brinkley

E & B Farms

Robert Hampton

3525 McCuller Rd Clinton NC 28228

Robert Harrell

Coharie Farms, Clinton, NC

William T. Matthias

Millbrook Farms Inc. Clinton N.C.

Charles Lee

Murphy Family Farm

Lynn Gishard

Hoke Livestock Farms Raeford

Howard Nelson

Oswell's Foods, Inc. Warsaw, N.C.

Deborah M. Murrell

MURPHY FAMILY FARMS, ROSE HILL

Tami Donnelly

Murphy Family Farms, Rose Hill

Allison Allen

Murphy Family Farms, Rose Hill

AGENDA

HOUSE COMMITTEE ON ENVIRONMENT

Wednesday, March 5, 1997

**12:00 PM
Room 643 LOB**

OPENING REMARKS:

**Rep. Rick Eddins
Co-Chairman**

BILLS TO BE CONSIDERED:

**HB 16 No Animal Waste Systems in Floodplains
Rep. Bobby Hall**

**HB 85 Environmentally Sound Policy Act
Rep. Richard Morgan**

QUESTIONS FROM THE COMMITTEE

ANNOUNCEMENTS:

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
MARCH 5, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on March 5, 1997, at 12:00 Noon. Representative Rick Eddins presided, and the following members were present: Representatives Eddins, Hill, and Watson, Co-Chairs; Representatives Baddour, Cole, Culp, Gulley, Hackney, Hall, Hightower, Kinney, McComas, McCombs, Mitchell, Mosley, Neely, Preston, Warner, Warwick, Weatherly, and Yongue.

Chairman Eddins called the meeting to order at 12:05 p.m. and welcomed the two pages, Travis Moore and Jordan Got of Davidson County.

There were eighty-four visitors.

The first order of business was **HOUSE BILL 16 - AN ACT TO PROHIBIT THE CONSTRUCTION OF CERTAIN COMPONENTS OF LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS WITHIN THE ONE HUNDRED-YEAR FLOODPLAIN**. There was a Committee Substitute to HB 16 (Committee Substitute 8056) and a title change to: **AN ACT TO PROHIBIT THE CONSTRUCTION OF CERTAIN COMPONENTS OF LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS WITHIN THE ONE HUNDRED-YEAR FLOODPLAIN**. Representative Hall explained the Committee Substitute, which was agreed upon by the ad hoc sub-committee, that would keep liquid animal waste systems that could not be permitted out of the floodplain. Representative Gamble asked for an explanation of the difference between the original bill and the substitute bill. Representative Hall explained the major differences.

Representative Mitchell moved for a favorable report on the Committee Substitute bill (see attachment). The motion was voted upon and carried.

The next order of business was **HOUSE BILL 85 - AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT THE HEALTH AND THE ENVIRONMENT**.

Chairman Eddins called on Representative Morgan to explain the bill. He indicated that since the last meeting staff had worked on a committee substitute which clarifies language in the bill. Section 8 clarifies the language so that it is very clear that existing operations are not affected. Staff Counsel Sherrie Evans-Stanton explained the changes as follows: On Page 8 of the bill starting on line 7, Section 8 was rewritten so that the bill, when it becomes law, applies to the construction or enlargement of a swine house or lagoon where the waste is applied. It is similar to the Swine Siting Act where there were approved animal waste management plans; where a farmer may not have reached the capacity set forth in the plan so those operations are grandfathered in. Basically, if the farmer is increasing the swine population, as it was projected on their registration, it is grandfathered in. The second part, subsection (b), provides that those provisions with respect to intensive animal feeding operations that are defined in the bill as 800,000 pounds or more of steady state live weight would apply to any of these operations for which construction began on or after January 1st regardless of when the site evaluation was completed.


After lengthy discussion of the bill by committee members, Dr. Ken Rudow, head toxicologist from DEHNR, was asked to comment on the odor problems. Dr. Rudow is one of two toxicologist for the North Carolina Division of Epidemiology, the Occupational and Environmental Epidemiology Section, which is responsible for doing human health assessment for North Carolina in areas that pose a risk to public health as far as air and ground water is concerned.

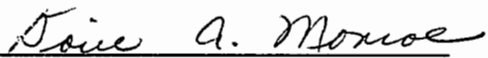
Dr. Rudow stated that there have been some studies done for a number of years on trying to identify the specific chemicals that are found in odors from livestock waste, and referred to a paper from O'Neill and Phillips done in 1992, and basically what they found was approximately 168 different specific chemicals from swine waste, poultry, cattle, and sheep. What they have been doing at Duke University is an extension of that work in reviewing the literature to determine whether or not odors can pose any public health risk and at this time we are noting that there are a number of chemicals that are emanating and identifiable from odors coming from hog farms. It is premature at this time to say whether or not it does or does not, and in toxicology we like to say the dose makes the poison. Dr. Rudow gave a report on the number of chemicals being studied, but these figures could not be used to support the bill at this time. More study is being done. The problem is serious but we do not really have many standards or baselines to know where we are at this time. Dr. Rudow stated that at this time we have not identified specific populations of people that have problems that have been measured and tied to something like odor. Until we do we really cannot say more than that these chemicals are there.

It was the concensus that the committee couldn't use the research at the present time to make a decision.

Chairman Eddins announced that normally the Committee stops at 10 minutes before the hour, but since there is so much importance to the bill and people have traveled a long way, the meeting will continue for a short while.

After more discussion by committee members, Chairman Eddins adjourned the meeting at 1:20 p. m.


Representative Rick Eddins, Chairman


Dorie A. Monroe, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 16
Committee Substitute Favorable 3/5/97

Short Title: No Liquid Animal Waste/Floodplains.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE CONSTRUCTION OF CERTAIN COMPONENTS
3 OF LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS WITHIN THE ONE
4 HUNDRED-YEAR FLOODPLAIN.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143-215.10C(b) reads as rewritten:

7 "(b) An animal waste management system shall be designed, constructed, and
8 operated so that the animal operation served by the animal waste management system
9 does not cause pollution in the waters of the State except as may result because of
10 rainfall from a storm event more severe than the 25-year, 24-hour storm. No
11 component of a liquid animal waste management system for which a permit is
12 required under this section, other than a land application site, shall be constructed on
13 land that is located within the 100-year floodplain."

14 Section 2. This act is effective when it becomes law and applies to any
15 new liquid animal waste management system where construction commences on or
16 after the date this act becomes law and to any expansion of an existing system where
17 construction commences on or after the date this act becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 16 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE CONSTRUCTION OF
(1) NEW ANIMAL WASTE MANAGEMENT SYSTEMS THAT MUST BE PERMITTED
AND (2) EXPANSIONS OF SUCH EXISTING SYSTEMS IN A LOCATION THAT IS
SUBJECT TO FLOODING BY A ONE-HUNDRED-YEAR FLOOD.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (# _____), ☒ which changes the title,
unfavorable as to original bill (Committee Substitute Bill # _____), (and recommendation
that the committee substitute bill # _____) be re-referred to the Committee on _____.)

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

House Committee on Environment
3-5-97

Announce before Bill consideration:

1.HB 16 has been received from the subcommittee and will be heard today.

Because of this and due to time restraints, the committee will not have formal presentations on HB 85 as originally planned. Those that were scheduled to speak concerning HB 85 are requested to give their written presentations, if available, to the committee clerk. They will then be given to all committee members.

Please recognize as a group at appropriate time.

Present to show support for HB 85

Deep River Coalition
Moore County League of Women Voters

Thank you,

Ebern Watson for Rep. Watson

file
3-5-97

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 85
Proposed Committee Substitute H85-PCS2174

Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
3 AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
4 THE ENVIRONMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. This act shall be known and may be cited as the
7 "Environmentally Sound Policy Act of 1997 (ESP)".

8 Section 2. Article 67 of Chapter 106 of the General Statutes reads as
9 rewritten:

10 "ARTICLE 67.

11 "Swine Farms.

12 "§ 106-800. Title.

13 This Article shall be known as the 'Swine Farm Siting Act'.

14 "§ 106-801. Purpose.

15 The General Assembly finds that certain limitations on the siting of swine houses
16 and lagoons for swine farms can assist in the development of pork production, which
17 contributes to the economic development of the State, by lessening the interference
18 with the use and enjoyment of adjoining property.

19 "§ 106-802. Definitions.

20 As used in this Article, unless the context clearly requires otherwise:

21 (1a) 'Intensive animal feeding operation' means a new or enlarged
22 swine farm with a design capacity of more than 800,000 pounds
23 steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, area or facility used for outdoor recreation, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight;

(6) ~~at~~ At least 500 feet from any property ~~boundary~~. boundary or public or private drinking water supply.

The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least ~~50~~ 100 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a1) A new or expanding swine house or a lagoon that is a component of a swine farm shall not be located in a 100-year floodplain unless protected from flooding as provided for in regulations of the Federal Emergency Management Agency and the

1 National Flood Insurance Program on Floodplain Management. Such construction or
2 expansion must be certified by the Department of Environment, Health, and Natural
3 Resources.

4 (b) A swine house or a lagoon that is a component of a swine farm may be
5 located closer to a residence, school, hospital, church, or a property boundary than is
6 allowed under subsection (a) of this section if written permission is given by the
7 owner of the property and recorded with the Register of Deeds.

8 **"§ 106-804. Enforcement.**

9 (a) Any person ~~owning~~ who owns property directly affected by the siting
10 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a
11 civil action against a swine farmer who has violated G.S. 106-803 and may seek any
12 one or more of the following:

- 13 (1) Injunctive relief.
- 14 (2) An order enforcing the siting requirements under G.S. 106-803.
- 15 (3) Damages caused by the violation.

16 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
17 the person ~~owns~~ owns a facility or property located less than the siting requirements
18 specified under G.S. 106-803.

- 19 ~~(1) An occupied residence located less than 1,500 feet from a swine~~
20 ~~house or lagoon in violation of G.S. 106-803.~~
- 21 ~~(2) A school, hospital, or church located less than 2,500 feet from a~~
22 ~~swine house or lagoon in violation of G.S. 106-803.~~
- 23 ~~(3) Property whose boundary is located less than 500 feet from a swine~~
24 ~~house or lagoon in violation of G.S. 106-803.~~
- 25 ~~(4) Property on which an occupied residence is located and whose~~
26 ~~boundary is less than 50 feet from the outer perimeter of the land~~
27 ~~area onto which waste is applied from a lagoon that is a~~
28 ~~component of a swine farm in violation of G.S. 106-803.~~
- 29 ~~(5) Property that abuts a perennial stream or river, or on which a~~
30 ~~perennial stream or river is located, and that property and that~~
31 ~~perennial stream or river are less than 50 feet from the outer~~
32 ~~perimeter of the land area onto which waste is applied from a~~
33 ~~lagoon that is a component of a swine farm in violation of G.S.~~
34 ~~106-803.~~

35 (c) If the court determines it is appropriate, the court may award court costs,
36 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
37 temporary restraining order or preliminary injunction is sought, the court may require
38 the filing of a bond or equivalent security. The court shall determine the amount of
39 the bond or security.

40 (d) Nothing in this section shall restrict any other right that any person may have
41 under any statute or common law to seek injunctive or other relief.

42 **"§ 106-805. Written notice of swine farms.**

43 Any person who intends to construct a swine farm whose animal waste
44 management system is subject to a permit under Part 1A of Article 21 of Chapter 143

1 of the General Statutes shall, after completing a site evaluation and before the farm
2 site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all
3 property owners who own property located across a public road, street, or highway
4 from the swine ~~farm~~ farm, the county or counties in which the farm site is located,
5 and the local health departments of that person's intent to construct the swine farm.
6 This notice shall be by certified mail sent to the address on record at the property tax
7 office in the county in which the land is located. The written notice shall include all
8 of the following:

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

22 Prior to issuing a permit for an intensive animal feeding operation, the Department
23 shall conduct a public hearing at the applicant's expense if the Department receives
24 at least 20 written requests for the public hearing.

25 **"§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.**

26 (a) No intensive animal feeding operation may cause, allow, or permit emission
27 into the ambient air of an outdoor recreational area any substance or combination of
28 substances in a quantity that is determined to be an undesirable level of odor unless
29 preventative measures are taken to abate or control the emission to the satisfaction of
30 the Department of Environment, Health, and Natural Resources. When the
31 Department receives an odor complaint, the Department shall determine through
32 field surveillance or specific complaints, if the odor is at an undesirable level, and
33 shall require remediation of the undesirable level of odor.

34 (b) Nothing in this section shall prohibit an individual or group of persons from
35 bringing a complaint against an intensive animal feeding operation as defined under
36 G.S. 106-802."

37 Section 3. G.S. 143-215(e) is repealed.

38 Section 4. G.S. 153A-340 reads as rewritten:

39 **"§ 153A-340. Grant of power.**

40 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
41 county may regulate and restrict the height, number of stories and size of buildings
42 and other structures, the percentage of lots that may be occupied, the size of yards,
43 courts and other open spaces, the density of population, and the location and use of
44 buildings, structures, and land for trade, industry, residence, or other purposes, and to

1 provide density credits or severable development rights for dedicated rights-of-way
2 pursuant to G.S. 136-66.10 or G.S. 136-66.11.

3 (b) These regulations may not affect bona fide farms, but any use of farm property
4 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include
5 the production and activities relating or incidental to the production of crops, fruits,
6 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other
7 forms of agricultural products having a domestic or foreign market. These
8 regulations may apply to intensive animal feeding operations, as defined in G.S.
9 106-802. An intensive animal feeding operation is not a farm for the purpose of this
10 Part.

11 (c) The regulations may provide that a board of adjustment may determine and
12 vary their application in harmony with their general purpose and intent and in
13 accordance with general or specific rules therein contained. The regulations may also
14 provide that the board of adjustment or the board of commissioners may issue special
15 use permits or conditional use permits in the classes of cases or situations and in
16 accordance with the principles, conditions, safeguards, and procedures specified
17 therein and may impose reasonable and appropriate conditions and safeguards upon
18 these permits. Where appropriate, the conditions may include requirements that
19 street and utility rights-of-way be dedicated to the public and that recreational space
20 be provided. When issuing or denying special use permits or conditional use permits,
21 the board of commissioners shall follow the procedures for boards of adjustment
22 except that no vote greater than a majority vote shall be required for the board of
23 commissioners to issue such permits, and every such decision of the board of
24 commissioners shall be subject to review by the superior court by proceedings in the
25 nature of certiorari.

26 (d) A county may regulate the development over estuarine waters and over lands
27 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
28 bounds of that county.

29 (e) For the purpose of this section, the term 'structures' shall include floating
30 homes.

31 (f) Any petition for review by the superior court shall be filed with the clerk of
32 superior court within 30 days after the decision of the board of commissioners is filed
33 in such office as the ordinance specifies, or after a written copy thereof is delivered to
34 every aggrieved party who has filed a written request for such copy with the clerk at
35 the time of the hearing of the case, whichever is later. The decision of the board of
36 commissioners may be delivered to the aggrieved party either by personal service or
37 by registered mail or certified mail return receipt requested."

38 Section 5. A zoning regulation applicable to intensive animal feeding
39 operations adopted by a board of county commissioners prior to the date Section 4 of
40 this act becomes effective is hereby retroactively validated.

41 Section 6. There is established a one-year moratorium for any new or
42 expanding swine farm or lagoon for which a permit is required under Part 1A of
43 Chapter 143 of the General Statutes for any area in the State that: (i) has a county
44 population of less than 75,000 according to the most recent decennial federal census;

1 (ii) has over one hundred fifty million dollars (\$150,000,000) on expenditures for
2 travel and tourism based on the most recent figures of the Department of Commerce;
3 and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January
4 1997, until 31 December 1997, no permit for a new or expanding swine farm or
5 lagoon shall be issued by the Environmental Management Commission.

6 Section 7. There is established a one-year moratorium on the
7 construction or expansion of swine farms and lagoons. The Environmental
8 Management Commission shall not issue a permit for an animal waste management
9 system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon,
10 as defined in G.S. 106-802, for a one-year period beginning on the date this act
11 becomes effective except as provided by this section. This section prohibits the
12 construction or expansion of an animal waste management system for a swine farm
13 for one year from the date this act becomes effective regardless of the date on which
14 a site evaluation for the swine farm is completed and regardless of whether the
15 animal waste management system is permitted under Part 1A of Article 21 of Chapter
16 143 of the General Statutes or deemed permitted under 15A North Carolina
17 Administrative Code 2H.0217 but does not prohibit:

- 18 (1) Construction to repair a component of an existing swine farm or
19 lagoon.
- 20 (2) Construction to replace a component of an existing swine farm or
21 lagoon if the replacement does not result in an increase in swine
22 population, except as provided in subdivision (4) of this section.
- 23 (3) Construction or expansion, if actual construction, including
24 purchase or delivery of material or equipment, began prior to 1
25 March 1997.
- 26 (4) Construction or expansion on or after the date this act becomes
27 law for the purpose of increasing the swine population to the
28 projected population or to the population that the animal waste
29 management system serving that swine farm is designed to
30 accommodate, as set forth in a registration of the swine operation
31 filed with the Department of Environment, Health, and Natural
32 Resources before the date this act becomes law.
- 33 (5) Construction or expansion on or after the date this act becomes
34 law for the purpose of complying with applicable animal waste
35 management rules and not for the purpose of increasing the swine
36 population.

37 Section 8. (a) Except as provided in subsection (b) of this section,
38 Section 2 of this act is effective when it becomes law and applies to the construction
39 or enlargement, on or after the effective date of this act, of swine houses, lagoons,
40 and land areas onto which waste is applied from a lagoon that are components of a
41 swine farm. Section 2 of this act does not apply under each of the following
42 circumstances when the construction or enlargement occurs on or after the effective
43 date of this act:

- 1 (1) For the purpose of increasing the swine population to that set forth
2 as the projected population in a registration of the swine operation
3 filed with the Department of Environment, Health, and Natural
4 Resources prior to the effective date of this act.
- 5 (2) For the purpose of increasing the swine population to the
6 population that the animal waste management system is designed
7 to accommodate as that system is set forth in a registration of the
8 swine operation filed with the Department of Environment, Health,
9 and Natural Resources, or an animal waste management plan
10 approved prior to the effective date of this act.
- 11 (3) For the purpose of complying with applicable animal waste
12 management rules and not for the purpose of increasing the swine
13 population.
- 14 (b) Section 1 and Sections 3 through 8 of this act are effective when this
15 act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of
16 this act applicable to intensive animal feeding operations as defined in G.S. 106-802,
17 as amended by Section 2 of this act, apply to any intensive animal feeding operation
18 for which construction began on or after 1 January 1997, regardless of the date on
19 which the site evaluation was completed.

VISITOR REGISTRATION SHEET

Environment
Transportation 3-5-97 11:00 a.m.

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. *G.V. Downsling*

CV Downsling & Sons Farm

✓ 2. *DSR*

SAB

✓ 3. *David Cox*

Hog Slat Inc

4. *Lo Ann Cox*

Hog Slat Inc

5. *Jeffrey Faulkner*

PMV

6. *James Hancock*

D.M.V.

7. *Don DeWane*

DOT

8. *ROBERT GLASER*

NC Auto Dealers

9. *Kim Mosley*

10. *Shannon Bullock*

GHSP

X 11. *Billy R Daughtry*

3D Farms

X 22. *JACK ARCHER*

TDM FARMS

23. *Ricky L. Forkum*

TDM Farms

24. *Lisli Stotts*

Carroll's Food

25. *R.S. Jones*

Carroll's Foods

26. *Isaac B Singletary*

Singletary Finishing - Beedy Branch Farms

27. *David P. Ferrell*

Hofa, McNamee, Caldwell, McElroy & Catter, P.A.

28. *Wesley Dick*

Speaker, Sr. Tarheel Legislature

29. *Allen Plaur*

Pork Producer Sampson Co.

30. *Wanda Coulter*

Pork Producer Robinson Co.

31. *Rhonda E Jessup*

Pork Supplier Sampson Co.

32. HOWARD HOBSON
33. Don Butler
34. John Adams
35. Ray Brett
36. Judy Hatcher
37. Mrs. Steffen
38. Delores Bryan
39. Reg Lester
40. Lois Creech
41. ~~Angela~~
42. Bobby & Duke
43. Steve Bowman
44. Randy Gial
45. DANNIE REDMOND
46. ~~Seawall~~
47. Judy Hatcher
48. Robert Hatcher
49. Margaret Holden
50. Shirley Creech
51. C. R. Creech
52. ~~Ed Thomas~~
53. James Daniels
54. Larry Holden
55. Harry Hubert
56. Marsh Smith
57. Jenny Wheeler
58. Richard Harrison
59. DAN A. GRAHAM BR.
60. SEANETTE WIDEMAN
61. Kerl Walker
62. JAMES L. RAYNOR
63. Alfred W. Thigpen
64. ~~Ing Williams~~
65. Milton Williams

CARROLL'S FOODS, INC.
 Corrolli Foods
 Self
 T & B Farms
 T & B Farms
 S & S Farms
 Amer. Longhorn QMC
 Ind. Garage Owners of NC
 DMV / Veh Reg
 DMV / Veh Reg
 NC Towing Assoc
 NC Towing Assoc.
 Autom. Parts Assoc.
 DAQ
 CBAC
 Deep R. Coal. (against factories)
 " " " "
 Deep River Coalition
 Deep River Coalition
 Deep River Coalition
 /
 Deep River coalition
 Deep River Coalition
 Deep River Coalition
 ARSI
 Deep River Coalition, Inc.
 Deep River Coalition, Inc.
 ARSI
 P.O. Box 602, Mt. Olive, N.C. 28365
 ARSI - BEULAUVILLE N.C. 28513
 ARSI Beulauville NC 28518
 " " " "
 " " " "

NAME

FIRM OR AGENCY

1.)

1.) ~~Al Hays~~
Ralph Hafford
Jenny Piers
Roy Christen
Nest Fowler
Brad Burns
Carnelia Winters
Sheri Anderson
Kelly Lambert
Dwight Dick

GICSSA
Purvis Farms
Purvis Farm
Purvis Farms
Purvis Farms

Purvis Farms
Purvis Farms
Purvis Farms
Purvis Farms

PURVIS FARMS

VISITOR REGISTRATION SHEET

ENVIRONMENT

March 5, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Hank Darden	Brown's of Carolina
Craig Craft	Brown's of Carolina
Marie Heath	Brown's of Carolina
Roy Heath	
Bob Livingston	The Turnbull company LLC, White Oak
Henry EVANS	SELF 5259 Fairview Wilson
Carlton BASS	SELF 6057 mangrove Wilson
Ken Eudy	Capital Strategies
Joe Young	COHARIE FARMS
Kelly Povarsay	Coharie Farms
William T. Matthi	Millbrook Farm Inc.
JERRY SCHILL	NC Fisheries ASSOCIATION
Walter Cherry	NC Pork Council
Whitley Stephenson	N.C. Pork Council
Janet Stephenson	Spring Meadows Farm
David Meredith	N.C. State Game
Margie Dancy	N.C. State Game
Jan Harris	206 N. Shore, Sunset Beach N.C. (BEAT)
Lisa Woodfolk	706 N. Shore Dr. Sunset Beach, N.C. 28468
Milton Lewis	ARSI 2665 Hwy 117 NORTH BERGAW 2844
Mary Jo Loftin	MT Olive NC
TOM MATLISON	New River Foundation, P.O. Box 241, Jax 2541
Robert Pickett	ARSI - Statesville NC
GALE LEWIS	Alliance for A Responsible Swine Industry
Marie Ross	Alliance for A Responsible Swine Industry
Bonnie Fulcher Wood	Alliance for A Responsible Swine Industry
Barbara LORIE	Chatham Citizens for Responsible Growth
Karen Priest	Baden Environment, ARSI, CCNC, Wildlife Action

1219

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

N.C.

Miriam M. Clark

Citizens for Clean Industry P.O. Box 357 Elwyn, Pa.

Ashie Daur

ARSD P.O. Box 160 White Oak, N.C.

ROBERT QUINN

DANESWICK CTY P.O. Box 10177, SOUTHPORT, NC 28461

EMMEL COGGINS

DUPLIN P.O. BOX 603 KENANSVILLE NC 28349

MYRNA PERTY

NORTHAMPTON RT-1 box 236 ZICH SQUARE N.C. 27869

SHERI ANDERSON

PURVIS FARMS

ROBBINS NC

Cornelia Winters

Purvis Farms

Robbins NC

Brad Purvis

Purvis Farms

Robbins NC

Trent Lowder

Purvis Farms

Robbins NC

Ray Chriscos

Swine Farm

SEAGROVE NC

Jerry Purvis

Purvis Farms

High Falls, NC

RALPH WOFFORD

Purvis Farms

Robbins, NC

Becky Lancaster

DUPLIN CO. 627 NC 403 MT. OLIVE NC 28365

Danny Lancaster

DUPLIN CO 627 NC 403 MT. OLIVE NC 28365

John Carr

Duplin Co 230 HENRY CARR LN MT OLIVE NC 28365

MARK VIN TAYLOR

Duplin Co 1984 James Chapman Road Mt Olive NC 28365

HENRY CARR

DUPLIN CO 214 HENRY CARR LN MT. OLIVE NC

James C. Hinson

Duplin Co 439 Washboard Avenue NC 28365

Shana G. Hinson

Duplin Co 439 Washboard Avenue NC 28365

Herman E. Lyon

Northampton Co. N-CAP P.O. Box 28 Henrico, N.C. 27841

CLIFFORD S. LYON

Northampton Co. N-CAP P.O. Box 28-Henrico 27842

Kelly Lambert

Purvis Farms

Robbins, NC

Liz Lih

PURVIS FARMS

ABERDEEN, NC

Michelle Nowlin

Southern Environmental
Law Center

Chapel Hill

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Catherine Colwell	League of Women Voters	270 Fairway, C. Pinchurst
Virginia Leiss	League of Women Voters	Moore Cty - 140 Pine Cone Place 30. Pines, NC 28387
Melba Ann		702 Rainbow Dr. Carboro NC 27510
John + Thomasina Williams		Duplin Cty. Marsaw, NC 28398
Bob + Pauline Joss	American Academy of Community League of Women Voters NC + women	Jacksonville, NC 28540
Greg Parker	Wildlife Action INC	Whiteville, N.C. 28472
Royce Edwards	CAPE FEAR FARM CREDIT, ACA	Clinton, N.C. 28328
WILLIAM R. HERRING	1 st Cit. BK Ambassador	Clinton NC. 28328
Francis C. Lee	Farmer - ARST	Benson NC 27504
Laura H. Lee	Housewife	Benson, NC 27504
Ronald Peterson	Farmer	Clinton N.C.
Ken Peterson	Farmer	Clinton N.C.
Melvin Lewis	Retired	Emerald Isle N.C.
Andy McALL	DEHNR	FAYETTEVILLE, NC 28301
BILL DOT REIST	RETIRED	8520 Woodcliff Dr Emerald Isle NC 28594
Joyce Mize	NC Coastal Federation	Ocean, NC
Bobby Adams	mechanic	Chocowinity, N.C.
Donald Purser	Auto Sales	Vanceboro N.C.
Dorenda Purser	Decorator	Chocowinity, NC.
Charles Purser	Auto Sales	Chocowinity, NC 27817
Wanda Buck	farmer (crop) NO Hogs!	Vanceboro, N.C. 28586

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Frank P Meadows (Hyma Burg)	2310 LAKEWOOD FALLS BLVD	27252
William A. Heist (Hyma Burg)	8520 Woodcliff Dr, Emerald Isle, NC	28594
Derb Carter	Southern Eumonia model hwy Center	Chapel Hill NC
John Birge	Murphy Family Farms, Inc	341 Double Eagle Rd Burgaw NC
Jane Mitchell	Hog Farmer	6450 Point Lenoir Rd, Atkinson, NC
Greg Stephens	Hog Farmer	302 Grove St Clinton NC
Jay Austin	Hog Slat	103 Clinton St. New Brown
Gaine Davis	-	P.O. B. 86 Harris - NC - 28524
Twila Nelson	-	MFC
Curtis Burch	Hog Farmer	603 Lafayette St Clinton 28328
Jay Warner	Hog Farmer	1372 Country Club Rd Sateburg 28385

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
March 12, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on March 12, 1997, at 12:00 Noon. Representative Rick Eddins presided at the meeting and introduced the pages, Courtney Jones from Alamance County and Beth Jones from Wake County. The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. Nelson Cole, Rep. Jim Gulley, Rep. Joe Hackney, Rep. Foyle Hightower, Rep. Ted Kinney, Rep. Danny McComas, Rep. Frank Mitchell, Rep. Chuck Neely, , Rep. Jean Preston, Rep. Alex Warner, Rep. Nurham Warwick, Rep John Weatherly and Rep. Douglas Yongue.

There were 103 visitors present.

Representative Eddins announced that immediately after session this afternoon, there will be a continuation of HB 85.

Representative Eddins recognized Jim Graham, Commissioner of Agriculture. Mr. Graham was asked by many people to speak before the Committee and to register his opposition to HB 85 (Attachment I). He urged the Committee to refrain from imposing any additional restrictions until we see the results of Senate Bill 1217, which was introduced during the last session.

Rep. Morgan requested that one more person give testimony before the Committee – Mr. Pat Corso, President and CEO of the Pinehurst Golf and Country Club and Resort. He also serves as Chairman of the Travel and Tourism Coalition. Permission was given for Mr. Corso to speak (Attachment II).

Representatives Mitchell, Mosley, and Warwick asked questions of Mr. Corso, and he responded.

Representative Watson offered an amendment to establish a one-year moratorium on the construction or expansion of any new swine farms and lagoons (Attachment III).

Representative Morgan spoke in favor of the amendment.

Rep. Brown spoke on his experience with the Blue Ribbon Study Commission. A paper issued by DEHNR (Attachment IV) specifies the amount of nitrogen released per day into the atmosphere for the different municipalities in North Carolina.

Representative Brown does not support the amendment.

Representative Mitchell made a motion that a sub-committee be set up to hear the bill.

Rep. Eddins stated that an amendment has been proposed, and asked Rep. Morgan to respond.

Rep. Morgan stated that the bill in no way impacts the small family farmers. It doesn't impact existing operations and it is clarified in the Committee Substitute proposed at the last meeting. One of the ideas was to recommend a sub-committee, and Rep. Morgan opposed this idea.

Representative Eddins commented on the sub-committee, and indicated that a lot of members want to hear all of the debate since there is no standing sub-committee. In this way the bill would be in front of everyone.

Representative Gardner asked if the amendment only impacted swine farms--not dairy farms, etc.--or did it have other ramifications that aren't obvious in reading it. Counsel advised that the bill and the amendment only applied to swine.

Representative Watson explained the amendment for swine farms. In her district there are 640 swine operations; in neighboring Sampson County there are 546. Bladen has 169, and no other counties have the excess of swine farms. Other counties do not have the odor and nutrient problems; therefore, the amendment is addressed with swine.

Representative Neely asked a series of questions of the amendment sponsor. Rep. Watson clarified the amendments.

Counsel Givens advised that it is a moratorium on new or expanded swine farms and lagoons. It is not restricted by the provisions that relate to size. Those restrictions in Section 8 refer to the amendments to the Swine Farm Siting Act. He also advised that there was a slight disconnect between intensive animal feeding operations as it is set out on page 8, line 24 and Section 7, either as it is in the bill now or as it would be with this amendment, but insofar as it applies to intensive animal feeding operations, it is probably retroactive to construction initiated after January 1. He advised that an amendment should correct this wording.

Representative Eddins asked staff to clear up the question during lunch break.

Representative Watson explained again that she was not asking for the moratorium to injure anybody but feels we should not expand an industry until we catch up with where

we are and make sure the research and data we have paid for is furnishing the numbers we are supposed to have.

Representative Warwick asked a parliamentary question and asked that the meeting be postponed until more members could attend since there was an Appropriations meeting following this meeting, and people were getting prepared for the President's visit. Representative Eddins denied the request and announced the meeting would convene immediately after session if a quorum were present.

The Committee reconvened immediately after session and the Chair declared a quorum.

Representative Eddins recognized Representative Cindy Watson who offered a new amendment with clarifying language (Attachment V).

Representative Hackney commented that if the moratorium was to mean anything you must take out (d) or portions of (d) and probably take out (c) as well.

Representative Watson called on staff to explain that the intent is not to harm anybody or put them out of business if they had a loan in process now but to stress that they did not want to continue adding animals in the state to the volume in which we have until we can get a handle on it or decide which waste treatment we can go to or where we need to come together with the industry.

Michelle Nowlin, of the Southern Environment Law Center in Chapel Hill explained site evaluations and the fact that most of the facilities coming into the state are actually moving up to the northeast while the ones already here are in the southeastern part of the state. She explained the various charts illustrating the growth

Representative Weatherly asked about the monitoring system used to determine the charts and Ms. Nowlin indicated they were from a series of reports produced by the state (Section 305B reports) assessing the water quality in different river systems. This is a published report that the Department of Health and Natural Resources has produced.

Representative Hackney submitted a perfecting amendment (Attachment VI).

Representative Brown introduced Dr. Mike Williams, Director of the Animal and Poultry Management Center of N. C. State University. Dr. Williams served on the Blue Ribbon Study Commission last year. He gave an overview of his program and explained what his research is targeting (Attachment VII). He answered various questions from the Committee and explained that the Center is focusing on research and development to convert animal waste to a value added product.

The center is also focusing on and have involvement in the nitrogen/isotope study to identify sources of nitrogen from different contributors that may be getting into waters of the state. He presented a very positive evaluation of the research projects underway and stated the Center has very positive preliminary results especially in the area of odor abatement.

Dr. Williams issued an invitation to anyone of the Committee to contact or visit him at the Center to see and learn more about what they are doing. The Center has an Advisory Committee that is represented by research, extension, environmental interest, regulatory and commodity. It is essential to get all of the players to the table. There is a very positive impact by taking this kind of approach.

Dr. Williams answered questions from Representatives Weatherly and Gamble as to how many times the Blue Ribbon Committee met and what was the consensus over the state as how the public attitude was toward animal waste and the whole general picture of environmental concerns. Dr. Williams stated that SB 1217 was a very good bill and represented the consensus of the Commission.

Dr. Gamble asked about the technology and the pure review scientific data that was procured on a trip to Holland, Germany and Denmark; Dr. Williams indicated that it was a very productive trip and the Commission has addressed many of the issues and the economic feasibility as well as the potential shortcomings and technical feasibility of adopting these programs.

Dr. Gamble asked for a thumbnail synopsis and Dr. Williams feels that many of the scientific approaches that have already been demonstrated to be feasible will work on a commercial scale, but we have to determine the cost to set up the systems and what the potential of getting a value added product back are.

Representative Weatherly asked if the recommendations of the Blue Ribbon Study Commission have been put into effect and Dr. Williams stated that the document that went forward from the Commission to the Legislature resulted in SB 1217.

Representative Weatherly asked if the proposed HB 85 would displace or disregard most of what SB 1217 implemented and Dr. Williams indicated there are many aspects of what he has read in the bill and he has not looked at the bill in great detail, but he spent many hours on the receiving end of testimony and going through documents provided to that Commission. He does not agree in total with all of the recommendations that went to the Legislature and were incorporated into SB 1217, but he believes it represents the consensus of the Commission and that it was a good bill. He was speaking 100% from

his own viewpoint and not that of the university. He stated there are some areas that could be improved on but in general it is a very good and fair bill.

Representative Hightower spoke about a video he saw when Representative James was Chairman of the Agriculture Committee and was highly enthusiastic about the method used in Europe to abate the odor problem. Dr. Williams indicated that the method was not economically feasible, but he was not aware of any research through the university that was stopped because of anything seen on the trip to Europe.

Representative Hightower questioned Dr. Williams about the discontinuance of research used in Holland, and Dr. Williams responded that many of the issues had been addressed to address the economic feasibility as well as potential shortcomings and technical feasibility. He advised that he was unaware that the university had discontinued any research due to the trip. Rep. Hightower continued with questions regarding the swine operation in Holland and what is being implemented at NCSU as to any of the methods that were investigated in Holland to make it economically feasible in NC. Dr. Williams responded that many similar operations where they feel it is in the best interest to this state in terms of dollars used to make the tweaks to make the system work for our system of agriculture. Rep. Hightower questioned the length of time before these methods will be used in NC. Dr. Williams responded that he felt that these technologies will be used in the same way that they have used technologies that enabled them to have the production of food products that they have.

Rep. Hightower asked how Holland came up with this method and what did the government do to help implement. Dr. Williams responded that the primary driving force was the ammonia emission and this was subsidized by the Dutch government.

Rep. Yongue questioned how to define economically feasibility and how long it would take. Dr. Williams responded to Rep. Yongue's concerns. Rep. Watson thanked Dr. Williams for the hard work and the time spent on this issue. She questioned his financial support, how much additional money would be necessary to help solve this problem, and which other departments and divisions he works with on this project; he responded.

Rep. Watson made additional comments in support of solving this problem, and what was the delay in implementing the findings found thus far, and Dr. Williams responded that he feels it is due to being able to validate what the technical deliverable and the economic deliverables are. Rep. Watson asked additional questions about financial funding and added comments about the serious problem.

Rep. McComas asked Dr. Williams about moratoriums on lagoons and he responded.

Rep. Neely asked about ground water contamination and odors. Dr. Williams commented about the setbacks and the current standards on lagoons. He explained how to determine sources to help this. Rep. Neely asked how this bill could be changed to make better improvements.

Rep. Cole asked what time frame was necessary to convert swine waste into a value added product. Dr. Williams responded.

Rep. Warwick asked if we needed to give the bill passed last session an opportunity to be applied and working before we add additional regulations.

Rep. Hackney sent forth a Perfecting Amendment. (Attachment VI). Co-counsel George Givens, read the Perfecting Amendment. The amendment takes out the existing subsection (c) on lines 25-27, rewrites "d" and re-letters everything. The Perfecting Amendment was acceptable to Rep. Watson.

Chairman Eddins called for the vote on Rep. Hackney's amendment and the amendment was adopted. Rep. Eddins brought Rep. Watson's amendment forward and called upon Rep. Neely who stated that he found Dr. Williams' testimony very interesting and recognized that he was speaking from his opinion only. He further stated that he would like to hear from those who may not be in agreement with Dr. Williams. Rep. Neely further stated that the issue of zoning appeared to him to be the large issue, and perhaps enforcement of SB 1217 would be good. He further stated that the moratorium had no effect on existing swine operations and would stop the expansion of the industry. He further stated that he had reservations about support for a long-term moratorium – perhaps a short term one adopted by the counties would be the better approach. He further stated that he would consider a committee substitute that would take the legislation in that direction. He concluded that he could not vote for the amendment.

Chairman Eddins recognized Rep. Hightower who expressed reservations about the moratorium, and stated that he felt if the moratorium was adopted why would the bill be necessary. He further stated that perhaps a shorter time period would be best and stated that he was not ready, at this time, to vote on either the bill or the amendment. He agreed with Rep. Neely and liked the idea of a zoning regulation and a shorter moratorium. Rep. Hightower stated that he felt a subcommittee would be in order to help the members understand more clearly, and that he felt the committee was not ready to vote at this point.

Chairman Eddins called on Rep. Hightower who stated that once construction has started, the new zoning authority is of no effect – commissioners have not control, and in that sense the hog industry is a victim of its own exclusion. He expressed his reservations

about shortening the moratorium and stated that he felt the bill was not a very strong bill, and that the hog industry should not be afraid of this bill.

Further extensive discussions continued, particularly with regard to individual county regulations and Rep. Nichols stated that the controls should be with the counties.

Chairman Eddins called on Rep. Weatherly who asked Rep. Morgan if his county (Moore) wanted zoning on this particular issue, and Rep. Morgan stated that in fact his county commissions passed a resolution requesting this and that he had copies of such resolutions. Rep. Weatherly went on to say that counties do not want to face up to this zoning problem. He further stated that you cannot selectively say that we are going to zone to exclude one particular enterprise - it must be county wide, which would determine what could be placed in certain areas by classification.

Rep. Morgan asked staff for clarification, and Counsel Ms. Evans-Stanton stated that counties do not have authority under present statutes to zone or exclude.

Rep. Eddins recognized Co-Chairman Hill who stated that Columbus County has some tough ordinances on hog farms through the local health department. He further stated that the hog farmers and environment are all happy in his area and whether it was legal or not, Columbus County did it. At this point, Rep. Nichols stated that if we are going to get into zoning, then he felt that it should be done by elected officials instead of the local health board.

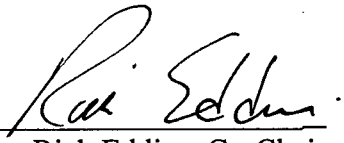
Rep. Eddins asked the Committee if there were further questions on the Watson Amendment and Rep. Neely stated that he would like to hear further discussion on the moratorium and made a motion to temporarily displace the bill. Chairman Eddins stated that he would not accept that motion and that it was up to the amendment sponsor. Rep. Neely interjected that he felt he had the right to make such a motion and Chairman Eddins stated that the Committee needed to vote on it. Chairman Eddins then recognized Rep. Hightower who asked if Rep. Watson would go along with Rep. Neely's request and give the members a chance to look at both of them together. He further stated that he was inclined to vote for the moratorium but not just now, and this was not an intention of delay.

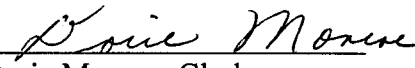
Chairman Eddins recognized Rep. Morgan who stated that he would like to make a few comments regarding the moratorium. He recognized Dr. Williams' reasons for wanting a moratorium, and stated that he had been asked by Rep. Watson if she would have a problem with his bill including a state-wide moratorium. Rep. Morgan stated he would not be stingy and would agree. He further stated that he would hope the moratorium remains, but that Rep. Watson would have to make that decision. Chairman Eddins then

recognized Rep. Watson who stated that the moratorium was necessary and that she wanted it to be voted up or down. She further stated that she wanted to thank the bill sponsor for the opportunity to amend the bill.

Chairman Eddins then called for a voice vote. He stated that the "ayes" have it, and promptly adjourned the meeting.

Respectfully submitted:


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk



State of North Carolina

Department of Agriculture

Raleigh

Memorandum

To: Members of the House Environment Committee

From: James A. Graham
Commissioner of Agriculture

A handwritten signature in cursive script that reads "Jim Graham".

Date: March 10, 1997

Subject: House Bill 85

It should come as no surprise that the Department of Agriculture is opposed to House Bill 85.

For the past year, we have been working with other State agencies, as well as farm organizations and public interest groups, to implement Senate Bill 1217. As a result of Senate Bill 1217, North Carolina now has the most comprehensive regulation of animal waste management systems of any state in the country, but it is still in the process of being implemented.

We realize that the public has yet to see the results of Senate Bill 1217, and we realize that you may still be hearing complaints about odors from hog operations, but House Bill 85 would unfairly impose additional restrictions before Senate Bill 1217 has had time to work. This amounts to changing the rules in the middle of the game, and it is simply not fair.

I urge you to refrain from imposing additional restrictions until we see the results of Senate Bill 1217.

JAG:jm

TRAVEL AND TOURISM COALITION OF NORTH CAROLINA

Remarks of: Patrick A. Corso
Chairman, Travel and Tourism Coalition of North Carolina
Former Chairman, North Carolina Board of Travel and Tourism
President, The Pinehurst Resort

To: The House Environment Committee
North Carolina General Assembly
March 12, 1997

Mr. Chairman, Members of the Committee. I appreciate the opportunity to speak to the Committee today.

I am here today representing the Travel and Tourism Coalition of North Carolina, which is an association of the major organizations involved in our state's travel and tourism industry. Our members include the Travel Council of North Carolina, the NC Hotel & Motel Association, the NC Association of Convention and Visitor Bureaus, the NC Restaurant Association, AAA of the Carolinas, several resorts and attractions like Pinehurst, Biltmore and The Grove Park Inn, and many other groups.

Our Coalition exists to help North Carolina achieve the full economic potential of the travel and tourism industry.

We are interested in House Bill 85 because it deals with issues that are fundamentally important, not only to our industry's future, but to the future of the North Carolina economy.

To explain our interest, let me begin with some brief background:

The North Carolina Department of Commerce classifies travel and tourism as our state's second largest industry with more than \$9 billion in sales last year. It is expected to be our largest industry by the year 2000.

In many of our rural areas, tourism offers our best hope for new jobs and employment.

More than 250,000 North Carolina jobs depend on travel and tourism.

Every county benefits from travel and tourism, ranging from Mecklenburg County with \$1.9 billion in revenues to Camden County with \$1.2 million.

The industry generates more than \$700 million in state and local tax revenue.

The industry generates economic development and jobs in many related fields, including banking, real estate, construction, restaurants, hotels, retirement communities, and many others, and helps to attract relocating companies to North Carolina.

It is very hard to imagine what our state, and our economy, would look like without travel and tourism. It

is very important that we all understand where it comes from.

It is really very simple. Everything I just mentioned, --- all the jobs, all the sales, all the tax revenues, all the related economic development --- it all depends on just one thing: the voluntary decision people make to come to North Carolina.

No has to come here, and we have many competitors --- other states --- that outspend us every year trying to take our customers away.

What makes people want to come here? In very large part, people come because of our reputation for scenic beauty, world-class recreation, fresh air and clean water. That reputation is known around the world. It is an asset of incredible value to every citizen of our state. That asset --- that reputation --- is a major cornerstone of our statewide economy.

But reputations are fragile. If the adverse national publicity we have been receiving continues much longer, we can easily lose North Carolina's reputation for scenic beauty, fresh air and clean water, and people will make voluntary decisions to go elsewhere. The economic price we will pay in lost business and lost jobs is just unimaginable.

And we must understand this: If we lose the reputation that attracts all these visitors, every part of the state will suffer, not just a few counties. Many tourists do not think of North Carolina as separate regions the way we do. Whatever tourists hear about the state, they associate with the entire state. Like it or not, we are all in this together.

That's why our Coalition urges you to consider the proposals in this bill so carefully. Frankly, we are alarmed, as many of our fellow citizens are, as many of you are, about the explosive growth of so-called "intensive livestock operations" in North Carolina and what they mean to our common future.

This bill says many things that need saying. It says that every industry should play by the same rules. It says that every county health department should have the clear power to protect citizens from any industry that creates a potential health hazard. The bill says that county commissioners, if they want to, should be able to devise zoning systems that are fair to everyone in the county, with no special exemptions for anyone. It says that serious violations of public health laws, and environmental laws, deserve serious penalties. We see no reason for exempting any industry from these common sense rules, particularly when the economic stakes for the whole state are so high.

Some of the good people in the swine industry may see these comments as an attack upon their industry. If they do, they are wrong. We are business people and we wish them well in their business. But good business requires mutual respect. No business has the inherent right to harm another business. State government has a clear responsibility here. We must either find a way to allow both of our industries to flourish or suffer tragic economic consequences.

Our business is increasing tourism into North Carolina. We don't claim to be environmental experts. As you review this bill, you may find ways to improve it and that's good. However, we firmly believe the bill is a move in the right direction.

My concern about all this, as some of you know, was greatly heightened when I learned two things --- that huge swine operations were starting just north of Pinehurst, and that the Moore County commissioners and the local health department were basically powerless to do anything about that project or future ones. Our county is enraged about this, because we know how much our economy depends on travel and tourism in

general and Pinehurst in particular, and we know that our current local economy is incompatible with intensive livestock operations. Many people in other counties feel the same way.

From a business point of view, this situation seems ridiculous. How can we encourage investment in any county, whether for a new hotel or a new factory at the Global TransPark or a new industrial site or a new resort or anything else, if we can't give the investor reasonable assurance that the location will remain habitable for the foreseeable future?

This bill suggests several answers, but one of the most obvious is giving counties the right to decide where intensive livestock operations will be located. The counties can do this now for every other kind of industry. There is simply no reason to continue to exempt vast livestock factories from sensible local zoning. If one county wants to encourage intensive livestock operations, it should be able to do so, so long as state environmental regulations are adequate and are enforced. If another county wants to encourage large-scale investment in travel and tourism or manufacturing or Global TransPark facilities --- projects that may not be compatible with vast livestock operations --- that county should be able to do so as well .

Maybe it is time to say something very clearly. Everywhere is not a good place for an intensive livestock operation. Some locations are much better than others. Some locations are disastrous. We should change the law to let the people decide in their own counties for themselves.

I will close by saying that our Coalition knows this problem is much bigger than the travel and tourism industry. It affects many, many other people. I know you all have heard the same stories I have:

about the families that have owned their land for generations, and are now unable to live on it or develop it, because of the odor from vast livestock facilities;

about the residents of entire communities who feel they have been disenfranchised by laws that allow one industry to make their homes almost unlivable, with no recourse;

about the owners of riverfront property and resorts who have suffered from unprecedented pollution;

about the stories on "60 Minutes" and elsewhere that threaten our state's reputation as an attractive vacation destination, and threaten all the jobs that depend on that reputation.

The good news is we still have time to prevent irreparable damage, if we act now to require all industries to be good neighbors. House Bill 85 is a good start.

Thank you for listening, and I will be happy to answer any questions you may have.

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Members of the Travel and Tourism Coalition of North Carolina: AAA Carolina Motor Club • Biltmore Estate • Asheville Area Convention and Visitors Bureau • Cape Fear Coast Convention and Visitors Bureau • Charlotte Convention and Visitors Bureau • Charlotte Motor Speedway • Durham Convention and Visitors Bureau • Greater Raleigh Convention and Visitors Bureau • Greensboro Area Convention and Visitors Bureau • The Grove Park Inn • N.C. Association of Convention and Visitor Bureaus • N.C. Hotel & Motel Association • N.C. Citizens for Business and Industry • N.C. Restaurant Association • Paramount's Carowinds • Pinehurst Southern Pines Aberdeen Area Convention & Visitors Bureau • Pinehurst Resort & Country Club • Sprint Mid-Atlantic • First Carolina Management • Travel Council of North Carolina • Winston-Salem Convention and Visitors Bureau



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Watson

1 moves to amend the bill on page 8, between lines 6 and 7
2 by inserting a new section of the bill to read:

3
4 "Section 7.1 There is established a one-year moratorium
5 on the construction or expansion of swine farms and lagoons. The
6 Environmental Management Commission shall not issue a permit for an
7 animal waste management system, as defined in G.S. 143-215.10B, for
8 a new or expanded swine farm or lagoon, as defined in G.S. 106-802,
9 for a one year period beginning on the date this act becomes
10 effective except as provided by this section. This section
11 prohibits the construction or expansion of an animal waste
12 management system for a swine farm for one year from the date this
13 act becomes effective regardless of the date on which a site
14 evaluation for the swine farm is completed and regardless of whether
15 the animal waste management system is permitted under Part 1A of
16 Article 21 of Chapter 143 of the General Statutes or deemed
17 permitted under 15A North Carolina Administrative Code 2H.0217 but
18 does not prohibit:

- 19 (a) Construction to repair a component of an existing
20 swine farm or lagoon.
21 (b) Construction to replace a component of an existing
22 swine farm or lagoon if the replacement does not
23 result in an increase in swine population, except as
24 provided in subsection (e) of this section.
25 (c) Construction or expansion if the owner or operator has
26 applied for a loan to finance the construction or
27 expansion and that loan application has been approved.
28 (d) Construction or expansion if site grading or actual
29 construction, including delivery of material or
30 equipment, began prior to the date this section
31 becomes law.
32 (e) Construction or expansion on or after the date this
33 act becomes law for the purpose of increasing the



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
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Page 2 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

1 swine population to the projected population or to the
2 population that the animal waste management system
3 serving that swine farm is designed to accommodate, as
4 set forth in a registration of the swine operation
5 filed with the Department of Environment, Health, and
6 Natural Resources before the date this act becomes
7 law.
8 (f) Construction or expansion on or after the date this
9 act becomes law for the purpose of complying with
10 applicable animal waste management rules and not for
11 the purpose of increasing the swine population." and
12
13 on page 8, line 31
14 by rewriting that line to read:
15
16 (b) Section 1 and Sections 3 through 8 of this act are effective
17 when this act becomes law. Section 1, Sections 3 through 7, Section
18 8, and the provisions of".

SIGNED Cynthia B. Watson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT IV

1996 DEHNR Municipal Discharge Data
19 Selected North Carolina Cities
Indexed By "Mg of "N" Per Liter"

Municipality	Total Discharge	Mg. "N" Per Liter Discharged	Pounds of Total "N" Discharged	Tons of 10-10-10 ("N" Equiv.)
Jacksonville	1,842,155,000	21.85	338,829	1,694
Wilmington	5,271,086,667	20.58	558,428	2,792
Cary	2,892,381,667	18.81	454,651	2,273
High Point	4,071,575,000	18.63	611,891	3,059
Buncombe-Ashville	8,264,968,750	17.08	1,156,823	5,784
New Bern	1,166,175,000	16.2	157,931	790
Elizabeth City	904,138,182	15.99	107,544	538
Fayetteville	8,281,352,272	14.5	1,026,274	5,131
Raleigh	12,387,187,500	14.02	1,443,140	7,216
Greensboro	12,028,422,917	12.43	1,244,693	6,223
Charlotte	22,796,240,910	12.13	2,448,891	12,244
Goldsboro	3,165,766,667	10.38	269,331	1,347
Kinston	2,458,418,788	9.52	156,508	783
Winston Salem	7,570,769,167	8.99	566,807	2,834
Greenville	3,393,283,333	8.88	251,360	1,257
Statesville	1,485,715,909	8.74	100,698	503
Durham	8,930,026,125	8.4	610,844	3,054
Tarboro	810,532,273	6.96	46,822	234
Rocky Mount	5,315,727,23	6.95	308,426	1,542
Totals	107,725,511,877		11,859,891	59,288

*nitrogen per day -
 Jul = 18 tons 10/10 feet.*



March 12, 1997
 Watson Amendment
 p.m. to replace
 a.m. Amendment

NORTH CAROLINA GENERAL ASSEMBLY
 AMENDMENT
 House Bill 85

AMENDMENT NO. _____
 (to be filled in by
 Principal Clerk)
 Page 1 of 1

H85V1-ART-004.03
 (H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
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 16 Article 21 of Chapter 143 of the General Statutes or deemed
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 26 applied for a loan to finance the construction or
 27 expansion and that loan application has been approved.
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*Watson
re introduced
3/12*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H85V1-ART-004.03
(H85-PCSRD-001)

Page 2 of 1

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17 when this act becomes law. Section 1, Sections 3 through 7, Section
18 8, and the provisions of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



March 12, 1997
2nd 4:00 p.m. Watson One Sheet
004.03 to replace withdrawn
10:00 a.m. Amendment 004.02

Replacement

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Watson

1 moves to amend the bill on page 8, between lines 6 and 7.
2 by inserting a new section of the bill to read:

3
4 "Section 7.1 There is established a one-year moratorium
5 on the construction or expansion of swine farms and lagoons. The
6 Environmental Management Commission shall not issue a permit for an
7 animal waste management system, as defined in G.S. 143-215.10B, for
8 a new or expanded swine farm or lagoon, as defined in G.S. 106-802,
9 for a one year period beginning on the date this act becomes
10 effective except as provided by this section. This section
11 prohibits the construction or expansion of an animal waste
12 management system for a swine farm for one year from the date this
13 act becomes effective regardless of the date on which a site
14 evaluation for the swine farm is completed and regardless of whether
15 the animal waste management system is permitted under Part 1A of
16 Article 21 of Chapter 143 of the General Statutes or deemed
17 permitted under 15A North Carolina Administrative Code 2H.0217 but
18 does not prohibit:

- 19 (a) Construction to repair a component of an existing
20 swine farm or lagoon.
21 (b) Construction to replace a component of an existing
22 swine farm or lagoon if the replacement does not
23 result in an increase in swine population, except as
24 provided in subsection (e) of this section.
25 (c) Construction or expansion if the owner or operator has
26 applied for a loan to finance the construction or
27 expansion and that loan application has been approved.
28 (d) Construction or expansion if site grading or actual
29 construction, including delivery of material or
30 equipment, began prior to the date this section
31 becomes law.
32 (e) Construction or expansion on or after the date this
33 act becomes law for the purpose of increasing the



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

1 swine population to the projected population or to the
2 population that the animal waste management system
3 serving that swine farm is designed to accommodate, as
4 set forth in a registration of the swine operation
5 filed with the Department of Environment, Health, and
6 Natural Resources before the date this act becomes
7 law.
8 (f) Construction or expansion on or after the date this
9 act becomes law for the purpose of complying with
10 applicable animal waste management rules and not for
11 the purpose of increasing the swine population." and
12
13 on page 8, line 31
14 by rewriting that line to read:
15
16 (b) Section 1 and Sections 3 through 8 of this act are effective
17 when this act becomes law. Section 1, Sections 3 through 7, Section
18 8, and the provisions of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



1
ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.02
(H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Watson *Admendment*

1 moves to amend the bill on page 7, line 39 through page 8, line 6
2 by rewriting those lines to read:

3
4 "Section 7. There is established a one-year moratorium on
5 the construction or enlargement of swine farms and lagoons. The
6 Environmental Management Commission shall not issue a permit for an
7 animal waste management system, as defined in G.S. 143-215.10B, for
8 a new or enlarged swine farm or lagoon, as defined in G.S. 106-802,
9 for a one year period beginning on the date this act becomes
10 effective. This section prohibits the construction or expansion of
11 an animal waste management system for a swine farm for one year
12 from the date this act become effective regardless of the date on
13 which a site evaluation for the swine farm is completed and
14 regardless of whether the animal waste management system is deemed
15 permitted."

SIGNED Cynthia B. Watson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ Tabled _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT VI

EDITION No. 1st

H. B. No. 85

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Hackney

Amendment H85VI-ART-004.03

1 moves to amend the bill on page 1, line 25 through 27

2 () WHICH CHANGES THE TITLE

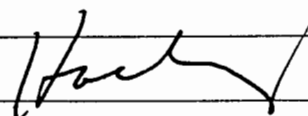
3 by deleting those lines,

4
5 on page 1 line 28 through 31
6 by rewriting those lines to read:

7
8 "(c) Construction or expansion, if
9 actual construction, including
10 purchase or delivery of
11 material or equipment, began
12 prior to 1 March 1997."

13
14 by relettering the succeeding
15 subsections accordingly.

16
17
18
19

SIGNED 

ADOPTED _____ FAILED _____ TABLED _____

APWMC OVERVIEW**1994 - 1996**

Numerous processing procedures for animal agriculture co-products have been proposed by researchers at many institutions in the U.S. and abroad. However, many such alternatives have not been evaluated or demonstrated beyond the laboratory on a commercial or full scale by the investigators conducting waste management research and extension work due to the lack of infrastructure to do so. The APWMC facilities (existing and planned) are housed on approximately 5 acres at the NCSU Agricultural Field Laboratory, located approximately 8 miles south of the NCSU main campus (see Site Map, Appendix 1). Two buildings, a waste processing equipment building (currently being equipped) and a composting building (construction scheduled for 1997) will provide facilities and equipment necessary for research, development, outreach and demonstration of advanced waste management technologies. In addition, NCSU's poultry, swine and dairy and cattle research units, located on adjacent property, will supplement the APWMC facilities. Collectively, these facilities and a research laboratory located in Scott Hall on the main NCSU campus provide the current APWMC infrastructure.

The APWMC, however, is not a facility as much as it is an organizational concept. In order to efficiently and effectively address the waste management requirements of the food-animal industries, a broadbased and interdisciplinary participation and input into the APWMC activities is needed. The APWMC has, therefore, established an operational structure in which various groups with an interest in animal agriculture form a partnership to address the agricultural food-animal waste management research area. A listing of current APWMC members is included in Appendix 2.

APWMC Objectives

The APWMC is addressing all aspects of food animal waste management by utilizing a variety of technology approaches. The specific objectives for the APWMC are:

1. To provide a modern facility and associated equipment (*i.e.*, the infrastructure) for carrying out research and extension educational activities on the management and utilization of food animal waste products; and, for the development of economically and environmentally acceptable procedures for conversion of these wastes into value added products for the food producing animal industries.
2. To provide personnel to operate the facility and its equipment on a daily basis and to work with the faculty and industry groups in carrying out the research and extension educational activities.
3. To provide the infrastructure which will allow faculty and organizations associated with the APWMC to be successfully competitive for individual and multi-disciplinary research funding on a national basis in the waste management arena.

4. To provide the national and world food animal producing industries with economically feasible and safe alternatives for handling and recycling by-products and wastes produced by these industries in the course of food production.
5. To reduce nutrient output in the waste stream of food-producing animals through dietary manipulations to improve the nutrient utilization of traditional foodstuffs, as well as of any value-added foodstuffs which are developed from animal by-products produced by the APWMC.
6. To facilitate in-service training in new technologies for waste management for extension agents, agricultural agencies, waste management system operators, agribusiness personnel, and other technology-user groups.

A Search for Alternate Treatment and Utilization Technologies

Some key research, development, and education areas related to water and air quality that are planned and/or are currently being addressed by the APWMC include:

- nutrient management and utilization of manures as a fertilizer, horticultural, and/or feed products,
- recycling and utilization of farm animal mortality and processing offal,
- odor control,
- dietary manipulation and genetic selection to affect digestibility and nutrient concentrations in manure.

Nutrient Management and Utilization of Manures as Fertilizer, Horticultural, and/or Feed Products

Nutrient management presents a significant challenge to the food-animal producer. Poor management by one or a few producers can have widespread impacts on the entire industry regarding perception and potential regulations. Nutrients contained in co-products such as manure slurry or litter can be cycled from crops to feedstuffs to animals to soil and again to crops. Under proper management practices, this cycle can be maintained under economical and environmentally sound conditions. This includes analysis of the manure content for fertilizer value, uniform application rates to the soil at times of the crop growing cycle such that uptake is maximized, and subsequent adjustment of commercial fertilizer rates, *etc.* Other alternatives include the development of products for which there may be specialized or niche markets suitable for utilizing the nutrients contained in manures. This would enable the movement of nutrients away from areas of intense livestock and poultry production and provide a cash return to the producer as well.

Examples of APWMC research in progress (Research and Development project updates provided in subsequent section of this Annual Report) to meet these objectives include (listings include project title and principal investigator): A system for the development of value-added products from swine manure and peanut shells, E.E. Jones; Recovery of solids from flushed swine manure for utilization, P.W. Westerman; Genetically engineered microorganisms for utilization of ammonia and other nitrogenous compounds from animal manure, E.E. Jones; The use of poultry litter as a co-substrate and source of inorganic nutrients and microorganisms for the *ex situ* biodegradation of hazardous compounds, C.M. Williams; Evaluation of fluidized-bed drying technology for recycling poultry litter as bedding material, C.M. Williams; Separation of turkey litter to enhance its value as a cattle feed ingredient, J.L. Grimes; Deep stacked broiler litter as a protein supplement for dairy replacement heifers, B.A. Hopkins; Predicting nutrient release from food and animal waste products, R.L. Mikkelsen.

Recycling and Utilization of Farm Animal Mortality and Processing Offal

In many cases, food-animal mortalities (especially for poultry and young swine) are currently being buried in on-farm pits. This practice may degrade water quality, at least in areas with certain soil types and/or high water tables, so alternatives must be developed to manage and recycle these potentially valuable co-products. Over the past few years, a number of poultry enterprises have begun utilizing the natural biological process of composting to handle their animal mortalities. This process provides a good, relatively low-cost alternative for disposing of animal mortalities in an environmentally safe manner, but still results in a product that must be land applied. Thus, alternative systems need to be developed, demonstrated, and refined which will allow on-farm preservation and storage of the preserved carcasses so that larger quantities can be collected and transported to rendering, drying and/or extrusion facilities for conversion into animal feed-grade meals.

Offal from food-animal processing plants has for many years been sold to rendering plants for conversion into feed-grade meat, bone and blood meals. Feathers, another major co-product of poultry processing plants, have been hydrolyzed and converted into feed-grade feather meals. A number of what would appear to be economically viable and better alternatives such as acid fermentation, fluidized bed drying, extrusion, and treatment with newly developed enzymes, have been introduced over the past few years, but these alternatives need to be scaled up and possibly modified so they can be demonstrated to be economically feasible and viable, if they are to become adopted by the animal industries.

Examples of APWMC research in progress to meet these objectives include: Development and demonstration of a fermentation-preservation system for converting poultry mortality and sweet potatoes into value-added products, P.R. Ferket; Optimizing the proteolytic degradation of animal by-products, E.S. Miller; Conversion of ensiled poultry, fish, and sweet potato by-products into high value poultry and aquaculture feed ingredients, P.R. Ferket; Composting - turning swine carcasses into humus, W.E. Morrow; Production of amino acids and peptides from feathers and other proteinaceous wastes using immobilized keratinase, J.C.H. Shih.

Odor Control

One of the more sensitive environmental issues currently facing the food-animal agriculture industry in general, and the pork producers in particular, is odor control. Numerous odor-control technologies have been developed for various industries that generate odorous compounds. However, many of these technologies are not considered to be technically or economically feasible for most livestock and poultry operations. Further research and development, as well as outreach demonstration of their economic and environmental benefits will be required prior to their wide spread utilization in the food-animal production industry. Several APWMC projects are targeting odor control and the approach, in most cases, will also address water quality issues. Examples of these projects include: Biofilter for removing odorous compounds in exhaust from swine buildings, J.J. Classen; Utilizing by-products to clean air in swine buildings, R.W. Bottcher; The potential of thermophilic anaerobic fermentation for biological methane production and odor control using swine manure as a substrate, C.M. Williams.

In addition, cooperative efforts were established between the APWMC, other universities, commodity groups, and commercial enterprises to establish a testing procedure and reporting format which can be used to provide consistent odor product information for food-animal producers and processors. The protocol developed through these efforts has been utilized by the APWMC to evaluate the effect of several products (laboratory and commercial scale analysis) on odor intensity, odor irritation, odor quality and other environmental parameters associated with swine manure. A listing of the various projects under which this protocol has been employed, is included in the Financial Data section of this Annual Report (Industry funded MOAs).

Dietary Manipulation and Genetic Selection to Affect Digestibility and Nutrient Concentrations in Manure

A logical approach to reducing the environmental impacts of nitrogen, phosphorus, copper, zinc, and other elements in manure is the improved efficiency of utilization of these nutrients by the animal. More work is needed to "fine tune" the nutritional requirements of food-animals as they relate to environmental issues as well as consumer requirements for meat, eggs, and milk. The efficacy of using exogenous enzymes in animal feedstuffs for improved utilization of oligosaccharides, phytate, and selected proteins needs to be determined. The effect of new feed processing technologies (dryers, extruders, expanders, *etc.*) on co-product nutrient availability and digestion also needs to be determined. Plans are underway for the APWMC to actively support such research efforts in the near future. One example is support of the project: Genetic control of nutrient utilization in swine, O.W. Robinson (initiated in 1996).

Miscellaneous "Other" Research Projects

Other projects that have been initiated during the previous 3 years to support the APWMC objectives include: Molecular phylogenetic survey of methane-producing archaea, J.W. Brown; Development and demonstration of an integrated wastewater and processing waste management system for trout production, J.E. Shelton; Evaluation of wetland plant species for use in constructed wetlands, J.M. Stucky; Management of field buffers to improve water quality in watersheds receiving swine lagoon effluent, R.L. Mikkelsen.

Demonstration of Alternate Treatment and Utilization Technologies

As technology advances the economic and environmental benefits of co-product utilization, it will be necessary to demonstrate, on a commercial-scale, the technical, economic, as well as social feasibility of the various technologies. An agreement was recently established between the APWMC and the North Carolina Department of Environment, Health, and Natural Resources (NCDEHNR) to provide resources by which innovative technologies, developed by research institutions and/or the private sector, targeting food-animal water quality issues may be evaluated and demonstrated on the sites of cooperating producers, university or NCDA research farms. This program is currently in the start-up phase. A total of 11 projects (descriptive project titles, technology provider, and NCSU principal investigator(s) provided in Appendix 3) have been selected and research efforts are expected to be actively underway this spring. The program will result in several demonstration sites, primarily located in eastern NC where the alternate treatment and utilization technologies will be evaluated for their environmental deliverables, capital and operating costs, and technical requirements for day to day operation. Selection of the technologies for evaluation were based on evaluations and critical reviews by a team represented by: 1) out of state scientists, 2) NCSU research and outreach faculty, and 3) an Advisory Committee made up of representatives from research, extension, NCDEHNR, commodity and environmental interest. It is also planned for these same groups to be involved in the evaluation process.

Interaction, communication and partnerships between the parties noted above will result in efficient identification of real and emerging environmental issues and subsequent solutions to address issues concerning co-product management. It is essential that we not only pool our resources and talents, but also involve representation of all aspects of society that will be impacted by the production and processing of livestock and poultry.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.02
(H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Watson

1 moves to amend the bill on page 7, line 39 through page 8, line 6
2 by rewriting those lines to read:

3
4 "Section 7. There is established a one-year moratorium on
5 the construction or enlargement of swine farms and lagoons. The
6 Environmental Management Commission shall not issue a permit for an
7 animal waste management system, as defined in G.S. 143-215.10B, for
8 a new or enlarged swine farm or lagoon, as defined in G.S. 106-802,
9 for a one year period beginning on the date this act becomes
10 effective. This section prohibits the construction or expansion of
11 an animal waste management system for a swine farm for one year
12 from the date this act become effective regardless of the date on
13 which a site evaluation for the swine farm is completed and
14 regardless of whether the animal waste management system is deemed
15 permitted."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

137
Watson Amendment
March 12, 1997
Withdrawn 004.02



*with an amendment
3/12
with drawn*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.02
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13 which a site evaluation for the swine farm is completed and
14 regardless of whether the animal waste management system is deemed
15 permitted."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Environment
HUMAN RESOURCES

March 12, 1997
~~February 27, 1997~~

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Kelly Smith	Pink Hill, NC 217 Tapp Farm Rd MFF
Katie Deachey	196 Deachey Loop Rd - Rose Hill, NC MFF
Danny Champion	Hog Slat Inc.
Don Hinson	Hog Slat Inc Newton Grove, NC
Tom Stevens	Bion Technologies 619-C S. 3rd Streetfield NC 27577
Damon M. Tatem	P.O. Box 427 Wags Head NC 27959
BILL SPRANSY	COMMON SCENTS AND Purification 1023 CRAWFORD DAIRY RD CHAPEL HILL 27516
Geneva K Mathis	Millbrook Farms Inc. Clinton NC.
William T Mathis	Millbrook Farms Inc. Clinton NC.
Timothy M. Pineda	Goldsboro Hog Farms, Goldsboro, N.C.
Cheri Hayes	Goldsboro Hog Farms, Goldsboro, N.C.
Sharon Patterson	Goldsboro Hog farm 3263 North N.C. 1118 9022 8308
RANDY PATTERSON	PATTERSON farm 3263 North N.C. 1118 9022 8308 Albinston, NC
STEVE SEILKOP	5542 RIVER CHAPEL RD, SILVER CITY, NC 27581
BARBARA LORIE	112 BLUE HERON FARM RD, PITTSBORO, NC
James H. Priddy	1108 Indian Creek Estates, Goldston, NC 27252
GREG PARKER	Wildlife Action INC. 866 Sikes Rd. Whiteville NC 28472
JACK Burchette	" " " 1872 SEAN PAT'S HALLS 6070
Jimmy Thum Ind	Clinton, N.C.
Leasa Hodges	Murphy Family Farms, Rose Hill, NC
Gaye Crowther	Seawright Farms, Inc. P.O. Box 5151 Ocean Isle Beach, NC
Delorah Meritt	MURPHY FAMILY FARMS, ROSE HILL, NC
Lisa Gurganus	MURPHY FAMILY FARMS, ROSE HILL, NC
Faye Woods White	Murphy Family Farms. Rose Hill NC
Garry B. B. B.	Murphy Family Farms. Rose Hill NC
Becky Cavanaugh	Murphy Family Farms, Rose Hill NC.
Craig Gault	Clinton NC

VISITOR REGISTRATION SHEET

Environment
HUMAN RESOURCES

March 12, 1997
February 27, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Jeff Warren	ADJ Farms 1366 Bass Lake Rd Roseboro 25382
Frederick Thornton	J&T Farms 787 East Warden Rd Faison NC
Curly S. Barnett	Charlie Farms 503 Lafayette St. Clinton NC 28324
JOE Young	CHARLIE FARMS 202 TURNER HWY DR ELANDER, NC 28325
Stevie Taylor	1984 Garner Chaple Rd. Mt. Olive, N.C. 28365
Carolyn Singleton	1827 Garner Chaple Rd. Mt. Olive, NC 28365
Wendy Singleton	1827 Warrick Rd Mt. Olive, N.C. 28365
James C. Vidson	P.O. Box 505 Mt. Olive N.C. 28365
Palmer Sugg	BWWS Box 2881 Rd. NC
Jim Dobbins	P.O. Box 157 Kinston, NC 28502
Cordell Johnson	P.O. Box 583 Kearsuville, NC 28349
Carole B. Johnson	CBS Farm P.O. Box 583 Kearsuville NC
Marie L. Heath	1079 Red Hill Rd. Mt. Olive, NC.
Roy K. Heath	1079 Red Hill Rd. Mt. Olive, N.C.
William E. Brown	Beulahville NC
Edmund Duff	Kearnsville N.C.
Dorrie Blackburn	Clinton N.C.
Larry Johnson	J&K Farms Harrells NC
Charles D. Moore	J&K Farms Harrells N.C.
CHARLES S. MOORE	J&K FARMS Harrells, NC.
John D. Williams	183 John Rich Rd Warsaw NC
Jim Brotherton	UNC General Administration - NC State
Thomasina Williams	RASS, Inc., Warsaw, NC
Cynthia L. Taylor	Mt. Olive, N.C. Rt 2 Box 430 Linden, N.C. 28356
Jana Hinson	Mt. Olive, N.C. P.O. Box 505 Mt. Olive 28365
Mary Taylor	Mt. Olive, N.C. Garner Chapel Rd
Monica Bennett	Waraw NC 27a Seward Hwy Rd MFF 28398

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VISITOR REGISTRATION SHEET

Environment

Name of Committee

3/12/97

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Walt Pope	GEM Sales	Rose Hill N.C.
Brian Larson	Murphy Family Farms	Rose Hill NC
Pete Blantz	Murphy Family Farms	Rose Hill, N.C.
Dale J. Meyer	Murphy Family Farms	Blk Co. NC
Ernest Knowles	Murphy Family Farm	Rose Hill NC
Eileen Coite	Murphy Family Farms	Rose Hill, NC
SHARON STEWART	MURPHY FAMILY FARMS	ROSE HILL, NC
Summer Mann	MURPHY FAMILY FARMS	ROSE HILL, NC
Chuck Hitchcock	rus: uniforms	Clington, NC
Jeff Rieres	Southernwood Farm	Folkston NC.
MARIA MITCHUM	Deep River Coalition	So. Pines NC
C.R. Creech	Deep River Coalition	Holdston NC
Shirley Creech	Deep River Coalition	Holdston, N.C.
Joseph Bush	Cape Fear River Watch (WILDLIFE ACTION)	Wilm NC.
Chase Hoke	Wildlife Action -	Whitewill, N.C.
Ted Hanning, Ben Strom, Mike O'Connell	UNC-TV	
David Nash	NCA PA -	Farmville NC
Jimmy Voss	NC PR	Ober Springs
Chris Pratt	Brownist Padma	Kenansville NC

103
VISITOR REGISTRATION SHEET

Environment
Name of Committee

3-12-97
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Wayne Shusko	NC Hotel & Motel Assn
DAVE HEINL	TRAVEL COUNCIL OF NC
REID FLINCHUM	TRAVEL COUNCIL OF N.C.
PAT CORSO	TRAVEL & TOURISM COALITION OF NC
Billy R Daughtry	3 D FARMS
Willie D Ferrer	
George Ferrer	Kenasville N.C. 28349
CRAIG CARR	Prestage FARMS
Alice Watkins	Hog Slat Inc.
Eric Watkins	Prestage
Roy Hame	Prestage Farms
TON RAY	Duplin Co. Registered Republican Voter: Against HR85
Damon Wilson	Hog Slat, Inc.
Peggy Wilson	Rowan County Tourism
Janet G. Newman	NC Association of Convention & Visitor Bureaus
Cornelia Winters	N.C. Purvis Farms
RALPH WOFFORD	N.C. Purvis
Kelly Lambert	N.C. Purvis Farms
Anthony J. Moore	N.C. Purvis Farms
Roy Chriscoe	Hog Farmer

VISITOR REGISTRATION SHEET

ENVIRONMENT COMMITTEE

Name of Committee

3-12, 1997
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
TANJA VUJIC	NC EDF, 112 S. BLOUNT ST., RALEIGH
OLIVIA HOLDING	ZSR W-S NC
Leis Buttl	M73
JOHN DEMPSEY	SAUNDHILLS C. C.
GEORGE REED	UC COUNCIL OF CHURCHES
Sammy Britt	Prestage Farms Johnston Co.
Jara Buttl	Prestage Farms
Gary Macferrings	Hog Slat
Jeff Auer	T-B Farms
Ray Britt	Jan Briden Farms
JAMES FRANCE	Grave Park Inn
Rhonda Cannady	Prestage Farms
James McCullen	Prestage Farms
Deborah Johnson	Prestage Farms
Curtis Johnson	C/S Johnson
Craig Carr	Prestage Farms
Jim C. Grady	Hog Slat - Newton Grove
Nikki Mills	Hog Slat, Newton Grove
Ricky L. Falkner	TDM Farms
John Auer	TDM FARMS
Bob Westrich	Hog Slat INC.
Angela J. Leach	Thorn Farms / TDM/01, 105
Veronica Robinson	Hog Slat Inc, Newton Grove N.C.
Kim Justman	Hog Slat, Inc Newton Grove, NC
Doug Daughtry	Prestage Farms, Clinton, NC
Bobby Gene Matthies	Prestage Farms, Clinton, NC
William M. Wain	Prestage Farms, Clinton NC
Mark Pear	Park Produce

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
March 19, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on March 19, 1997, at 12:00 Noon. Representative Rick Eddins presided at the meeting and welcomed the pages, Nicole Gales of Guilford County and Dustin Miller of Onslow County.

The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, John Brown, Rep. Nelson Cole, Rep. Arlie Culp, John Gamble, Rep. Charlotte Gardner, Jim Gulley, Rep. Joe Hackney, Rep. Bobby Hall, Rep. Foyle Hightower, Rep. Ted Kinney, Rep. Danny McComas, Rep. Eugene McCombs, Frank Mitchell, Rep. Jane Mosley, Rep. John Nichols, Rep. Jean Preston, Rep. Alex Warner, Rep. Nurham Warwick, Rep. John Weatherly, and Rep. Douglas Yongue.

There were one-hundred three visitors.

Co-Chairman Eddins called the meeting to order and recognized Representative Morgan who proceeded to support his bill, **HB 85 - Environmentally Sound Policy Act.** Upon conclusion of Representative Morgan's remarks, Representative Eddins recognized Mr. Rick Dove, Neuse River Keeper, who provided the members of the Committee with a lengthy presentation (Attachment A).

Upon conclusion of Mr. Dove's presentation, Representative Eddins asked Representative Morgan if he had any additional comments and Representative Morgan stated that the previous week, purely unsolicited, the Governor's representatives contacted him to discuss HB 85. The Governor's staff wanted to advise Representative Morgan of the Governor's position on this bill. Representative Morgan proceeded to state that he requested Committee staff to meet with them. He then asked staff person, Sherri-Evans Stanton to correct him if he makes a mistake or a misrepresentation. He further stated that he did inquire as to whether these positions were in accord with the Governor as he had talked with Governor Hunt personally.

Representative Morgan proceeded to state that the siting requirements on Page 2 of the bill is supported by the Governor, the 2,500 requirement, with a footnote that the portion of the bill on outdoor recreational issues needed to be defined a little more closely. Representative Morgan acknowledged that he was aware Representative Yongue was particularly concerned with this section of the bill. With respect to the setbacks, the Governor maintains that he supports safe setbacks at 500 feet – the bill states 1,000 feet. With respect to the outer perimeter of the land area to which waste is applied to the lagoon, the bill changes it to 100 feet; the Governor supports 50 feet. With respect to the

100-year floodplain, the Governor supports no new or expanding lagoons in floor plains. With respect to Page 5, emission of undesirable level of odor in outdoor recreational areas, the Governor believes that the language is too suggestive; with respect to the Board of Health, the Governor believes the local board has ample authority and this provision may restrict the current authority. On Page 6, with respect to zoning, the Governor supports a study, and with respect to the moratorium, the Governor has no position. Upon conclusion of Representative Morgan's remarks, staff stated they had no corrections.

Chairman Eddins called upon Dr. Christopher Delaney of New Bern, North Carolina, (Attachment B) to speak. Conclusion of Dr. Delaney's remarks, Chairman Eddins then opened the meeting to questions from the Committee members.

Representative McComas and Representative Nichols directed numerous questions to Mr. Dove and Dr. Delaney regarding the pollution in the Neuse River and other water areas. Also, they asked about the cooperation and information received from Dr. Ron Levine of the State Health Department, and other state agencies to help solve the problems of pollution, both from hog farms and runoff from farms, housing developments, etc., and other environmental causes.

Mr. Dove reported that very angry citizens from New Bern, Oriental and South River confronted the officials at a public meeting on the day Jonathan Howe said that the Neuse River was a disaster – it was broken, and it had to be fixed. Representative McComas asked about the demonstration situation in Vanceboro. Mr. Dove stated they were hard working people and were being frustrated and don't know what to do. They are looking for some other way out, in order to protect their property from hog farm development. Hopefully, if the Legislature takes some action, we will not see any more violence.

Representative Nichols stated he did not like one-sided presentations, hitting on farmers, and asked how much fertilizer is going into farming. Nitrogen fertilizer is possibly a big piece of the problem and should be investigated.

Mr. Dove explained that crop farmers have done a noteworthy job and have begun to manage the use of nitrogen in ways where it is being reduced. That is not true from animal production. He pleaded for the Committee to do something about all of the nitrogen fertilizer that is being sold in the stores and the application of lawn fertilizer. He stated the problem is in waste management, and called for the Committee to ask for the help of tax payers to get it solved.

There was a discussion led by Dr. Delaney about the different cultures of festules and other fecal bugs, including lots of toxic algae and how long it would take to clean it up.

Mr. Dove stated that the N.C. State University scientists are an excellent resource and we might be able to achieve a lot in creating an animal industry that is much more viable in possible one and one-half years if we put all of our resources to work. We must find out what will work if the waste management system is not working. He stated the people why first set up the waste management system knew of the volition of ammo gas which escapes and what it did to the environment.

Co-counsel Sherrie-Evans Stanton reported that the Legislature funded studies and the isotope studies will be out soon which are done on the Neuse and the Cape Fear River Basins, and will be able to identify which type of waste is contributing, whether it is coming from hog farms or from other types of operations. There is also the atmospheric deposition of nitrogen study and that is in the Neuse River. That should have some results within the next year. There is an odor control study, alternative animal waste technologies, and ground water impacts of lagoons. So, there are a number of studies out there now.

Representative Eddins announced there were five people who would like to speak on the issue and asked that they be short so that everyone could speak. Also, there will be another meeting of the Committee immediately after Session today.

Representative Weatherly spoke on the pork industry and the agribusiness farmer and both are a tremendous large issue. It was pointed out that everyone in the room, including Committee members are responsible for cleaning up the business. It goes way beyond environmental issues and one single area in agriculture. He stated we need the time to revisit some of the things that the Study Commission did to restudy the restrictions and the requirements that was in the last General Assembly's Senate bill; to revisit the dates that these reports will be available to us to look at what a moratorium will do for the economy in N.C. and look at some things which have a lot of merit - the point sources and let's name the problem where it is. He selected three out of nineteen cities between here and the ocean, sizable towns, and pointed out that one town on the coast dumps five and one-half million pounds of 5-10-10 equivalent nitrogen into the water. Another one dumps 3.3 million pounds, and one inland, dumps ten million pounds. We can't single out one industry; one culprit, and we need some time. We don't need to pass a bill that is partially correct, partially a good bill, and mostly a bad bill, and a bill that is punitive to one particular group of people. He made a request that the Chairman might consider sending the bill to a committee so it can be dealt with over a

longer period of time than just two or three hours, because we are creating a mess that yet another general assembly is going to have to deal.

Representative Gamble commented on the statements by Dr. Delaney about the culture of germs with dominant staphicocci, the common bug that is on the skin and makes a lot of little pimples or a large pustular sore.

Representative Hackney indicated he supported the moratorium so that we can slow down and continue the studies. He supported the set backs and the zoning. He questioned the lack of interest on urban growth and asked why sub-divisions in North Raleigh, Cary, Johnston County, and Chapel Hill because people are a large part of the Neuse's pollution problem.

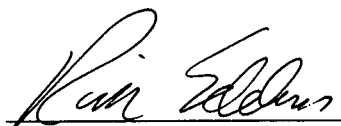
Mr. Dove stated that these issues are challenged and they have recently settled a suit with the city of Cary. A little organization has to do legal work themselves and took on Cary and we got an agreement which capped their nitrogen discharge to Crabtree Creek 50% of what they had been putting out, from both of their plants. We have a suit pending before the Environmental Protection Agency and we met with them in Washington and all the things you say we should be doing, we are doing, they are just not advertised.

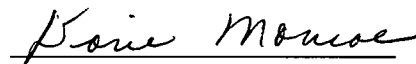
Representative McComas asked if Dr. JoAnn Burkholder of N. C. State University could speak in the afternoon meeting to speak on fisteria and about the subject of isotope testing.

Dr. Burkholder commented briefly on the science involved in stable isotope work. The members of the Sea Grant program are saying what most scientist believe, that the Neuse River Stable Isotope Study should be regarded as an experiment, and it will not replace imperial research.

Representative Watson was recognized and stated she had spent time with Dr. Burkholder and it was felt that a year's moratorium would give time to address the issue.

The session was adjourned at 1:20 PM until after the session.


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
March 19, 1997

The second meeting of the Committee on Environment met in Room 643 of the Legislative Office Building on March 19, 1997, at 2:24 PM, immediately after the session. Representative Rick Eddins presided at the meeting. .

The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. Arlie Culp, Rep. Charlotte Gardner, Rep. Jim Gulley, Rep. Joe Hackney, Rep. Bobby Hall, Rep. Foyle Hightower, Rep. Ted Kinney, Rep. Dan McComas, Rep. Jane Moseley, Rep. John Nichols, Rep. Nurham Warwick, Rep. John Weatherly and Rep. Douglas Yongue.

There were twenty-two visitors.

Co-Chairman Eddins called the meeting to order. The first order of business was a continuation of discussion on HB 85.

Representative McComas offered an amendment (Attachment A) which moved to amend the bill on Page 6, lines 4-19, by deleting those lines and by substituting the following: "Section 4. G.S. 143-215 (e) is repealed."

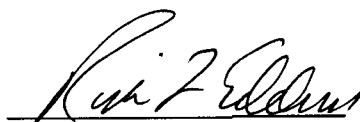
Representative McComas moved that the amendment be incorporated into a new Committee Substitute for HB 85 and that the new Committee Substitute be given a favorable report, unfavorable to the original bill.

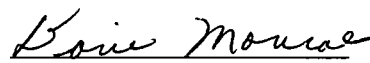
Representative Hackney offered a Perfecting Amendment (Attachment B) to amend the bill on Page 1, lines 25 through 27 by deleting those lines, on Page 1 lines 28 through 31 by rewriting those lines to read: "Construction or expansion, if actual construction, including purchase or delivery of material or equipment, began prior to 1 March 1997". And by relettering the succeeding subsections accordingly.

The Chairman directed that the roll be called and the motion by Representative McComas passes by a vote of 10 to 5 in favor of the bill. A copy of the Roll Count is attached (Attachment C).

Representative Warwick asked for an explanation of the rules and the Chairman explained that they would be given to him at a later date.

The meeting was adjourned at 3:30 PM.


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 85
Proposed Committee Substitute H85-PCS2174

Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
3 AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
4 THE ENVIRONMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. This act shall be known and may be cited as the
7 "Environmentally Sound Policy Act of 1997 (ESP)".

8 Section 2. Article 67 of Chapter 106 of the General Statutes reads as
9 rewritten:

10 "ARTICLE 67.
11 "Swine Farms.

12 "§ 106-800. Title.

13 This Article shall be known as the 'Swine Farm Siting Act'.

14 "§ 106-801. Purpose.

15 The General Assembly finds that certain limitations on the siting of swine houses
16 and lagoons for swine farms can assist in the development of pork production, which
17 contributes to the economic development of the State, by lessening the interference
18 with the use and enjoyment of adjoining property.

19 "§ 106-802. Definitions.

20 As used in this Article, unless the context clearly requires otherwise:

21 (1a) 'Intensive animal feeding operation' means a new or enlarged
22 swine farm with a design capacity of more than 800,000 pounds
23 steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, area or facility used for outdoor recreation, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight;

(6) ~~at~~ At least 500 feet from any property ~~boundary.~~ boundary or public or private drinking water supply.

The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least ~~50~~ 100 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a1) A new or expanding swine house or a lagoon that is a component of a swine farm shall not be located in a 100-year floodplain unless protected from flooding as provided for in regulations of the Federal Emergency Management Agency and the

1 National Flood Insurance Program on Floodplain Management. Such construction or
2 expansion must be certified by the Department of Environment, Health, and Natural
3 Resources.

4 (b) A swine house or a lagoon that is a component of a swine farm may be
5 located closer to a residence, school, hospital, church, or a property boundary than is
6 allowed under subsection (a) of this section if written permission is given by the
7 owner of the property and recorded with the Register of Deeds.

8 **"§ 106-804. Enforcement.**

9 (a) Any person ~~owning~~ who owns property directly affected by the siting
10 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a
11 civil action against a swine farmer who has violated G.S. 106-803 and may seek any
12 one or more of the following:

- 13 (1) Injunctive relief.
- 14 (2) An order enforcing the siting requirements under G.S. 106-803.
- 15 (3) Damages caused by the violation.

16 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
17 the person ~~owns~~ owns a facility or property located less than the siting requirements
18 specified under G.S. 106-803.

- 19 ~~(1) An occupied residence located less than 1,500 feet from a swine~~
20 ~~house or lagoon in violation of G.S. 106-803.~~
- 21 ~~(2) A school, hospital, or church located less than 2,500 feet from a~~
22 ~~swine house or lagoon in violation of G.S. 106-803.~~
- 23 ~~(3) Property whose boundary is located less than 500 feet from a swine~~
24 ~~house or lagoon in violation of G.S. 106-803.~~
- 25 ~~(4) Property on which an occupied residence is located and whose~~
26 ~~boundary is less than 50 feet from the outer perimeter of the land~~
27 ~~area onto which waste is applied from a lagoon that is a~~
28 ~~component of a swine farm in violation of G.S. 106-803.~~
- 29 ~~(5) Property that abuts a perennial stream or river, or on which a~~
30 ~~perennial stream or river is located, and that property and that~~
31 ~~perennial stream or river are less than 50 feet from the outer~~
32 ~~perimeter of the land area onto which waste is applied from a~~
33 ~~lagoon that is a component of a swine farm in violation of G.S.~~
34 ~~106-803.~~

35 (c) If the court determines it is appropriate, the court may award court costs,
36 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
37 temporary restraining order or preliminary injunction is sought, the court may require
38 the filing of a bond or equivalent security. The court shall determine the amount of
39 the bond or security.

40 (d) Nothing in this section shall restrict any other right that any person may have
41 under any statute or common law to seek injunctive or other relief.

42 **"§ 106-805. Written notice of swine farms.**

43 Any person who intends to construct a swine farm whose animal waste
44 management system is subject to a permit under Part 1A of Article 21 of Chapter 143

1 of the General Statutes shall, after completing a site evaluation and before the farm
2 site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all
3 property owners who own property located across a public road, street, or highway
4 from the swine ~~farm~~ farm, the county or counties in which the farm site is located,
5 and the local health departments of that person's intent to construct the swine farm.
6 This notice shall be by certified mail sent to the address on record at the property tax
7 office in the county in which the land is located. The written notice shall include all
8 of the following:

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

22 Prior to issuing a permit for an intensive animal feeding operation, the Department
23 shall conduct a public hearing at the applicant's expense if the Department receives
24 at least 20 written requests for the public hearing.

25 **"§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.**

26 (a) No intensive animal feeding operation may cause, allow, or permit emission
27 into the ambient air of an outdoor recreational area any substance or combination of
28 substances in a quantity that is determined to be an undesirable level of odor unless
29 preventative measures are taken to abate or control the emission to the satisfaction of
30 the Department of Environment, Health, and Natural Resources. When the
31 Department receives an odor complaint, the Department shall determine through
32 field surveillance or specific complaints, if the odor is at an undesirable level, and
33 shall require remediation of the undesirable level of odor.

34 (b) Nothing in this section shall prohibit an individual or group of persons from
35 bringing a complaint against an intensive animal feeding operation as defined under
36 G.S. 106-802."

37 Section 3. G.S. 143-215(e) is repealed.

38 Section 4. G.S. 153A-340 reads as rewritten:

39 **"§ 153A-340. Grant of power.**

40 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
41 county may regulate and restrict the height, number of stories and size of buildings
42 and other structures, the percentage of lots that may be occupied, the size of yards,
43 courts and other open spaces, the density of population, and the location and use of
44 buildings, structures, and land for trade, industry, residence, or other purposes, and to

1 provide density credits or severable development rights for dedicated rights-of-way
2 pursuant to G.S. 136-66.10 or G.S. 136-66.11.

3 (b) These regulations may not affect bona fide farms, but any use of farm property
4 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include
5 the production and activities relating or incidental to the production of crops, fruits,
6 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other
7 forms of agricultural products having a domestic or foreign market. These
8 regulations may apply to intensive animal feeding operations, as defined in G.S.
9 106-802. An intensive animal feeding operation is not a farm for the purpose of this
10 Part.

11 (c) The regulations may provide that a board of adjustment may determine and
12 vary their application in harmony with their general purpose and intent and in
13 accordance with general or specific rules therein contained. The regulations may also
14 provide that the board of adjustment or the board of commissioners may issue special
15 use permits or conditional use permits in the classes of cases or situations and in
16 accordance with the principles, conditions, safeguards, and procedures specified
17 therein and may impose reasonable and appropriate conditions and safeguards upon
18 these permits. Where appropriate, the conditions may include requirements that
19 street and utility rights-of-way be dedicated to the public and that recreational space
20 be provided. When issuing or denying special use permits or conditional use permits,
21 the board of commissioners shall follow the procedures for boards of adjustment
22 except that no vote greater than a majority vote shall be required for the board of
23 commissioners to issue such permits, and every such decision of the board of
24 commissioners shall be subject to review by the superior court by proceedings in the
25 nature of certiorari.

26 (d) A county may regulate the development over estuarine waters and over lands
27 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
28 bounds of that county.

29 (e) For the purpose of this section, the term 'structures' shall include floating
30 homes.

31 (f) Any petition for review by the superior court shall be filed with the clerk of
32 superior court within 30 days after the decision of the board of commissioners is filed
33 in such office as the ordinance specifies, or after a written copy thereof is delivered to
34 every aggrieved party who has filed a written request for such copy with the clerk at
35 the time of the hearing of the case, whichever is later. The decision of the board of
36 commissioners may be delivered to the aggrieved party either by personal service or
37 by registered mail or certified mail return receipt requested."

38 Section 5. A zoning regulation applicable to intensive animal feeding
39 operations adopted by a board of county commissioners prior to the date Section 4 of
40 this act becomes effective is hereby retroactively validated.

41 Section 6. There is established a one-year moratorium for any new or
42 expanding swine farm or lagoon for which a permit is required under Part 1A of
43 Chapter 143 of the General Statutes for any area in the State that: (i) has a county
44 population of less than 75,000 according to the most recent decennial federal census;

1 (ii) has over one hundred fifty million dollars (\$150,000,000) on expenditures for
2 travel and tourism based on the most recent figures of the Department of Commerce;
3 and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January
4 1997, until 31 December 1997, no permit for a new or expanding swine farm or
5 lagoon shall be issued by the Environmental Management Commission.

6 Section 7. There is established a one-year moratorium on the
7 construction or expansion of swine farms and lagoons. The Environmental
8 Management Commission shall not issue a permit for an animal waste management
9 system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon,
10 as defined in G.S. 106-802, for a one-year period beginning on the date this act
11 becomes effective except as provided by this section. This section prohibits the
12 construction or expansion of an animal waste management system for a swine farm
13 for one year from the date this act becomes effective regardless of the date on which
14 a site evaluation for the swine farm is completed and regardless of whether the
15 animal waste management system is permitted under Part 1A of Article 21 of Chapter
16 143 of the General Statutes or deemed permitted under 15A North Carolina
17 Administrative Code 2H.0217 but does not prohibit:

- 18 (1) Construction to repair a component of an existing swine farm or
19 lagoon.
- 20 (2) Construction to replace a component of an existing swine farm or
21 lagoon if the replacement does not result in an increase in swine
22 population, except as provided in subdivision (4) of this section.
- 23 (3) Construction or expansion, if actual construction, including
24 purchase or delivery of material or equipment, began prior to 1
25 March 1997.
- 26 (4) Construction or expansion on or after the date this act becomes
27 law for the purpose of increasing the swine population to the
28 projected population or to the population that the animal waste
29 management system serving that swine farm is designed to
30 accommodate, as set forth in a registration of the swine operation
31 filed with the Department of Environment, Health, and Natural
32 Resources before the date this act becomes law.
- 33 (5) Construction or expansion on or after the date this act becomes
34 law for the purpose of complying with applicable animal waste
35 management rules and not for the purpose of increasing the swine
36 population.

37 Section 8. (a) Except as provided in subsection (b) of this section,
38 Section 2 of this act is effective when it becomes law and applies to the construction
39 or enlargement, on or after the effective date of this act, of swine houses, lagoons,
40 and land areas onto which waste is applied from a lagoon that are components of a
41 swine farm. Section 2 of this act does not apply under each of the following
42 circumstances when the construction or enlargement occurs on or after the effective
43 date of this act:

- 1 (1) For the purpose of increasing the swine population to that set forth
2 as the projected population in a registration of the swine operation
3 filed with the Department of Environment, Health, and Natural
4 Resources prior to the effective date of this act.
- 5 (2) For the purpose of increasing the swine population to the
6 population that the animal waste management system is designed
7 to accommodate as that system is set forth in a registration of the
8 swine operation filed with the Department of Environment, Health,
9 and Natural Resources, or an animal waste management plan
10 approved prior to the effective date of this act.
- 11 (3) For the purpose of complying with applicable animal waste
12 management rules and not for the purpose of increasing the swine
13 population.
- 14 (b) Section 1 and Sections 3 through 8 of this act are effective when this
15 act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of
16 this act applicable to intensive animal feeding operations as defined in G.S. 106-802,
17 as amended by Section 2 of this act, apply to any intensive animal feeding operation
18 for which construction began on or after 1 January 1997, regardless of the date on
19 which the site evaluation was completed.

3/19

Attachment "A"

Fresh WATER
WASTE 3-1
ammonia/NITROGEN GAS
Health

Good afternoon, Mr. Chairman and members of the House Committee on Health and Environment.

INTRODUCTION

My name is Rick Dove. Since 1994, I have served a full time, fully funded riverkeeper on the Neuse. As the Neuse River Keeper, I am duly licensed by the National Alliance of River, Sound and Bay Keepers. My sponsor, the Neuse River Foundation, Inc., is a non-profit grass roots, riverkeeping organization comprised of nearly 2200 members. This group, which is headquartered in New Bern, has over 300 active volunteers who regularly assist me in patrolling and protecting the Neuse watershed from Raleigh to the coast. If you have any questions about my duties, responsibilities and/or qualifications, I will be glad to answer them at the completion of my presentation.

STATUS OF THE NEUSE

The Neuse River, which flows from Raleigh to the coast, is one of NC most important economic resources. Tourism, development, industry--the very future of our children and our state--all depend on a healthy river. Unfortunately, our river is sick, very sick; and now, we are just beginning to understand the consequences which accompany this sickness. There have already been numerous national and international news stories covering the problems of the Neuse. Stories about:

- (1) the more than 1 billion fish that died in 1991 and the millions more that died in 1995
- (2) the vegetation that stops our boats on the spot and turns our waters in something you would expect to see in a science fiction movie
- (3) the algae that stains our waters a variety of putrid colors
- (4) pfiesteria and the people who are getting deathly sick due to their contact with the water.

Those of you who have read the book, "and the Waters Turned to Blood", have some understanding of how all this all happened. I urge the rest of you to read the book as soon as you

are able.

It took mother nature over 2 million years to create the Neuse. During that time a delicate balance was set up. Wetlands, in the right number and place, nutrients in the proper amounts and buffers where needed. Unfortunately, over the past few generations we have acted selfishly, ignored that balance and nearly killed our gold egg laying goose, the Neuse.

The Neuse River is not dead. It, along with a bright economic future, can be restored if we commit ourselves to some immediate, albeit painful, solutions. Make no mistake about it, fixing the river will require lots of money and great sacrifice --and I want to stress that word sacrifice. But one thing is certain, the situation has now reach the point where *not fixing the river will be more costly then fixing it.*

To fix the river, in the short term, we must drastically reduce nitrogen loadings and hold phosphorus to current levels over the next five years. Nitrogen discharges from all wastewater treatment plants must be reduced by 50% and all nitrogen and phosphorus loadings from these point sources must be permanently capped at at that level. We must eliminate small wastewater treatment plants, often referred to as package plants and find a solution for crop farmers where their nutrient discharges are substantially reduced. Buffers are one of the best solutions; but, their are others and we must be help these farmers find the right solutions. Private septic systems, lawns, golf courses, car and boat emissions, air emissions from factories etc--these must all be part of the solution.

All of us must be part of the solution and that includes the intensive livestock industry.

Chart one--reductions that must be achieved in nitrogen delivery to the Neuse estuary.

Chart two--what's been happening in the Neuse since 1990.

Chart three--what's been happening in the livestock industry over the past ten years

Chart four--feces and urine produced by hogs

Chart five--where waste is being dumped

Chart six--Dr Cahoon's study on imports of nitrogen.

Chart seven--what does this area look like to a fish

Chart eight--how hog farms overlay this watery area

Chart nine--hog and fowl growth in the Neuse River basin

Chart ten--nitrogen produced by hogs

Chart eleven-- are hog production facilities zero discharge systems
how hog waste gets into the river

Chart twelve--how much hog waste is released to the environment

Chart thirteen--estimates on how much nitrogen is discharged to the river by hogs

Chart fourteen--waking up to reality

What can a moratorium do to help solve the nitrogen loadings from intensive animal production operations:

1. Stop adding more nitrogen to the problem. (Let's not talk about what's legal or illegal, but rather, what needs to be done).
2. Give the parties time to calm down, sit down and come around to some solutions that serve the best interest of the citizens of North Carolina and the hog producers.

Beginning Sunday night with Dateline NBC, all forms of national media will be telling the American people about NC's environmental health crises. It will be told on all national TV networks, newspapers with national coverage, national public radio, and eventually in a non-fiction movie. The consequences will follow. Have you thought about what they might be?

The moratorium --What choice do you have?

①

NEUSE RIVER AT NEW BERN

MINIMUM NITROGEN REDUCTION REQUIREMENT

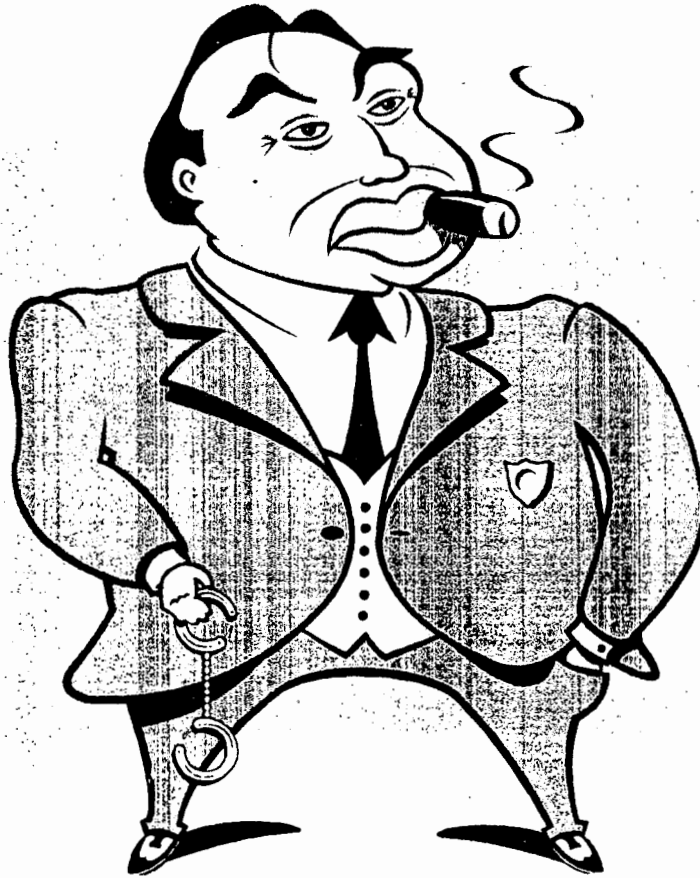
1997 TO 2001

AT A TIME CERTAIN DETERMINE

- CURRENT AVERAGE ANNUAL LOADING = 8.7 MIL LBS ESTIMATED
- RQR'D MINIMUM 30% REDUCTION = 2.6 " "
- RQR'D MAXIMUM 70% CAP = 6.1 " "
- DESIRED MINIMUM 50% REDUCTION = 4.35 "
- DESIRED MAXIMUM 50% CAP = 4.35 "

SOURCE:
CONSENSUS OF PARTICIPENTS:
SCIENTIFIC FORUM OF THE
NC SENATE SELECT COMMITTEE ON
RIVER WATER QUALITY & FISH KILLS
HART 11/14/96

SINCE 1990



**MORE PEOPLE
MORE HOGS
DEVELOPMENT
MORE SEWAGE
POLLUTION**

	1985	RNK
CHICKENS	469,000,000	

	1996	
CHICKENS	619,000,000	3

	1985
TURKEYS	31,850,000

	1996	
TURKEYS	61,200,000	1

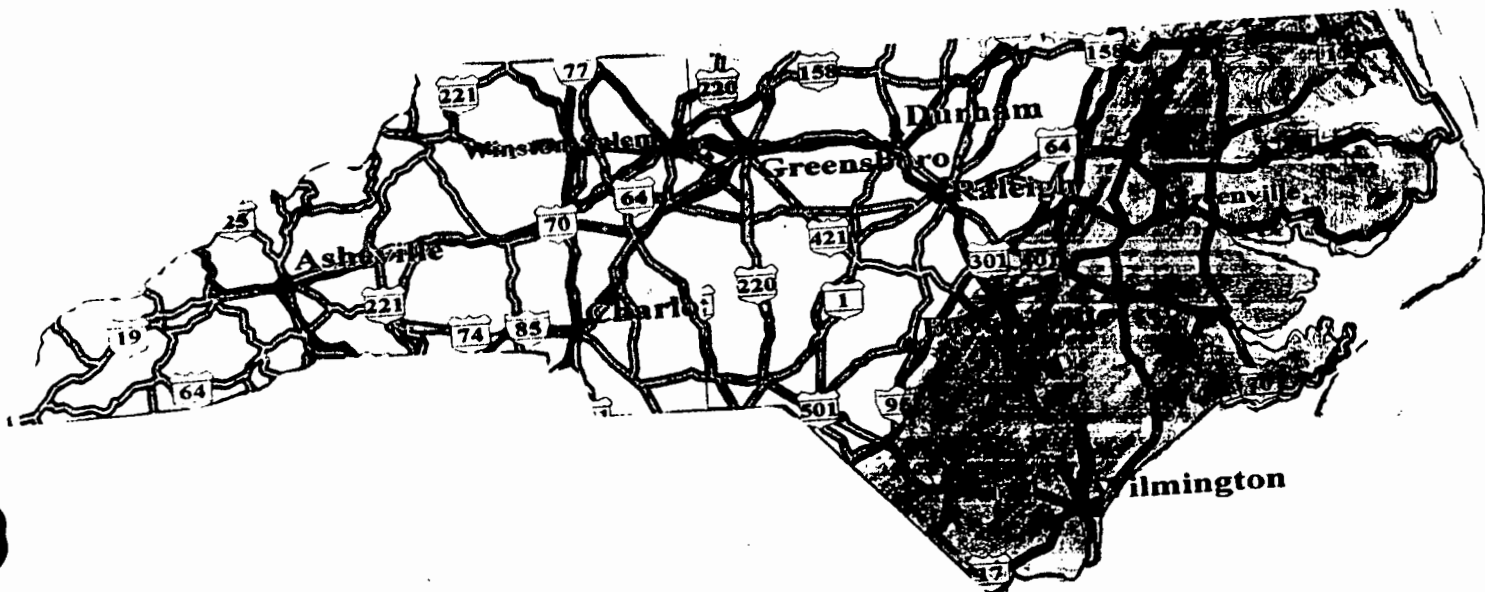
	1985
HOGS	2,350,000

	1996	
HOGS	9,300,000	2

42

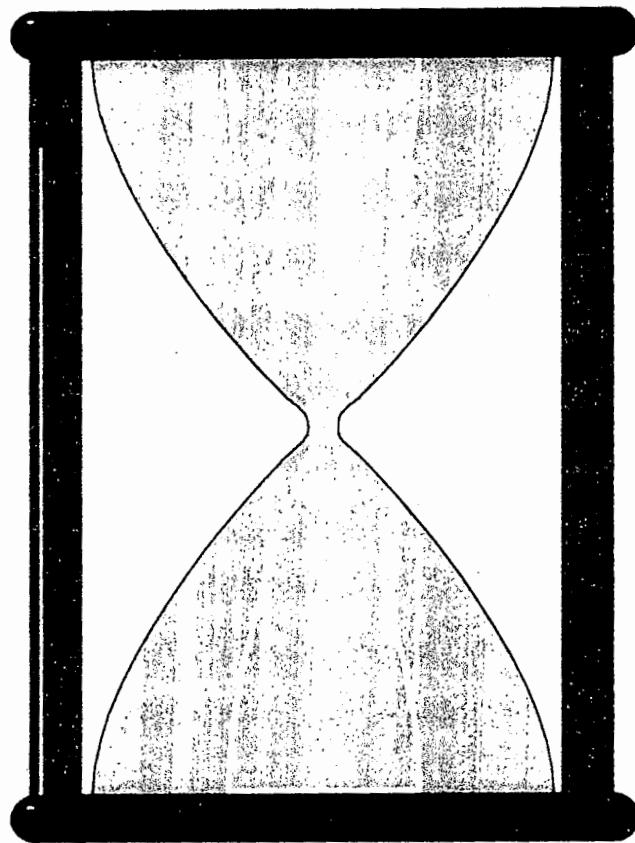
**IN EASTERN NC
THERE ARE
APPROXIMATELY
9,300,000 HOGS
PRODUCING THE
FECAL & URINE
WASTE EQUAL TO
THAT PRODUCED
BY ALL
THE PEOPLE IN THE
STATES OF
NEW YORK
&
CALIFORNIA**

5

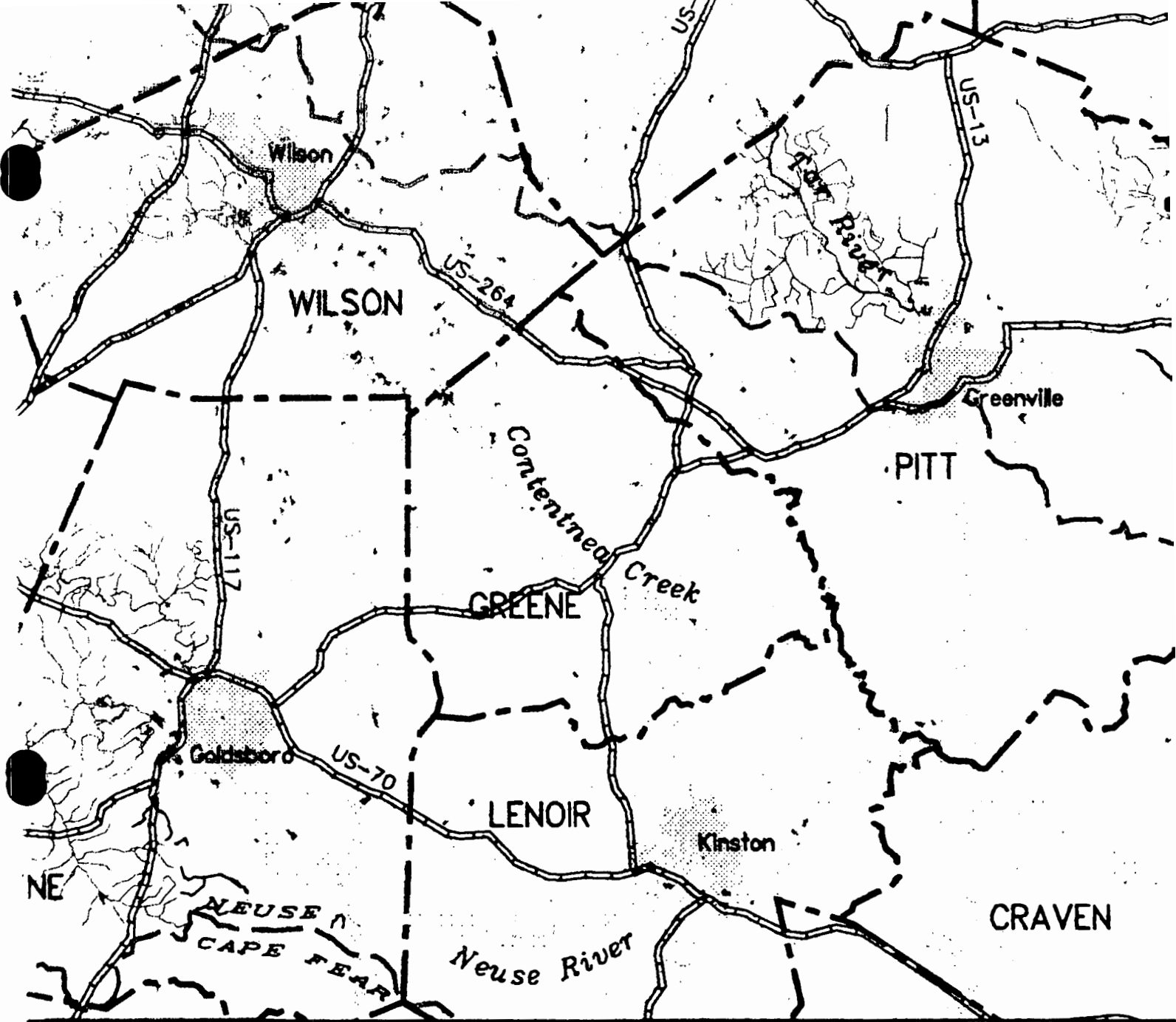


6

**IS TIME RUNNING OUT
FOR EASTERN
NORTH CAROLINA**



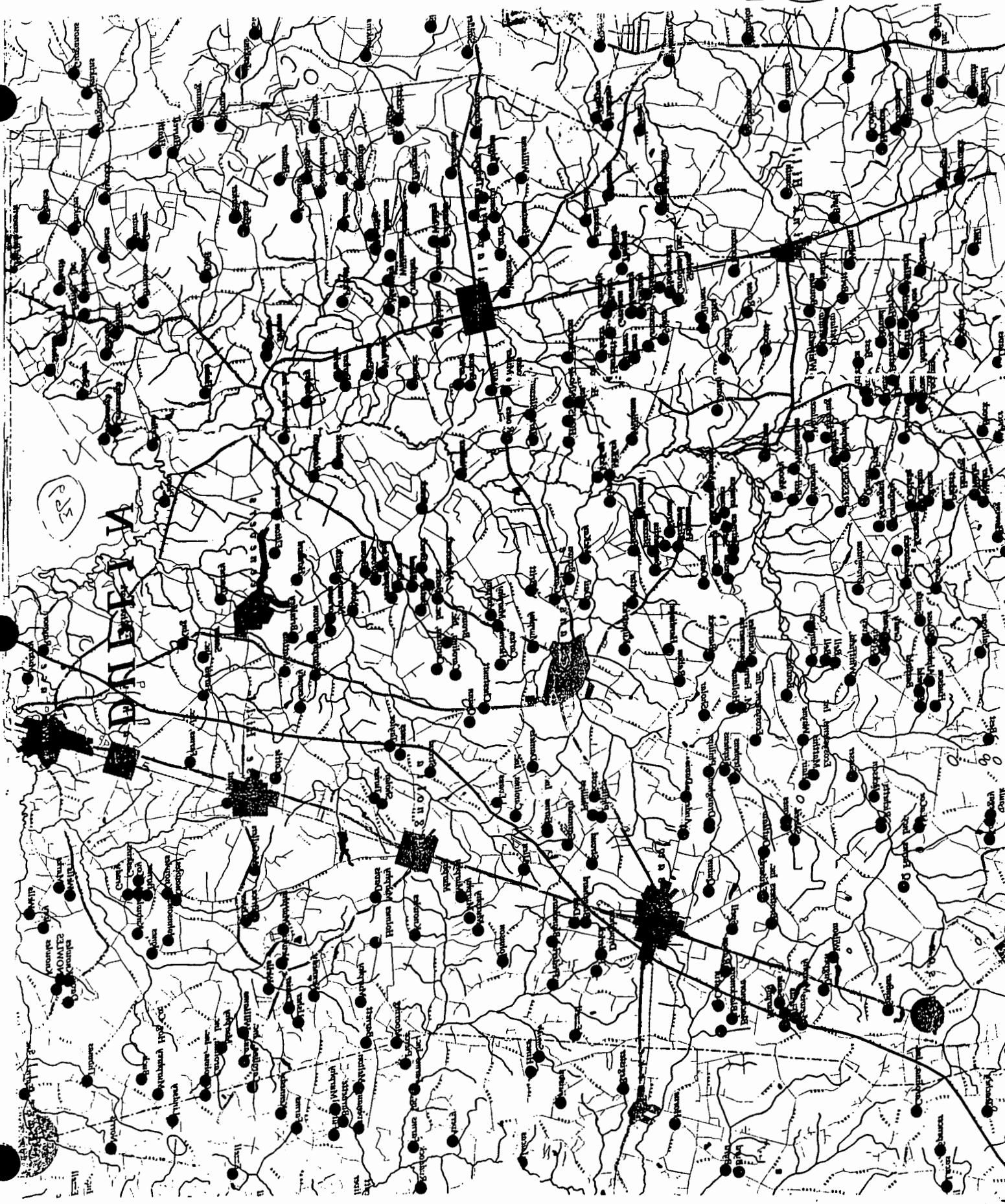
**DR. LAWRENCE
CAHOON
AND
THE LOVE CANAL**



7

8

DUERIA

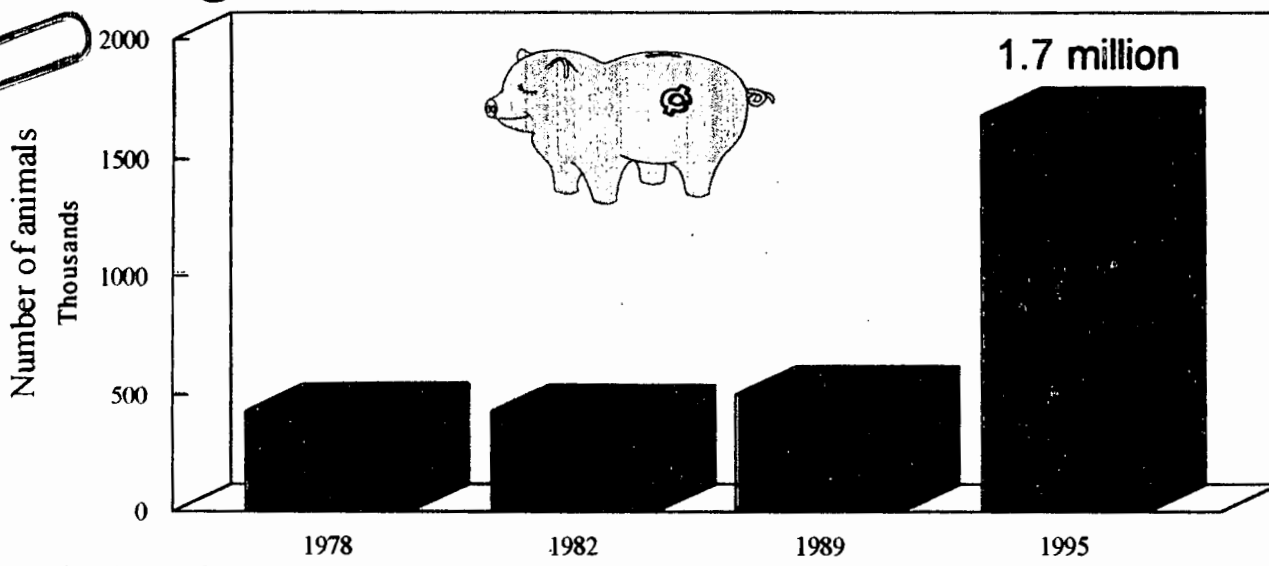


27

8 0

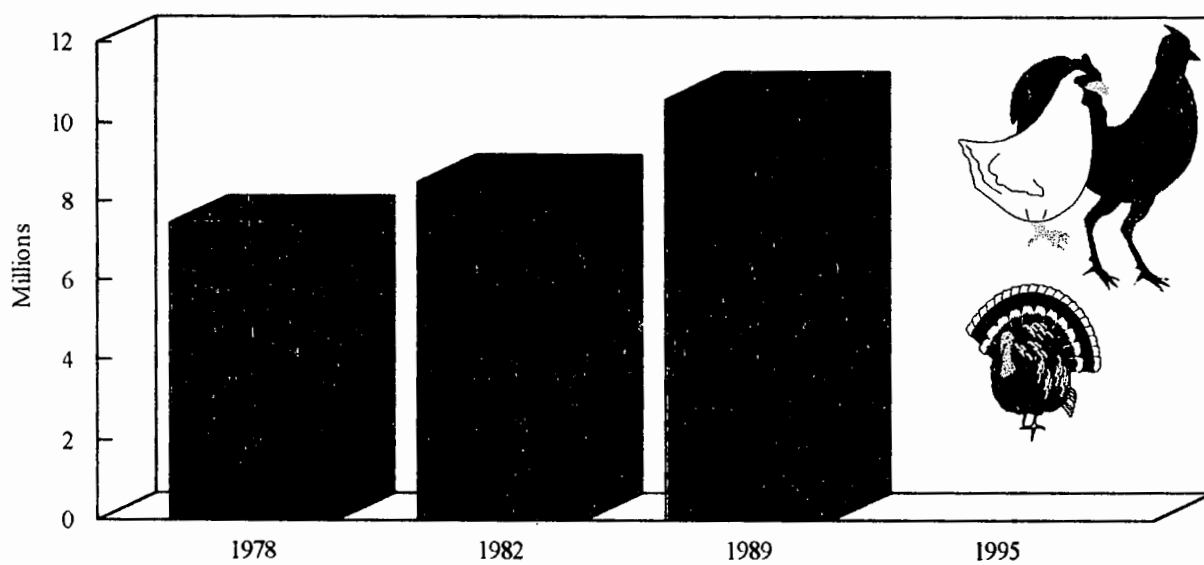
9

Hog Growth - Neuse River Basin



'78, '82: Dr. DW Stanley, ECU (1992)
'89, NRF; '95, EDF

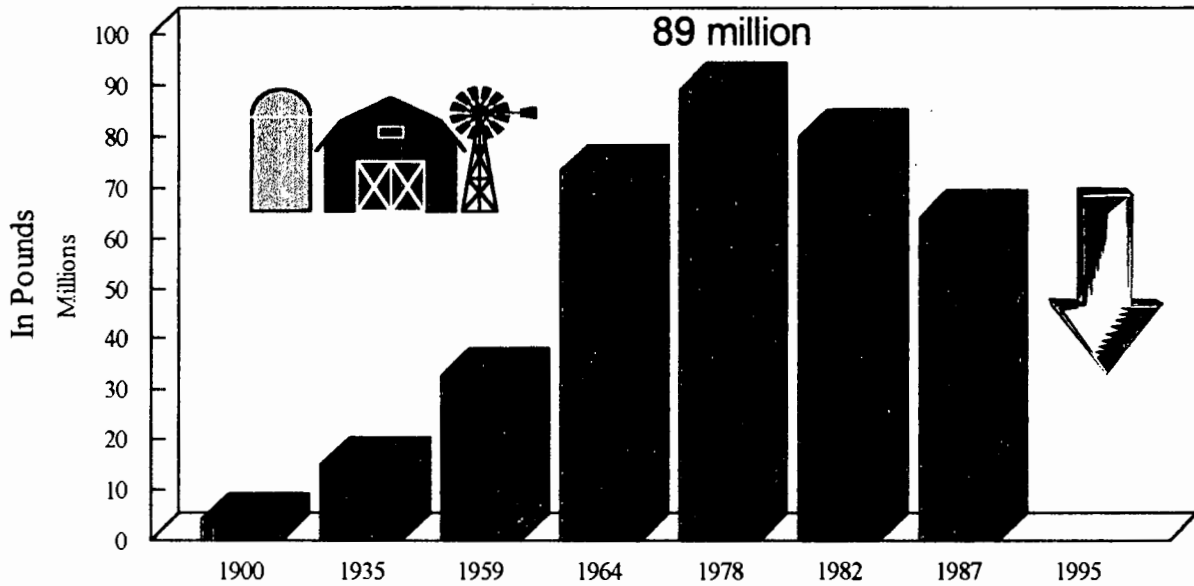
Fowl Growth - Neuse River Basin



Dr. DW Stanley, ECU (1992)

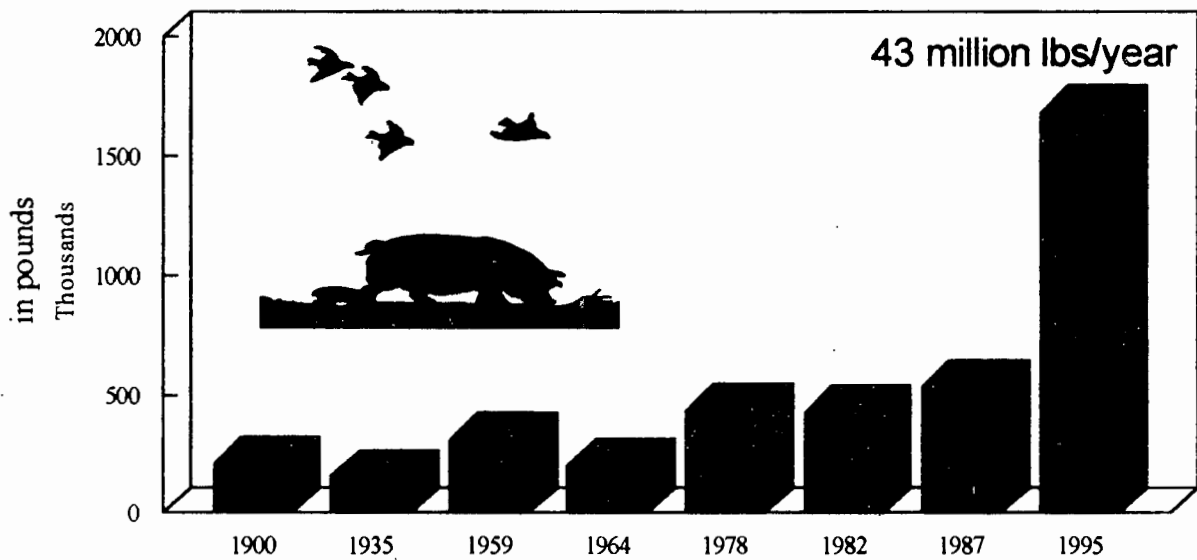
10

Commercial Nitrogen Fertilizer Sold - Neuse Basin



Source: Dr. DW Stanley, ECU (1992)

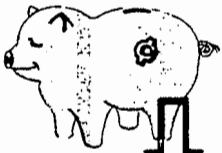
Nitrogen from hogs - Neuse R. Basin



Populations - Dr. DW Stanley, ECU; 1995, EDF
Per capita N: American Society of Agric. Engineers

W

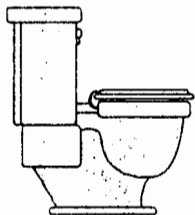
Ammonia Gas



Lagoon/Ammonia NH_3

Ammonium
 NH_4

Crop



Denitrification

Nitrate to N_2 Gas

WWTP's

Ammonia to Nitrate NO_3

Neuse
River

Nitrate

**1995
AMMONIA/NITROGEN
PRODUCED BY
HOGS**

**231 MILLION
POUNDS**

**USDA REPORTS 80
TO 90 PERCENT IS
DISCHARGED TO
ENVIRONMENT BY**

AIR



**POUNDS OF
AMMONIA
NITROGEN
PRODUCED BY
NEUSE HOGS**

43,000,000

@7%---3,100,000 lbs

@30%-12,900,000 lbs

CONFIDENTIAL



(251)



WAKING UP TO REALITY

15

*Review
Info only*

THE NEUSE RIVER KEEPER PROGRAM

SPONSORED BY:

THE NEUSE RIVER FOUNDATION, INC.

The Neuse River Keeper Program was established on April, 1, 1993. Its sponsor, the Neuse River Foundation, Inc., a non-profit organization incorporated under the laws of the State of North Carolina, came into existence in October 1980, when a group of citizens banded together to preserve and improve the quality of the waters of the Neuse River. Until the establishment of the Neuse River Keeper Program in 1993, the membership of the Neuse River Foundation fluctuated between 100 and 200 members. The membership is now approaching 2,000.

2

The Neuse River is one of three large rivers which flows into the Albemarle-Pamlico Sound. This estuarine system is the second-largest in the United States. The Neuse begins above the State Capital of Raleigh, at the confluence of the Flat and Eno rivers. This is the heart of North Carolina's Piedmont area. The entire watershed covers a distance of over 6,100 square miles. The freshwater flow of the Neuse covers about 150 miles from its source to the City of New Bern. For the most part, this stretch of the River varies in width between 100 and 150 yards. At New Bern, the Trent River joins the Neuse. This area marks the headwaters of the Neuse estuary, where freshwater begins mixing with saltwater from the Pamlico Sound.

The final fifty miles of the Neuse, from above New Bern to the sound, forms the base of patrol jurisdiction of the Neuse River Keeper. This is a sluggish area where upstream pollutants are settled and retained. It is also an area where the Neuse transfigures itself into one of the widest rivers in the country (6 miles at its mouth).

The Neuse River is home to a large variety of fish and other wildlife. Shark, tarpon, blue fish, flounder and blue and oysters, live in close proximity to species needing freshwater, like catfish bass and brim.

The Neuse is estimated to be approximately 2,000,000 years old. Archaeological evidence indicates the first humans settled around the Neuse as early as 14,000 years ago. The early native American settlers included the Tuscaroras, Coree and Neusek Indians. A struggle between early European settlers and the Tuscaroras reduced the European population from 30,000 prior to 1600 to 5,000 after the decisive "Tuscarora War" in 1714. As new settlers populated North Carolina over the next two and one half centuries, farming and forestry took hold. Today, no other river in the Albemarle-Pamlico region is as developed as the Neuse. Over 1.5 million people live in the watershed, from the sprawling suburbs of Raleigh to the up scale golf-and-sail communities below New Bern.

In 1995 and 1996, American Rivers, a nationally renowned environmental group, rated the Neuse River as one of the 20 most threatened rivers in North America. The Neuse was the only river in North Carolina which appeared on this list. Unfortunately, the State of North Carolina has been unable to effectively protect the Neuse from pollution degradation. Although the State has declared two portions of the Neuse River as "Nutrient Sensitive Waters" (NSW) --Falls Lake (1983) and the lower Neuse (1988), it has been ineffective in limiting the discharge of phosphorus and it has done nothing to limit the discharge of nitrogen. Other identified concerns include high toxin levels, six known areas of extensive heavy metal contamination in the lower Neuse, recurring fish kills and diseases and extensive sedimentation.

Currently, over 400 point source discharge permits are active in the watershed, by far the largest number for any tributary river of the Albemarle-Pamlico Sound. Over 100 million gallons of partially treated wastewater are discharged into the Neuse each day. Since 1950 there has been a 650% increase in the amount of wastewater being discharged into the Neuse River.

Non point runoff is another significant pollution problem in the Neuse River watershed. North Carolina has always been a large farming state and it has recently become the second largest hog producing state in the Nation. Most of the hogs in North Carolina are produced in the watershed area of the Albemarle-Pamlico Estuary. The State has not been effective in implementing, monitoring and/or enforcing pollution control regulations for nonpoint runoff.

North Carolina is the tenth most populated state in the United States and ranks "in the bottom ten" of the fifty states for the amount of money, per capita, it appropriates to protect its environment. It is rated by the EPA as one of the top ten states for putting toxic pollutants into the environment.

Establishment of the Neuse River Keeper Program was made possible through funding provided in three grants from the Z. Smith Reynolds Foundation beginning in 1992. These grants, coupled with wide community support and the rapid growth of the Neuse River Foundation, have insured the viability and continued success of the Neuse River Keeper Program.

The first, and current, Neuse River Keeper is Rick Dove. Rick is a retired Marine Colonel, attorney and former commercial fisherman. He was selectively chosen by the Neuse River Foundation from the 75 applicants who applied for the position in January 1993. He is licensed to serve as the Neuse River Keeper by the National alliance of River, Bay and Sound Keepers.

The Neuse River Keeper patrols the Neuse River and its shoreline by boat, aircraft and truck in order to locate and eliminate pollution sources. The River Keeper is assisted by a volunteer force of 84 Creek Keepers. These Creek Keepers, serving under the control of the River Keeper, patrol

the tributaries of the Neuse in privately owned boats and vehicles. Essentially, it is the responsibility of these Creek Keepers to be the voice, eyes, ears and nose for their assigned tributary. The River Keeper is assisted in his daily monitoring of the Creek Keeper Program by an appointed Creek Master and eleven Chief Creek Keepers. The River Keeper is also assisted by a force of over 18 pilots and observers who fly the skies in search of pollution, wildlife and disaster assessment. These volunteers, known as the Neuse River Air Force (NRAF), often coordinate their efforts with the Creek Keepers through air to ground communications. .

The River Keeper works closely with the Neuse River Foundation in monitoring NPDES permits. He interacts with agents of the state and federal government, including all relevant agencies and representatives involved with water quality protection. He coordinates his efforts with scientists and other researchers working on watershed problems. A key function of the Neuse River Keeper is to educate the public concerning water quality problems. In this regard, over the past eighteen months, the Neuse River Keeper has made presentations to over 2,000 adult citizens and 2,500 school children living in the Neuse River basin.

The River Keeper also works with volunteers of the Neuse River Foundation in maintaining a 24 hour Hot Line service. This service advertises in local papers, receives reports of pollution practices and passes these reports on to the River Keeper for investigation.

In 1994, the Neuse River Keeper retained the services of an Environmental Law Firm in order to pursue actions under the Clean Water Act. So far, more than 12 cases have been initiated and many of these cases are nearing settlement and/or court action.

A recap of the duties and functions of the Neuse River Keeper are as follows:

- (1) Patrols the Neuse River by boat, plane and vehicle
- (2) Coordinates the Neuse River Creek Keeper and NRAF Program
- (3) Locates, investigates and eliminates pollution sources
- (4) Works with government agencies in conducting water monitoring
- (5) Works with members of the scientific community on water quality research
- (6) Supervises the Neuse River Hot Line Service
- (7) Monitors NPDES permit applications and renewals.
- (8) Maintains an active education program for adults and children
- (9) Disseminates information
- (10) Environmental litigation

Information concerning the Neuse River Keeper Program can be obtained by contacting the Neuse River Foundation: Neuse River Foundation, P.O. Box 15451, New Bern, N.C. 28561 (919 637-7972) or by contacting the Neuse River Keeper: Neuse Station, 427 Boros Road, New

Address to the Committee on Health and Environment 3/19/97

Ladies and Gentlemen:

My name is Dr. Christopher Delaney. I live in New Bern, North Carolina, a town which sits on the confluence of the Neuse and Trent Rivers where they empty into the Pamlico Sound. I am board certified in Physical Medicine. I am also certified by the American Academy of Wound Management in the treatment of common skin injuries.

In the practice of my profession, I encounter a wide variety of patients from our community, many of whom live and work on the rivers. Recently I became involved with a group of patients who presented themselves for evaluation and treatment of pustular, festering blisters and open lesions. I was uncertain of the etiology of their disease, but was able to identify one common denominator: The distribution of these lesions consistently occurred where these workers had contacted either by direct immersion or splashing with water from the Neuse River. While these lesions were new to me, interestingly, they were familiar to those who work on the river. Indeed, some workers had been instructed by their employers to begin using protective garments and salves to protect themselves from contact with the water. Amongst other workers, the problems they were seeing had been given colloquial names such as "Crab bite" or "fish fin disease." A dermatologist was asked to assist with the evaluation and treatment of one patient. Cultures identified heavy growth of Staph, a common skin bacterium, which I found remarkable, as this does not normally result in such profound infections.

I therefore began consulting with other physicians in the area, and interestingly they too, had experiences with patients whom they felt had been made sick by the river. These physicians indicated they had also had seen wounds from river water exposure infected with vibrio (a pathogen associated with contaminated seafood) and even e. Coli, the bacterium that makes up the physical bulk of feces and which is treated by doctors as a biological hazard. Concern grew greater when, in my investigation of the situation, I saw photographs of lesions on fish who died in the recent rash of massive fish kills on our local waters. Stunningly, these lesions were visually identical to those seen on my patients and other people exposed to the Neuse river water. The pathogen in these cases is believed to be pfiesteria, a dinoflagellate which has existed for millions of years, but which now appears to be increasingly virulent.

I come to you not as an environmentalist and not as a toxicologist. I come to you as a member of my community who has, myself, seen the river change and deteriorate. I've seen the alga blooms, the irritation from contact with the water, the channels being choked with the effects of contaminants and of course, the fish kills with lesions remarkably similar to those I have seen on patients. I also come to you as a physician, as one with a moral responsibility for caring for the health and well being of my community and a member of an increasingly concerned and vocal chorus of physicians who fear what is happening to the river and to the people who contact it.

The concern of these doctors has grown so great that they we united to formally petition government at all levels. We doctors, seeing our role as advocates for our patients, and whose only agenda is their health and well-being, are informing all who will hear us that we believe the current agricultural, sewage and industrial waste disposal situation is posing an increasing health risk to our patients, our

neighbors and our communities. More than one hundred, ten physicians have joined with me in this cause. These committed and concerned professionals have devoted great effort to bring this situation to your attention and these fine scientists are asking only one thing of you: *Time*.

The organisms we are removing from our patients' wounds are not diseases, but symptoms of a still greater danger. In past time, a canary was placed in the coal mines to give warning to the workers so that they could save themselves. Ladies and Gentlemen, pfiesteria may be the coal mine canary of the Neuse and other coastal rivers. We are not placing blame, but make no mistake, we are sounding a frightening alarm to the people who have contact with the water and to you.

The many physicians who are calling out to you are charged with a moral, ethical and scientific responsibility to care for the well-being of the people of our communities and we believe you share with us that responsibility. We see what is before you as an opportunity to plan for the future and a chance for these noble scientists and others to examine what is afoot. Your neighbors, your *doctors* are telling you the river and the people who contact are getting sick. By acting through the moratorium, we will know you understand the urgency and the gravity of what we are saying. Do this, and know that in spite of the many pressures you feel, you are doing the right thing. Do the right thing.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **ENVIRONMENT** will meet as follows:

DAY & DATE: ¹⁰~~Wednesday~~ **Thursday, March 20, 1997**

TIME: **Immediately after session**

LOCATION: **Room 643 LOB**

The following bills will be considered (Bill # & Short Title):
HB 85 - Environmentally Sound Policy Act

Respectfully,

Representative
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
9:00 AM
on **March 20, 1997**.

___ Principal Clerk
___ Reading Clerk - House Chamber

Dorie Monroe (Committee Clerk)

Office
brien

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 85 A BILL TO BE ENTITLED AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☐ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill # ~~be re-referred to the Committee on~~)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)



3/19
Amendment
McComas

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

H85-ARD-002.2

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

Date _____, 1997

Comm. Sub. [yes]
Amends Title [no]

Rep. McComas

- 1 moves to amend the bill on page 65, lines 4-19,
2 by deleting those lines and by substituting the following:
3 "Section 4. G.S. 143-215(e) is repealed."
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Respecting
Amendment

ATTACHMENT B

(Please type or use ballpoint pen)

EDITION No. 1stH. B. No. 85

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Amendment H85VI-ART-004.03

Harkney

1 moves to amend the bill on page 1, lines 25 through 27

2 () WHICH CHANGES THE TITLE

3 by deleting those lines,4
5 on page 1 line 28 through 31
6 by rewriting those lines to read:7
8 "(c) Construction or expansion, if
9 actual construction, including
10 purchase or delivery of
11 material or equipment, began
12 prior to 1 March 1997."13
14 by relettering the succeeding
15 subsections accordingly.

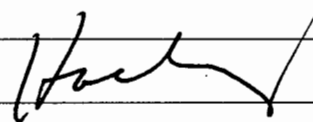
16

17

18

19

SIGNED



ADOPTED _____ FAILED _____ TABLED _____

m organ
CUT

Farm waste link to illness prompts ban

F.O. MAR 13 1997

Doctors' complaints about illnesses linked to contamination in the Neuse River persuade Craven County commissioners to issue a moratorium on large scale livestock operations.

NEW BERN (AP) — Craven County commissioners have temporarily banned new large livestock operations after doctors complained that farm waste and other contaminants in the Neuse River are making people sick.

Dr. Chris Delaney illustrated his concerns about the river with a graphic slide last month at a public meeting.

The slide displayed sores on a man's legs that ranged in size from pin pricks to one as big as a dime. All had appeared after the man submerged his legs in the nearby Neuse River.

Delaney told Craven County commissioners that the sores — afflicting a growing number of people who have contact with the river — were reason enough to ban any new large livestock operations in the county for a year.

70 doctors on petition

He was backed by a petition signed by more than 70 doctors.

"We fear what is happening to the river and are deeply concerned about the people who come in contact with it," said Delaney, who said he has treated skin lesions on two patients during the past six weeks.

Confronted by the display of concern by local doctors and other testimony, commissioners imposed the moratorium.

State officials said they had no idea that doctors in and near Craven County were observing increased rates of disease linked to the river. A survey of physicians in that area after fish kills in 1995 turned up no evidence that illnesses were rising, and state officials have received no other reports to date.

"Anytime people raise concerns we are concerned," said Dr. Michael Moser, director of the state's epidemiology staff. "But if people don't present us with evidence, we can't comment on the evidence they are operating on."

A tiny borer

The most frightening and confusing development is the discovery of a tiny organism called *pfisteria* in local waters. Since 1991, it has been found in the vicinity of more than 100 fish kills in the Neuse, New and Pamlico rivers.

The one-celled organism bores holes into fish, and some scientists think it is harmful to humans as well — though there is no conclusive evidence that it does.

State infectious disease officials are moving to force doctors to report any cases of such infection. It is considered an emerging disease by the Centers for Disease Control and state health officials plan to track reports of illness.

So far, they have no evidence that its presence is disproportionately high in the Neuse, said Dr. J.N. MacCormick, who runs North Carolina's communicable disease control office.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Watson

1 moves to amend the bill on page 8, between lines 6 and 7
2 by inserting a new section of the bill to read:

3
4 "Section 7.1 There is established a one-year moratorium
5 on the construction or expansion of swine farms and lagoons. The
6 Environmental Management Commission shall not issue a permit for an
7 animal waste management system, as defined in G.S. 143-215.10B, for
8 a new or expanded swine farm or lagoon, as defined in G.S. 106-802,
9 for a one year period beginning on the date this act becomes
10 effective except as provided by this section. This section
11 prohibits the construction or expansion of an animal waste
12 management system for a swine farm for one year from the date this
13 act becomes effective regardless of the date on which a site
14 evaluation for the swine farm is completed and regardless of whether
15 the animal waste management system is permitted under Part 1A of
16 Article 21 of Chapter 143 of the General Statutes or deemed
17 permitted under 15A North Carolina Administrative Code 2H.0217 but
18 does not prohibit:

- 19 (a) Construction to repair a component of an existing
20 swine farm or lagoon.
21 (b) Construction to replace a component of an existing
22 swine farm or lagoon if the replacement does not
23 result in an increase in swine population, except as
24 provided in subsection (e) of this section.
25 (c) Construction or expansion if the owner or operator has
26 applied for a loan to finance the construction or
27 expansion and that loan application has been approved.
28 (d) Construction or expansion if site grading or actual
29 construction, including delivery of material or
30 equipment, began prior to the date this section
31 becomes law.
32 (e) Construction or expansion on or after the date this
33 act becomes law for the purpose of increasing the



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 85

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of 1

H85V1-ART-004.03
(H85-PCSRD-001)

1 swine population to the projected population or to the
2 population that the animal waste management system
3 serving that swine farm is designed to accommodate, as
4 set forth in a registration of the swine operation
5 filed with the Department of Environment, Health, and
6 Natural Resources before the date this act becomes
7 law.
8 (f) Construction or expansion on or after the date this
9 act becomes law for the purpose of complying with
10 applicable animal waste management rules and not for
11 the purpose of increasing the swine population." and
12
13 on page 8, line 31
14 by rewriting that line to read:
15
16 (b) Section 1 and Sections 3 through 8 of this act are effective
17 when this act becomes law. Section 1, Sections 3 through 7, Section
18 8, and the provisions of".

SIGNED Cynthia B. Watson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

roll call
original

ROLL CALL VOTE

9 9 = 18 (TOTAL)
YES NO

3/19

HB# 85
SB# _____

HOUSE STANDING COMMITTEE ON ENVIRONMENT

YES	NO	MEMBER	YES	NO	EX OFFICIO MEMBERS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eddins, Co-Chair			
<input type="checkbox"/>	<input type="checkbox"/>	Hill Co-Chair	<input type="checkbox"/>	<input type="checkbox"/>	Woods Speaker Pro Tem
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Watson Co-Chair	<input type="checkbox"/>	<input type="checkbox"/>	Daughtry Majority Leader
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Baddour	<input type="checkbox"/>	<input type="checkbox"/>	Howard Majority Whip
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brown			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cole			
<input type="checkbox"/>	<input type="checkbox"/>	Culp			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gamble			
<input type="checkbox"/>	<input type="checkbox"/>	Gardner			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Gulley			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hackney			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hall			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hightower			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Kinney			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McComas			
<input type="checkbox"/>	<input type="checkbox"/>	McCombs			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mitchell			
<input type="checkbox"/>	<input type="checkbox"/>	Mosley			
<input type="checkbox"/>	<input type="checkbox"/>	Neely			
<input type="checkbox"/>	<input type="checkbox"/>	Nichols			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Preston			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weatherley			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Warner			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Warwick			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yongue RMM			

9 9

~~roll call~~
original

ROLL CALL VOTE

9 9 = 18 (TOTAL)
YES NO

HB# 85
SB#

HOUSE STANDING COMMITTEE ON ENVIRONMENT

YES	NO	MEMBER	YES	NO	EX OFFICIO MEMBERS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eddins, Co-Chair			
<input type="checkbox"/>	<input type="checkbox"/>	Hill Co-Chair	<input type="checkbox"/>	<input type="checkbox"/>	Woods Speaker Pro Tem
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Watson Co-Chair	<input type="checkbox"/>	<input type="checkbox"/>	Daughtry Majority Leader
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Baddour	<input type="checkbox"/>	<input type="checkbox"/>	Howard Majority Whip
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brown			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cole			
<input type="checkbox"/>	<input type="checkbox"/>	Culp			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gamble			
<input type="checkbox"/>	<input type="checkbox"/>	Gardner			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Gulley			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hackney			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hall			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hightower			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Kinney			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McComas			
<input type="checkbox"/>	<input type="checkbox"/>	McCombs			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mitchell			
<input type="checkbox"/>	<input type="checkbox"/>	Mosley			
<input type="checkbox"/>	<input type="checkbox"/>	Neely			
<input type="checkbox"/>	<input type="checkbox"/>	Nichols			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Preston			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weatherley			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Warner			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Warwick			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yongue RMM			

9 9

ATTACHMENT C

ROLL CALL VOTE

3/20/97

10 5 = 15 (TOTAL)
YES NO

HB# 85
SB#

HOUSE STANDING COMMITTEE ON ENVIRONMENT

YES	NO	MEMBER	YES	NO	EX OFFICIO MEMBERS
<u> </u>	<u> </u>	Eddins, Co-Chair			
<u> </u>	<u> </u>	Hill Co-Chair	<u> </u>	<u> </u>	Woods Speaker Pro Tem
<u>✓</u>	<u> </u>	Watson Co-Chair	<u> </u>	<u> </u>	Daughtry Majority Leader
<u> </u>	<u>✓</u>	Baddour	<u>✓</u>	<u> </u>	Howard Majority Whip
<u> </u>	<u> </u>	Brown —			
<u> </u>	<u> </u>	Cole —			
<u>✓</u>	<u> </u>	Culp			
<u> </u>	<u> </u>	Gamble —			
<u>✓</u>	<u> </u>	Gardner			
<u>✓</u>	<u> </u>	Gulley			
<u>✓</u>	<u> </u>	Hackney			
<u>✓</u>	<u> </u>	Hall			
<u>✓</u>	<u> </u>	Hightower			
<u> </u>	<u>✓</u>	Kinney			
<u>✓</u>	<u> </u>	McComas			
<u> </u>	<u> </u>	McCombs			
<u> </u>	<u> </u>	Mitchell			
<u> </u>	<u> </u>	Mosley			
<u> </u>	<u> </u>	Neely			
<u> </u>	<u>✓</u>	Nichols			
<u> </u>	<u> </u>	Preston			
<u> </u>	<u>✓</u>	Weatherley			
<u> </u>	<u> </u>	Warner			
<u> </u>	<u>✓</u>	Warwick			
<u>✓</u>	<u> </u>	Yongue RMM			

ROLL CALL VOTE

3/20/97

10
YES 5
NO = 15 (TOTAL)

HB# 85
SB# _____

HOUSE STANDING COMMITTEE ON ENVIRONMENT

YES	NO	MEMBER	YES	NO	EX OFFICIO MEMBERS
_____	_____	Eddins, Co-Chair	_____	_____	
_____	_____	Hill Co-Chair	_____	_____	Woods Speaker Pro Tem
<u>✓</u>	_____	Watson Co-Chair	_____	_____	Daughtry Majority Leader
_____	<u>✓</u>	Baddour	<u>✓</u>	_____	Howard Majority Whip
_____	_____	Brown —			
_____	_____	Cole —			
<u>✓</u>	_____	Culp			
_____	_____	Gamble —			
<u>✓</u>	_____	Gardner			
<u>✓</u>	_____	Gulley			
<u>✓</u>	_____	Hackney			
<u>✓</u>	_____	Hall			
<u>✓</u>	_____	Hightower			
_____	<u>✓</u>	Kinney			
<u>✓</u>	_____	McComas			
_____	_____	McCombs			
_____	_____	Mitchell			
_____	_____	Mosley			
_____	_____	Neely			
_____	<u>✓</u>	Nichols			
_____	_____	Preston			
_____	<u>✓</u>	Weatherley			
_____	_____	Warner			
_____	<u>✓</u>	Warwick			
<u>✓</u>	_____	Yongue RMM			

VISITOR REGISTRATION SHEET

19

ENVIRONMENT COMMITTEE

March 20, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Cam Cover	BPMHL
Sheila Ingram	HS INC.
Rickey L. Forkum	TDM Farms
Tommy Wagoner	TDM Farms
Durwood ASKEW	H.S. INC
Zeb Alley	Farmers for Fairness
Glennant	H.S.I.
Dale Warren	H.S.I.
George Everett	MCIC
Nichelle Cook	Weyerhaeuser
Whitley Stephenson	N.C. Park Council
John Adams	Snow Hill NC
Laura Hatfield	MCIC
David Simmons	Zeb Alley, P.A.
John Bode	Bode Cell & Green
Lou Ann Coe	HSL
Nick Wagoner	GMC
Ed Boma	P. Boma
James E. Lee	IV
Janet Hall	Rep. Hall's wife
Bernie Wills	2 AR man
Howard Arge	NC Union

22

Rep Eddins

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 85 A BILL TO BE ENTITLED AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP) AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND THE ENVIRONMENT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☐ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill # ~~be re-referred to the Committee on~~.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

Handwritten: C. Lamberd

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 85
Proposed Committee Substitute H85-PCS2174

Short Title: Environmentally Sound Policy Act.

(Public)

Sponsors:

Referred to:

February 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE ENVIRONMENTALLY SOUND POLICY ACT (ESP)
3 AND TO PROVIDE A MENU OF MEASURES TO PROTECT HEALTH AND
4 THE ENVIRONMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. This act shall be known and may be cited as the
7 "Environmentally Sound Policy Act of 1997 (ESP)".

8 Section 2. Article 67 of Chapter 106 of the General Statutes reads as
9 rewritten:

10 "ARTICLE 67.

11 "Swine Farms.

12 "§ 106-800. Title.

13 This Article shall be known as the 'Swine Farm Siting Act'.

14 "§ 106-801. Purpose.

15 The General Assembly finds that certain limitations on the siting of swine houses
16 and lagoons for swine farms can assist in the development of pork production, which
17 contributes to the economic development of the State, by lessening the interference
18 with the use and enjoyment of adjoining property.

19 "§ 106-802. Definitions.

20 As used in this Article, unless the context clearly requires otherwise:

21 (1a) 'Intensive animal feeding operation' means a new or enlarged
22 swine farm with a design capacity of more than 800,000 pounds
23 steady state live weight.

(1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.

(3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

Department of Environment, Health and Natural Resources

(5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~ located:

(1) ~~at~~ At least 1,500 feet from any occupied residence;

(2) ~~at~~ At least 2,500 feet from any school, hospital, national or State park or forest, wildlife refuge, fragile or historic area, area or facility used for outdoor recreation, or church;

(3) At least 1,320 feet from any surface waters of the State;

(4) At least 1,000 feet from any property boundary for any new or enlarged swine farm with a design capacity of at least 500,000 pounds steady state live weight;

(5) At least 1,500 feet from any property boundary for any new or enlarged swine farm with a design capacity of more than 1,000,000 pounds steady state live weight;

(6) ~~at~~ At least 500 feet from any property ~~boundary~~; boundary or public or private drinking water supply.

The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least ~~50~~ 100 feet from any boundary of property on which an occupied residence is located from any perennial stream or river, other than an irrigation ditch or canal.

(a1) A new or expanding swine house or a lagoon that is a component of a swine farm shall not be located in a 100-year floodplain unless protected from flooding as provided for in regulations of the Federal Emergency Management Agency and the

1 National Flood Insurance Program on Floodplain Management. Such construction or
2 expansion must be certified by the Department of Environment, Health, and Natural
3 Resources.

4 (b) A swine house or a lagoon that is a component of a swine farm may be
5 located closer to a residence, school, hospital, church, or a property boundary than is
6 allowed under subsection (a) of this section if written permission is given by the
7 owner of the property and recorded with the Register of Deeds.

8 "§ 106-804. Enforcement.

9 (a) Any person ~~owning~~ who owns property directly affected by the siting
10 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a
11 civil action against a swine farmer who has violated G.S. 106-803 and may seek any
12 one or more of the following:

13 (1) Injunctive relief.

14 (2) An order enforcing the siting requirements under G.S. 106-803.

15 (3) Damages caused by the violation.

16 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
17 the person ~~owns~~ owns a facility or property located less than the siting requirements
18 specified under G.S. 106-803.

19 ~~(1) An occupied residence located less than 1,500 feet from a swine~~
20 ~~house or lagoon in violation of G.S. 106-803.~~

21 ~~(2) A school, hospital, or church located less than 2,500 feet from a~~
22 ~~swine house or lagoon in violation of G.S. 106-803.~~

23 ~~(3) Property whose boundary is located less than 500 feet from a swine~~
24 ~~house or lagoon in violation of G.S. 106-803.~~

25 ~~(4) Property on which an occupied residence is located and whose~~
26 ~~boundary is less than 50 feet from the outer perimeter of the land~~
27 ~~area onto which waste is applied from a lagoon that is a~~
28 ~~component of a swine farm in violation of G.S. 106-803.~~

29 ~~(5) Property that abuts a perennial stream or river, or on which a~~
30 ~~perennial stream or river is located, and that property and that~~
31 ~~perennial stream or river are less than 50 feet from the outer~~
32 ~~perimeter of the land area onto which waste is applied from a~~
33 ~~lagoon that is a component of a swine farm in violation of G.S.~~
34 ~~106-803.~~

35 (c) If the court determines it is appropriate, the court may award court costs,
36 including reasonable attorneys' fees and expert witnesses' fees, to any party. If a
37 temporary restraining order or preliminary injunction is sought, the court may require
38 the filing of a bond or equivalent security. The court shall determine the amount of
39 the bond or security.

40 (d) Nothing in this section shall restrict any other right that any person may have
41 under any statute or common law to seek injunctive or other relief.

42 "§ 106-805. Written notice of swine farms.

43 Any person who intends to construct a swine farm whose animal waste
44 management system is subject to a permit under Part 1A of Article 21 of Chapter 143

1 of the General Statutes shall, after completing a site evaluation and before the farm
2 site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all
3 property owners who own property located across a public road, street, or highway
4 from the swine ~~farm~~ farm, the county or counties in which the farm site is located,
5 and the local health departments of that person's intent to construct the swine farm.
6 This notice shall be by certified mail sent to the address on record at the property tax
7 office in the county in which the land is located. The written notice shall include all
8 of the following:

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

22 Prior to issuing a permit for an intensive animal feeding operation, the Department
23 shall conduct a public hearing at the applicant's expense if the Department receives
24 at least 20 written requests for the public hearing.

25 **"§ 106-806. Emission of undesirable level of odor in outdoor recreational areas.**

26 (a) No intensive animal feeding operation may cause, allow, or permit emission
27 into the ambient air of an outdoor recreational area any substance or combination of
28 substances in a quantity that is determined to be an undesirable level of odor unless
29 preventative measures are taken to abate or control the emission to the satisfaction of
30 the Department of Environment, Health, and Natural Resources. When the
31 Department receives an odor complaint, the Department shall determine through
32 field surveillance or specific complaints, if the odor is at an undesirable level, and
33 shall require remediation of the undesirable level of odor.

34 (b) Nothing in this section shall prohibit an individual or group of persons from
35 bringing a complaint against an intensive animal feeding operation as defined under
36 G.S. 106-802."

37 Section 3. G.S. 143-215(e) is repealed.

38 Section 4. G.S. 153A-340 reads as rewritten:

39 **"§ 153A-340. Grant of power.**

40 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
41 county may regulate and restrict the height, number of stories and size of buildings
42 and other structures, the percentage of lots that may be occupied, the size of yards,
43 courts and other open spaces, the density of population, and the location and use of
44 buildings, structures, and land for trade, industry, residence, or other purposes, and to

1 provide density credits or severable development rights for dedicated rights-of-way
2 pursuant to G.S. 136-66.10 or G.S. 136-66.11.

3 (b) These regulations may not affect bona fide farms, but any use of farm property
4 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include
5 the production and activities relating or incidental to the production of crops, fruits,
6 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other
7 forms of agricultural products having a domestic or foreign market. These
8 regulations may apply to intensive animal feeding operations, as defined in G.S.
9 106-802. An intensive animal feeding operation is not a farm for the purpose of this
10 Part.

11 (c) The regulations may provide that a board of adjustment may determine and
12 vary their application in harmony with their general purpose and intent and in
13 accordance with general or specific rules therein contained. The regulations may also
14 provide that the board of adjustment or the board of commissioners may issue special
15 use permits or conditional use permits in the classes of cases or situations and in
16 accordance with the principles, conditions, safeguards, and procedures specified
17 therein and may impose reasonable and appropriate conditions and safeguards upon
18 these permits. Where appropriate, the conditions may include requirements that
19 street and utility rights-of-way be dedicated to the public and that recreational space
20 be provided. When issuing or denying special use permits or conditional use permits,
21 the board of commissioners shall follow the procedures for boards of adjustment
22 except that no vote greater than a majority vote shall be required for the board of
23 commissioners to issue such permits, and every such decision of the board of
24 commissioners shall be subject to review by the superior court by proceedings in the
25 nature of certiorari.

26 (d) A county may regulate the development over estuarine waters and over lands
27 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
28 bounds of that county.

29 (e) For the purpose of this section, the term 'structures' shall include floating
30 homes.

31 (f) Any petition for review by the superior court shall be filed with the clerk of
32 superior court within 30 days after the decision of the board of commissioners is filed
33 in such office as the ordinance specifies, or after a written copy thereof is delivered to
34 every aggrieved party who has filed a written request for such copy with the clerk at
35 the time of the hearing of the case, whichever is later. The decision of the board of
36 commissioners may be delivered to the aggrieved party either by personal service or
37 by registered mail or certified mail return receipt requested."

38 Section 5. A zoning regulation applicable to intensive animal feeding
39 operations adopted by a board of county commissioners prior to the date Section 4 of
40 this act becomes effective is hereby retroactively validated.

41 Section 6. There is established a one-year moratorium for any new or
42 expanding swine farm or lagoon for which a permit is required under Part 1A of
43 Chapter 143 of the General Statutes for any area in the State that: (i) has a county
44 population of less than 75,000 according to the most recent decennial federal census;

1 (ii) has over one hundred fifty million dollars (\$150,000,000) on expenditures for
2 travel and tourism based on the most recent figures of the Department of Commerce;
3 and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January
4 1997, until 31 December 1997, no permit for a new or expanding swine farm or
5 lagoon shall be issued by the Environmental Management Commission.

6 Section 7. There is established a one-year moratorium on the
7 construction or expansion of swine farms and lagoons. The Environmental
8 Management Commission shall not issue a permit for an animal waste management
9 system, as defined in G.S. 143-215.10B, for a new or expanded swine farm or lagoon,
10 as defined in G.S. 106-802, for a one-year period beginning on the date this act
11 becomes effective except as provided by this section. This section prohibits the
12 construction or expansion of an animal waste management system for a swine farm
13 for one year from the date this act becomes effective regardless of the date on which
14 a site evaluation for the swine farm is completed and regardless of whether the
15 animal waste management system is permitted under Part 1A of Article 21 of Chapter
16 143 of the General Statutes or deemed permitted under 15A North Carolina
17 Administrative Code 2H.0217 but does not prohibit:

- 18 (1) Construction to repair a component of an existing swine farm or
19 lagoon.
- 20 (2) Construction to replace a component of an existing swine farm or
21 lagoon if the replacement does not result in an increase in swine
22 population, except as provided in subdivision (4) of this section.
- 23 (3) Construction or expansion, if actual construction, including
24 purchase or delivery of material or equipment, began prior to 1
25 March 1997.
- 26 (4) Construction or expansion on or after the date this act becomes
27 law for the purpose of increasing the swine population to the
28 projected population or to the population that the animal waste
29 management system serving that swine farm is designed to
30 accommodate, as set forth in a registration of the swine operation
31 filed with the Department of Environment, Health, and Natural
32 Resources before the date this act becomes law.
- 33 (5) Construction or expansion on or after the date this act becomes
34 law for the purpose of complying with applicable animal waste
35 management rules and not for the purpose of increasing the swine
36 population.

37 Section 8. (a) Except as provided in subsection (b) of this section,
38 Section 2 of this act is effective when it becomes law and applies to the construction
39 or enlargement, on or after the effective date of this act, of swine houses, lagoons,
40 and land areas onto which waste is applied from a lagoon that are components of a
41 swine farm. Section 2 of this act does not apply under each of the following
42 circumstances when the construction or enlargement occurs on or after the effective
43 date of this act:

- 1 (1) For the purpose of increasing the swine population to that set forth
2 as the projected population in a registration of the swine operation
3 filed with the Department of Environment, Health, and Natural
4 Resources prior to the effective date of this act.
- 5 (2) For the purpose of increasing the swine population to the
6 population that the animal waste management system is designed
7 to accommodate as that system is set forth in a registration of the
8 swine operation filed with the Department of Environment, Health,
9 and Natural Resources, or an animal waste management plan
10 approved prior to the effective date of this act.
- 11 (3) For the purpose of complying with applicable animal waste
12 management rules and not for the purpose of increasing the swine
13 population.
- 14 (b) Section 1 and Sections 3 through 8 of this act are effective when this
15 act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of
16 this act applicable to intensive animal feeding operations as defined in G.S. 106-802,
17 as amended by Section 2 of this act, apply to any intensive animal feeding operation
18 for which construction began on or after 1 January 1997, regardless of the date on
19 which the site evaluation was completed.

VISITOR REGISTRATION SHEET

Environment
ame of Committee3/19/97
DateVISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Reginald Strickland	Strickland Farms
GENE WEST	G+R FARMS
Cathy Davis	McLachlan Livestock Farm
Benny Anderson	Hana Farms
David C. Kautz	Carolina Packers Inc.
Whitley Stephenson	N.C. Park Council
G.W. Newkirk	J&K Farms Inc.
LARRY JOHANSEN	J&K Farms Inc.

VISITOR REGISTRATION SHEET

ENVIRONMENT

March 19, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Jimmy Vinson	Warsaw NC
Deborah Johnson	Clinton NC
Lu-Ann Coe	HSI Cary NC
PETER MOSS	CARROLL'S FOODS, LAURINBURG, NC
Keri Britt	Murphy Family Farms
Walter Cherry	NIC Park Council
David Simonone	Zeb Alley PA
David W. Martin	South River Assoc., 820 Morris Rd Raleigh 27603
Elizabeth G. Mark	Friends of State Park 820 Morris Rd 27601
John Adams	Snow Hill NC
Pat Adams	Snow Hill NC
Zeb DeLong	Farmer For Fairness
Jameson Williams	Bone & Bassett Park Council
Marian Dodd	League of Women Voters NC Board
Roger Bone	Bone & Assoc / N.P.C.
William E. Bone	Beaufortville NC
Roy Chriscoe	Seagrave NC Farmer
Ralph Wofford	Pine Farm
Virginia Seaton	Wake County LFP Chapter, Task Force, Raleigh
Jameson	Break & Call & Then
Dr. B. D. Smith	Eco Alliance
Suzanne Johnson	Eco Alliance
Billy Register	Rose Hill N.C. 28458
Danny Champion	Hog Slat Inc Newton Grove N.C.
Jeffrey Thornton	Hog Slat Inc Newton Grove N.C.
Bob Westbrook	Hog Slat Inc Newton Grove, NC
Don Hinson	Hog Slat Inc Newton Grove, NC
GEORGE LEAMING	MURPHY FAMILY FARMS

Lisa Pearson

James M & Cullen

Tommy DALE

RIL POWELL

Clinton, N.C.

Clinton, N.C.

Clinton, NC

CLINTON N.C.

VISITOR REGISTRATION SHEET

Environment
ame of Committee

3/18/97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Otis Carter	Carter & Assoc. Hog Farmer
Gregory Johnson	1091 Dusty Road Bladenboro, N.C. 28320
Peter Daniel	IVCDA
Jeff Turner	MFF
Bice Buffaloe	NC Aquaculture Council
Nick Dean	GM Co.
Louis Magwell	GM Co
AB Swindell IV	BFI
John Runkle	CONSERVATION COUNCIL OF NC
EMMEL Coggins	SFLI
Patrick Bell	MFF (Murphy Family Farms) (Contract Grower)
Thomas Greer Edwards	TDM Grower

VISITOR REGISTRATION SHEET

Environment
ame of Committee

3/19/97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Anna Tefft

OSBM

Mark Sisak

OSBM

Jerry Schill

NC Fisheries Association
New Bern

Janet Hall

Wife of Rep. Hall

Andy Muncy

Murphy Family Farm

Dennis Pabram

"

4

FINCH MANSON

LUMAS OIL CO.

Joseph L Caudle

CACTUS

Richard R. Pinkston

Cactus. ANSON, County N.C.

Bobby Briley

Cactus ANSON County, N.C.

Donna Lee

"Rd 2, Box 286, Wadesboro, NC 28170"

Tyrone

DRC

VISITOR REGISTRATION SHEET

Environment
ame of Committee

3/19/97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

<u>Howard Kuster</u>	<u>DRC</u>
<u>Derb Carter</u>	<u>Southern Environmental Law Center</u>
<u>Michelle Nowlin</u>	<u>Southern Environmental Law Center</u>
<u>Craig Pratt</u>	<u>Brown's of Portman, Inc.</u>
<u>BOB LIVINGSTON</u>	<u>THE TURNBULL COMPANY, WHITE OAK</u>
<u>Debra B. Edwards</u>	<u>Cornell's Food</u>
<u>Bryan Allen</u>	<u>Murphy Family Farms</u>
<u>David Salinas</u>	<u>MURPHY FAMILY FARMS</u>
<u>TERRY HARDESTY</u>	<u>NCPC</u>
<u>Billy Lynn</u>	<u>Murphy Family Farms</u>
<u>Garrett Strickland</u>	<u>Strickland Farms</u>
<u>EDGAR D. BULLARD</u>	<u>STRICKLAND FARMS</u>

VISITOR REGISTRATION SHEET

3/19

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Junious Williams	Murphy Family Farms Rt 1 Box 101K Deep Run NC 28525
Roberta Alvarez	Murphy Family Farms PO Box 280 White Oak NC
TERRY TATE	MURPHY FAMILY FARMS PO Box 759 Rose Hill, NC 28458
John Carr	230 Henry Carr Ln Mt Olive N.C. Duplin Co. & Bog
Henry Carr	214 HENRY CARR LANE MT-OLIVE DUPLIN.
MARVIN TAYLOR	1984 Garner Rd Road Mt Olive Duplin
Alfred Thigpen	For HB 85 Duplin Co. Hag County Support HB-85
Winfred Mobley	1134 Old Chingwadin Rd. Beulaville N.C. Support for H.B. 85
Milton Williams	1912 S. N.C. 41 & 111 Beulaville, NC 28518
Irene Williams	Support H.B. 85 1912 S N.C. 41 & 111 Beulaville NC 28518
Fris A. Rayner	Duplin County
James Z Rayner	"

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

FRANK MEADOWS	RETIRED RESIDENCE CHATHAM
C. R. Creech	Chatham Co Lakewood Falls, Goldston, NC.
Shirley Creech	Chatham Co.
RAINE LEE	Orange Co.
Charles Bone	Duplin County
Becky Lancaster	Duplin County
Danny Lancaster	
YBuckley	Hansen H B 85
Amelia Williams	Wake Co.
Shelly Pickett	Stokes NC.

VISITOR REGISTRATION SHEET

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Eugene Parker

Murphy Farms

Charles Lee

Murphy Farms

Twila Nelson

MFC

M. H. Harris

M.F.F.

John R. Arnold

Johnson, Jack

Dogwood Farms Inc.

Benny Halder

Dogwood Farm Club

Tom Burke

Murphy Farms

Darlene Burke

Murphy Farms

David R. Benton

Murphy Family Farms

Gay H. H.

Murphy Farms

Henry Gorton

Samson Co. Ltd.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **ENVIRONMENT** will meet as follows:

DAY & DATE: **Wednesday, March 26, 1997**

TIME: **12:00 N**

LOCATION: **Room 643, LOB**

The following bills will be considered (Bill # & Short Title):

HB No. 260 Conservation Easements/Tax Credits

HB No. 189 Drinking Water Amendments (=S138)

HB No. 194 State Revolving Water Fund Account (=S137)

HB No. 242 Scrap Tire Disposal Tax Amendments (=S153) *- see du*

HB 245 Wetlands Restoration Funds (=S113)

Respectfully,

Representative Rick Eddins
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 PM on March 24, 1997, 1997.

____ Principal Clerk
____ Reading Clerk - House Chamber

Dorie Monroe, (Committee Clerk)

AGENDA

HOUSE COMMITTEE ON ENVIRONMENT

March 26, 1997
Room 643 LOB

12:00 N

OPENING REMARKS

Representative Rick Eddins

BILLS TO BE CONSIDERED:

HB 260 Conservation Easements/Tax Credits

HB 189 Drinking Water Amendments (=S138)

HB 194 State Revolving Water Fund Account (=S137)

HB 242 Scrap Tire Disposal Tax Amendments (=S153)

HB 245 Wetlands Restoration Funds (=S113)

ADJOURNMENT

HOUSE COMMITTEE ON ENVIRONMENT

Minutes: March 26, 1997

The Environment Committee met in Room 643 of the Legislative Office Building at 12:00 noon. Rep. Rick Eddins presided and called the committee to order. The following members were present: Rep. Dewey L. Hill, Cochair; Rep. Cynthia Watson, Cochair; Rep. Philip A. Baddour; Rep. Nelson Cole; Rep. Arlie Culp; Rep. John R. Gamble; Rep. Charlotte Gardner; Rep. Jim Gulley; Rep. Joe Hackney; Rep. Bobby Ray Hall; Rep. Foyle Hightower; Rep. Eugene McCombs; Rep. Frank Mitchell; Rep. Charles B. Neely; Rep. John Nichols; Rep. Jean Preston; Rep. John Weatherly; Rep. Alex Warner; Rep. Nurham Warwick and Rep. Douglas Yongue

Chairman Eddins called the meeting to order at 12:05 and recognized Rep. Lyons Gray to speak in support of his bill, HB260, Conservation Easements/Tax Credit. Rep. Gray stated that HB 260 is a product of the Environmental Review Commission. (See Attachment "A"). Rep. Yongue had a question with regard to funding and George Givens, Committee Staff, stated that the bill would go to the Finance Committee where that will be determined. Rep. Gamble was recognized with a question regarding whether or not there was a corresponding statute in the federal tax laws which would be parallel with this bill, and Rep. Gray stated that that was correct. Rep. Gamble had a further question with regard to this legislation opening the door for a federal break, and Rep. Gray stated that the federal government was giving, and the state was increasing.

Chairman Eddins recognized Rep. Mitchell who made a motion for a favorable report and re-referral to the Finance Committee, and the motion carried.

Chairman Eddins recognized Rep. Culp to speak for HB189, Drinking Water/Conform with Fed. Law. Rep. Culp stated that his bill was a product of the Environmental Review Commission. (Please see Attachment "B"). Upon conclusion of Rep. Culp's remarks, the representative moved for a favorable report. Chairman Eddins then called for the vote and the motion carried. Rep. Culp was recognized to continue and explain his second bill on the committee agenda HB 194, Drinking Water Revolving Loan Fund. Rep. Culp stated that the bill sets up a special account in the state revolving water fund so that it may handle funds made available through the Federal Safe Drinking Water Act. Rep. Culp further stated that the fund has no money at the present time; however, money will be generated by the end of the 97-98 fiscal year. At this point, Rep. Culp moved that the committee adopt the committee substitute for this bill and the motion carried. There was discussion regarding federal moneys for these grants, and Chairman Eddins recognized Ms. Linda Sewall, Division of Environmental Health. She stated that the money would be available from the federal government. She stated that the bill sets up a special account in the event North Carolina qualifies for the funds.

Rep. Culp had a question of Ms. Sewall regarding the number of small community water systems in the state, and Ms. Sewell stated that the total was about 3,000 community water systems and about 2,700 are small, which means it serves less than 3,300 people.

Chairman Eddins recognized Rep. McCombs who made the motion for an unfavorable report on the original bill, and a favorable report on the committee substitute. Chairman Eddins then called for the vote and the motion carried.

Chairman Eddins recognized Rep. Mitchell to explain his proposed committee substitute for HB242, Scrap Tire Disposal Tax Amend. Rep. Mitchell stated that the bill was a product of the Environmental Review Commission, and that the bill removes the sunset for fees for scrap tire disposal tax, and several other changes which Rep. Mitchell continued to explain. Rep. Mitchell further stated he was not aware of any opposition to the bill.

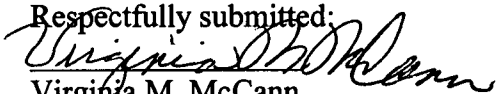
Chairman Eddins recognized Rep. Hall who made the motion for an unfavorable report on the original bill, favorable on the proposed committee substitute, and that the bill be referred to the Finance Committee. The motion carried.

Chairman Eddins recognized Rep. Hackney who stated that he wanted to complement the Scrap Tire Disposal Program. Rep. Hackney further stated that the program was a very good program, and Rep. Mitchell stated that the program was the best in the nation.

Chairman Eddins recognized Rep. Mitchell who made the motion for the committee to adopt his proposed committee substitute for discussion, and the motion carried. Rep. Mitchell stated that the bill was a product of the Environmental Review Commission and further stated that should the committee members approve the bill it would be necessary for it to be referred to the Appropriations Committee. (Please see Attachment "D").

Chairman Eddins recognized Rep. Hackney who made the move for a favorable report, and there was continued discussion regarding funding. Rep. Mitchell stated that the budgeting process would be the final decision on the bill. There was continued discussion regarding the positions called for in the bill, and Mr. Preston Howard, Division of Environmental Management stated that the Office of State Personnel would make the final decision. Chairman Eddins called for a vote - unfavorable as to original bill and favorable as to the committee substitute, which will be referred to the Appropriations Committee. The motion carried.

Respectfully submitted:


Virginia M. McCann
Committee Clerk


Rep. Rick Eddins
CoChair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*Mitchell for
road for
funding
by Finance*

H

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HOUSE BILL 260*

Short Title: Conservation Easements/Tax Credit.

(Public)

Sponsors: Representatives Gray, Mitchell; Davis, Hall, Rayfield, Sherrill, and Watson.

Referred to: Environment, if favorable, Appropriations.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CONSERVATION EASEMENTS PROGRAM THAT
3 USES CONSERVATION TAX CREDITS FOR THE PROTECTION OF
4 NATURAL RESOURCES AND THAT FURTHERS APPROPRIATE PUBLIC
5 USE OF NATURAL RESOURCES, TO CREATE THE FACILITATION AND
6 ASSISTANCE GRANT FUND TO SUPPORT COOPERATIVE
7 CONSERVATION EFFORTS, AND TO INCREASE THE CAP ON THE
8 INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR
9 CONSERVATION PURPOSES, AS RECOMMENDED BY THE
10 ENVIRONMENTAL REVIEW COMMISSION.

11 The General Assembly of North Carolina enacts:

12 Section 1. Chapter 113A of the General Statutes is amended by adding a
13 new Article to read:

14 "ARTICLE 16.

15 "Conservation Easements Program.

16 "§ 113A-230. Legislative findings; intent.

17 The General Assembly finds that past efforts to protect natural resources and to
18 provide for the appropriate public use of natural resources through the provision of
19 income tax credits for the donation of real property interests is fiscally prudent but
20 too limited to meet increasing needs. The General Assembly finds that a statewide
21 network of protected riparian buffers and greenways can best be accomplished
22 through a conservation easements program that entails the cooperative effort of all
23 levels of government, nonprofit organizations, and individuals. It is clear that a more

comprehensive approach is required to accomplish riparian buffers and greenways, as well as this program's other conservation purposes, than was previously envisioned and set in place. Other public conversation and use programs, such as natural area protection, beach access, trail systems, historic landscape protection, and agricultural preservation, also can benefit from increased attention and improved conservation tools. Recognizing that flexibility is essential to the success of this effort, the conservation easements program utilizes a broad range of nonregulatory approaches and involves all interested parties in its activities. Because public understanding and acceptance is crucial to a nonregulatory program, activities include education about the purpose of and methods for conservation, as well as opportunities to use such knowledge through involvement in efforts to conserve ecological systems. Potential exists to accomplish multiple public purposes on conserved lands, and every reasonable effort should be made to accommodate compatible uses without diminishing their natural resource value. In those cases where potential conservation lands have been previously degraded, partnerships should be sought to restore these lands so that they again will serve a viable role in the ecological system. The General Assembly intends to extend the ability of the Department of Environment, Health, and Natural Resources to achieve these purposes and to strengthen the capability of private nonprofit land trusts to participate in land and water conservation.

"§ 113A-231. Duties of the Department.

The Department of Environment, Health, and Natural Resources shall develop a nonregulatory program that uses conservation tax credits as a prominent tool to accomplish conservation purposes, including the maintenance of ecological systems. The Secretary of Environment, Health, and Natural Resources shall:

- (1) Adopt a plan guiding efforts to educate involved parties, focus on attainable conservation objectives, and achieve ecological benefits for the State.
- (2) Set goals for education and communication designed to reach the broadest and most involved audience so that the conservation tax credit may develop into a significant tool for environmental protection and for furthering appropriate public use of natural resources.
- (3) Adopt guidance, criteria, and rules for program operation to ensure maximum effectiveness and long-term efficiency.
- (4) Award grants and execute contracts and other agreements as necessary to conduct the nonregulatory program and achieve its goals.
- (5) Facilitate acquisition through donation and facilitate the holding and the transferring of interests in land necessary to establish a network of riparian buffers and greenways, as well as natural areas and other conservation benefits.
- (6) Facilitate acceptance of donations that are eligible for tax credits under G.S. 105-130.34 or G.S. 105-151.12 or that constitute a charitable deduction under federal or State law.

- (7) Cooperate with federal, State, or local government agencies, nonprofit organizations, corporations, and individuals.
- (8) Involve professional associations, business leagues, community groups, and other volunteer groups in program activities.
- (9) Facilitate public education regarding the function and importance of ecological systems and the methods available for their protection.
- (10) Coordinate with other programs involved with the conservation of lands and waters to gain the most public benefit while protecting the environment.
- (11) Pursue cooperative efforts to restore previously degraded lands brought under the public trust to reestablish their ecological function.

"§ 113A-232. Facilitation and Assistance Grant Fund.

(a) Fund Created. -- The Facilitation and Assistance Grant Fund is created. The Fund shall be administered by the Department of Environment, Health, and Natural Resources to stipulate use of the conservation easements for other conservation purposes, to improve the capacity of private nonprofit land trusts to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase citizen participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. -- The Facilitation and Assistance Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the biennium unless the General Assembly otherwise provides. Unexpended monies in the Fund from other sources shall not revert and shall remain available until such time as they are expended consistent with this Article.

(c) Administration of Fund. -- The Secretary of Environment, Health, and Natural Resources shall adopt rules that set forth the process for awarding grants and administering the Facilitation and Assistance Grant Fund, using the best available information to focus grants activity on those areas, approaches, and techniques that are likely to provide the optimum positive effect on environmental protection. The Secretary may contract for administrative services to assist in administering the program under this Article.

(d) Eligibility. -- In order to be the subject of a grant under this Article, lands must possess or have a high potential to possess ecological value, must be reasonably restorable, and must qualify for tax credits under G.S. 105-151.12 and G.S. 105-130.34. Private nonprofit land trust organizations must be qualified pursuant to G.S. 105-151.12 and G.S. 105-130.34 and must be certified under section 501(c)(3) of the Internal Revenue Code.

"§ 113A-233. Uses of the Facilitation and Assistance Grant Fund.

1 (a) The Facilitation and Assistance Grant Fund shall be used to pay costs
2 reasonably necessary to administer the grants program. After these administrative
3 costs are paid, the Fund may be used for:

4 (1) Reimbursement for total or partial transaction costs for donations
5 from individuals or corporations satisfying either of the following:

6 a. Insufficient financial ability to pay all costs or insufficient
7 taxable income to allow these costs to be included in the
8 donated value.

9 b. Insufficient tax burdens to allow these costs to be offset by
10 the value of tax credits under G.S. 105-130.34 or G.S. 105-
11 151.12 or by charitable deductions.

12 (2) Management support, including initial baseline inventory and
13 planning.

14 (3) Monitoring compliance with conservation easements; the related
15 use of riparian buffers, natural areas, and greenways; and the
16 presence of ecological integrity.

17 (4) Education, including information materials intended for
18 landowners and education for staff and volunteers.

19 (5) Direct stewardship and stewardship as provided in subsection (b)
20 of this section.

21 (6) Transaction costs, including legal expenses, closing and title costs,
22 and unusual direct costs, such as overnight travel.

23 (7) Administrative costs for short-term growth or for building capacity.

24 (b) The Secretary may allocate up to ten percent (10%) of available funds after
25 reasonably necessary administrative costs have been paid to a protected endowment
26 account, the interest from which shall be available to accomplish the ongoing
27 activities provided in subdivisions (3) and (5) of subsection (a) of this section.

28 (c) The Fund shall not be used to pay the purchase price for any interest in land.

29 "§ 113A-234. Administration of grants.

30 (a) The Department of Environment, Health, and Natural Resources may
31 administer the grants under this Article or may contract for selected activities under
32 this Article. If administrative services are contracted, the Department shall establish
33 guidance and criteria for its operation and contract with a statewide nonprofit land
34 trust service organization.

35 (b) The Secretary of Environment, Health, and Natural Resources shall adopt
36 rules for the award of grants. The rules may address, but are not limited to, the
37 following considerations:

38 (1) Application and award frequency.

39 (2) Organizational capability of the grantees.

40 (3) Viability of the donor.

41 (4) Location of the natural resources.

42 (5) Ecological and conservation value.

43 (6) Legal parameters of protective instruments.

44 (7) Procedural considerations.

(8) Management policies.

(9) Stewardship expectations.

(10) Requirements for matching funds.

(c) The Secretary of Environment, Health, and Natural Resources shall make the final decision on the award of grants and shall announce the award publicly in a timely manner.

"§ 113A-235. Conservation easements.

Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act. A conservation easement or conservation agreement secured with assistance from the Facilitation and Assistance Grant Fund shall provide that all rights under the easement or conservation agreement may be transferred to the Department of Environment, Health and Natural Resources. As a condition of receiving funds under this Article, the holder of the conservation easement or conservation agreement shall grant to the Department of Environment, Health, and Natural Resources, as trustee for the State, a first right of refusal to acquire all rights in the conservation easement or conservation agreement under such terms and conditions as agreed to between the holder of the conservation easement or conservation agreement and the Department of Environment, Health and Natural Resources. Any holder of a conservation easement or conservation agreement secured under this Article shall assume responsibility for the management of the protected interests created by the easement. The Department of Environment, Health, and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems."

Section 2. G.S. 105-130.34 reads as rewritten:

"§ 105-130.34. Credit for certain real property donations.

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, ~~shall be~~ is allowed a credit against the ~~taxes tax~~ imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, ~~local government~~ a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. ~~105-130.9; provided, however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances shall not be~~ the regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000).

1 To support the credit allowed by this section, the taxpayer shall file with its income
2 tax return for the taxable year in which the credit is claimed, a certification by the
3 Department of Environment, Health, and Natural Resources that the property
4 donated is suitable for one or more of the valid public benefits set forth in this
5 subsection.

6 (b) The credit allowed by this section may not exceed the amount of tax imposed
7 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
8 ~~this Division; allowed~~, except payments of tax made by or on behalf of the taxpayer.

9 (c) Any unused portion of this credit may be carried forward for the next
10 succeeding five years.

11 (d) ~~The fair market value, or any portion thereof, of a~~ That portion of a
12 qualifying donation that is ~~not eligible for a credit pursuant to this section may be~~
13 ~~considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of~~
14 ~~the donation~~ the basis for a credit allowed as a credit pursuant to under this section
15 ~~shall not be~~ is not eligible for deduction as a charitable ~~contribution.~~ contribution
16 under G.S. 105-130.9."

17 Section 3. G.S. 105-151.12 reads as rewritten:

18 "**§ 105-151.12. Credit for certain real property donations.**

19 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
20 property located in North Carolina during the taxable year that is useful for (i) public
21 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
22 conservation, or (iv) other similar land conservation purposes, ~~shall be~~ is allowed as a
23 credit against the tax imposed by this Division an amount equal to twenty-five
24 percent (25%) of the fair market value of the donated property interest. To be
25 eligible for this credit, the interest in property must be donated to and accepted by
26 either the State, a local government, or a body that is both organized to receive and
27 administer lands for conservation purposes and ~~is~~ qualified to receive charitable
28 contributions under the ~~Code; provided, however, that lands~~ Code. Lands required
29 to be dedicated pursuant to local governmental regulation or ordinance and
30 dedications made to increase building density levels permitted under ~~such~~ the
31 regulations or ordinances are not eligible for this credit. The credit allowed under
32 this section may not exceed ~~twenty-five thousand dollars (\$25,000).~~ one hundred
33 thousand dollars (\$100,000). To support the credit allowed by this section, the
34 taxpayer shall file with the income tax return for the taxable year in which the credit
35 is claimed a certification by the Department of Environment, Health, and Natural
36 Resources that the property donated is suitable for one or more of the valid public
37 benefits set forth by this subsection.

38 (b) The credit allowed by this section may not exceed the amount of tax imposed
39 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
40 ~~this Division; allowed~~, except payments of tax made by or on behalf of the taxpayer.

41 Any unused portion of this credit may be carried forward for the next succeeding
42 five years.

43 (c) In order to claim the credit allowed under this section, the taxpayer must add
44 the fair market value of the donated property interest, up to a maximum of ~~one~~

1 ~~hundred thousand dollars (\$100,000),~~ four hundred thousand dollars (\$400,000), to
2 taxable income as provided in G.S. 105-134.6(c).

3 (d) In the case of property owned by a married couple, if both spouses are
4 required to file North Carolina income tax returns, the credit allowed by this section
5 may be claimed only if the spouses file a joint return. If only one spouse is required
6 to file a North Carolina income tax return, that spouse may claim the credit allowed
7 by this section on a separate return.

8 (e) In the case of marshland for which a claim has been filed pursuant to G.S.
9 113-205, the offer of donation must be made before December 31, 1998, to qualify for
10 the credit allowed by this section."

11 Section 4. G.S. 105-134.6(c)(5) reads as rewritten:

12 "(5) The fair market value, up to a maximum of ~~one hundred thousand~~
13 ~~dollars (\$100,000),~~ four hundred thousand dollars (\$400,000), of
14 the donated property interest for which the taxpayer claims a
15 credit for the taxable year under G.S. 105-151.12 and the market
16 price of the gleaned crop for which the taxpayer claims a credit for
17 the taxable year under G.S. 105-151.14."

18 Section 5. G.S. 105-287(a) reads as rewritten:

19 "(a) In a year in which a general reappraisal or horizontal adjustment of real
20 property in the county is not made, the assessor shall increase or decrease the
21 appraised value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish
22 any one or more of the following:

- 23 (1) Correct a clerical or mathematical ~~error;~~ error.
24 (2) Correct an appraisal error resulting from a misapplication of the
25 schedules, standards, and rules used in the county's most recent
26 general reappraisal or horizontal ~~adjustment;~~ adjustment.
27 (2a) Recognize changes in value resulting from agreements made
28 pursuant to Article 4 of Chapter 121 of the General Statutes, the
29 Conservation and Historic Preservation Agreements Act.
30 (3) Recognize an increase or decrease in the value of the property
31 resulting from a factor other than one listed in subsection (b)."

32 Section 6. G.S. 105-317(a) reads as rewritten:

33 "(a) Whenever any real property is appraised it shall be the duty of the persons
34 making appraisals:

- 35 (1) In determining the true value of land, to consider as to each tract,
36 parcel, or lot separately listed at least its advantages and
37 disadvantages as to location; zoning; quality of soil; waterpower;
38 water privileges; dedication as a nature preserve; conservation
39 easements; historic preservation agreements; mineral, quarry, or
40 other valuable deposits; fertility; adaptability for agricultural,
41 timber-producing, commercial, industrial, or other uses; past
42 income; probable future income; and any other factors that may
43 affect its value except growing crops of a seasonal or annual
44 nature.

- 1 (2) In determining the true value of a building or other improvement,
2 to consider at least its location; type of construction; age;
3 replacement cost; cost; adaptability for residence, commercial,
4 industrial, or other uses; past income; probable future income; and
5 any other factors that may affect its value.
6 (3) To appraise partially completed buildings in accordance with the
7 degree of completion on January 1."
8 Section 7. Sections 2 through 4 of this act are effective for taxable years
9 beginning on or after 1 January 1997. The remaining sections of this act become
10 effective 1 July 1997.



**North Carolina General Assembly
Legislative Services Office**

Attachment "A"

Gray

George R. Hall, Legislative Services Officer
(919) 733-7044

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(919) 733-2578

March 26, 1997

MEMORANDUM

To: House Committee on Environment

From: Mary Beach Shuping, Administrative Assistant

Re: **House Bill 260 - Conservation Easements/Tax Credit**

HB 260 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The bill establishes a conservation easement program which uses tax credits for protecting natural resources and furthers the appropriate public use of natural resources. The bill also creates the Facilitation and Assistance Grant Fund to support cooperative conservation efforts. Finally, the bill increases the cap on the income tax credit for real property donated for conservation purposes.

Section 1. Amends §113A to add Article 16 (Conservation Easements Program). Section 1 of this bill establishes a Conservation Easements Program in the Department of Environment, Health and Natural Resources (DEHNR). It directs DEHNR to develop a nonregulatory program which uses conservation tax credits in accomplishing conservation purposes, including the maintenance of ecological systems.

Section 1 also establishes the Facilitation and Assistance Grant Fund (Fund) to be administered by DEHNR. The fund will consist of any monies appropriated by the General Assembly as well as monies from other public and private sources. Funds appropriated by the General Assembly will be subject to reversion while monies from other public and private resources will not revert. It also directs the Secretary of Environment, Health, and Natural Resources (Secretary) to adopt rules to provide for awarding grants and administering the Fund, and provides that in order to be eligible for a grant, the lands must possess or have a high potential to possess ecological value, be reasonably restorable, and must qualify for certain tax credits.

Section 1 also directs that the Fund shall be used to pay reasonably necessary costs to administer the grants program, and that after administrative costs are paid, the Fund may be used to reimburse transaction costs to individuals or corporations who either have insufficient ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value; or insufficient tax burdens to allow these costs to be offset by the value of tax credits involving the donation of real property. The fund may also be used for management support, including: baseline inventory and planning; monitoring compliance with conservation easements; educational activities; direct stewardship; transaction costs; and administrative costs for short-term growth or for building capacity. The Secretary

may allocate up to ten percent (10%) of available funds after administrative costs to a protected endowment account. Section 1 prohibits the Fund from being used to pay the purchase price for any interest in land. This Section also provides that DEHNR may administer the grants or may contract for selected activities, and that the Secretary shall adopt rules for awarding the grants.

Finally, this Section provides that all rights under a conservation easement or conservation agreement secured with assistance from the Fund may be transferred to DEHNR and DEHNR must be granted a first right of refusal to acquire all rights.

Section 2. Amends § 105-130.34, Credit for certain real property donations. Section 2 provides that corporations making a donation of interest in real property are allowed a tax credit equal to 25% of the fair market value of the donated property not to exceed \$250,000 (current limitation is \$25,000).

Section 3. Amends § 105-151.12, Credit for certain real property donations. Section 3 provides that individuals making a donation of interest in real property are allowed a tax credit equal to 25% of the fair market value of the donated property, not to exceed \$100,000 (current limitation is \$25,000).

Section 4. Amends § 105-134.6(c)(5). This Section provides that the taxpayer claiming the tax credit for donated property must add the fair market value of the donated property up to a maximum of \$400,000 (current maximum is \$100,000).

Section 5. Amends § 105-287(a). This Section provides that tax assessors shall recognize changes in value resulting from agreements made under the Conservation and Historic Preservation Agreements Act.

Section 6. Amends § 105-317(a). This Section provides that persons who appraise real property shall consider conservation easements and historic preservation agreements.

Section 7. Effective Dates. This Section makes Sections 2 through 4 effective for taxable years beginning on or after January 1, 1997, and makes all other Sections effective July 1, 1997.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 260 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A CONSERVATION EASEMENTS PROGRAM THAT USES CONSERVATION TAX CREDITS FOR THE PROTECTION OF NATURAL RESOURCES AND THAT FURTHERS APPROPRIATE PUBLIC USE OF NATURAL RESOURCES, TO CREATE THE FACILITATION AND ASSISTANCE GRANT FUND TO SUPPORT COOPERATIVE CONSERVATION EFFORTS, AND TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☒ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

*Fairly
repeat*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 189*

Short Title: Drinking Water/Conform with Fed. Law.

(Public)

Sponsors: Representative Culp.

Referred to: Environment.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA DRINKING WATER ACT SO
3 THAT IT CONFORMS WITH FEDERAL LAW, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 130A-313(10) reads as rewritten:
7 "(10) 'Public water system' means a system for the provision to the
8 public of ~~pipd water for human consumption~~ water for human
9 consumption through pipes or other constructed conveyances if the
10 system serves 15 or more service connections or which regularly
11 serves 25 or more individuals. The term includes:
12 a. Any collection, treatment, storage or distribution facility
13 under control of the operator of the system and used
14 primarily in connection with the system; and
15 b. Any collection or pretreatment storage facility not under the
16 control of the operator of the system ~~which~~ that is used
17 primarily in connection with the system.
18 A public water system is either a 'community water system' or a
19 'noncommunity water system' as follows:
20 a. 'Community water system' means a public water system
21 ~~which~~ that serves 15 or more service connections or ~~which~~
22 that regularly serves at least 25 year-round residents.
23 b. 'Noncommunity water system' means a public water system
24 ~~which~~ that is not a community water system.

1 A connection to a system that delivers water by a constructed
2 conveyance other than a pipe is not a connection within the
3 meaning of this subdivision under any one of the following
4 circumstances:

- 5 a. The water is used exclusively for purposes other than
6 residential uses. As used in this subdivision, 'residential
7 uses' mean drinking, bathing, cooking, or other similar uses.
8 b. The Department determines that alternative water to
9 achieve the equivalent level of public health protection
10 pursuant to applicable drinking water rules is provided for
11 residential uses.
12 c. The Department determines that the water provided for
13 residential uses is centrally treated or treated at the point of
14 entry by the provider, a pass-through entity, or the user to
15 achieve the equivalent level of protection provided by the
16 applicable drinking water rules."

17 Section 2. This act is effective when it becomes law.

for report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 189*

Short Title: Drinking Water/Conform with Fed. Law.

(Public)

Sponsors: Representative Culp.

Referred to: Environment.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA DRINKING WATER ACT SO
3 THAT IT CONFORMS WITH FEDERAL LAW, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 130A-313(10) reads as rewritten:
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8 public of ~~pipd water for human consumption~~ water for human
9 consumption through pipes or other constructed conveyances if the
10 system serves 15 or more service connections or which regularly
11 serves 25 or more individuals. The term includes:
12 a. Any collection, treatment, storage or distribution facility
13 under control of the operator of the system and used
14 primarily in connection with the system; and
15 b. Any collection or pretreatment storage facility not under the
16 control of the operator of the system ~~which~~ that is used
17 primarily in connection with the system.
18 A public water system is either a 'community water system' or a
19 'noncommunity water system' as follows:
20 a. 'Community water system' means a public water system
21 ~~which~~ that serves 15 or more service connections or ~~which~~
22 that regularly serves at least 25 year-round residents.
23 b. 'Noncommunity water system' means a public water system
24 ~~which~~ that is not a community water system.

1 A connection to a system that delivers water by a constructed
2 conveyance other than a pipe is not a connection within the
3 meaning of this subdivision under any one of the following
4 circumstances:

- 5 a. The water is used exclusively for purposes other than
6 residential uses. As used in this subdivision, 'residential
7 uses' mean drinking, bathing, cooking, or other similar uses.
8 b. The Department determines that alternative water to
9 achieve the equivalent level of public health protection
10 pursuant to applicable drinking water rules is provided for
11 residential uses.
12 c. The Department determines that the water provided for
13 residential uses is centrally treated or treated at the point of
14 entry by the provider, a pass-through entity, or the user to
15 achieve the equivalent level of protection provided by the
16 applicable drinking water rules."

17 Section 2. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Office**

Attachment "B"
George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
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Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

March 26, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 189 (Drinking Water/Conform with Federal Law)

House Bill 189 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). This bill amends the definition of "public water system" in G.S. 130A-313(10) of the North Carolina Drinking Water Act so that it conforms with Title I, section 101 of the federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182; 110 Stat. 1616; 42 U.S.C. § 300f). North Carolina must conform to or surpass federal drinking water laws in order to maintain its role as the primary enforcement authority over drinking water. This bill's inclusion of "constructed conveyances" in the term "public water system" would have no impact in North Carolina, other than bringing the State into conformity with federal law, because North Carolina has no "constructed conveyances" (ditches, open aqueducts) that deliver water for human consumption.

Section 1.

Section 1 of the bill amends the definition of "public water system" in G.S. 120A-313(10) to include systems that provide water through constructed conveyances as well as pipes. Section 1 also defines "connection" as used in the term "public water system". "Connection" does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (a) the water is used for other than residential uses (drinking, bathing, cooking, or other similar uses); (b) the Department of Environment, Health, and Natural Resources determines that an alternative source of water for residential uses that satisfies public health protection rules is provided; or (c) the Department of Environment, Health, and Natural Resources determines that the water provided for residential uses is sufficiently treated to satisfy applicable drinking water rules.

Section 2.

Section 2 of this bill makes this act effective when it becomes law.

*Reg. Eddins
Sec #65*

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) Hill, Eddins & Watson for the Committee on ENVIRONMENT.

☐ Committee Substitute for

H.B. 189 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA
DRINKING WATER ACT SO THAT IT CONFORMS WITH FEDERAL LAW, AS
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

HOUSE BILL 194

*Culp -
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Short Title: State Revolving Water Fund Account.

(Public)

Sponsors: Representatives Culp; and Weatherly.

Referred to: Environment, if favorable, Appropriations.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN ACCOUNT WITHIN THE STATE REVOLVING
3 LOAN AND GRANT FUND SO THAT FUNDS MADE AVAILABLE UNDER
4 THE FEDERAL SAFE DRINKING WATER ACT AMENDMENTS OF 1996
5 MAY BE USED BY THE STATE, AS RECOMMENDED BY THE
6 ENVIRONMENTAL REVIEW COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 159G-5 is amended by adding a new subsection to read:
9 "(d) The State Revolving Water Fund is established as a special account within
10 the Clean Water Revolving Loan and Grant Fund. This account shall be established
11 and managed in accordance with the requirements of Title I, section 130 of the
12 federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182), to achieve
13 the purposes and goals of the federal Safe Drinking Water Act Amendments of 1996.
14 The funds in the State Revolving Water Fund account may be used only for the
15 purposes of providing revolving construction loans and other assistance as set forth in
16 Title I, section 130 of the federal Safe Drinking Water Act Amendments of 1996 and
17 the regulations thereunder, including making grants to the extent permitted by these
18 amendments or these regulations."
19 Section 2. This act is effective when it becomes law.

Attachment^{cc}
C 9
for

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 194
Proposed Committee Substitute H194-PCS8040

Short Title: Drinking Water Revolving Loan Fund.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN ACCOUNT WITHIN THE CLEAN WATER
3 REVOLVING LOAN AND GRANT FUND SO THAT FUNDS MADE
4 AVAILABLE UNDER THE FEDERAL SAFE DRINKING WATER ACT
5 AMENDMENTS OF 1996 MAY BE USED BY THE STATE, AS
6 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 159G-5 is amended by adding a new subsection to read:
9 "(d) The Drinking Water Treatment Revolving Loan Fund is established as a
10 special account within the Clean Water Revolving Loan and Grant Fund. This
11 account shall be established and managed in accordance with the requirements of
12 section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996
13 (Pub. L. 104-182; 110 Stat. 1662; 42 U.S.C. § 300j-12), to achieve the purposes and
14 goals of the federal Safe Drinking Water Act Amendments of 1996. The funds in the
15 Drinking Water Treatment Revolving Loan Fund may be used only for the purposes
16 of providing revolving construction loans and other assistance as set forth in section
17 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 and the
18 regulations promulgated thereunder, including making grants to the extent permitted
19 by these amendments or these regulations."
20 Section 2. This act is effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 194 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN ACCOUNT WITHIN THE STATE REVOLVING LOAN AND GRANT FUND SO THAT FUNDS MADE AVAILABLE UNDER THE FEDERAL SAFE DRINKING WATER ACT AMENDMENTS OF 1996 MAY BE USED BY THE STATE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*M: Culp
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D

HOUSE BILL 242*
Proposed Committee Substitute H242-PCS1184

Short Title: Scrap Tire Disposal Tax Amend.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT
3 RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE
4 THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO
5 COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS
6 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as
9 rewritten:

10 "Sec. 9. Section 4 of this act becomes effective January 1, 1994. Section 8 of this
11 act becomes effective June 30, 1997. All other sections of this act become effective
12 October 1, 1993. ~~Sections 1 through 6 of this act expire June 30, 1997. Section 7 of~~
13 ~~this act expires June 30, 1995. Any funds remaining in the Scrap Tire Disposal~~
14 ~~Account created by this act on June 30, 1997, shall be transferred to the Solid Waste~~
15 ~~Management Trust Fund. The expiration of the additional tax imposed by Section 1~~
16 ~~of this act does not affect the rights or liabilities of the State, a taxpayer, or another~~
17 ~~person that arise during the time the additional tax is in effect. The first quarterly~~
18 ~~report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days~~
19 ~~after the quarter that ends on December 31, 1993."~~

20 Section 2. G.S. 130A-309.63 reads as rewritten:

21 "§ 130A-309.63. Scrap Tire Disposal Account.

22 (a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting
23 account within the Department. The Account consists of revenue credited to the

1 Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of
2 Chapter 105 of the General Statutes.

3 (b) Use. -- The Department may use revenue in the Account only as authorized
4 by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty
5 percent (50%) of the revenue in the Account to make grants to units of local
6 government to assist them in disposing of scrap tires. To administer the grants, the
7 Department shall establish procedures for applying for a grant and the criteria for
8 selecting among grant applicants. The criteria shall include the financial ability of a
9 unit of local government to provide for scrap tire disposal, the severity of a unit of
10 local government's scrap tire disposal problem, the effort made by a unit of local
11 government to ensure that only tires generated in the normal course of business in
12 this State are provided free disposal, and the effort made by a unit of local
13 government to provide for scrap tire disposal within the resources available to it.
14 The Department may use up to forty percent (40%) of the revenue in the Account to
15 make grants to encourage the use of processed scrap tire materials. These grants may
16 be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or
17 other components of tires for use in products such as fuel, tires, mats, auto parts,
18 gaskets, flooring material, and other applications of processed tire materials. These
19 grants shall be made in consultation with the Department of Commerce, the Division
20 of Environmental Assistance and Pollution Prevention of the Department, and, where
21 appropriate, the Department of Transportation. Grants to encourage the use of
22 processed scrap tire materials shall not be used to process tires.

23 (c) Eligibility. -- A unit of local government is not eligible for a grant unless its
24 costs for disposing of scrap tires for the six-month period preceding the date the unit
25 of local government files an application for a grant exceeded the amount the unit of
26 local government received during that period from the proceeds of the scrap tire tax
27 under G.S. 105-187.19. A grant to a unit of local government may not exceed the
28 unit of local government's unreimbursed cost for the six-month period.

29 (d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining
30 revenue in the Account only to clean up scrap tire collection sites that the
31 Department has determined are a nuisance. The Department may use funds in the
32 Account to clean up a nuisance tire collection site only if no other funds are available
33 for that purpose. The Department may use funds in the Account to establish and
34 support a position to provide regulatory assistance to local governments to develop
35 programs to prevent scrap tires from outside the State from being presented for free
36 disposal and to complete the cleanup of nuisance tire collection sites.

37 (e) Reports. -- The Department shall report annually on the Scrap Tire Disposal
38 Account to the Environmental Review Commission. The report shall be submitted
39 by 1 October of each year for the fiscal year ending the preceding 30 June. The
40 report shall show the beginning and ending balances in the Account for the reporting
41 period, the amount credited to the Account during the reporting period, and the
42 amount of revenue used for grants and to clean up nuisance tire collection sites."

1 Section 3. Section 8 of Chapter 548 of the 1993 Session Laws, which
2 under Section 9 of Chapter 548 of the 1993 Session Laws would become effective 30
3 June 1997, is repealed.

4 Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

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HOUSE BILL 242*

Short Title: Scrap Tire Disposal Tax Amend.

(Public)

Sponsors: Representatives Mitchell; Weatherly, Nichols, and Starnes.

Referred to: Environment, if favorable, Finance.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT
3 RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE
4 THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO
5 COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS
6 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as
9 rewritten:
10 "Sec. 9. Section 4 of this act becomes effective January 1, 1994. ~~Section 8 of this~~
11 ~~act becomes effective June 30, 1997.~~ All other sections of this act become effective
12 October 1, 1993. ~~Sections 1 through 6 of this act expire June 30, 1997.~~ Section 7 of
13 this act expires June 30, 1995. ~~Any funds remaining in the Scrap Tire Disposal~~
14 ~~Account created by this act on June 30, 1997, shall be transferred to the Solid Waste~~
15 ~~Management Trust Fund. The expiration of the additional tax imposed by Section 1~~
16 ~~of this act does not affect the rights or liabilities of the State, a taxpayer, or another~~
17 ~~person that arise during the time the additional tax is in effect.~~ The first quarterly
18 report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days
19 after the quarter that ends on December 31, 1993."
20 Section 2. G.S. 130A-309.63 reads as rewritten:
21 "§ 130A-309.63. Scrap Tire Disposal Account.
22 (a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting
23 account within the Department. The Account consists of revenue credited to the

1 Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of
2 Chapter 105 of the General Statutes.

3 (b) Use. -- The Department may use revenue in the Account only as authorized
4 by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty
5 percent (50%) of the revenue in the Account to make grants to units of local
6 government to assist them in disposing of scrap tires. To administer the grants, the
7 Department shall establish procedures for applying for a grant and the criteria for
8 selecting among grant applicants. The criteria shall include the financial ability of a
9 unit of local government to provide for scrap tire disposal, the severity of a unit of
10 local government's scrap tire disposal problem, the effort made by a unit of local
11 government to ensure that only tires generated in the normal course of business in
12 this State are provided free disposal, and the effort made by a unit of local
13 government to provide for scrap tire disposal within the resources available to it.
14 The Department may use up to forty percent (40%) of the revenue in the Account to
15 make grants to encourage the use of crumb rubber. Grants to encourage the use of
16 crumb rubber shall be made in consultation with the Department of Commerce and
17 the Recycling Business Assistance Center. Grants to encourage the use of crumb
18 rubber shall not be used to process tires.

19 (c) Eligibility. -- A unit of local government is not eligible for a grant unless its
20 costs for disposing of scrap tires for the six-month period preceding the date the unit
21 of local government files an application for a grant exceeded the amount the unit of
22 local government received during that period from the proceeds of the scrap tire tax
23 under G.S. 105-187.19. A grant to a unit of local government may not exceed the
24 unit of local government's unreimbursed cost for the six-month period.

25 (d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining
26 revenue in the Account only to clean up scrap tire collection sites that the
27 Department has determined are a nuisance. The Department may use funds in the
28 Account to clean up a nuisance tire collection site only if no other funds are available
29 for that purpose. The Department may use funds in the Account to establish and
30 support a position to provide regulatory assistance to local governments to develop
31 programs to prevent scrap tires from outside the State from being presented for free
32 disposal and to complete the cleanup of nuisance tire collection sites.

33 (e) Reports. -- The Department shall report annually on the Scrap Tire Disposal
34 Account to the Environmental Review Commission. The report shall be submitted
35 by 1 October of each year for the fiscal year ending the preceding 30 June. The
36 report shall show the beginning and ending balances in the Account for the reporting
37 period, the amount credited to the Account during the reporting period, and the
38 amount of revenue used for grants and to clean up nuisance tire collection sites."

39 Section 3. This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 242*
Proposed Committee Substitute H242-PCS1184

Short Title: Scrap Tire Disposal Tax Amend.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as rewritten:

"Sec. 9. Section 4 of this act becomes effective January 1, 1994. Section 8 of this act becomes effective June 30, 1997. All other sections of this act become effective October 1, 1993. ~~Sections 1 through 6 of this act expire June 30, 1997. Section 7 of this act expires June 30, 1995. Any funds remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Trust Fund. The expiration of the additional tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arise during the time the additional tax is in effect. The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends on December 31, 1993.~~"

Section 2. G.S. 130A-309.63 reads as rewritten:

"§ 130A-309.63. Scrap Tire Disposal Account.

(a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the

1 Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of
2 Chapter 105 of the General Statutes.

3 (b) Use. -- The Department may use revenue in the Account only as authorized
4 by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty
5 percent (50%) of the revenue in the Account to make grants to units of local
6 government to assist them in disposing of scrap tires. To administer the grants, the
7 Department shall establish procedures for applying for a grant and the criteria for
8 selecting among grant applicants. The criteria shall include the financial ability of a
9 unit of local government to provide for scrap tire disposal, the severity of a unit of
10 local government's scrap tire disposal problem, the effort made by a unit of local
11 government to ensure that only tires generated in the normal course of business in
12 this State are provided free disposal, and the effort made by a unit of local
13 government to provide for scrap tire disposal within the resources available to it.
14 The Department may use up to forty percent (40%) of the revenue in the Account to
15 make grants to encourage the use of processed scrap tire materials. These grants may
16 be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or
17 other components of tires for use in products such as fuel, tires, mats, auto parts,
18 gaskets, flooring material, and other applications of processed tire materials. These
19 grants shall be made in consultation with the Department of Commerce, the Division
20 of Environmental Assistance and Pollution Prevention of the Department, and, where
21 appropriate, the Department of Transportation. Grants to encourage the use of
22 processed scrap tire materials shall not be used to process tires.

23 (c) Eligibility. -- A unit of local government is not eligible for a grant unless its
24 costs for disposing of scrap tires for the six-month period preceding the date the unit
25 of local government files an application for a grant exceeded the amount the unit of
26 local government received during that period from the proceeds of the scrap tire tax
27 under G.S. 105-187.19. A grant to a unit of local government may not exceed the
28 unit of local government's unreimbursed cost for the six-month period.

29 (d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining
30 revenue in the Account only to clean up scrap tire collection sites that the
31 Department has determined are a nuisance. The Department may use funds in the
32 Account to clean up a nuisance tire collection site only if no other funds are available
33 for that purpose. The Department may use funds in the Account to establish and
34 support a position to provide regulatory assistance to local governments to develop
35 programs to prevent scrap tires from outside the State from being presented for free
36 disposal and to complete the cleanup of nuisance tire collection sites.

37 (e) Reports. -- The Department shall report annually on the Scrap Tire Disposal
38 Account to the Environmental Review Commission. The report shall be submitted
39 by 1 October of each year for the fiscal year ending the preceding 30 June. The
40 report shall show the beginning and ending balances in the Account for the reporting
41 period, the amount credited to the Account during the reporting period, and the
42 amount of revenue used for grants and to clean up nuisance tire collection sites."

1 Section 3. Section 8 of Chapter 548 of the 1993 Session Laws, which
2 under Section 9 of Chapter 548 of the 1993 Session Laws would become effective 30
3 June 1997, is repealed.

4 Section 4. This act is effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 242 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (#), ~~☐ which changes the title,~~ unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on Appropriations.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

for

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 245*
Proposed Committee Substitute H245-PCSA247

Short Title: Wetlands Restoration Prgm. Funds.

(Public)

Sponsors:

Referred to:

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS FOR THE WETLANDS RESTORATION
3 PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
4 COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. There is appropriated from the General Fund to the Wetlands
7 Restoration Fund the sum of four million dollars (\$4,000,000) for the 1997-98 fiscal
8 year and the sum of four million dollars (\$4,000,000) for the 1998-99 fiscal year for
9 the purposes set out in G.S. 143-214.12.
10 Section 2. There is appropriated from the General Fund to the
11 Department of Environment, Health, and Natural Resources the sum of one million
12 dollars (\$1,000,000) for the 1997-98 fiscal year and the sum of one million dollars
13 (\$1,000,000) for the 1998-99 fiscal year to establish and support 15 positions and for
14 administrative and other expenses necessary to implement the Wetlands Restoration
15 Program.
16 Section 3. This act becomes effective 1 July 1997.



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Memorandum

March 26, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 245 (Wetlands Restoration Prgm. Funds)

House Bill 245 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). This bill appropriates funds to administer the Wetlands Restoration Program and to fund the Wetlands Restoration Fund for fiscal years 1997-98 and 1998-99. The Program and Fund were established in Section 27.4(a) of Chapter 18 of the 1996 Second Extra Session. The purposes of the Wetlands Restoration Program, as enumerated in G.S. 143-214.9, are to restore wetland functions; provide a consistent and simplified approach to mitigation; streamline the wetlands permitting process; increase the ecological effectiveness of compensatory mitigation; achieve a net increase in wetland acres and functions; and foster a comprehensive approach to environmental protection. The Wetlands Restoration Fund is a nonreverting fund created within the Department of Environment, Health, and Natural Resources (DEHNR) to provide a repository for monetary contributions or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas.

Section 1.

Section 1 of this bill appropriates from the General Fund to the Wetlands Restoration Fund four million dollars (\$4,000,000) for the 1997-98 fiscal year and four million dollars (\$4,000,000) for the 1998-99 fiscal year. These funds are to be used for the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas.

Section 2.

Section 2 of this bill appropriates from the General Fund to DEHNR two million dollars (\$2,000,000) for the 1997-98 fiscal year and two million dollars (\$2,000,000) for the 1998-99 fiscal year to establish and support 15 positions and for administrative and other expenses for the implementation of the Wetlands Restoration Program.

Section 3.

Section 3 of this bill makes this act effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) Hill, Eddins & Watson for the Committee on ENVIRONMENT.

☐ Committee Substitute for

H.B. 245 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR THE
WETLANDS RESTORATION PROGRAM, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), ~~(and recommendation~~
~~that the committee substitute bill #) be re-referred to the Committee on~~)

appropriations

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

VISITOR REGISTRATION SHEET

ENVIRONEMNT

March 26 , 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME**FIRM OR AGENCY AND ADDRESS**

Billet & Sullivan	NC Ag Alliances
Paul Ben	NC Agribusiness
Joe Scott	N.C. Agri. Business
Jimmy Johnson	N.C. Agri. Business
JIMMY SUTTON	N.C. AGRIC. BUSINESS
HARLAN BRITT	NC, DWQ
R. ROGERS	EHNR
Scott Morgan	EHNR
Paul Curren	EHNR
Paul E. Bailey	Citizen, Retired 10104 Whitestone Rd, Ral.
Linda Sewell	DEH, DEHNR
James Morgan	CCNC
PRESTON HOWARD	DEHNR-DWQ
Cathy Cottle	DEHNR-DWQ
George Long	NC DOR
JERRY Schill	NC Fisheries Association
Danny Rogers	NCDOT
Row FERRER	DEHNR/PWQ
Bonnie Brinn	Fishermens Supporter

**HOUSE STANDING COMMITTEE ON
ENVIRONMENT
1997 Session**

**Rep. Rick Eddins, Co-Chair
Rep. Dewey Hill, Co-Chair
Rep. Cindy Watson, Co-Chair**

**Dorie Monroe, Committee Clerk
Virginia McCann, Committee Clerk
Ebern Watson, Committee Clerk**

Eddins

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE**

You are hereby notified that the Committee on **ENVIRONMENT** will meet as follows:

DAY & DATE: **Wednesday, April 2, 1997**

TIME: **12:00 N**

LOCATION: **Rm. 643 LOB**

The following bills will be considered (Bill # & Short Title):

SB 126 Solid Waste Mgt. Permit Requirements ✓

SB 140 Increase ERC Membership ✓

SB 150 Inactive Haz. Sites/Reports & Notice

HB 239 Amend Env. Mgt. Comm. Membership

HB 475 Wastewater Improvement Permits/AB

HB 484 Record Notices of Open Dumps/AB

adv. 12/5

Respectfully,

Representative Rick Eddins
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at
3:00 PM on March 31, 1997.

____ Principal Clerk
____ Reading Clerk - House Chamber

Dorie Monroe (Committee Clerk)

MINUTES

HOUSE COMMITTEE ON ENVIRONMENT

WEDNESDAY, APRIL 2, 1997

12 NOON

ROOM 643-LOB

The House Committee on Environment met on Wednesday, April 2, 1997 in Room 643-LOB at 12 noon. A silent roll was taken, (roll list denotes members present). Rep. D. Hill called the meeting to order and introduced the Pages.

SB-150 - INACTIVE HAZ. SITES/REPORTS & NOTICE

Senator Cooper was recognized to explain his bill. He explained that this bill came from the Environmental Review Commission and urged support. Rep. Brown moved for a favorable report. Rep. Hightower questioned Section 2 of the bill and why the reports should no longer come to the General Assembly. Senator Cooper responded and asked Mr. George Givens, Research Division to further explain. Mr. Givens explained that the report will be filed in the library after the report has been made to the Environment Commission Committee. Having no further discussion, a vote was taken and SB150 passed with a favorable report.

SB-126 - SOLID WASTE MGT. PERMIT REQUIREMENTS

Senator Odom was recognized to explain his bill. He shared that this bill had full support of the Environment Review Commission and urged support. Rep. Hightower questioned Senator Odom and he deferred to staff. Mr. George Givens responded. Rep. Hightower moved for a favorable report. The vote was taken and SB-126 passed with a favorable report.

SB-140 - INCREASE ERC MEMBERSHIP

Senator Odom explained the bill. Rep. Nichols moved for a favorable report. Having no further discussion, the vote was taken and SB-140 passed with a favorable report.

HB-475 WASTE WATER IMPROVEMENT PERMITS

Rep. Hurley was recognized to explain his bill. He shared that this was an agency bill from DEHNER. Mr. Bill Getter, Supervisor, Division of Environmental Health-Onsite Waste Water Program. Rep. Gardner questioned the removal of liability for the state. Mr. Getter explained that this legislation will remove liability from the local health departments. He further explained that this will allow local health departments to establish their own method of evaluation of proposed sites. Rep. Hightower had additional questions about the responsibility of inspections on a county level and Mr. Getter responded. Rep. Hightower continued discussion. Rep. Warner spoke in support of the bill. Rep. Nichols also questioned Mr. Getter regarding counties operating under state guidelines. Mr. Getter responded. Chairman Hill asked Mr. Givens, Research Division to further explain and he responded. Rep. Nichols continued with comments about the bill and how it affects county inspections guidelines. Rep. Baddour spoke on the bill in agreement with Rep. Nichols and asked if someone from the Home Builders Association could respond. Chairman Hill called on Mr. Getter to respond to their comments. Mr. Mike Carpenter, Director of Governmental Affairs, Home Builders Association spoke on the bill and agreed with Rep. Baddour's comments about the county and state inspections liabilities. Chairman Hill announced that the bill sponsor agreed to send this bill back to a sub-committee for further research. Having no objections, HB-475 will be sent to a sub-committee.

HB-239

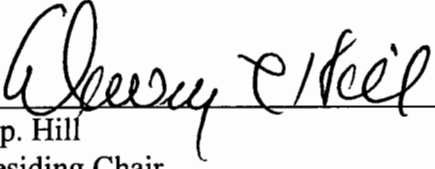
Rep. Frank Mitchell explained his bill. He advised that this was a result of the Environment Review Commission and it changes Page 2, item 8 so that it will include someone from the manufacturing facilities to serve on the board. Rep. Hightower asked Mr. George Givins about changing the language to read the same in other sections of the bill. Mr. Givins responded that the other sections would need to remain as they are due to the fact of those who are appointed to serve on the board. Rep. Culp moved for a favorable report. Rep. McComas asked for the definition of "recently" and asked if an amendment was in order to define this. Mr. Givins responded that he would not recommend this and Rep. Mitchell agreed. Having no further discussion, the vote was taken and passed with a favorable report.

HB-484

Rep. Weatherly explained his bill. He then asked Mr. Dexter Matthews, Chief of Solid Waste Section in the Division of Solid Waste Management to further explain the purpose of the bill. Rep. Nichols moved for a favorable report. Rep. Neely asked if "open dump" was defined in the General Statutes. Mr. George Givins read the General Statute to which this applies. Having no further discussion, HB-484 passed with a favorable report.

Chairman Hill appointed the members of the sub-committee for HB-475. They are Reps. Watson, Baddour, Kinney, Mosley, Nichols, and Warner. Rep. Watson will serve as Chair of the sub-committee.

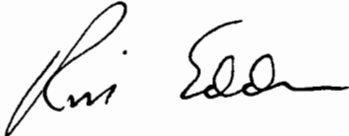
The meeting adjourned.



Rep. Hill
Presiding Chair



Ebern Watson
Committee Clerk



*For review
report*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 150*

Short Title: Inactive Haz. Sites/Reports & Notice.

(Public)

Sponsors: Senators Cooper; Horton and Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE FREQUENCY OF THE REPORT ON THE
3 INACTIVE HAZARDOUS SUBSTANCE RESPONSE ACT OF 1987 FROM
4 ANNUALLY TO EVERY TWO YEARS AND TO CLARIFY THE PUBLIC
5 COMMENT PERIOD ON REMEDIAL ACTION PLANS, AS RECOMMENDED
6 BY THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 130A-310.10 reads as rewritten:

9 "§ 130A-310.10. Annual reports.

10 (a) The Secretary shall present ~~an annual~~ a report on inactive hazardous sites to
11 ~~the General Assembly and the Environmental Review Commission which~~
12 Commission. The report shall include at least the following: least:

- 13 (1) The Inactive Hazardous Waste Sites Priority List;
14 (2) A list of remedial action plans requiring State funding through the
15 Inactive Hazardous Sites Cleanup Fund;
16 (3) A comprehensive budget to implement these remedial action plans
17 and the adequacy of the Inactive Hazardous Sites Cleanup Fund to
18 fund the cost of said plans;
19 (4) A prioritized list of sites that are eligible for remedial action under
20 CERCLA/SARA together with recommended remedial action
21 plans and a comprehensive budget to implement such plans. The
22 budget for implementing a remedial action plan under
23 CERCLA/SARA shall include a statement as to any appropriation
24 that may be necessary to pay the State's share of such plan;

- 1 (5) A list of sites and remedial action plans undergoing voluntary
2 cleanup with Departmental approval;
3 (6) A list of sites and remedial action plans that may require State
4 funding, a comprehensive budget if implementation of these
5 possible remedial action plans is required, and the adequacy of the
6 Inactive Hazardous Sites Cleanup Fund to fund the possible costs
7 of said plans;
8 (7) A list of sites which pose an imminent hazard;
9 (8) A comprehensive budget to develop and implement remedial
10 action plans for sites that pose imminent hazards and that may
11 require State funding, and the adequacy of the Inactive Hazardous
12 Sites Cleanup Fund; and
13 (9) Any other information requested by the General Assembly or the
14 Environmental Review Commission.

15 (b) The ~~annual reports~~ report required by this section shall be made by the
16 Secretary on ~~15 February of each year beginning 15 February 1990. or before 1~~
17 November of even-numbered years."

18 Section 2. G.S. 130A-310.4(e) reads as rewritten:

19 "(e) At least 45 days from the latest date on which notice is provided pursuant to
20 subsection ~~(e)~~ (c)(1) of this section shall be allowed for the receipt of written
21 comment on the proposed remedial action plan prior to its approval. If a public
22 hearing is held pursuant to subsection (f) of this section, at least 20 days will be
23 allowed for receipt of written comment following the hearing prior to the approval of
24 the remedial action plan."

25 Section 3. This act is effective when it becomes law. The Secretary of
26 Environment, Health, and Natural Resources shall make the first report under G.S.
27 130A-310.10, as amended by Section 1 of this act, on or before 1 November 1998.



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Memorandum

April 2, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 150 (Inactive Haz. Sites Reports)

Senate Bill 150 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). It received a favorable report from the Senate Committee on Agriculture, Environment, and Natural Resources on March 11, 1997 and passed second and third reading in the Senate on March 12, 1997.

Section 1.

Section 1 of this bill amends G.S. 130A-310.10 (Annual reports) to require the Secretary of Environment, Health, and Natural Resources (Secretary) to present a report on inactive hazardous sites to the Environmental Review Commission rather than to General Assembly and to reduce the reporting frequency of this report from annually to once every two years.

Section 2.

Section 2 of this bill amends G.S. 130A-310.4(e) to clarify that the 45 day period for receipt of written comment on a proposed remedial action plan begins when the notice requirement of G.S. 130A-310.4(c)(1) (newspaper notice for three consecutive weeks) is satisfied.

Section 3.

Section 3 of this bill makes this act effective when it becomes law. It also requires the Secretary to present the first inactive hazardous sites report under G.S. 130A-310.10, as amended by Section 1 of this act, on or before 1 November 1998.

*Wegman
Javala
report*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 126*

Short Title: Solid Waste Mgt. Permit Requirements.

(Public)

Sponsors: Senators Odom; Albertson, Cooper, Horton, Kinnaid, and Martin of Pitt.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT AN APPLICANT FOR A PERMIT UNDER THE
3 STATUTES GOVERNING SOLID WASTE MANAGEMENT BE
4 FINANCIALLY QUALIFIED AND DEMONSTRATE SUBSTANTIAL
5 COMPLIANCE WITH ENVIRONMENTAL LAWS, AS RECOMMENDED BY
6 THE ENVIRONMENTAL REVIEW COMMISSION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 130A-290 is amended by recodifying subdivision (1) as
9 subdivision (1a), subdivision (1a) as subdivision (1b), subdivision (1b) as subdivision
10 (1c), subdivision (41a) as subdivision (41b), and by adding three new subdivisions to
11 read:
12 "(1) 'Affiliate' has the same meaning as in 17 Code of Federal
13 Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines
14 'affiliate' as a person that directly, or indirectly through one or
15 more intermediaries, controls, is controlled by, or is under
16 common control of another person.
17 (21a) 'Parent' has the same meaning as in 17 Code of Federal
18 Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines
19 'parent' as an affiliate that directly, or indirectly through one or
20 more intermediaries, controls another person.
21 (41a) 'Subsidiary' has the same meaning as in 17 Code of Federal
22 Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines

'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person."

Section 2. G.S. 130A-294 is amended by adding two new subsections to read:

"(b2) An applicant for a permit under this Article shall satisfy the Department that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent:

(1) Is financially qualified to carry out the activity for which the permit is required.

(2) Has substantially complied with the requirements applicable to any solid waste management activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

(b3) An applicant for a permit under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Article, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified."

Section 3. This act is effective when it becomes law.



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Memorandum

April 2, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Committee Substitute for Senate Bill 126 (Solid Waste Mgt. Permit Requirements)

Senate Bill 126 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The Senate Committee on Agriculture, Environment, and Natural Resources gave a favorable report to a committee substitute for Senate Bill 126 on March 11, 1997 and the committee substitute for Senate Bill 126 passed second and third reading in the Senate on March 12, 1997.

Section 1.

Section 1 of the committee substitute amends G.S. 130A-290 by incorporating the CFR definitions for "affiliate", "parent", and "subsidiary" (17 Code of Federal Regulations § 240.12(b)-2 (1 April 1996 Edition)). See Attachment for CFR definitions.

Section 2.

Section 2 of the committee substitute amends G.S. 130A-294 by adding two new subsections:

Subsection (b2) authorizes the Department of Environment, Health, and Natural Resources (DEHNR) to require an applicant for a solid waste management permit to demonstrate that the applicant (and its parent, subsidiaries, and affiliates): (1) is financially qualified to carry out the permitted activity and (2) has substantially complied with the requirements applicable to solid waste management activities in which the applicant has previously engaged and has substantially complied with federal and state environmental protection laws.

There are similar provisions in existing law regarding initial financial qualification, compliance history, or both in:

G.S. 74-50(c). Permits – General (Mining).

G.S. 74-51(d)(7). Permits – Application, granting, conditions (Mining).

G.S. 113A-54.1(c). Approval of erosion control plans (Sedimentation).

G.S. 143-215.1(b)(4). Control of sources of water pollution; permits required.

G.S. 143-215.94U(a)(5). Registration of petroleum commercial underground storage tanks; operation of petroleum underground storage tanks; operating permit required.

G.S. 143-215.108(b)(5a). Control of sources of air pollution; permits required.

In addition, there are provisions in existing law governing solid waste and hazardous waste that relate to compliance history and financial responsibility.

G.S. 130A-294(b). Solid waste management program (Financial responsibility for closure and post-closure monitoring and maintenance at landfills).

G.S. 130A-294(j). Solid waste management program (Financial responsibility for closure and post-closure monitoring and maintenance at disposal facilities).

G.S. 130A-309.06(b). Additional powers and duties of the Department (Compliance history in this State only).

Subsection (b3) requires a permittee to remain financially qualified in order to continue holding a solid waste management permit and to provide any information requested by the DEHNR to demonstrate that the permittee continues to be financially qualified. There is a similar provision regarding continuing financial qualification in G.S. 130A-295(b), Additional requirements for hazardous waste facilities.

Section 3.

Section 3 of the committee substitute makes this act effective when it becomes law. It also makes the act applicable to any application for a permit submitted on or after this act becomes law, except that applicants for renewal, modification, or expansion do not have to satisfy G.S. 130A-294(b2)(2) (history of compliance with federal and state solid waste management requirements and environmental protection laws), as enacted by Section 2 of this act, if the applicant has satisfied G.S. 130A-309.06(b) (compliance with North Carolina solid waste management requirements).

The committee substitute for Senate Bill 126 differs from Senate Bill 126, as introduced, in the following aspects:

- The definitions of "affiliate", "parent", and "subsidiary" in Section 1 of the committee substitute contain only the Code of Federal Regulations (CFR) citation, rather than the full CFR definitions.
- Subsection (b2) of Section 2 of the committee substitute authorizes DEHNR to require, in DEHNR's discretion, that an applicant demonstrate financial qualification, rather than mandate that an applicant demonstrate financial qualification in all cases.
- Section 3 of the committee substitute exempts applicants for renewal, modification, or expansion from satisfying the requirements of G.S. 130A-294(b2)(2) (federal and state compliance history), as enacted by Section 2, if the applicant satisfies G.S. 130A-309.06(b) (North Carolina compliance history), rather than require all applicants to satisfy federal and state compliance history requirements, as well as North Carolina compliance history requirements.

§ 240.12b-1

single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

[56 FR 28322, June 20, 1991]

REGULATION 12B: REGISTRATION AND REPORTING

SOURCE: Sections 240.12b-1 to 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

GENERAL

§ 240.12b-1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to sections 12(b) and 12(g) of the Act and all reports filed pursuant to sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[47 FR 11464, Mar. 16, 1982]

§ 240.12b-2 Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in this regulation or in Regulation 13A or 15D or in the forms for statements and reports filed pursuant to sections 12, 13 or 15(d) of the act, shall have the respective meanings indicated in this rule:

Affiliate. An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

17 CFR Ch. II (4-1-96 Edition)

Amount. The term "amount," when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

Associate. The term "associate" used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

Certified. The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

Charter. The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

Common equity. The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

Control. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Depository share. The term "depository share" means a security, evidenced by an American Depositary Re-

ceipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depository.

Employee. The term "employee" does not include a director, trustee, or officer.

Fiscal year. The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

Majority-owned subsidiary. The term "majority-owned subsidiary" means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

Managing underwriter. The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

Material. The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

Parent. A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

Predecessor. The term "predecessor" means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

Previously filed or reported. The terms "previously filed" and "previously reported" mean previously filed with, or reported in, a statement under section 12, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14 of the act, or a registration statement under the Securities Act of 1933: *Provided*, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

Principal underwriter. The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

Promoter. (1) The term "promoter" includes:

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (1) of this definition may be referred to as "founders" or "organizers" or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

Prospectus. Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

Registrant. The term "registrant" means an issuer of securities with respect to which a registration statement or report is to be filed.

Registration statement. The term "registration statement" or "statement", when used with reference to registration pursuant to section 12 of the act, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b) of the act and a registration statement filed pursuant to section 12(g) of the act.

Share. The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than \$25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of \$25,000,000 or more.

NOTE: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also "majority-owned subsidiary," "significant subsidiary," and "totally-held subsidiary.")

Succession. The term "succession" means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed

by the direct acquisition of its assets. The terms "succeed" and "successor" have meanings correlative to the foregoing.

Totally held subsidiary. The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Voting securities. The term "voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

Wholly-owned subsidiary. The term "wholly-owned subsidiary" means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly-owned subsidiaries.

[13 FR 9321, Dec. 31, 1948, as amended at 19 FR 6730, Oct. 30, 1954; 20 FR 8285, Nov. 4, 1955; 30 FR 2022, Feb. 13, 1965; 47 FR 11464, Mar. 16, 1982; 47 FR 29841, July 9, 1982; 47 FR 54780, Dec. 6, 1982; 48 FR 12350, Mar. 24, 1983; 50 FR 25216, June 18, 1985; 57 FR 36494, Aug. 13, 1992]

§ 240.12b-3 Title of securities.

Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1950 to 1955"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue;

and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 240.12b-4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

[47 FR 11465, Mar. 16, 1982]

§ 240.12b-5 Determination of affiliates of banks.

In determining whether a person is an "affiliate" or "parent" of a bank or whether a bank is a "subsidiary" or "majority-owner subsidiary" of a person within the meaning of those terms as defined in § 240.12b-2, voting securities of the bank held by a corporation all of the stock of which is directly owned by the United States Government shall not be taken into consideration.

§ 240.12b-6 When securities are deemed to be registered.

A class of securities with respect to which a registration statement has been filed pursuant to section 12 of the act shall be deemed to be registered for the purposes of sections 13, 14, 15(d) and 16 of the act and the rules and regulations thereunder only when such statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14 and 16 of the act until such state-

*Michael W. Odom
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report*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 140

Short Title: Increase ERC Membership.

(Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO ADD TWO MEMBERS TO THE ENVIRONMENTAL REVIEW
3 COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 120-70.42 reads as rewritten:

7 "**§ 120-70.42. Membership; ~~cochairmen~~ cochairs; vacancies; quorum.**

8 The Environmental Review Commission shall consist of ~~five~~ six Senators
9 appointed by the President Pro Tempore of the Senate, ~~five~~ six Representatives
10 appointed by the Speaker of the House of Representatives, who shall serve at the
11 pleasure of their appointing officer, the ~~Chairman~~ Chair of the Senate Committee on
12 Environment and Natural Resources, and the ~~Chairman~~ Chair of the House of
13 Representatives Committee on the Environment. The President Pro Tempore of the
14 Senate shall designate one Senator to serve as ~~cochairman~~ cochair and the Speaker of
15 the House of Representatives shall designate one Representative to serve as
16 ~~cochairman~~ cochair. Any vacancy which occurs on the Environmental Review
17 Commission shall be filled in the same manner as the original appointment. A
18 quorum of the Environmental Review Commission shall consist of ~~seven~~ eight
19 members."

20 Section 2. This act is effective when it becomes law and applies to any
21 appointments for terms beginning on or after that date.



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Memorandum

April 2, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 140 (Increase ERC Membership)

Senate Bill 140 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). It received a favorable report from the Senate Committee on Agriculture, Environment, and Natural Resources on February 26, 1997 and passed second and third reading in the Senate on February 27, 1997.

Section 1.

Section 1 of this bill amends G.S. 120-70.42 to increase the membership and quorum requirements of the Environmental Review Commission.

The appointments of the President Pro Tempore of the Senate are increased from five to six Senators and the appointments of the Speaker of the House of Representatives are increased from five to six Representatives. The total membership of the Environmental Review Commission is increased from 12 to 14 members (six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, the Chair of the Senate Committee on Environment and Natural Resources, and the Chair of the House Committee on Environment).

The quorum requirement of the Environmental Review Commission is increased from seven to eight members. Section 1 of this bill also amends G.S. 120-70.42 to change the words cochairmen, Chairman, and cochairman to cochairs, Chair, and cochair respectively as they appear throughout the section.

Section 2.

Section 2 of this bill makes this act effective when it becomes law. This act applies to any appointments for terms beginning on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

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Committee*

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1

HOUSE BILL 475

Short Title: Wastewater Improvement Permits/AB.

(Public)

Sponsors: Representatives Hurley; Baddour and Watson.

Referred to: Environment.

March 10, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE LOCAL BOARDS OF HEALTH TO ESTABLISH
3 LOCAL PROGRAMS THAT PROVIDE FOR PRELIMINARY EVALUATIONS
4 OF PROPOSED SITES FOR WASTEWATER SYSTEMS THAT ARE NOT
5 BINDING ON THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND
6 NATURAL RESOURCES OR THE LOCAL HEALTH DEPARTMENT AND
7 TO PROHIBIT ANY OTHER PRELIMINARY SITE EVALUATIONS.
8 The General Assembly of North Carolina enacts:
9 Section 1: G.S. 130A-336(a) reads as rewritten:
10 "(a) Any proposed site for a residence, place of business, or place of public
11 assembly in an area not served by an approved wastewater system shall be evaluated
12 by the local health department in accordance with rules adopted pursuant to this
13 Article. The local health department shall not perform an evaluation of a proposed
14 site until an application for an improvement permit for a specific site is submitted in
15 accordance with rules adopted by the Commission. When conducting an evaluation
16 of a proposed site, the local health department shall not review or assess acreage and
17 shall not conduct soil mapping. The local health department shall evaluate each
18 individual site and either issue or deny the improvement permit. Except as provided
19 in G.S. 130A-335(c1), a preliminary or a provisional evaluation shall not be
20 performed. An improvement permit shall be issued in compliance with the rules
21 adopted pursuant to this Article. An improvement permit shall include:
22 (1) For permits that are valid without expiration, a plat or, for permits
23 that are valid for five years, a site plan.
24 (2) A description of the facility the proposed site is to serve.

- (3) The proposed wastewater system and its location.
- (4) The design wastewater flow and characteristics.
- (5) The conditions for any site modifications.
- (6) Any other information required by the rules of the Commission.

The improvement permit shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale."

Section 2. G.S. 130A-335 is amended by adding a new subsection to read:

"(c1) A local board of health may adopt local rules to establish a local program that provides for preliminary or provisional site evaluations of proposed sites. Any such local program is not a part of the Department's program regarding wastewater systems under this Article. Any preliminary or provisional site evaluation provided pursuant to such local rules does not satisfy the requirements to obtain an improvement permit, and an authorization for wastewater system construction under G.S. 130A-336, does not give any assurance of approval or denial of a future improvement permit, and is not binding on the Department or its agents. Subsection (c) of this section does not apply to any such local rules."

Section 3. This act is effective when it becomes law and applies only to applications for improvement permits filed on or after that date.



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Memorandum

April 2, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 475 (Wastewater Improvement Permits)

Section 1.

Section 1 of this bill amends G.S. 130A-336(a) to prohibit local health departments from evaluating a proposed site (for a residence, place of business, or place of public assembly) until an improvement permit application has been submitted in accordance with Commission for Health Services (Commission) rules. It provides that, when evaluating a proposed site, local health departments are prohibited from reviewing or assessing acreage and from conducting soil mapping and are required to either issue or deny the improvement permit. It also prohibits local health departments from conducting preliminary evaluations except as provided for under G.S. 130A-335(c1).

Section 2.

Section 2 of this bill amends G.S. 130A-335 by adding a subsection (c1) to authorize local boards of health to establish local programs for preliminary site evaluations of proposed sites. It clarifies that local programs are not part of the Department of Environment, Health, and Natural Resources' (DEHNR's) wastewater systems program. Furthermore, it provides that a preliminary site evaluation under a local program: (1) does not satisfy improvement permit requirements or authorization for wastewater system construction under G.S. 130A-336; (2) does not give any assurance of approval or denial of a future improvement permit; and (3) is not binding on DEHNR or its agents. Section 2 of this bill also provides that subsection (c) of G.S. 130A-335 (wastewater system approval by local boards that have adopted local rules more stringent than those of the Commission) does not apply to local rules.

Section 3.

Section 3 of this bill makes this act effective when it becomes law. Section 3 of this bill makes this act applicable to those applications for improvement permits filed on or after the date this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

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1

HOUSE BILL 239

Short Title: Amend. Env. Mgt. Comm. Membership.

(Public)

Sponsors: Representatives Mitchell; Weatherly, Nichols, and Morris.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO SPECIFY THAT ONE MEMBER OF THE ENVIRONMENTAL
3 MANAGEMENT COMMISSION SHALL HAVE EMPLOYMENT EXPERIENCE
4 IN INDUSTRIAL AIR AND WATER POLLUTION CONTROL AT AN
5 INDUSTRIAL MANUFACTURING FACILITY, AS RECOMMENDED BY THE
6 ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 143B-283(a) reads as rewritten:

9 "(a) The Environmental Management Commission shall consist of 13 members
10 appointed by the Governor. The Governor shall select the members so that the
11 membership of the Commission shall consist of:

- 12 (1) One who shall be a licensed physician with specialized training
13 and experience in the health effects of environmental pollution;
14 (2) One who shall, at the time of appointment, be actively connected
15 with the Commission for Health Services or local board of health
16 or have experience in health sciences;
17 (3) One who shall, at the time of appointment, be actively connected
18 with or have had experience in agriculture;
19 (4) One who shall, at the time of appointment, be a registered
20 engineer with specialized training and experience in water supply
21 or water or air pollution control;
22 (5) One who shall, at the time of appointment, be actively connected
23 with or have had experience in the fish and wildlife conservation
24 activities of the State;

- 1 (6) One who shall, at the time of appointment, have special training
2 and scientific expertise in hydrogeology or groundwater hydrology;
3 (7) Three members interested in water and air pollution control,
4 appointed from the public at large;
5 (8) One who shall, at the time of appointment, be actively ~~connected~~
6 ~~with~~ employed by, or recently retired from, an industrial
7 ~~production or have had experience~~ manufacturing facility and
8 knowledgeable in the field of industrial air and water pollution
9 control;
10 (9) One who shall, at the time of appointment, be actively connected
11 with or have had experience in pollution control problems of
12 municipal or county government;
13 (10) One who shall, at the time of appointment, have special training
14 and scientific expertise in air pollution control and the effects of
15 air pollution; and
16 (11) One who shall, at the time of appointment, have special training
17 and scientific expertise in freshwater, estuarine, marine biological,
18 or ecological sciences."

19 Section 2. This act is effective when it becomes law and applies to any
20 appointment to the Environmental Management Commission pursuant to G.S.
21 143B-283(a)(8), as amended by Section 1 of this act, made on or after the date this
22 act becomes effective.



**North Carolina General Assembly
Legislative Services Office**

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(919) 733-2578

April 2, 1997

MEMORANDUM

To: House Committee on Environment

From: Mary Beach Shuping
Administrative Assistant

Re: **House Bill 239 - Amend Environmental Management Commission Membership (EMC)**

HB 239 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The Environmental Management Commission (EMC) consists of 13 members appointed by the Governor. This bill provides that one of the members of the EMC must have employment experience in industrial air and water pollution control at an industrial manufacturing facility. This bill does not increase or decrease the membership of the EMC.

Section 1. Amends § 143B-283(a)(8). Section 1 amends current membership requirements to provide that one member, at the time of appointment, shall be actively employed by or recently retired from an industrial manufacturing facility and knowledgeable in the field of industrial air and water pollution control. (Current law states that this member must be actively connected with industrial production or have had experience in the field of industrial air and water pollution control.)

Section 2. Effective Date. Section 2 provides that this act is effective when it becomes law and applies to any appointment to the Environmental Management Commission pursuant to § 143B-283(a)(8) as amended and made on or after the date this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

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HOUSE BILL 484

Short Title: Record Notices of Open Dumps/AB.

(Public)

Sponsors: Representatives Weatherly; and Culp.

Referred to: Environment.

March 10, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE RECORDATION OF NOTICES OF OPEN
3 DUMPS IN THE OFFICE OF THE REGISTER OF DEEDS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 47.29.1 reads as rewritten:
6 "**§ 47-29.1. Recordation of waste disposal on land.**
7 (a) A permit for the disposal of waste on land shall be recorded as provided in
8 G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a
9 disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.
10 (b) An inactive hazardous substance or waste disposal site shall be recorded as
11 provided in G.S. 130A-310.8.
12 (c) Notice of an open dump shall be recorded as provided in G.S. 130A-301(f)."
13 Section 2. G.S. 130A-301 reads as rewritten:
14 "**§ 130A-301. Recordation of permits for disposal of waste on ~~land~~: land and notices of**
15 **open dumps.**
16 (a) Whenever the Department approves a permit for a sanitary landfill or a facility
17 for the disposal of hazardous waste on land, the owner of the facility shall be granted
18 both an original permit and a copy certified by the Secretary. The permit shall
19 include a legal description of the site that would be sufficient as a description in an
20 instrument of conveyance.
21 (b) The owner of a facility granted a permit for a sanitary landfill or a facility for
22 the disposal of hazardous waste on land shall file the certified copy of the permit in
23 ~~the register of deeds' office~~ office of the register of deeds in the county or counties in
24 which the land is located.

(c) The register of deeds shall record the certified copy of the permit and index it in the grantor index under the name of the owner of the land.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection (b).

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit.

(f) When the Department determines that an open dump exists, the Department may record a Notice of the open dump in the office of the register of deeds in the county or counties where the open dump is located. This power is additional to any other power granted to the Department in this Chapter and is not intended to repeal or supersede any statute or rule requiring or authorizing record notice by the owner. Any person who owns or has an interest in real property that is subject to a Notice of the open dump may appeal the decision of the Department to record the Notice as provided in G.S. 130A-24.

(1) The Department shall file the Notice in the office of the register of deeds in substantially the following form:

'NOTICE OF OPEN DUMP

The Division of Waste Management of the North Carolina Department of Environment, Health, and Natural Resources has determined that an open dump exists on the property described below. The Department provides the following information regarding this open dump as a public service:

Name(s) of the record owner(s):

Description of the real property:

Any person who has questions regarding this Notice should contact the Division of Waste Management of the North Carolina Department of Environment, Health, and Natural Resources. The contact person for this Notice is: _____ who may be reached by telephone at _____ or by mail at _____. Requests for inspection and copying of public records regarding this open dump may be directed to _____ who may be reached by telephone at _____ or by mail at _____.

Secretary of Environment, Health, and Natural Resources

- 1
2 by _____ Date: _____.
3 (2) The register of deeds shall record the Notice and index it in the
4 grantor index under the name of the record owner or owners.
5 After recording the Notice, the register of deeds shall return the
6 Notice to the Department in care of the person listed as the
7 contact person listed on the Notice.
8 (3) When the owner removes all solid waste from the open dump site
9 to the satisfaction of the Department, the Department shall file a
10 Cancellation of the Notice of the open dump. The Cancellation
11 shall be in a form similar to the original Notice and shall state that
12 all the solid waste that constituted the open dump has been
13 removed to the satisfaction of the Department. The Cancellation
14 shall be filed and indexed in the same manner as the original
15 Notice."

16 Section 3. This act is effective when it becomes law.



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April 2, 1997

MEMORANDUM

To: House Committee on Environment

From: Mary Beach Shuping
Administrative Assistant

Re: **House Bill 484 - Record Notices of Open Dumps/AB**

HB 484 would provide for the recordation of notices of open dumps in the office of the register of deeds. This bill was requested by the Department of Environment, Health, and Natural Resources (DEHNR).

Section 1. Amend § 47-29.1. Recordation of waste disposal on land. Section 1 amends §47-29.1 by adding a new subsection (c) to provide that the notice of an open dump shall be recorded as provided in § 130A-301(f).

Section 2. Amend § 130A-301. Recordation of permits for disposal of waste on land. Section 2 makes a technical amendment to § 130A-301(b). Section 2 also adds a new subsection (f) which provides that when DEHNR determines an open dump exists, it may record a Notice of an open dump in the office of the register of deeds in the county or counties where the dump is located. This section also allows the property owner to appeal the decision by DEHNR to file a Notice; prescribes the form to be used by DEHNR in filing the Notice; and requires DEHNR to file a Cancellation of the Notice when the owner has satisfactorily removed all solid waste from the dump site.

Section 3. Effective Date. This act is effective when it becomes law.

Page 2 Elen

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

☐ Committee Substitute for

H.B. 239 A BILL TO BE ENTITLED AN ACT TO SPECIFY THAT ONE MEMBER OF THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL HAVE EMPLOYMENT EXPERIENCE IN INDUSTRIAL AIR AND WATER POLLUTION CONTROL AT AN INDUSTRIAL MANUFACTURING FACILITY AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

- ☐ Committee Substitute for
H.B. 484 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE RECORDATION
OF NOTICES OF OPEN DUMPS IN THE OFFICE OF THE REGISTER OF DEEDS.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

- ☐ Committee Substitute for
S.B. 140 A BILL TO BE ENTITLED AN ACT TO ADD TWO MEMBERS TO THE
ENVIRONMENTAL REVIEW COMMISSION, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environmetn.**

- ☐ Committee Substitute for
S.B. 150 A BILL TO BE ENTITLED AN ACT TO REDUCE THE FREQUENCY OF
THE REPORT ON THE INACTIVE HAZARDOUS SUBSTANCE RESPONSE ACT OF
1987 FROM ANNUALLY TO EVERY TWO YEARS AND TO CLARIFY THE PUBLIC
COMMENT PERIOD ON REMEDIAL ACTION PLANS, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on _____

☐ Committee Substitute for

S.B. 126 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT AN APPLICANT FOR PERMIT UNDER THE STATUTES GOVERNING SOLID WASTE MANAGEMENT BE FINCNCIALLY QUALIFIED AND DEMONSTRATE SUBSTANTIAL COMPLIANCE WITH ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (# _____), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill # _____), (and recommendation that the committee substitute bill # _____) be re-referred to the Committee on _____.)

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

VISITOR REGISTRATION

ENVIRONMENT COMMITTEE

April 2

, 1997

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Debbie Haskins	Charlotte Chambers
George Everett	MCIC
Laura Hartsell	MCIC
Kim Smith	NCLM
Betsy Kane	self
Peter DANIEL	NCLM
John Cyrus	N.C. State House
Dan Meredith	N.C. State House
Thomas Jones	N.C. State House
Mike Reavis RS	Yadkin Co Env Health
Nilla T. Sloan RS	Wake Co Env Health
Grand J. Lee	Abundance Co H&O
Dan A. Hartsell	Solid Waste Section DEHNR
The M.C. Myers	N.C. Sept & Air
Dennis St. Pierre	self
Ruby Berry	CCNC
TANJA VUJIC	NC ENVIRONMENTAL DEFENSE FUND
Ed Bowen	R W Borne
Melby Bullock	AG
Don Harris	DEHNR
Bill Strubensee	Du Pont
RE M. Vain	Gargia - Pacific Corp
Michelle Cook	Weyman Associates
Curt Williams	Governor's Office
Paul E. Allen	N.C. # 901 Business
Brenda Long	Martin M. H.

**MINUTES
HOUSE COMMITTEE ON ENVIRONMENT**

April 9, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on April 9, 1997, at 12:00 Noon. Representative Rick Eddins presided at the meeting and welcomed the two pages, Philip Washington from Robeson County and Lee Colovito from Johnston County.

The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. Nelson Cole, Rep. John Gamble, Rep. Charlotte Gardner, Rep. Jim Gulley, Rep. Joe Hackney, Rep. Foyle Hightower, Rep. Danny McComas, Rep. Gene McCombs, Rep. Frank Mitchell, Rep. Jane Mosley, Rep. John Nichols, Rep. Jean Preston, Rep. Alex Warner, Rep. Nurham Warwick, Rep. John Weatherly and Rep. Douglas Yongue.

There were twenty-eight visitors.

The first order of business was HB227 AN ACT TO PROVIDE THAT RECORDATION OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE IS NOT REQUIRED IN CERTAIN CASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Representative Hackney explained the bill. He stated it was an agency bill and an Environmental Review Commission bill, and probably everyone on the Committee were already familiar with the bill. It has to do with the inactive sites program which was put into effect some years ago and there are now some 1,000 inactive hazardous waste sites in the states which have been identified and this bill amends the recordation requirements which were formally put in place. There is required in the inactive hazardous sites program that a notice be placed on the public records in the Register of Deeds office about that site, and this bill rolls back in accordance with the department's request which sites must be the subject of that notification and under what circumstances.

The Chairman called upon Charlotte Josnick of the Department of Health and Natural Resources to speak. She provided information on the bill and the fact that recording notices on these inactive hazardous waste sites requires a fair amount of time and resources and in a couple of instances it just isn't necessary when you have residential property where it is already required to disclose the contamination according to the Residential Property Disclosure Act that resources could be saved by giving the Secretary the authority to excuse those people from having to record their properties. In addition, cases where voluntary cleanups are going on in compliance with the agreement

with the state it was felt it was not necessary for those cases to have to record notices if they were going to completely clean up the site, and nothing was going to remain at the site.

The sites are being watched and it would create an additional amount of work to cancel the notice after cleanup.

Representative McComas asked the bill sponsor about undergoing voluntary remediation and if it would not be better to change the bill so that it would be after completion of voluntary remediation. Representative Hackney referred the question to Ms. Jesnick who stated that the requirements under the law now targets voluntary remediators as having to record and we felt those cases didn't need to record because they were actively fixing the site and the cleanup would soon be over. By the time the recordation was repaired and filed the cleanup would be complete and it is an unnecessary expenditure of resources for both the state and the party doing the cleanup. If there is any contaminate residuals remaining after the cleanup such as they used a containment remedy then the information would be recorded on the property deed.

Representative Nichols moved for a favorable report. There were no objections and the motion carried.

The next bill was HB 228 and actually it became SB 151, which is identical to HB 228. SB 151 was distributed to the Committee.

Representative Hackney explained SB 151 - **AN ACT TO CLARIFY THE DUTY OF AN OWNER, OPERATOR, OR OTHER RESPONSIBLE PARTY OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE TO NOTIFY THE DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES OF THE EXISTENCE OF THE SITE, TO REQUIRE OWNERS, OPERATORS, AND OTHER RESPONSIBLE PARTIES TO FURNISH INFORMATION REGARDING THE SITE, AND TO SIMPLIFY THE INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE INVENTORY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.** The bill also pertains to the inactive sites program and is also an agency bill and an Environmental Review Commission bill. It does several different things with respect to the program. The first deals with where the information is kept – the law now requires the identification, inventory and monitoring of the sites and the first provision allows the agency to keep the information in one place rather than having to duplicate it and put in two places; the second change makes sure that the requirement to provide information is a continuing one with respect to the information required as to the site from the owner, operator or responsible party.

The last changes, Sub-Section (f), (g),(h) and (i) have to do with the collection of information and basically put into place the same information gathering that is required with respect to the federal super fund program with respect to the state program, i.e., any person can be required to provide information about what's there and when it got there, etc.

Representative Nichols moved for a favorable report on SB 151 and the vote was unanimous.

Representative Watson explained HB 900 **AN ACT TO IMPROVE THE WATER QUALITY OF SURFACE WATERS OF THIS STATE BY FURTHER LIMITING THE AMOUNT OF NITROGEN THAT CERTAIN LARGE FACILITIES DISCHARGE TO NUTRIENT SENSITIVE WATERS WHERE NITROGEN IS A NUTRIENT OF CONCERN, TO AUTHORIZE THE USE OF UP TO TWENTY-FIVE PERCENT OF THE FUNDS IN THE CLEAN WATER MANAGEMENT TRUST FUND FOR A PORTION OF THE COSTS TO LOCAL GOVERNMENTS OF MODIFYING EXISTING FACILITIES TO SATISFY THIS STRICTER LIMIT, AND TO AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT FUND FOR LOANS.** (Copy of remarks attached). Attachment I. Also attached is a copy of the Committee Counsel report (Attachment II).

Representative Watson deferred the technical questions concerning the bill to counsel.

Representative Mitchell questioned the fast track of the bill and asked what industries are being targeted and the fact they have not had an opportunity to see the bill. Asked for someone from the department to report on the restrictions.

Representative Nichols reported that the people that were affected by the bill are aware of the bill which was introduced about 700 bills ago. He supported the bill and thinks it is a good bill. It is primarily aimed at municipalities and does not require any appropriations. He also explained the bill, on Page 3, line 17, goes to the fact that the Clean Water Trust Fund Commission can do grants as well as loans. Some of the members of the commission said that it only allows for grants and asked why we could not lend money at low interest rates and put it back. The primary issue of this bill says we will take up to twenty-five percent of the Clean Water Trust Fund and match municipalities cost up to fifty percent. If we run out of money this year we will match it next year. Not only is the technology available but as permits become due on municipalities and others the Department of Environment, Health and Natural Resources are already putting limits on nitrogen that can be placed in waste and we are offering the carrot before the stick! I think if this bill is not passed you will see the limits coming down in rules for provision

of water quality and you will see municipalities having to do it without any assistance from the state.

Representative McCombs asked how the bill differs from the federal guidelines that are in place now. The question was deferred to committee counsel, George Givens, who reported that the bill set a lower nitrogen limit than anything the federal government has for those waters. _

Colleen Sullins with the Division of Water Quality answered questions on standards already set up for protecting for things such as dissolved oxygen , chlorophyll-A, etc. or what nutrients do when added to the water. The bill would propose a limit on total nitrogen for the facilities that discharge into the Neuse River. It is correct to say there is no federal nitrogen limit.

Representative Watson reported on public hearings she attended throughout N.C. to hear frustrated farmers who were having to reduce their nitrogen in the lagoons with all the buffers, loss of land, and loss of tax dollars in her area of Jones County . She feels as if we should try to be serious in the state about cleaning up the rivers so we can open the shellfish beds that have been closed for two years. There are many problems and we need to start working on that reduction in the nitrogen amounts and this would be the beginning since we have the monies to start allocating toward that goal.

Rep. McCombs asked how many rivers are in bad shape now. Rep. Watson reported that the Neuse is in bad shape and the Pamlico -Tar . There are problems in the Cape Fear River Basin and the lower basin and reported there is a Cape Fear River Assembly that is working with enterprise and will have an appropriation bill so monitoring can start in that basin and keep hands on it before it becomes as bad as the Neuse. She referred questions to counsel who may know of others.

Co-counsel George Givens reported that the bill is specifically directed at setting a nitrogen limit and it is directed towards those rivers that have been classified as nutrient sensitive where the nutrient of concern is nitrogen. The principal river that this applies to is the Neuse River but there are other portions of rivers that this applies to.

Ms. Sullins identified rivers that are classified as nutrient sensitive waters, including the New River in Onslow County, the Neuse River, the Tar-Pamlico River System, the Chowan River System and several more.

Representative Eddins asked if the committee would like to get a list of the waters but it was determined that there is a need to get a list of those classified as NSW and of those

the ones that the Environmental Management Commission has determined that nitrogen is the reason why it is NSW.

Representative Yongue directed a question to co-counsel - under Section 2, enforcement procedures, penalties, etc. where we assess civil penalties up to \$10,000, what factors would determine the amount of the fine?

Counsel George Givens reported that the nature of the offense, how long it had lasted, how severe the impact is, whether it was inadvertent or willful, whether it is a paper work violation or actual violation limit - lots of factors go into an initial decision by the department as to the amount of the civil penalty they will assess, the Commission has review authority over that penalty.

Representative Gamble asked questions about the Chowan River Basin in 1975 having tremendous blooms on various weeds and plants in the river. He questioned using the word "clean-up" loosely. He asked whether the nitrogen was organic or inorganic. Sources have not really been sighted and the techniques that would fit in to clean up. He questioned whether there really are techniques to clean up or is this trying to get somewhere that money will take care of eventually if the techniques come out and I noticed Rep. Nichols used the word "technology" and I thought maybe he could yield for a question and let me ask him about it.

Rep. Gamble asked Rep. Nichols what he knows about the modern technologies that would be used in the cleanups of nitrogen overage in the waterways.

Rep. Nichols reported that city sewer systems per se can be modified through an aerobic process where air is introduced into the system which will reduce the amount of nitrogen that is being discharged into the waters. Florida has a limit now in statute of 3 parts per million; Maryland has several facilities that have been put in that are required to reach the same goals. There are four or five in the same neighborhood so north of us we found out that the system works in cooler climates than we are and in warmer climates like Florida. The cities of Enfield and Zebulon have already installed this technology in their systems which reduce nitrogen to the required point or less. A presentation was made by the people who installed the ones in Zebulon and the cost of a new system is about the same as a new system that doesn't do this and there is some way that through this aerobic process that somehow as it breaks down there is less sludge and the plant can be operated cheaper and in upgrading you save the cost of the holding tanks by cutting them into four sections and introduce oxygen through pipes coming in to them by forced air and circulate between the chambers. It breaks down the nitrogen. This bill requires the cost of existing system modifications, not if somebody is putting in a new system or expanding. We will help pay the cost of existing system modifications, but to help the

cities with existing problems. I think you will see nitrogen limits placed on everybody in the future. We may want to continue this down the road for those systems coming on-line and there will be some other rivers that are declared nutrient system to nitrogen at some point, that is an aerobic process and it seemed to work in Florida. Maryland is in the process of putting in a mandate in certain areas around the Chesapeake Bay and probably statewide.

Dr. Gamble asked if it were an organic process to eat up and utilize the nitrogen and put it into another compound or plant or an inorganic process. He suggested the Committee get an expert from the university and give us details on the process, the price, etc.

Rep. Nichols stated it does not effect all counties in the state but it just refers to nutrient sensitive waters where the nutrient is nitrogen. Some waters are nutrient sensitive but not to nitrogen; some cities do not discharge into any waters so that it wouldn't effect them so right now it would be a limited number of cities affected; the cost of putting in a new system is comparable to putting in any other system. He did not recall the cost of putting in the system, or upgrading the system, and that is why we are opting to pay fifty percent of it.

Co-Counsel Givens added that there is a fair amount of debate as to what the limits should be and the EMC settled on 3.5 milligrams per liter for two reasons; first, because that is achievable with current technology, and secondly, because that standard is consistent with the 30% nitrogen reduction that the General Assembly adopted last year. He understands that this is an organic process but Ms. Sullins is familiar with how these systems operate, and can elaborate to some extent. With regard to cost, there was some discussion of that and he does not recall firm dollar figures but the cost of putting in a new plant that could meet the standard is essentially the same as putting in the types of plants that would be installed in absence of a standard and the cost of retrofit to address that is the reason for the bill allowing access to the Trust Fund.

Ms. Sullins reported on how the system works. It is an aerobic/anoxite type of program for the treatment - it is an organic, microbiological process. In some cases there is a further policy that requires the addition of a filter system and methane to further polish and provide for the lower levels of treatment. It depends on the particular system and how it is functioning.

Representative Weatherly asked if this is the first instance where the Clean Water Fund is being earmarked, and Mr. Givens indicated that this is the first instance when there is any modification of that earmarking. The categories are spelled out in Page 2 of the bill. They are set out as existing law, Page 2 of the bill and that lists starting at line 18 - fund purposes - there is a list of nine purposes and this would be a 10th purpose, lines 5 - 8 on

Page 3. Rep. Weatherly was concerned if earmarked, what function will the Clean Water Trust Fund Trustees have if it is already prescribed. Mr. Givens explained that they are simply adding to the list of uses that the money can be assigned to - all that is to be determined by the Board of Trustees for the fund which is just now getting underway.

Representative Mitchell suggested that someone from the League of Municipalities to explain how this is going to impact and maybe there are industries that have discharge permits that we haven't heard from and in the haste to clean up the rivers by the time we get out of town, I don't want to shut down numerous plants between here and the ocean. That why we need someone from the Department of Water Quality to tell us which industries that may be effected by this. I particularly want to hear from someone from the League of Municipalities, also.

Representative Hackney answered Dr. Gamble's question before the department did but added to say that nitrogen goes off into sludge as well for agricultural uses; have to watch for the use of heavy metals, and test for those during the agricultural application process.

Representative Baddour had a number of questions. Asked about the loan vs. the grant - municipalities can already get loans at a favorable rate; needs - what needs would be expected vs. the availability of funds, and how much help the cities could expect from the fund; learning about the 3.5 standard vs. some other standard - the City Manager of Goldsboro tells me with our plant for which they would like to ask for an expansion that he can get it down to about 5 milligrams per liter at relatively little cost but to take the extra 1-1/2 would cost \$7 million . Would like discussion of the availability of funds for expansion on the one hand vs. just to improve the existing facility because for instance Goldsboro, at the request of several small municipalities has agreed to accept their waste, and this is what is causing them to do an expansion. Everybody feels like this is a desirable result that these people have failing systems and Goldsboro is being encouraged to assume their waste. Is this going to discourage them from reaching out and trying to help others? There are a lot of issues I would like to learn about. I would like to hear how the environmental community feels about it, there are many problems facing all kinds of rivers in this state - are we dealing with those problems the way that we need to. We need to hear from the League of Municipalities and perhaps the county commissioners . I hope the bill can be structured in such a way that we can gain the necessary knowledge in order to make this bill a good bill and make it have a chance of being passed in the House and Senate. We need to take the time to give it that careful consideration.

Representative Hightower asked about water supplies and what happens to the water and it must be clean. You mentioned a treatment process of treating and going into the atmosphere. We also need clean air and when you get something out of the water and

treat it so that it goes into the air , what happens to it? Is it the situation? Are we going from one bad situation to another?

Ms. Sullins explained that it changes the form of the nitrogen into nitrogen gas which is a great portion of the atmosphere is made up of nitrogen gas, so ammonia is probably more of a concern for it being volatilized into the atmosphere in this case.

Representative Hightower asked about the ammonia - is enough going into the atmosphere so that it is harmful? By going from one thing to another you're not messing up the atmosphere. Ammonia is converted into nitrogen gas which makes up 72% of the atmosphere. Some of the nitrogen compounds also goes into the sludge which have to be used in a fashion to insure they don't impact waters, as well.

Representative Yongue asked if the bill addresses the time factors involved in making the corrections to comply. Mr. Givens indicated it would apply to new facilities and then to existing facilities, Section 6, page 5, directs the Environmental Management Commission to develop a schedule of dates between this year and the year 2005 which is basically a little over a seven-year period to phase this in for existing facilities.

Representative Hightower followed up by asking if we would operate under SOC's. Would something similar to that apply to these cases? Mr. Givens indicated it would be similar in the sense that this bill by its terms provides for folks to operate above this limit until they come up against whatever schedule the EMC sees fit to adopt for compliance over the next 7-1/2 years.

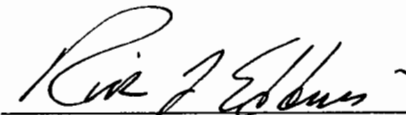
Representative Warwick was interested in the fact that we have 17 river basins in this state and only part of the rivers have been classified as nutrient sensitive waters. Is there a schedule that might match out with the seven year period to test the other waters? Maybe someone could bring that information to us at one of the meetings, the point being that there are a lot of rivers in this state and we could have a lot of other sensitive waters in and around some other cities, factories, industries, etc. that have not yet been tested.

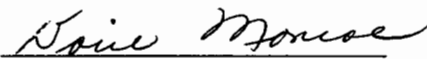
Mr. Givens indicated that all the waters of the state have been checked and classified by the EMC. It's not a matter that other surface waters in the 17 river basins haven't been classified. Perhaps this is as good as point as any to say that. The department has submitted some recommended additional language to this bill that the committee might want to consider at some point. One aspect of that would allow this bill to be applied in other places on a site specific basis where there are problems with respect to a particular discharge and there is concern about nitrogen in a particular area even though the overall water body has not been classified as NSW.

Representative Warwick asked if the department or someone bring information identifying some of those particular sites of concern at some future date.

The Chairman called upon Kimberly Smith of the League of Municipalities to speak. (Attachment III).

The meeting adjourned at 1:00 PM.

+ 
Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

*forwardable
report*

H

1

HOUSE BILL 227*

Short Title: Inactive Haz. Sites Recordation.

(Public)

Sponsors: Representatives Hackney; Hightower and Culp.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT RECORDATION OF AN INACTIVE
3 HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE IS NOT
4 REQUIRED IN CERTAIN CASES, AS RECOMMENDED BY THE
5 ENVIRONMENTAL REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 130A-310.8 reads as rewritten:

8 "**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

9 (a) After determination by the Department of the existence and location of an
10 inactive hazardous substance or waste disposal site, the owner of the real property on
11 which the site is located, within 180 days after official notice to him to do so, shall
12 submit to the Department a survey plat of areas designated by the Department which
13 has been prepared and certified by a professional land surveyor, and entitled
14 "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL
15 SITE". The Notice shall include a legal description of the site that would be
16 sufficient as a description in an instrument of conveyance, shall meet the
17 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 18 (1) The location and dimensions of the disposal areas with respect to
19 permanently surveyed benchmarks; and
20 (2) The type, location, and quantity of hazardous substances disposed
21 of on the site, to the best of the owner's knowledge.

22 Where an Inactive Hazardous Substance or Waste Disposal Site is located on more
23 than one parcel or tract of land, a composite map or plat showing all such sites may
24 be recorded.

1 (b) After the Department approves and certifies the Notice, the owner of the site
2 shall file the certified copy of the Notice in the register of deeds' office in the county
3 or counties in which the land is located.

4 (c) The register of deeds shall record the certified copy of the Notice and index it
5 in the grantor index under the names of the owners of the lands.

6 (d) In the event that the owner of the site fails to submit and file the Notice
7 required by this section within the time specified, the Secretary may prepare and file
8 such Notice. The costs thereof may be recovered by the Secretary from any
9 responsible party. In the event that an owner of a site who is not a responsible party
10 submits and files the Notice required by this section, he may recover the reasonable
11 costs thereof from any responsible party.

12 (e) When an inactive hazardous substance or waste disposal site is sold, leased,
13 conveyed, or transferred, the deed or other instrument of transfer shall contain in the
14 description section, in no smaller type than that used in the body of the deed or
15 instrument, a statement that the property has been used as a hazardous substance or
16 waste disposal site and a reference by book and page to the recordation of the Notice.

17 (f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be
18 cancelled by the Secretary after the hazards have been eliminated. The Secretary
19 shall send to the register of deeds of the county where the Notice is recorded a
20 statement that the hazards have been eliminated and request that the Notice be
21 cancelled of record. The Secretary's statement shall contain the names of the
22 landowners as shown in the Notice and reference the plat book and page where the
23 Notice is recorded. The register of deeds shall record the Secretary's statement in the
24 deed books and index it on the grantor index in the name of the landowner as shown
25 in the Notice and on the grantee index in the name 'Secretary of Environment,
26 Health, and Natural Resources'. The register of deeds shall make a marginal entry
27 on the Notice showing the date of cancellation and the book and page where the
28 Secretary's statement is recorded, and the register shall sign the entry. If a marginal
29 entry is impracticable because of the method used to record maps and plats, the
30 register of deeds shall not be required to make a marginal entry.

31 (g) ~~This section shall apply with respect to any facility, structure, or area where~~
32 ~~disposal of any hazardous substance or waste has occurred which~~ Recordation under
33 this section is not required for any inactive hazardous substance or waste disposal site
34 that is undergoing voluntary remedial action pursuant to this Part. Part unless the
35 Secretary determines that either:

36 (1) A concentration of a hazardous substance or hazardous waste that
37 poses a danger to public health or the environment will remain
38 following implementation of the voluntary remedial action
39 program.

40 (2) The voluntary remedial action program is not being implemented
41 in a manner satisfactory to the Secretary and in compliance with
42 the agreement between the Secretary and the owner, operator, or
43 other responsible party.

1 (h) The Secretary may waive recordation under this section with respect to any
2 residential real property that is contaminated solely because a hazardous substance or
3 hazardous waste migrated to the property from other property by means of
4 groundwater flow if disclosure of the contamination is required under Chapter 47E of
5 the General Statutes. An owner of residential real property whose recordation
6 requirement is waived by the Secretary under this subsection and who fails to disclose
7 contamination as required by Chapter 47E of the General Statutes is subject to both
8 the penalties and remedies under this Chapter applicable to a person who fails to
9 comply with the recordation requirements of this section as though those
10 requirements had not been waived and to the remedies available under Chapter 47E
11 of the General Statutes."

12 Section 2. This act is effective when it becomes law.



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Memorandum

April 9, 1997

TO: House Committee Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 227 (Inactive Haz. Sites Recordation)

House Bill 227 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). This bill amends subsection (g) of G.S. 130A-310.8 to clarify that the requirement to record inactive hazardous substance or waste disposal sites does not apply to sites that are undergoing **voluntary** remedial action. This bill also adds a subsection (h) to G.S. 130A-310.8 that allows the Secretary of Environment, Health, and Natural Resources to waive the recordation requirement for residential property if site contamination is due solely to groundwater migration and the site owner provides notice of the contamination to potential buyers.

Section 1.

Section 1 of this bill amends subsection (g) of G.S. 130A-310.8 (Recordation of inactive hazardous substance or waste disposal sites) to provide that recordation is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action unless the Secretary of Environment, Health, and Natural Resources determines that either:

- (1) a dangerous concentration of hazardous substance or waste will remain after implementation of voluntary remedial action, or
- (2) voluntary remedial action is not implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the responsible party.

Section 1 of this bill also adds a subsection (h) to G.S. 130A-310.8 that authorizes the Secretary to waive recordation with respect to any residential property contaminated solely due to the migration of a hazardous substance or waste by means of groundwater flow if disclosure of the contamination is required by Chapter 47E of the General Statutes (Residential Real Property Disclosure Act). An owner whose recordation requirement is waived under subsection (h) and who fails to disclose the contamination as required by Chapter 47E of the General Statutes is subject to the penalties of both Chapter 130A (G.S. 130A-22 (Administrative penalties) and G.S. 130A-25 (Misdemeanor)) and Chapter 47E.

Section 2.

Section 2 of this bill makes the act effective when it becomes law.

min
7

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill and Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 227 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT RECORDATION OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE IS NOT REQUIRED IN CERTAIN CASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 228*

Short Title: Inactive Haz. Sites Info.

(Public)

Sponsors: Representatives Hackney; Mosley and Culp.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE DUTY OF AN OWNER, OPERATOR, OR OTHER
3 RESPONSIBLE PARTY OF AN INACTIVE HAZARDOUS SUBSTANCE OR
4 WASTE DISPOSAL SITE TO NOTIFY THE DEPARTMENT OF
5 ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OF THE
6 EXISTENCE OF THE SITE, TO REQUIRE OWNERS, OPERATORS, AND
7 OTHER RESPONSIBLE PARTIES TO FURNISH INFORMATION
8 REGARDING THE SITE, AND TO SIMPLIFY THE INACTIVE HAZARDOUS
9 SUBSTANCE OR WASTE DISPOSAL SITE INVENTORY, AS
10 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
11 The General Assembly of North Carolina enacts:
12 Section 1. G.S. 130A-310.1 reads as rewritten:
13 "§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous
14 substance or waste disposal ~~sites~~: sites; duty of owners, operators, and responsible
15 parties to provide information and access; remedies.
16 (a) ~~Within six months of July 1, 1987, the~~ The Department shall develop and
17 implement a program for locating, cataloguing, and monitoring all inactive hazardous
18 substance or waste disposal sites in North Carolina. The Secretary shall compile and
19 maintain an inventory of all ~~such~~ inactive hazardous substance or waste disposal sites
20 based on information submitted by owners, operators, and responsible parties, and on
21 data obtained directly by the Secretary. The ~~inventory shall include~~ Secretary shall
22 maintain records of any evidence of contamination to the air, surface water,
23 groundwater, surface or subsurface soils, or waste ~~streams~~. streams for inventoried
24 sites. The ~~inventory shall indicate~~ records shall include all available information on

1 the extent of any actual damage or potential danger to public health or to the
2 environment resulting from ~~such~~ the contamination.

3 (b) ~~Within six months of July 1, 1987, the~~ The Commission shall develop and
4 make available a format and checklist for submission of data relevant to inactive
5 hazardous substance or waste disposal sites. Within 90 days ~~thereafter, each of the~~
6 date on which an owner, operator, or responsible party knows or should know of the
7 existence of an inactive hazardous substance or waste disposal site, the owner,
8 operator, or responsible party shall submit to the Secretary all ~~such~~ site data as that is
9 known or readily available to him. the owner, operator, or responsible party. The
10 owner, operator, or responsible party shall certify under oath that, to the best of his
11 knowledge and belief, ~~such~~ the data is complete and accurate.

12 (c) Whenever the Secretary determines that there is a release, or substantial threat
13 of a release, into the environment of a hazardous substance from an inactive
14 hazardous substance or waste disposal site, the Secretary may, in addition to any
15 other powers he may have, order any responsible party to conduct ~~such~~ any
16 monitoring, testing, analysis, and reporting ~~as that~~ the Secretary deems reasonable
17 and necessary to ascertain the nature and extent of any hazard posed by the site.
18 Written notice of any order issued pursuant to this section shall be given to all
19 persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to
20 the entry of any ~~such~~ order, shall solicit the cooperation of the responsible party.

21 (d) If a person fails to submit data as required in subsection (b) of this section or
22 violates the requirements or schedules in an order issued pursuant to subsection (c) of
23 this section, the Secretary may institute an action for injunctive relief, irrespective of
24 all other remedies at law, in the superior court of the county where the violation
25 occurred or where a defendant resides.

26 (e) Whenever a person ordered to take any action pursuant to this section is
27 unable or fails to do so, or if the Secretary, after making a reasonable attempt, is
28 unable to locate any responsible party, the Secretary may take ~~such~~ the action. The
29 cost of any action by the Secretary pursuant to this section may be paid from the
30 Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement
31 pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of
32 G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this
33 section.

34 (f) Upon reasonable notice, the Secretary may require any person to furnish to the
35 Secretary any information, document, or record in that person's possession or under
36 that person's control that relates to:

- 37 (1) The identification, nature, and quantity of material that has been
38 or is generated, treated, stored, or disposed of at an inactive
39 hazardous substance or waste disposal site or that is transported to
40 an inactive hazardous substance or waste disposal site.
41 (2) The nature and extent of a release or threatened release of a
42 hazardous substance or hazardous waste at or from an inactive
43 hazardous substance or waste disposal site.

1 (3) Information relating to the ability of a person to pay for or to
2 perform a cleanup.

3 (g) A person who is required to furnish any information, document, or record
4 under subsection (f) of this section shall either allow the Secretary to inspect and
5 copy all information, documents, and records or shall copy and furnish to the
6 Secretary all information, documents, and records at the expense of the person.

7 (h) To collect information to administer this Part, the Secretary may subpoena the
8 attendance and testimony of witnesses and the production of documents, records,
9 reports, answers to questions, and any other information that the Secretary deems
10 necessary. Witnesses shall be paid the same fees and mileage that are paid to
11 witnesses in proceedings in the General Court of Justice. In the event that a person
12 fails to comply with a subpoena issued under this subsection, the Secretary may seek
13 enforcement of the subpoena in the superior court in any county where the inactive
14 hazardous substance or waste disposal site is located, in the county where the person
15 resides, or in the county where the person has his or her principal place of business.

16 (i) A person who owns or has control over an inactive hazardous substance or
17 waste disposal site shall grant the Secretary access to the site at reasonable times. If a
18 person fails to grant the Secretary access to the site, the Secretary may obtain an
19 administrative search and inspection warrant as provided by G.S. 15-27.2."

20 Section 2. This act is effective when it becomes law.



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Memorandum

April 9, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 228 (Inactive Haz. Sites Info.)

House Bill 228 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC).

Section 1 amends G.S. 130A-310.1(a) to allow the Secretary of Environment, Health, and Natural Resources (Secretary) to maintain records on contamination and potential and actual damage to public health and natural resources in agency files separate from the official inventory of inactive hazardous substance or waste disposal sites required under G.S. 130A-310.1(a). This change would permit the Department of Environment, Health, and Natural Resources to maintain contamination information only in agency files rather than require duplication of this information in both agency files and in the official inventory.

Section 1 of this bill also amends G.S. 130A-310.1(b) to clarify that the duty of an owner, operator, or responsible party to report the existence of an inactive hazardous substance or waste disposal site is continuing and is not limited to those sites that were known of at the time the Commission for Health Services presented its format/checklist (within six months of July 1, 1987). This continuing reporting requirement applies to an owner, operator, or responsible party who knows or should know of the existence of an inactive hazardous substance or waste disposal site.

Section 1 of this bill also amends G.S. 130A-310.1 by adding four new subsections, (f) through (i). Subsection (f) authorizes the Secretary to require a person to furnish information, documents, or records that relate to (1) the nature and quantity of the material involved at a site; (2) the nature and extent of a release or threatened release; and (3) information relating to the ability of a person to pay or perform cleanup. Subsection (g) sets out how information, documents, or records are to be provided to the Secretary. Subsection (h) authorizes the Secretary to subpoena the testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information the Secretary deems necessary to administer the Inactive Hazardous Sites Program. Subsection (i) requires a person owning or controlling an inactive hazardous substance or waste disposal site to grant the Secretary access to the site at reasonable times and if the person fails to grant access, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2.

Section 2 makes this act effective when it becomes law.



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TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 228 (Inactive Haz. Sites Info.)

House Bill 228 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC).

Section 1 amends G.S. 130A-310.1(a) to allow the Secretary of Environment, Health, and Natural Resources (Secretary) to maintain records on contamination and potential and actual damage to public health and natural resources in agency files separate from the official inventory of inactive hazardous substance or waste disposal sites required under G.S. 130A-310.1(a). This change would permit the Department of Environment, Health, and Natural Resources to maintain contamination information only in agency files rather than require duplication of this information in both agency files and in the official inventory.

Section 1 of this bill also amends G.S. 130A-310.1(b) to clarify that the duty of an owner, operator, or responsible party to report the existence of an inactive hazardous substance or waste disposal site is continuing and is not limited to those sites that were known of at the time the Commission for Health Services presented its format/checklist (within six months of July 1, 1987). This continuing reporting requirement applies to an owner, operator, or responsible party who knows or should know of the existence of an inactive hazardous substance or waste disposal site.

Section 1 of this bill also amends G.S. 130A-310.1 by adding four new subsections, (f) through (i). Subsection (f) authorizes the Secretary to require a person to furnish information, documents, or records that relate to (1) the nature and quantity of the material involved at a site; (2) the nature and extent of a release or threatened release; and (3) information relating to the ability of a person to pay or perform cleanup. Subsection (g) sets out how information, documents, or records are to be provided to the Secretary. Subsection (h) authorizes the Secretary to subpoena the testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information the Secretary deems necessary to administer the Inactive Hazardous Sites Program. Subsection (i) requires a person owning or controlling an inactive hazardous substance or waste disposal site to grant the Secretary access to the site at reasonable times and if the person fails to grant access, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2.

Section 2 makes this act effective when it becomes law.

*Final
report*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 151*

Short Title: Inactive Haz. Sites Info.

(Public)

Sponsors: Senators Cooper; Horton and Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE DUTY OF AN OWNER, OPERATOR, OR OTHER
3 RESPONSIBLE PARTY OF AN INACTIVE HAZARDOUS SUBSTANCE OR
4 WASTE DISPOSAL SITE TO NOTIFY THE DEPARTMENT OF
5 ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OF THE
6 EXISTENCE OF THE SITE, TO REQUIRE OWNERS, OPERATORS, AND
7 OTHER RESPONSIBLE PARTIES TO FURNISH INFORMATION
8 REGARDING THE SITE, AND TO SIMPLIFY THE INACTIVE HAZARDOUS
9 SUBSTANCE OR WASTE DISPOSAL SITE INVENTORY, AS
10 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
11 The General Assembly of North Carolina enacts:
12 Section 1. G.S. 130A-310.1 reads as rewritten:
13 "§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous
14 substance or waste disposal ~~sites~~: sites; duty of owners, operators, and responsible
15 parties to provide information and access; remedies.
16 (a) ~~Within six months of July 1, 1987, the~~ The Department shall develop and
17 implement a program for locating, cataloguing, and monitoring all inactive hazardous
18 substance or waste disposal sites in North Carolina. The Secretary shall compile and
19 maintain an inventory of all ~~such~~ inactive hazardous substance or waste disposal sites
20 based on information submitted by owners, operators, and responsible parties, and on
21 data obtained directly by the Secretary. ~~The inventory shall include~~ Secretary shall
22 maintain records of any evidence of contamination to the air, surface water,
23 groundwater, surface or subsurface soils, or waste ~~streams~~. streams for inventoried
24 sites. ~~The inventory shall indicate~~ records shall include all available information on

1 the extent of any actual damage or potential danger to public health or to the
2 environment resulting from ~~such~~ the contamination.

3 (b) ~~Within six months of July 1, 1987, the~~ The Commission shall develop and
4 make available a format and checklist for submission of data relevant to inactive
5 hazardous substance or waste disposal sites. Within 90 days ~~thereafter, each of the~~
6 date on which an owner, operator, or responsible party knows or should know of the
7 existence of an inactive hazardous substance or waste disposal site, the owner,
8 operator, or responsible party shall submit to the Secretary all ~~such~~ site data ~~as that~~ is
9 known or readily available to ~~him~~ the owner, operator, or responsible party. The
10 owner, operator, or responsible party shall certify under oath that, to the best of his
11 knowledge and belief, ~~such~~ the data is complete and accurate.

12 (c) Whenever the Secretary determines that there is a release, or substantial threat
13 of a release, into the environment of a hazardous substance from an inactive
14 hazardous substance or waste disposal site, the Secretary may, in addition to any
15 other powers he may have, order any responsible party to conduct ~~such~~ any
16 monitoring, testing, analysis, and reporting ~~as that~~ the Secretary deems reasonable
17 and necessary to ascertain the nature and extent of any hazard posed by the site.
18 Written notice of any order issued pursuant to this section shall be given to all
19 persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to
20 the entry of any ~~such~~ order, shall solicit the cooperation of the responsible party.

21 (d) If a person fails to submit data as required in subsection (b) of this section or
22 violates the requirements or schedules in an order issued pursuant to subsection (c) of
23 this section, the Secretary may institute an action for injunctive relief, irrespective of
24 all other remedies at law, in the superior court of the county where the violation
25 occurred or where a defendant resides.

26 (e) Whenever a person ordered to take any action pursuant to this section is
27 unable or fails to do so, or if the Secretary, after making a reasonable attempt, is
28 unable to locate any responsible party, the Secretary may take ~~such~~ the action. The
29 cost of any action by the Secretary pursuant to this section may be paid from the
30 Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement
31 pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of
32 G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this
33 section.

34 (f) Upon reasonable notice, the Secretary may require any person to furnish to the
35 Secretary any information, document, or record in that person's possession or under
36 that person's control that relates to:

- 37 (1) The identification, nature, and quantity of material that has been
38 or is generated, treated, stored, or disposed of at an inactive
39 hazardous substance or waste disposal site or that is transported to
40 an inactive hazardous substance or waste disposal site.
41 (2) The nature and extent of a release or threatened release of a
42 hazardous substance or hazardous waste at or from an inactive
43 hazardous substance or waste disposal site.

1 (3) Information relating to the ability of a person to pay for or to
2 perform a cleanup.

3 (g) A person who is required to furnish any information, document, or record
4 under subsection (f) of this section shall either allow the Secretary to inspect and
5 copy all information, documents, and records or shall copy and furnish to the
6 Secretary all information, documents, and records at the expense of the person.

7 (h) To collect information to administer this Part, the Secretary may subpoena the
8 attendance and testimony of witnesses and the production of documents, records,
9 reports, answers to questions, and any other information that the Secretary deems
10 necessary. Witnesses shall be paid the same fees and mileage that are paid to
11 witnesses in proceedings in the General Court of Justice. In the event that a person
12 fails to comply with a subpoena issued under this subsection, the Secretary may seek
13 enforcement of the subpoena in the superior court in any county where the inactive
14 hazardous substance or waste disposal site is located, in the county where the person
15 resides, or in the county where the person has his or her principal place of business.

16 (i) A person who owns or has control over an inactive hazardous substance or
17 waste disposal site shall grant the Secretary access to the site at reasonable times. If a
18 person fails to grant the Secretary access to the site, the Secretary may obtain an
19 administrative search and inspection warrant as provided by G.S. 15-27.2."

20 Section 2. This act is effective when it becomes law.

7

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

228 The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill and Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

S.B. 151 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DUTY OF AN OWNER, OPERATOR, OR OTHER RESPONSIBLE PARTY OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE TO NOTIFY THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OF THE EXISTENCE OF THE SITE, TO REQUIRE OWNERS, OPERATORS, AND OTHER RESPONSIBLE PARTIES TO FURNISH INFORMATION REGARDING THE SITE, AND TO SIMPLIFY THE INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE INVENTORY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 900

Short Title: Nitrogen Limit/Clean Water Fund Mod.

(Public)

Sponsors: Representatives Watson; Hill and Nichols.

Referred to: Environment, if favorable, Appropriations.

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE WATER QUALITY OF THE SURFACE WATERS
3 OF THIS STATE BY FURTHER LIMITING THE AMOUNT OF NITROGEN
4 THAT CERTAIN LARGE FACILITIES DISCHARGE TO NUTRIENT
5 SENSITIVE WATERS WHERE NITROGEN IS A NUTRIENT OF CONCERN,
6 TO AUTHORIZE THE USE OF UP TO TWENTY-FIVE PERCENT OF THE
7 FUNDS IN THE CLEAN WATER MANAGEMENT TRUST FUND FOR A
8 PORTION OF THE COSTS TO LOCAL GOVERNMENTS OF MODIFYING
9 EXISTING FACILITIES TO SATISFY THIS STRICTER LIMIT, AND TO
10 AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT FUND
11 FOR LOANS.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 143-215.1 is amended by adding a new subsection to
14 read:

15 "(c1) Any person who is required to obtain a permit under this section for a
16 facility discharging to surface waters of the State that have been classified as nutrient
17 sensitive waters under rules adopted by the Commission and where nitrogen is
18 determined by the Commission to be a nutrient of concern shall not discharge more
19 nitrogen, on a permitted annual average basis expressed as pounds per day, than
20 would result from a discharge having a concentration of three and one-half
21 milligrams of nitrogen per liter (3.5 mg/l) times the volume of discharge that the
22 permit for that facility allows that person to discharge during the year that ended 31
23 December 1995. Any person subject to this subsection shall monitor the facility's
24 discharge for nitrogen at least weekly. This subsection does not apply to facilities

1 that have a design capacity to discharge less than 500,000 gallons per day. The
2 Commission may adopt rules to implement this subsection."

3 Section 2. G.S. 143-215.6A(a) is amended by adding a new subdivision
4 to read:

5 "(10) Violates G.S. 143-215.1(c1) or a rule adopted pursuant to G.S.
6 143-215.1(c1)."

7 Section 3. G.S. 113-145.3 reads as rewritten:

8 **"§ 113-145.3. Clean Water Management Trust Fund: established.**

9 (a) Fund Established. -- There is established a Clean Water Management Trust
10 Fund in the State Treasurer's Office that shall be used to finance projects to clean up
11 or prevent surface water pollution in accordance with this Article.

12 (b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the
13 Fund separate and apart from all other moneys, funds, and accounts. Investment
14 earnings credited to the assets of the Fund shall become part of the Fund. Any
15 balance remaining in the Fund at the end of any fiscal year shall be carried forward
16 in the Fund for the next succeeding fiscal year. Payments from the Fund shall be
17 made on the warrant of the Chair of the Board of Trustees.

18 (c) Fund Purposes. -- Moneys from the Fund may be used for any of the following
19 purposes:

- 20 (1) To acquire land for riparian buffers for the purposes of providing
21 environmental protection for surface waters and urban drinking
22 water supplies and establishing a network of riparian greenways for
23 environmental, educational, and recreational uses.
- 24 (2) To acquire conservation easements or other interests in real
25 property for the purpose of protecting and conserving surface
26 waters and urban drinking water supplies.
- 27 (3) To coordinate with other public programs involved with lands
28 adjoining water bodies to gain the most public benefit while
29 protecting and improving water quality.
- 30 (4) To restore previously degraded lands to reestablish their ability to
31 protect water quality.
- 32 (5) To repair failing waste treatment systems if: (i) an application has
33 first been submitted to receive a loan or grant from the Clean
34 Water Revolving Loan and Grant Fund and the application was
35 denied during the latest review cycle; (ii) the repair is a reasonable
36 remedy for resolving an existing waste treatment problem; and (iii)
37 the repair is not for the purpose of expanding the system to
38 accommodate future anticipated growth of a community. Priority
39 shall be given to economically distressed units of local government.
- 40 (6) To repair and eliminate failing septic tank systems, to eliminate
41 illegal drainage connections, and to expand waste treatment
42 systems if the system is being expanded as a remedy to eliminate
43 failing septic tank systems or illegal drainage connections. Priority
44 shall be given to economically distressed units of local government.

- (7) To improve stormwater controls and management practices.
- (8) To facilitate planning that targets reductions in surface water pollution.
- (9) To fund operating expenses of the Board of Trustees and its staff.
- (10) To modify an existing permitted wastewater treatment facility that is owned or operated by a unit of local government and that is subject to G.S. 143-215.1(c1) to enable the unit of local government to comply with G.S. 143-215.1(c1).

(d) ~~Limit on Operating and Administrative Expenses.~~ Limitations on Uses of Fund. -- No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of eight hundred fifty thousand dollars (\$850,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff. No more than twenty-five percent (25%) of the amount credited to the Fund during the year ending 30 June shall be used as provided by subdivision (10) of subsection (c) of this section."

Section 4. G.S. 113-145.4 reads as rewritten:

"§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants; loans or grants; grant matching funds or property requirement; funds; loan limit.

(a) Eligible ~~Grant~~ Applicants. -- Any of the following are eligible to apply for a loan or grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.
- (2) A local government or other political subdivision of the State or a combination of such entities.
- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(b) Grant Matching Requirement. -- The Board of Trustees shall establish matching requirements for grants awarded under this Article. ~~The~~ For all eligible projects or activities other than projects eligible under G.S. 113-145.3(c)(10), the Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded. For projects eligible under G.S. 113-145.3(c)(10), the Board of Trustees may require a match of up to fifty percent (50%) of the amount of the grant awarded. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(b1) Loan Limit. -- The Board of Trustees shall establish requirements regarding limits on loans provided under this Article. The Board of Trustees may require that the maximum principal amount of a loan not exceed eighty percent (80%) of the nonfederal share of the costs of any eligible project or activity. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also

1 waive the requirement to limit loans pursuant to guidelines adopted by the Board of
2 Trustees.

3 (c) ~~Grants~~ Loans or Grants Not Available to Satisfy Compensatory Mitigation
4 Requirements. -- No loan and no grant shall be ~~awarded~~ provided under this ~~article~~
5 Article to satisfy compensatory mitigation requirements under 33 ~~USC~~ U.S.C. § 1344
6 or G.S. 143-214.11."

7 Section 5. G.S. 113-145.6 reads as rewritten:

8 "**§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and**
9 **duties.**

10 (a) Allocate Loan and Grant Funds. -- The Trustees shall allocate moneys from
11 the Fund as loans or grants. A loan or grant may be ~~awarded~~ provided only for a
12 project or activity that satisfies the criteria and furthers the purposes of this Article.

13 (b) Develop Grant Criteria. -- The Trustees shall develop criteria for ~~awarding~~
14 providing loans and grants under this Article. The criteria developed shall include
15 consideration of the following:

- 16 (1) The significant enhancement and conservation of water quality in
17 the State.
- 18 (2) The objectives of the basinwide management plans for the State's
19 river basins and watersheds.
- 20 (3) The promotion of regional integrated ecological networks insofar
21 as they affect water quality.
- 22 (4) The specific areas targeted as being environmentally sensitive.
- 23 (5) The geographic distribution of funds as appropriate.
- 24 (6) The preservation of water resources with significant recreational or
25 economic value and uses.
- 26 (7) The development of a network of riparian buffer-greenways
27 bordering and connecting the State's waterways that will serve
28 environmental, educational, and recreational uses.

29 (c) Develop Additional Guidelines. -- The Trustees may develop guidelines in
30 addition to the loan and grant criteria consistent with and as necessary to implement
31 this Article.

32 (d) Acquisition of Land. -- The Trustees may acquire land by purchase,
33 negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed
34 and approved by the Council of State and the deed for the land subject to approval
35 of the Attorney General before the acquisition can become effective. In determining
36 whether to acquire land as permitted by this Article, the Trustees shall consider
37 whether the acquisition furthers the purposes of this Article and may also consider
38 recommendations from the Council. Nothing in this section shall allow the Trustees
39 to acquire land under the right of eminent domain.

40 (e) Exchange of Land. -- The Trustees may exchange any land they acquire in
41 carrying out the powers conferred on the Trustees by this Article.

42 (f) Land Management. -- The Trustees may designate managers or managing
43 agencies of the lands acquired under this Article.

1 (g) Tax Credit Certification. -- The Trustees shall develop guidelines to determine
2 whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are
3 suitable for one of the purposes under this Article and may be certified for a tax
4 credit.

5 (h) Rule-making Authority. -- The Trustees may adopt rules to implement this
6 Article. Chapter 150B of the General Statutes applies to the adoption of rules by the
7 Trustees.

8 (i) The Chair of the Board of Trustees of the Clean Water Management Trust
9 Fund shall report to the Environmental Review Commission beginning November 1,
10 1996, and annually thereafter on implementation of this section. A written copy of
11 the report shall also be sent to the Fiscal Research Division of the General Assembly
12 beginning November 1, 1996, and annually thereafter on implementation of this
13 section."

14 Section 6. By 1 November 1997, the Environmental Management
15 Commission shall develop a schedule of dates between 1 November 1997, and 1
16 January 2005, by which existing facilities must comply with G.S. 143-215.1(c1), as
17 enacted by Section 1 of this act. The schedule of compliance dates shall follow as
18 closely as possible the dates on which permits for existing facilities must be renewed.
19 New facilities and expansions of existing facilities for which an application for a
20 permit is received by the Department of Environment, Health, and Natural Resources
21 on behalf of the Environmental Management Commission prior to the date this act
22 becomes effective shall be treated as existing facilities.

23 Section 7. This act is effective when it becomes law.



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Memorandum

April 9, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 900 (Nitrogen Limit/Clean Water Fund Mod.)

Section 1 amends G.S. 143-215.1 (Control of sources of water pollution; permits required) by adding a subsection (c1) that prohibits a discharge containing an annual average concentration of nitrogen greater than three and one-half milligrams of nitrogen per liter (3.5 mg N/l). This nitrogen discharge limit is only applicable to facilities that are: (1) required to obtain a permit under G.S. 143-215.1 (those making outlets into waters of the State); (2) designed with the capacity to discharge five hundred thousand gallons per day (500,000 gal./day); and (3) making discharges into surface waters of the State that have been classified as nutrient sensitive and that have been determined to have nitrogen as a nutrient of concern.

Section 2 amends G.S. 143-215.6A (Enforcement procedures: civil penalties) by adding a subdivision (10) that authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of up to ten thousand (\$10,000) for violations of the nitrogen discharge limit established by G.S. 143-215.1(c1) or the rules implementing the nitrogen discharge limit.

Section 3 amends subsections (c) and (d) of G.S. 113-145.3 (Clean Water Management Trust Fund: established). Subsection (c) is amended by adding a subdivision (10) to allow moneys from the Fund to be used enable units of local government to comply with the nitrogen discharge limit established by G.S. 143-215.1(c1). Subsection (d) is amended to limit the amount of Clean Water Management Trust Fund (Fund) moneys that may be used to enable units of local government to comply with the nitrogen discharge limit to no more than twenty-five percent (25%) of the amount credited to the Fund.

Section 4 amends the catchline and subsections (a) and (c) of G.S. 113-145.4 (Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement) to allow moneys from the Fund to be disbursed in the form of loans as well as grants. Section 4 adds a subsection (b1) to G.S. 113-145.4 to provide that loans available from the Fund would be limited to eighty percent (80%) of the cost of the eligible project or activity. Section 4 also amends

subsection (b) of G.S. 113-145.4 to provide that the Fund's Board of Trustees (Trustees) may require up to a fifty percent (50%) match for projects eligible under G.S. 113-145.3(c)(10) (compliance with the nitrogen limit) rather than the up to twenty percent (20%) matching requirement for other eligible projects.

Section 5 amends G.S. 113-145.6 (Clean Water Management Trust Fund Board of Trustees: powers and duties) to require the Trustees to allocate moneys from the Fund as loans as well as grants. The Trustees are also directed to develop criteria for issuing loans as well as grants.

Section 6 directs the Environmental Management Commission to develop a nitrogen discharge limit compliance schedule. The schedule will run between November 1, 1997 and January 1, 2005 and will follow, as closely as possible, the permit renewal dates of existing facilities. New or expanding facilities for which a permit application is received by the Department of Environment, Health, and Natural Resources prior to the date this act becomes effective will be treated as existing facilities.

Section 7 makes this act effective when it becomes law.

ATTACHMENT III

Thank you Mr. Chairman and members of the Committee. I am Kim Smith, Associate General Counsel with the N.C. League of Municipalities, representing 512 cities, towns and villages throughout the state.

Let me begin by saying that cities are committed to water quality improvement efforts. Providing clean drinking water and properly treating sewage to protect public health and the environment are part of our mission as governmental units, and we take it very seriously.

We have closely followed the debate as to the best methods of reducing nitrogen loading in nutrient sensitive waters. We recognize that municipal wastewater treatment plants are one source of the nitrogen problem, and we agree that municipalities need to participate in solving that problem.

Our members stand ready to take appropriate actions to do so. We told the Governor that in a meeting with him last week and I want to reiterate that to you now. We will not oppose reasonable requirements for nutrient removal by wastewater treatment plants.

But we would also ask that any nitrogen removal strategy be a fair and balanced one. This particular bill (HB 900) focuses only on point source nitrogen reductions by municipalities and industries.

We believe that all sources must be asked to participate in nitrogen reduction if the solution is to be an effective one. Without a comprehensive approach that requires reductions from non-point sources as well (whether agriculture, stormwater runoff, or home and business use of fertilizer), treatment plant upgrades will not achieve the goal. It is crucial that all responsible parties participate in proportion to their nutrient contributions. We appreciate Representative Watson's comments about bringing the other sources on board to do their share.

Having said that, our main concern with the bill as written is the proposed 3.5 milligram per liter limit. Currently there is no permit limit on nitrogen. Many of the plants in the affected basins are discharging between 14 and 20 milligrams per liter. While these numbers do need to be reduced, we submit that 3.5 is a drastic change that will push treatment plants beyond the limits of technology.

We do not have information for all affected plants, but an engineering study conducted by Piedmont, Olsen & Hensley for the Lower Neuse Basin indicates that it will not be technologically feasible for some existing plants to achieve that limit. In addition, for those plants that could reach the limit, the necessary capital and operating improvements would be extremely costly.

In response to legislation passed by the General Assembly in 1996, the Environmental Management Commission has been in the process of developing rules to reduce nitrogen in the Neuse River by at least 30%. The draft rules propose a comprehensive approach to nitrogen reduction by all sources and have been through the public hearing process.

In formulating what was needed to achieve point source reduction goals, the DEHNR and the EMC arrived at a recommended nitrogen limit of 6 milligrams per liter. We believe this is a far more reasonable number that would make a significant positive impact on water quality and would also be more feasible and cost-effective to achieve.

Some municipal plants have already undertaken nitrogen reduction programs. The Lower Neuse Basin Association (a voluntary coalition of municipalities and industries) has been collectively monitoring the Neuse for several years and commissioned the engineering study just mentioned to recommend reduction strategies. Coalition members have voluntarily proceeded with those recommendations. Raleigh, Cary and Goldsboro are currently in capital improvement and/or operational improvement programs to reduce the total load on the Neuse on a collaborative basis.

We would ask that the bill specifically authorize cooperative efforts among point sources to allow them to work together in determining where to allocate limited resources within the basin in order to achieve the overall reductions needed. The EMC proposal contains such a provision. With this flexibility, municipalities will be better able to do their share of the reductions in the most cost-effective way.

Thank you for your consideration of these suggestions.

HB 900
Introduced by
Rep. Cindy Watson
House Committee on Environment
April 9, 1997

Thank you Mr. Chairman, members of the Environment Committee.

For many years now we have been warned that our estuaries, creeks, rivers , bays and sounds have been dying.

This warning has proven to be a reality as manifested in the many fish kills, the closed shellfish areas , and an overall deterioration in aquatic life.

In an attempt to heed this warning, legislation, both Federal and State, has been implemented to help revive and breathe new life into our waterways.

A successful example of this was a restriction, or in some areas an outright ban, in the use of phosphate in our cleaning supplies. Consequently the levels of phosphorous in our rivers and streams has been dramatically abated.

Many of our waterways are considered nutrient sensitive to nitrogen. Academia reports that the level of nitrogen in whatever form that is flowing to our waterways far exceeds the limits that will sustain a healthy aquatic environment.

We have been told that while agriculture, industry , and local government or other political subdivisions are collectively the cause of the problem, probably the most apparent violators of excessive nitrogen level discharges are our large point source discharge waste generators, in other words large industries and municipalities.

This committee has recently approved a bill that would place more stringent regulations on our swine industry. As a perceived polluter this industry maintains that it should not be singled out when large point source discharge facilities are "permitted to pollute". I recall the cries of indignation from many of you that it was unfair to overlook Cary, Raleigh, and other large discharge facilities if we indeed are serious about cleaning up our rivers and streams.

Today we have an opportunity to rectify this situation. To answer the call that we give our rivers and stream some relief from these large point source discharge facilities.

HB 900 lowers the maximum parameters for the levels of nitrogen that may be permitted to be discharged by any facility that has a design capacity of more than 500,000 gallons per day and provides a method to help municipalities pay for the costs of updating their waste treatment facilities to meet these more stringent requirements.

Now I know that many will say that the cost to achieve these new limits will be too costly, that many companies will be forced out of business if they are

required to meet these limits. Many municipalities will say that the taxpayer cannot afford the cost. Yes there will be shouts of anguish and a bleating from those timid souls who are unwilling to take a stand for what is right, yes to take a stand to give relief to the real cries of anguish from our polluted rivers. But I tell you that we must take a stand to do this right thing before the death bell tolls for the last time for the protection of our most precious resource...water.

Mr. / Chairman, fellow committee members...Mother Earth, while forgiving much of our mistreatment, can suffer irreparable harm because of our greed or apathy, whereas the ingenuity of the marketplace has the proven record to always overcome any additional costs of goods or services and even higher taxes that may have been incurred when PROTECTION OF THE ENVIRONEMNT HAS PRECEDENT OVER GREED AND APATHY.

HB 900 IS A GOOD BILL !

If I may Mr. Chairman, I defer most of the technical questions concerning HB 900 to staff, George Givens.



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Memorandum

April 9, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 900 (Nitrogen Limit/Clean Water Fund Mod.)

Section 1 amends G.S. 143-215.1 (Control of sources of water pollution; permits required) by adding a subsection (c1) that prohibits a discharge containing an annual average concentration of nitrogen greater than three and one-half milligrams of nitrogen per liter (3.5 mg N/l). This nitrogen discharge limit is only applicable to facilities that are: (1) required to obtain a permit under G.S. 143-215.1 (those making outlets into waters of the State); (2) designed with the capacity to discharge five hundred thousand gallons per day (500,000 gal./day); and (3) making discharges into surface waters of the State that have been classified as nutrient sensitive and that have been determined to have nitrogen as a nutrient of concern.

Section 2 amends G.S. 143-215.6A (Enforcement procedures: civil penalties) by adding a subdivision (10) that authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of up to ten thousand (\$10,000) for violations of the nitrogen discharge limit established by G.S. 143-215.1(c1) or the rules implementing the nitrogen discharge limit.

Section 3 amends subsections (c) and (d) of G.S. 113-145.3 (Clean Water Management Trust Fund: established). Subsection (c) is amended by adding a subdivision (10) to allow moneys from the Fund to be used enable units of local government to comply with the nitrogen discharge limit established by G.S. 143-215.1(c1). Subsection (d) is amended to limit the amount of Clean Water Management Trust Fund (Fund) moneys that may be used to enable units of local government to comply with the nitrogen discharge limit to no more than twenty-five percent (25%) of the amount credited to the Fund.

Section 4 amends the catchline and subsections (a) and (c) of G.S. 113-145.4 (Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement) to allow moneys from the Fund to be disbursed in the form of loans as well as grants. Section 4 adds a subsection (b1) to G.S. 113-145.4 to provide that loans available from the Fund would be limited to eighty percent (80%) of the cost of the eligible project or activity. Section 4 also amends

subsection (b) of G.S. 113-145.4 to provide that the Fund's Board of Trustees (Trustees) may require up to a fifty percent (50%) match for projects eligible under G.S. 113-145.3(c)(10) (compliance with the nitrogen limit) rather than the up to twenty percent (20%) matching requirement for other eligible projects.

Section 5 amends G.S. 113-145.6 (Clean Water Management Trust Fund Board of Trustees: powers and duties) to require the Trustees to allocate moneys from the Fund as loans as well as grants. The Trustees are also directed to develop criteria for issuing loans as well as grants.

Section 6 directs the Environmental Management Commission to develop a nitrogen discharge limit compliance schedule. The schedule will run between November 1, 1997 and January 1, 2005 and will follow, as closely as possible, the permit renewal dates of existing facilities. New or expanding facilities for which a permit application is received by the Department of Environment, Health, and Natural Resources prior to the date this act becomes effective will be treated as existing facilities.

Section 7 makes this act effective when it becomes law.

VISITOR REGISTRATION SHEET

4-9-97 Environment

Room 643

Wednesday
12:06 noon

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY

1. Richard Whisenand

DEHNR

2. Big Meyer

DEHNR - DWM

3. Paul E. New

N.C. Air Business

4. John Gaur

N.C. State Strangle

5. Gary Harris

NC Petroleum Marketers

6. Doug Hawley

II

7. Conn Cove

BPMHL

8. Harlan Britt

DEHNR - DWQ

9. Jonathan Breedel

Citizen

10. Ed Regor

N.C.A.C.C.

11. Bill McAnulty

PSNC

22. Jim Blackburn

N C A C C

23. David McLoughlin

NC Clean Water Mgt. Trust Fund

24. Amanda Davis

Sierra Club

25. Tom Bern

NC Wildlife Federation

26. Joe Rudek

NC Environmental Defense Fund

27. Mic Baxley

N.C. Aggregates Assoc.

28. Karen Brashear

City of Goldsboro

29. Deen H. Sullins

DEHNR / DWQ

30. Don Strit

DEHNR / DWQ

31. OKHob

SHORE

32. A B Smiley

SFT

32. Amy Tucker
33. Ed Bower
34. Milly Diggins
35. Nichelle O'Neil
36. Paula Gapp
37. Marcia Jones
38. _____
39. _____
40. _____
41. _____
42. _____
43. _____
44. _____
45. _____
46. _____
47. _____
48. _____
49. _____
50. _____

Huntton's Williams
RW Boone
NC Siena Club
Weyerhaeuser
NC
Ames's Eastern Office

A G E N D A

House ENVIRONMENT Committee

April 16, 1997

Opening Remarks: Rep. Dewey L. Hill, Co-Chair

BILLS TO BE CONSIDERED:

HB188, Rep. Culp - Env. Tech. Corrections

HB211, Rep. Culp - Amend Env. Laws

HB302, Rep. H. Hunter - Wildlife Quarantine

HB900, Rep. Watson - Nitrogen Limit/Clean Water Fund Mod.

PLEASE NOTE: The Committee will resume 15 minutes after today's session.

MINUTES
HOUSE ENVIRONMENT COMMITTEE
April 16, 1997

The committee met in room 643 of the Legislative Office Building at 12:00 noon. Rep. Dewey L. Hill presided at the meeting at the following members were in attendance: Rep. Rick Eddins, CoChair; Rep. Phil Baddour; Rep. John Brown; Rep. Nelson Cole; Rep. Arlie Culp; Rep. John Gamble; Rep. Charlotte Gardner; Rep. Jim Gulley; Rep. Joe Hackney; Rep. Foyle Hightower; Rep. Theodore Kinney; Rep. Danny McComas; Rep. Eugene McCombs; Rep. William Mitchell; Rep. John Nichols; Rep. Jean Preston; Rep. Nurham Warwick and Rep. Doug Yongue.

Chairman Hill called the meeting to order, and recognized Ms. Laura Humphries from Person County who was serving as a Page for the House this week. Chairman Hill called upon Rep. Arlie Culp to come forward and support his bill, HB188, Env. Tech. Corrections. Rep. Culp stated that he had a proposed committee substitute to offer the committee, and Chairman Hill recognized Rep. Eddins who made the motion that the substitute be adopted for discussion.

Rep. Culp stated that his bill came from the Environmental Review Commission and asked the members to please refer to the explanation sheet prepared by the committee staff (please see attachment "A"). Staff explained that two new technical corrections were the reason for the substitute. Chairman Hill recognized Rep. Brown who made the motion for a favorable report on the substitute and unfavorable as to original bill, and the motion carried.

Rep. Culp had another bill on the agenda today, HB211, Amend Env. Laws, which was a product of the Environmental Review Commission as well. Rep. Culp stated that the title of the proposed committee substitute explained the bill in its entirety. Chairman Hill recognized Rep. Eddins who made the motion to adopt the substitute for discussion, and the motion carried. Rep. Culp further stated that staff had prepared an explanation (see Attachment "B"). Rep. Hightower had some questions and Chairman Hill recognized Mr. Ed. Regan, Association of County Commissioners, who stated that the commissioners do not have a position on the bill at this particular time. Rep. Hightower stated that he wanted to know the association's position on the bill and staff stated that they would amend the bill if he so desired. Rep. Nichols had further questions for staff and committee counsel, George Givens, stated that perhaps Mr. Richard Rogers with the Department of Environment, Health and Natural Resources, would come forward and state the department's position. Mr. Rogers stated that the department did not have a representative from Water Quality in attendance; however, he stated that the department has been managing this aspect of Rep. Hightower's question, and it is not anything new. The committee staff explained the amendment requested by Rep. Hightower, and Rep. Nichols stated that the General Assembly would ultimately have the final authority on these rules, and that he felt the amendment was not necessary.

Chairman Hill requested staff to explain the differences between the two issues before the committee at the moment. Committee Counsel, George Givens, stated that without the change there would not be any continuing education requirements, with this change they would adopt them as stated by Rep. Nichols - subject to legislative review.

Chairman Hill called for a vote on Rep. Hightower's amendment, and the amendment did not pass. Chairman Hill recognized Rep. Nichols who made the motion for a favorable report on the committee substitute, and unfavorable as to the original bill. Chairman Hill called for the vote, and the motion carried.

Chairman Hill recognized Rep. Howard Hunter to come forward and support his bill, HB 302, Wildlife Quarantine. Rep. Hunter stated that he wished the members of the committee to have several documents in support of his bill. (Please see four (4) attachments). Chairman Hill recognized Rep. Yongue who made the motion that the committee adopt the committee substitute for discussion by the committee, and the motion carried.

Rep. Hunter stated that the increase in rabies is an issue which must be addressed, and he proceeded to give many statistics supporting this. He further stated that this legislation allows local health department to be able to take certain species of animals: raccoons, skunks, bobcats and foxes.

Chairman Hill recognized Rep. Yongue who questioned Rep. Hunter regarding the word "taking", and Rep. Hunter stated that it meant kill.

Chairman Hill recognized Mr. Charles Fullwood, Director of the Wildlife Commission who stated that he agreed with Rep. Hunter that there is indeed a problem, and that his department was ready to act within their statutory authority to address it. He further stated that it sets up a state agency in a manner that it would have to deal with referrals from 100 different counties and their local health directors. He further stated that the department would prefer notification through the state health director instead, and that that would be a more orderly process.

Chairman Hill recognized Rep. Hightower who had a question with regard to only the four species stated. The Chairman recognized Mr. Charles Fullwood once again who stated that the law does allow a person to kill an animal in defense of his property. Then the question of open season on fox was opened. The Chairman recognized Rep. Warwick who had a question with regard to who recommended the bill to Rep. Hunter. Rep. Hunter stated that it was a local health department. A discussion continued with regard to open seasons and particularly with regard to rabies.

Chairman Hill recognized Rep. Hackney who had a question for the best rabies specialist in the room, and Chairman Hill recognized Dr. Lee Hunter, State Veterinarian, to answer Rep. Hackney's question with regard to limiting the bill to raccoons and achieve the purpose of the bill. Dr. Hunter stated that the state is currently experiencing


three epidemics and that two of them are predominantly raccoons which will spill over to dogs etc. The third epidemic is in the skunk population and that the epidemics are somewhat species specific.

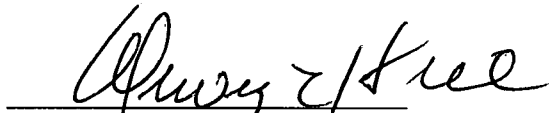
Chairman Hill recognized Rep. Yongue with a question regarding epidemic stages. Dr. Hunter stated that there was indeed an increase in reporting.

Chairman Hill recognized Rep. Warwick who had a question with regard to the word "taking". Further discussion continued with regard to the issue and the committee was unable to reach a consensus; therefore, Chairman Hill stated that he would appoint a subcommittee to study the issue further. Chairman Hill stated that he would assign the members as follows: Rep. Rick Eddins, chairman; Rep. Dewey L. Hill; Rep. Doug Yongue; Rep. John Brown and Rep. Arlie Culp.

Before Chairman Hill adjourned the meeting, he reminded the members that the committee would continue 15 minutes after the House adjourned today; however, the House adjourned too late in the day for that to occur.

Submitted by:


Virginia M. McCann
Committee Clerk


Rep. Dewey L. Hill
CoChairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 211*
Committee Substitute Favorable 4/16/97

Short Title: Amend Env. Laws.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE
3 FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE
4 EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE
5 WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION
6 COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE
7 HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER
8 THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE
9 DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING
10 IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY
11 PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT
12 COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER
13 THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES
14 FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6)
15 REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR
16 THE MINING COMMISSION; AND (7) REESTABLISH A SCHEDULE OF
17 TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS
18 AND RECREATION AUTHORITY, AS RECOMMENDED BY THE
19 ENVIRONMENTAL REVIEW COMMISSION.
20 The General Assembly of North Carolina enacts:
21 Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a
22 new section to read:

1 "§ 90A-46.1. Expiration and renewal of certificates; continuing education
2 requirements.

3 A certificate issued under this Part expires on 31 December of the year in which it
4 is issued or renewed. The Commission may establish minimum continuing education
5 requirements that an applicant must meet to renew a certificate. The Commission
6 shall renew a certificate if the applicant meets the continuing education requirement
7 and pays the required renewal fee, any renewal fee in arrears, and any late
8 application penalty."

9 Section 2. G.S. 113A-120(b1) reads as rewritten:

10 "(b1) In addition to those factors set out in subsection (a) of this section, and
11 notwithstanding the provisions of subsection (b) of this section, the responsible
12 official or body may deny an application for a permit upon finding that an applicant,
13 or any parent or subsidiary corporation if the applicant is a corporation:

- 14 (1) Is conducting or has conducted any activity causing significant
15 environmental damage for which a major development permit is
16 required under this Article without having previously obtained
17 such permit or has received a notice of violation with respect to
18 any activity governed by this Article and has not complied with the
19 notice within the time specified in the notice;
- 20 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a
21 local ordinance adopted pursuant to this Article, or Article 17 of
22 Chapter 113 of the General Statutes which is due and for which no
23 appeal is pending;
- 24 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126,
25 G.S. 113-229(k), or any criminal provision of a local ordinance
26 adopted pursuant to this Article; or
- 27 (4) Has failed to substantially comply with State state rules or local
28 ordinances and regulations adopted pursuant to this Article or with
29 other federal and State state laws, regulations, and rules for the
30 protection of the environment."

31 Section 3. G.S. 143-215.1(c) reads as rewritten:

32 "(c) Applications for Permits and Renewals for Facilities Discharging to the
33 Surface Waters. --

- 34 (1) All applications for permits and for renewal of existing permits for
35 outlets and point sources and for treatment works and disposal
36 systems discharging to the surface waters of the State shall be in
37 writing, and the Commission may prescribe the form of such
38 applications. All applications shall be filed with the Commission
39 at least 180 days in advance of the date on which it is desired to
40 commence the discharge of wastes or the date on which an existing
41 permit expires, as the case may be. The Commission shall act on a
42 permit application as quickly as possible. The Commission may
43 conduct any inquiry or investigation it considers necessary before
44 acting on an application and may require an applicant to submit

1 plans, specifications, and other information the Commission
2 considers necessary to evaluate the application.

- 3 (2) a. The Department shall refer each application for permit, or
4 renewal of an existing permit, for outlets and point sources
5 and treatment works and disposal systems discharging to the
6 surface waters of the State to its staff for written evaluation
7 and proposed determination with regard to issuance or
8 denial of the permit. If the Commission concurs in the
9 proposed determination, it shall give notice of intent to issue
10 or deny the permit, along with any other data that the
11 Commission may determine appropriate, to be given to the
12 appropriate State, interstate and federal agencies, to
13 interested persons, and to the public.

14 a1. The Commission shall prescribe the form and content of the
15 notice. ~~The notice required herein~~ Public notice shall be
16 given at least 45 days prior to any proposed final action
17 granting or denying the permit. Public notice shall be given
18 by publication of the notice one time in a newspaper having
19 general circulation within the county.

20 b. Repealed by Session Laws 1987, c. 734.

- 21 (3) If any person desires a public ~~meeting~~ hearing on any application
22 for permit or renewal of an existing permit provided for in this
23 subsection, he shall so request in writing to the Commission within
24 30 days following date of the notice of intent. The Commission
25 shall consider all such requests for ~~meeting~~ hearing, and if the
26 Commission determines that there is a significant public interest in
27 holding such ~~meeting~~ hearing, at least 30 days' notice of such
28 ~~meeting~~ hearing shall be given to all persons to whom notice of
29 intent was sent and to any other person requesting notice. At least
30 30 days prior to the date of ~~meeting~~ hearing, the Commission shall
31 also cause a copy of the notice thereof to be published at least one
32 time in a newspaper having general circulation in such county. In
33 any county in which there is more than one newspaper having
34 general circulation in that county, the Commission shall cause a
35 copy of such notice to be published in as many newspapers having
36 general circulation in the county as the Commission in its
37 discretion determines may be necessary to assure that such notice
38 is generally available throughout the county. The Commission
39 shall prescribe the form and content of the notices.

40 The Commission shall prescribe the procedures to be
41 followed in ~~such meetings~~ hearings. If the ~~meeting~~ hearing is not
42 conducted by the Commission, detailed minutes of the ~~meeting~~ hearing
43 hearing shall be kept and shall be submitted, along with any other
44 written comments, exhibits or documents presented at the ~~meeting~~ hearing.

1 hearing, to the Commission for its consideration prior to final
2 action granting or denying the permit.

3 (4) Not later than 60 days following notice of intent or, if a public
4 hearing is held, within 90 days following consideration of the
5 matters and things presented at such hearing, the Commission shall
6 grant or deny any application for issuance of a new permit or for
7 renewal of an existing permit. All permits or renewals issued by
8 the Commission and all decisions denying application for permit or
9 renewal shall be in writing.

10 (5) No permit issued pursuant to this subsection (c) shall be issued or
11 renewed for a term exceeding five years.

12 (6) The Commission shall not act upon an application for a new
13 nonmunicipal domestic wastewater discharge facility until it has
14 received a written statement from each city and county government
15 having jurisdiction over any part of the lands on which the
16 proposed facility and its appurtenances are to be located which
17 states whether the city or county has in effect a zoning or
18 subdivision ordinance and, if such an ordinance is in effect,
19 whether the proposed facility is consistent with the ordinance. The
20 Commission shall not approve a permit application for any facility
21 which a city or county has determined to be inconsistent with its
22 zoning or subdivision ordinance unless it determines that the
23 approval of such application has statewide significance and is in
24 the best interest of the State. An applicant for a permit shall
25 request that each city and county government having jurisdiction
26 issue the statement required by this subdivision by mailing by
27 certified mail, return receipt requested, a written request for such
28 statement and a copy of the draft permit application to the clerk of
29 the city or county. If a local government fails to mail the statement
30 required by this subdivision, as evidenced by a postmark, within 15
31 days after receiving and signing for the certified mail, the
32 Commission may proceed to consider the permit application
33 notwithstanding this subdivision."

34 Section 4. G.S. 143-215.4(b) reads as rewritten:

35 "(b) Procedures for Public Input. --

36 (1) The Commission may, on its own motion or when required by
37 federal law, request public comments on or hold public hearings
38 on matters within the scope of its authority under this Article or
39 Articles 21A or 21B of this Chapter. To request public comments
40 on a matter, the Commission shall notify appropriate agencies of
41 the opportunity to submit written comments to the Commission on
42 the matter and shall publish a notice in a newspaper having
43 general circulation in the affected area, stating the matter under
44 consideration by the Commission and informing the public of its

1 opportunity to submit written comments to the Commission on the
2 matter. A public comment period shall extend for at least 30 days
3 after the notice is published.

4 (2) To hold a public hearing on a matter, the Commission shall notify,
5 by personal service or certified mail, persons directly affected by
6 the matter under consideration and shall publish a notice in a
7 newspaper having general circulation in the affected area, stating
8 the matter under consideration by the Commission and the time,
9 date, and place of a public hearing to be held on the matter. A
10 public hearing shall be held no sooner than 20 days after the notice
11 is published. The proceedings at a public hearing held under this
12 subsection shall be recorded. Upon payment of a fee established by
13 the Commission, any person may obtain a copy of the record of
14 the public hearing. After a public hearing, the Commission shall
15 accept written comments for the time period prescribed by the
16 Commission.

17 (3) This subsection does not apply to rule-making proceedings,
18 contested case hearings, or the issuance of permits required under
19 Title V. The Commission shall establish procedures for public
20 hearings, public notice, and public comment respecting permits
21 required by Title V as provided by G.S. 143-215.111(4).

22 (4) The Commission may hold a public meeting on any matter within
23 its scope of authority. The Commission may hold a public meeting
24 in addition to any public hearing that is required under any
25 provision of law, but a public meeting may not be substituted for
26 any required public hearing. Except as may be otherwise provided
27 by law, the Commission may determine the procedures for any
28 public meeting it holds."

29 Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

30 "(4) To delegate such of the powers of the Commission as the
31 Commission deems necessary to one or more of its members, to the
32 Secretary or any other qualified employee of the Department.
33 ~~Department; provided, that the provisions of any such delegation~~
34 ~~of power shall be set forth in the rules of the Commission; and~~
35 ~~provided further that the~~ The Commission shall not delegate to
36 persons other than its own members and the designated employees
37 of the Department the power to conduct hearings with respect to
38 the classification of waters, the assignment of classifications, air
39 quality standards, air contaminant source classifications, emission
40 control standards, or the issuance of any special order except in the
41 case of an emergency under subdivision (12) of this subsection for
42 the abatement of existing water or air pollution. Any employee of
43 the Department to whom a delegation of power is made to conduct

1 a hearing shall report the hearing with its evidence and record to
2 the Commission."

3 Section 6. G.S. 143-215.114A(b) reads as rewritten:

4 ~~"(b) Each day of continuing violation after written notification from the Secretary~~
5 ~~shall be considered a separate offense. If any action or failure to act for which a~~
6 ~~penalty may be assessed under this section is continuous, the Secretary may assess a~~
7 ~~penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the~~
8 ~~violation continues."~~

9 Section 7. G.S. 143B-291 reads as rewritten:

10 "§ 143B-291. North Carolina Mining Commission -- members; selection; removal;
11 compensation; quorum; services.

12 (a) Members. Selection. -- The North Carolina Mining Commission shall consist
13 of nine members appointed by the Governor. ~~The Commission shall be composed of~~
14 ~~the following: one~~ Governor under a specified subdivision of this subsection as
15 follows:

16 (1) One member who is the chairman of the North Carolina State
17 University Minerals Research Laboratory Advisory Committee, ex
18 officio. ~~Committee; three representatives of mining industries;~~
19 ~~three representatives of nongovernmental conservation interests~~
20 ~~and two who shall represent the Environmental Management~~
21 ~~Commission and be knowledgeable in the principles of water and~~
22 ~~air resources management.~~

23 (2) One member who is a representative of the mining industry.

24 (3) One member who is a representative of the mining industry.

25 (4) One member who is a representative of the mining industry.

26 (5) One member who is a representative of nongovernmental
27 conservation interests.

28 (6) One member who is a representative of nongovernmental
29 conservation interests.

30 (7) One member who is a representative of nongovernmental
31 conservation interests.

32 (8) One who, at the time of the appointment to the Mining
33 Commission, is a member of the Environmental Management
34 Commission and knowledgeable in the principles of water and air
35 resources management.

36 (9) One who, at the time of the appointment to the Mining
37 Commission, is a member of the Environmental Management
38 Commission and knowledgeable in the principles of water and air
39 resources management.

40 ~~The initial members of the North Carolina Mining Commission shall be those~~
41 ~~members of the present North Carolina Mining Council who shall meet the above~~
42 ~~requirements for membership on the North Carolina Mining Commission and who~~
43 ~~shall serve on the North Carolina Mining Commission for a period equal to the~~
44 ~~remainder of their current terms on the North Carolina Mining Council. The~~

1 ~~remaining initial members shall be appointed by the Governor to staggered terms of~~
2 ~~six years.~~

3 (b) Terms. -- The term of office of a member of the Commission is six years. Any
4 appointment to fill a vacancy on the Commission created by the resignation,
5 dismissal, death or disability of a member shall be for the balance of the unexpired
6 term. At the expiration of each member's term, the Governor shall replace the
7 member with a new member of like qualifications for a term of six years. The term
8 of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this
9 section shall expire on 30 June of years that precede by one year those years that are
10 evenly divisible by six. The term of members appointed under subdivisions (3) and
11 (6) of subsection (a) of this section shall expire on 30 June of years that follow by one
12 year those years that are evenly divisible by six. The term of members appointed
13 under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30
14 June of years that follow by three years those years that are evenly divisible by six.
15 Upon the expiration of a six-year term, a member may continue to serve until a
16 successor is appointed and duly qualified as provided by G.S. 128-7.

17 (c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
18 balance of the term.

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

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

26 (f) Quorum. -- A majority of the Commission shall constitute a quorum for the
27 transaction of business.

28 (g) Staff. -- All clerical and other services required by the Commission shall be
29 supplied by the Secretary of the Department."

30 Section 8. In order to reestablish a schedule of six-year staggered terms
31 for the Mining Commission as required by G.S. 143B-291, as amended by Section 7
32 of this act, the Governor, in making appointments to replace the two members of the
33 Mining Commission who represent the mining industry and whose terms both expire
34 on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full
35 six-year term expiring on 30 June 2003 and shall appoint one member under G.S.
36 143B-291(a)(4), to a four-year term expiring 30 June 2001.

37 Section 9. G.S. 143B-313.2 reads as rewritten:

38 **§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection;**
39 **compensation; meetings.**

40 (a) Membership. -- The North Carolina Parks and Recreation Authority shall
41 consist of 11 members. The members shall include persons who are knowledgeable
42 about park and recreation issues in North Carolina or with expertise in finance.
43 ~~Three members shall be appointed by the Governor, four members shall be~~
44 ~~appointed by the General Assembly upon the recommendation of the Speaker of the~~

~~1 House of Representatives in accordance with G.S. 120-121, and four members shall~~
~~2 be appointed by the General Assembly upon the recommendation of the President~~
~~3 Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall~~
~~4 serve at the pleasure of the appointing authority. The Governor shall appoint one of~~
~~5 the members to be Chair of the North Carolina Parks and Recreation Authority.~~
~~6 Vacancies shall be appointed by the original appointing authority, and the term shall~~
~~7 be for the balance of the unexpired term. The North Carolina Parks and Recreation~~
~~8 Authority shall meet at a time and place as designated by the Chair, but no less~~
~~9 frequently than quarterly. In making appointments, each appointing authority shall~~
~~10 specify under which subdivision of this subsection the person is appointed. Members~~
~~11 shall be appointed as follows:~~

- ~~12 (1) One member appointed by the Governor.~~
- ~~13 (2) One member appointed by the Governor.~~
- ~~14 (3) One member appointed by the Governor.~~
- ~~15 (4) One member appointed by the General Assembly upon the~~
~~16 recommendation of the Speaker of the House of Representatives,~~
~~17 as provided in G.S. 120-121.~~
- ~~18 (5) One member appointed by the General Assembly upon the~~
~~19 recommendation of the Speaker of the House of Representatives,~~
~~20 as provided in G.S. 120-121.~~
- ~~21 (6) One member appointed by the General Assembly upon the~~
~~22 recommendation of the Speaker of the House of Representatives,~~
~~23 as provided in G.S. 120-121.~~
- ~~24 (7) One member appointed by the General Assembly upon the~~
~~25 recommendation of the Speaker of the House of Representatives,~~
~~26 as provided in G.S. 120-121.~~
- ~~27 (8) One member appointed by the General Assembly upon the~~
~~28 recommendation of the President Pro Tempore of the Senate, as~~
~~29 provided in G.S. 120-121.~~
- ~~30 (9) One member appointed by the General Assembly upon the~~
~~31 recommendation of the President Pro Tempore of the Senate, as~~
~~32 provided in G.S. 120-121.~~
- ~~33 (10) One member appointed by the General Assembly upon the~~
~~34 recommendation of the President Pro Tempore of the Senate, as~~
~~35 provided in G.S. 120-121.~~
- ~~36 (11) One member appointed by the General Assembly upon the~~
~~37 recommendation of the President Pro Tempore of the Senate, as~~
~~38 provided in G.S. 120-121.~~

~~39 (b) Terms. -- Members shall serve two-year terms. Members shall serve no more~~
~~40 than two full two-year terms. Upon the expiration of a two-year term, a member may~~
~~41 continue to serve until a successor is appointed and duly qualified as provided by~~
~~42 G.S. 128-7. The term of members appointed under odd-numbered subdivisions of~~
~~43 subsection (a) of this section shall expire on 30 June of odd-numbered years. The~~

1 term of members appointed under even-numbered subdivisions of subsection (a) of
2 this section shall expire on 30 June of even-numbered years.

3 (c) Chair. -- The Governor shall appoint one member of the North Carolina Parks
4 and Recreation Authority to serve as Chair.

5 (d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation
6 Authority shall be filled by the appointing authority responsible for making the
7 appointment to that position as provided in subsection (a) of this section. An
8 appointment to fill a vacancy shall be for the unexpired balance of the term.

9 (e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any
10 member of the North Carolina Parks and Recreation Authority appointed by the
11 Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may
12 remove any member of the North Carolina Parks and Recreation Authority
13 appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

14 (e) (f) Compensation. -- The members of the North Carolina Parks and Recreation
15 Authority shall receive per diem and necessary travel and subsistence expenses
16 according to the provisions of G.S. 138-5.

17 (g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at
18 least quarterly at a time and place designated by the Chair.

19 (d) (h) Quorum. -- A majority of the North Carolina Parks and Recreation
20 Authority shall constitute a quorum for the transaction of business.

21 (e) (i) Staff. -- All clerical and other services required by the North Carolina
22 Parks and Recreation Authority shall be provided by the Secretary of Environment,
23 Health, and Natural Resources."

24 Section 10. In order to reestablish a schedule of two-year staggered terms
25 for the North Carolina Parks and Recreation Authority as required by G.S.
26 143B-313.2, as amended by Section 9 of this act:

27 (1) The Governor, in making appointments to replace the one member
28 of the North Carolina Parks and Recreation Authority appointed
29 by the Governor whose term expires on 30 June 1997, shall
30 appoint a member under G.S. 143B-313.2(a)(1) to a full two-year
31 term expiring on 30 June 1999.

32 (2) The Governor, in making appointments to replace the two
33 members of the North Carolina Parks and Recreation Authority
34 appointed by the Governor whose terms expire on 30 June 1998,
35 shall appoint one member under G.S. 143B-313.2(a)(2) to a full
36 two-year term expiring on 30 June 2000 and shall appoint one
37 member under G.S. 143B-313.2(a)(3) to a one-year term expiring
38 30 June 1999.

39 (3) The General Assembly, in making appointments to replace the
40 four members of the North Carolina Parks and Recreation
41 Authority appointed by the General Assembly upon the
42 recommendation of the Speaker of the House of Representatives
43 whose terms expire on 30 June 1998, shall appoint two members
44 under G.S. 143B-313.2(a)(4) and G.S. 143B-313.2(a)(6) to full

1 two-year terms expiring on 30 June 2000 and shall appoint two
2 members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to
3 one-year terms expiring 30 June 1999.

- 4 (4) The General Assembly, in making appointments to replace the
5 four members of the North Carolina Parks and Recreation
6 Authority appointed by the General Assembly upon the
7 recommendation of the President Pro Tempore of the Senate
8 whose terms expire on 30 June 1998, shall appoint two members
9 under G.S. 143B-313.2(a)(8) and G.S. 143B-313.2(a)(10) to full
10 two-year terms expiring on 30 June 2000 and shall appoint two
11 members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11)
12 to one-year terms expiring 30 June 1999.

13 Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 211*

Short Title: Amend Env. Laws.

(Public)

Sponsors: Representative Culp.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS, AS
3 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a
6 new section to read:

7 "§ 90A-46.1. Renewal of certificates.

8 A certificate issued under this Part expires on 31 December of the year in which it
9 is issued or renewed. The Commission may establish minimum continuing education
10 requirements that an applicant must meet to renew a certificate. The Commission
11 shall renew a certificate if the applicant meets the continuing education requirement
12 and pays the required renewal fee, any renewal fee in arrears, and any late
13 application penalty."

14 Section 2. G.S. 113A-120(b1) reads as rewritten:

15 "(b1) In addition to those factors set out in subsection (a) of this section, and
16 notwithstanding the provisions of subsection (b) of this section, the responsible
17 official or body may deny an application for a permit upon finding that an applicant,
18 or any parent or subsidiary corporation if the applicant is a corporation:

19 (1) Is conducting or has conducted any activity causing significant
20 environmental damage for which a major development permit is
21 required under this Article without having previously obtained
22 such permit or has received a notice of violation with respect to
23 any activity governed by this Article and has not complied with the
24 notice within the time specified in the notice;

- 1 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a
2 local ordinance adopted pursuant to this Article, or Article 17 of
3 Chapter 113 of the General Statutes which is due and for which no
4 appeal is pending;
5 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126,
6 G.S. 113-229(k), or any criminal provision of a local ordinance
7 adopted pursuant to this Article; or
8 (4) Has failed to substantially comply with ~~State~~ state rules or local
9 ordinances and regulations adopted pursuant to this Article or with
10 other federal and ~~State~~ state laws, regulations, and rules for the
11 protection of the environment."

12 Section 3. G.S. 143-215.1(c) reads as rewritten:

13 "(c) Applications for Permits and Renewals for Facilities Discharging to the
14 Surface Waters. --

- 15 (1) All applications for permits and for renewal of existing permits for
16 outlets and point sources and for treatment works and disposal
17 systems discharging to the surface waters of the State shall be in
18 writing, and the Commission may prescribe the form of such
19 applications. All applications shall be filed with the Commission
20 at least 180 days in advance of the date on which it is desired to
21 commence the discharge of wastes or the date on which an existing
22 permit expires, as the case may be. The Commission shall act on a
23 permit application as quickly as possible. The Commission may
24 conduct any inquiry or investigation it considers necessary before
25 acting on an application and may require an applicant to submit
26 plans, specifications, and other information the Commission
27 considers necessary to evaluate the application.
28 (2) a. The Department shall refer each application for permit, or
29 renewal of an existing permit, for outlets and point sources
30 and treatment works and disposal systems discharging to the
31 surface waters of the State to its staff for written evaluation
32 and proposed determination with regard to issuance or
33 denial of the permit. If the Commission concurs in the
34 proposed determination, it shall give notice of intent to issue
35 or deny the permit, along with any other data that the
36 Commission may determine appropriate, to be given to the
37 appropriate State, interstate and federal agencies, to
38 interested persons, and to the public. The Commission shall
39 prescribe the form and content of the notice.

40 The notice required herein shall be given at least 45
41 days prior to any proposed final action granting or denying
42 the permit. Public notice shall be given by publication of
43 the notice one time in a newspaper having general
44 circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

- (3) If any person desires a public ~~meeting~~ hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for ~~meeting~~, hearing, and if the Commission determines that there is a significant public interest in holding such ~~meeting~~, hearing, at least 30 days' notice of such ~~meeting~~ hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of ~~meeting~~, hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in ~~such meetings~~, hearings. If the ~~meeting~~ hearing is not conducted by the Commission, detailed minutes of the ~~meeting~~ hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the ~~meeting~~, hearing, to the Commission for its consideration prior to final action granting or denying the permit.

- (4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

- (5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

- (6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The

Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

Section 4. G.S. 143-215.4(b) reads as rewritten:

"(b) Procedures for Public Input. --

- (1) The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.
- (2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.
- (3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public

1 hearings, public notice, and public comment respecting permits
2 required by Title V as provided by G.S. 143-215.111(4).

3 (4) The Commission may hold a public meeting on any matter within
4 its scope of authority. The Commission may hold a public meeting
5 in addition to any public hearing that is required under any
6 provision of law, but a public meeting may not be substituted for
7 any required public hearing. Except as may be otherwise provided
8 by law, the Commission may determine the procedures for any
9 public meeting it holds."

10 Section 5. G.S. 143-215.114A(b) reads as rewritten:

11 "~~(b) Each day of continuing violation after written notification from the Secretary~~
12 ~~shall be considered a separate offense. If any action or failure to act for which a~~
13 ~~penalty may be assessed under this section is continuous, the Secretary may assess a~~
14 ~~penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the~~
15 ~~violation continues."~~

16 Section 6. This act is effective when it becomes law.



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April 16, 1997

MEMORANDUM

To: House Committee on the Environment

From: Mary Beach Shuping

Re: **Proposed Committee Substitute - House Bill 211 - Amend Environmental Laws**

House Bill 194 was recommended to the 1997 General Assembly by the Environmental Review Commission.

Section 1 addresses water pollution control certificates by adding G.S. 90A-46.1 which provides that a water pollution control system operator's certificate expires on December 31st of the year in which it is issued or renewed. This section also provides that the Water Pollution Control System Operators Certification Commission (Commission) may establish minimum continuing education requirements that an applicant must meet in order to renew a certificate. Finally, this section provides that the Commission must renew a certificate if the applicant meets the continuing education requirement and pays any applicable fees.

Section 2 amends G.S. 113A-120(b1) to provide that an application for a permit required under the Coastal Area Management Act, is contingent upon the applicant's compliance with state rules or state laws (Current law specifies that applicants must comply with North Carolina rules and laws. This amendment clarifies that applicants must be in compliance with the rules and laws of other states as well.)

Section 3 amends G.S. 143-215.1(c), Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. This amendment clarifies that the Environmental Management Commission (EMC), in reviewing an application for a permit under the water quality program, hold a public hearing rather than a public meeting.

Section 4 amends G.S. 143-215.4(b) to allow the EMC to hold a public meeting on any matter within the scope of its authority. However, a public meeting may not be substituted for any required public hearing.

Section 5 amends G.S. 143-215.3(a)(4) to allow the EMC to delegate its powers through resolution rather than through rule, as is the case for other Commissions.

Section 6 amends G.S. 143-215.114A to provide that if any action or failure to act that constitutes a violation of air quality standards is continuous, the violator may be assessed a maximum penalty of \$10,000 per day as long as the violation continues.

Section 7 amends G.S. 143B-291 to re-establish a schedule of six-year staggered terms for the members of the North Carolina Mining Commission.

Section 8 establishes term expiration dates for appointees to the to the Mining Commission for appointments made in 1997 and who represent the mining industry in order to achieve the six-year staggered terms required in Section 7 of the bill. No current member will have his or her term shortened or extended under this provision.

Section 9 amends G.S. 143B-313.2 to re-establish a schedule of two-year staggered terms for the members of the North Carolina Parks and Recreation Authority.

Section 10 establishes term expiration dates for appointees to the North Carolina Parks and Recreation Authority for appointments made in 1997 and 1998 in order to achieve the two-year staggered terms required in Section 9 of the bill. No current member will have his or her term shortened or extended under this provision.

Section 11. This act is effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

- ☐ Committee Substitute for
H.B. 211 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS
ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL
REVIEW COMMISSION.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill (~~#~~), ☒ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill #~~), ~~(and recommendation~~
~~that the committee substitute bill #~~) be re-referred to the Committee on ~~.~~
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 188*

Short Title: Env. Tech. Corrections.

(Public)

Sponsors: Representative Culp.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL
3 CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH,
4 AND NATURAL RESOURCES, AS RECOMMENDED BY THE
5 ENVIRONMENTAL REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143B-282(a) reads as rewritten:

8 "(a) There is hereby created the Environmental Management Commission of the
9 Department of Environment, Health, and Natural Resources with the power and duty
10 to promulgate rules to be followed in the protection, preservation, and enhancement
11 of the water and air resources of the State.

12 (1) Within the limitations of G.S. 143-215.9 concerning industrial
13 health and safety, the Environmental Management Commission
14 shall have all of the following powers and duties:

15 a. To grant a permit or temporary permit, to modify or revoke
16 a permit, and to refuse to grant permits pursuant to G.S.
17 143-215.1 and G.S. 143-215.108 with regard to controlling
18 sources of air and water ~~pollution; pollution.~~

19 b. To issue a special order pursuant to G.S. 143-215.2(b) and
20 G.S. 143-215.110 to any person whom the Commission finds
21 responsible for causing or contributing to any pollution of
22 water within such watershed or pollution of the air within
23 the area for which standards have been ~~established;~~
24 established.

- 1 c. To conduct and direct that investigations be conducted
2 pursuant to G.S. 143-215.3 and G.S. ~~143-215.108(b)(5);~~
3 143-215.108(b)(5).
- 4 d. To conduct public hearings, institute actions in superior
5 court, and agree upon or enter into settlements, all pursuant
6 to G.S. ~~143-215.3;~~ 143-215.3.
- 7 e. To direct the investigation of any killing of fish and wildlife
8 pursuant to G.S. ~~143-215.3;~~ 143-215.3.
- 9 f. To consult with any person proposing to construct, install,
10 or acquire an air or water pollution source pursuant to G.S.
11 143-215.3 and G.S. ~~143-215.111;~~ 143-215.111.
- 12 g. To encourage local government units to handle air pollution
13 problems and to provide technical and consultative
14 assistance pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~
15 143-215.112.
- 16 h. To review and have general oversight and supervision over
17 local air pollution control programs pursuant to G.S.
18 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.
- 19 i. To declare an emergency when it finds a generalized
20 dangerous condition of water or air pollution pursuant to
21 G.S. ~~143-215.3;~~ 143-215.3.
- 22 j. To render advice and assistance to local government
23 regarding floodways pursuant to G.S. ~~143-215.56;~~ 143-215.56.
- 24 k. To declare and delineate and modify capacity use areas
25 pursuant to G.S. ~~143-215.13;~~ 143-215.13.
- 26 l. To grant permits for water use within capacity use areas
27 pursuant to G.S. ~~143-215.15;~~ 143-215.15.
- 28 m. To direct that investigations be conducted when necessary to
29 carry out duties regarding capacity use areas pursuant to
30 G.S. ~~143-215.19;~~ 143-215.19.
- 31 n. To approve, disapprove and approve subject to conditions
32 all applications for dam construction pursuant to G.S.
33 143-215.28; to require construction progress reports pursuant
34 to G.S. ~~143-215.29;~~ 143-215.29.
- 35 o. To halt dam construction pursuant to G.S. ~~143-215.29;~~
36 143-215.29.
- 37 p. To grant final approval of dam construction work pursuant
38 to G.S. ~~143-215.30;~~ 143-215.30.
- 39 q. To have jurisdiction and supervision over the maintenance
40 and operation of dams pursuant to G.S. ~~143-215.31;~~
41 143-215.31.
- 42 r. To direct the inspection of dams pursuant to G.S.
43 ~~143-215.32;~~ 143-215.32.

- 1 s. To modify or revoke any final action previously taken by
2 the Commission pursuant to G.S. 143-214.1 and G.S.
3 ~~143-215.107~~, 143-215.107, ~~and~~
4 t. To have jurisdiction and supervision over oil pollution
5 pursuant to Article 21A of Chapter ~~143~~, 143, ~~[and]~~
6 u. To administer the State's authority under 33 USC § 1341 of
7 the federal Clean Water Act."

8 Section 2. Section 17 of Chapter 626 of the 1995 Session Laws (1996
9 Regular Session) reads as rewritten:

10 "Sec. 17. No later than October 1, 1996, the Environmental Management
11 Commission and the Soil and Water Conservation Commission, with technical
12 assistance from the Cooperative Extension Service, shall establish the record-keeping
13 requirements under G.S. ~~143-215.1C(e)(8)~~, 143-215.10C(e)(8), as enacted by Section 2
14 of this act. The Natural Resources Conservation Service is encouraged to cooperate
15 fully with establishing these requirements."

16 Section 3. Section 2 of Chapter 627 of the 1995 Session Laws (1996
17 Regular Session) reads as rewritten:

18 "Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words
19 'Currituck: Session Laws 1959, Chapter 545.'"

20 Section 4. This act is effective when it becomes law.



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April 16, 1997

MEMORANDUM

To: House Committee on the Environment

From: Mary Beach Shuping

Re: **Proposed Committee Substitute for House Bill 188 - Environmental Technical Corrections**

This bill was recommended to the 1997 General Assembly by the Environmental Review Commission. The bill makes several clarifying, conforming, and technical changes to laws related to environment, health, and natural resources.

Section 1. Section 1 amends §106-802(4) to remove an inadvertent reference to the Department of Environment, Health, and Natural Resources.

Section 2. Section 2 amends §143-215.74(b)(3) to clarify that it is the Soil and Water Conservation Commission which has the authority to establish priority designations for inclusion in the agriculture cost share program.

Section 3. Section 3 clarifies that the Environmental Management Commission (EMC) has all of the powers and duties listed under §143B-282(a)(1). This section also makes several grammatical changes.

Section 4. Section 4 corrects a statutory citation referenced in Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session).

Section 5. Section 5 corrects a statutory citation referenced in Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session).

Section 6. Effective Dates. The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 188*
Proposed Committee Substitute H188-PCS6200

Short Title: Env. Tech. Corrections.

(Public)

Sponsors:

Referred to:

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL
3 CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH,
4 AND NATURAL RESOURCES, AS RECOMMENDED BY THE
5 ENVIRONMENTAL REVIEW COMMISSION.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 106-802(4) reads as rewritten:
8 "(4) 'Site evaluation' means an investigation to determine if a site
9 meets all federal and State standards as evidenced by the Waste
10 Management Facility Site Evaluation Report on file with the Soil
11 and Water Conservation District office or a comparable report
12 certified by a professional engineer or a comparable report
13 certified by a technical specialist approved by the North Carolina
14 Soil and Water Conservation Commission.
15 ~~Department of Environment, Health and Natural Resources".~~
16 Section 2. G.S. 143-215.74(b)(3) reads as rewritten:
17 "(3) Subject to subdivision (7) of this subsection, priority designations
18 for inclusions in the program shall be under the authority of the
19 Soil and Water Conservation ~~Commission and the~~ Commission.
20 The Soil and Water Conservation Commission shall retain the
21 authority to allocate the cost share funds."
22 Section 3. G.S. 143B-282(a) reads as rewritten:

1 "(a) There is hereby created the Environmental Management Commission of the
2 Department of Environment, Health, and Natural Resources with the power and duty
3 to promulgate rules to be followed in the protection, preservation, and enhancement
4 of the water and air resources of the State.

5 (1) Within the limitations of G.S. 143-215.9 concerning industrial
6 health and safety, the Environmental Management Commission
7 shall have all of the following powers and duties:

- 8 a. To grant a permit or temporary permit, to modify or revoke
9 a permit, and to refuse to grant permits pursuant to G.S.
10 143-215.1 and G.S. 143-215.108 with regard to controlling
11 sources of air and water ~~pollution~~; pollution.
- 12 b. To issue a special order pursuant to G.S. 143-215.2(b) and
13 G.S. 143-215.110 to any person whom the Commission finds
14 responsible for causing or contributing to any pollution of
15 water within such watershed or pollution of the air within
16 the area for which standards have been ~~established~~;
17 established.
- 18 c. To conduct and direct that investigations be conducted
19 pursuant to G.S. 143-215.3 and G.S. ~~143-215.108(b)(5)~~;
20 143-215.108(b)(5).
- 21 d. To conduct public hearings, institute actions in superior
22 court, and agree upon or enter into settlements, all pursuant
23 to G.S. ~~143-215.3~~; 143-215.3.
- 24 e. To direct the investigation of any killing of fish and wildlife
25 pursuant to G.S. ~~143-215.3~~; 143-215.3.
- 26 f. To consult with any person proposing to construct, install,
27 or acquire an air or water pollution source pursuant to G.S.
28 143-215.3 and G.S. ~~143-215.111~~; 143-215.111.
- 29 g. To encourage local government units to handle air pollution
30 problems and to provide technical and consultative
31 assistance pursuant to G.S. 143-215.3 and G.S. ~~143-215.112~~;
32 143-215.112.
- 33 h. To review and have general oversight and supervision over
34 local air pollution control programs pursuant to G.S.
35 143-215.3 and G.S. ~~143-215.112~~; 143-215.112.
- 36 i. To declare an emergency when it finds a generalized
37 dangerous condition of water or air pollution pursuant to
38 G.S. ~~143-215.3~~; 143-215.3.
- 39 j. To render advice and assistance to local government
40 regarding floodways pursuant to G.S. ~~143-215.56~~; 143-215.56.
- 41 k. To declare and delineate and modify capacity use areas
42 pursuant to G.S. ~~143-215.13~~; 143-215.13.
- 43 l. To grant permits for water use within capacity use areas
44 pursuant to G.S. ~~143-215.15~~; 143-215.15.

- 1 m. To direct that investigations be conducted when necessary to
2 carry out duties regarding capacity use areas pursuant to
3 G.S. ~~143-215.19~~; 143-215.19.
- 4 n. To approve, disapprove and approve subject to conditions
5 all applications for dam construction pursuant to G.S.
6 143-215.28; to require construction progress reports pursuant
7 to G.S. ~~143-215.29~~; 143-215.29.
- 8 o. To halt dam construction pursuant to G.S. ~~143-215.29~~;
9 143-215.29.
- 10 p. To grant final approval of dam construction work pursuant
11 to G.S. ~~143-215.30~~; 143-215.30.
- 12 q. To have jurisdiction and supervision over the maintenance
13 and operation of dams pursuant to G.S. ~~143-215.31~~;
14 143-215.31.
- 15 r. To direct the inspection of dams pursuant to G.S.
16 ~~143-215.32~~; 143-215.32.
- 17 s. To modify or revoke any final action previously taken by
18 the Commission pursuant to G.S. 143-214.1 and G.S.
19 ~~143-215.107~~; 143-215.107. ~~and~~
- 20 t. To have jurisdiction and supervision over oil pollution
21 pursuant to Article 21A of Chapter ~~143~~; 143. ~~[and]~~
- 22 u. To administer the State's authority under 33 ~~USE~~ U.S.C. §
23 1341 of the federal Clean Water Act."

24 Section 4. Section 17 of Chapter 626 of the 1995 Session Laws (1996
25 Regular Session) reads as rewritten:

26 "Sec. 17. No later than October 1, 1996, the Environmental Management
27 Commission and the Soil and Water Conservation Commission, with technical
28 assistance from the Cooperative Extension Service, shall establish the record-keeping
29 requirements under G.S. ~~143-215.1C(e)(8)~~; 143-215.10C(e)(8), as enacted by Section 2
30 of this act. The Natural Resources Conservation Service is encouraged to cooperate
31 fully with establishing these requirements."

32 Section 5. Section 2 of Chapter 627 of the 1995 Session Laws (1996
33 Regular Session) reads as rewritten:

34 "Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words
35 'Currituck: Session Laws 1959, Chapter 545.'"

36 Section 6. This act is effective when it becomes law.

file

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill, Eddins & Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 188 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING,
CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY
THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (#), ☒ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 302

Short Title: Wildlife Quarantine.

(Public)

Sponsors: Representative H. Hunter.

Referred to: Environment.

February 24, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN
3 COUNTIES WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

4 The General Assembly of North Carolina enacts:

5 Section 1. Part 6 of Article 6 of Chapter 130A of the General Statutes is
6 amended by adding the following section to read:

7 "**§ 130A-194.1. Wildlife quarantine.**

8 (a) Notwithstanding any other provision of law, a local health director may
9 authorize the taking of bobcats, foxes, raccoons, and skunks if the director determines
10 that a case of rabies has occurred in any animal, other than a bat, in a county the
11 director serves or, if the case occurs in another state, within 50 miles of the county
12 line. Before authorizing the taking, the director shall notify the Executive Director of
13 the Wildlife Resources Commission, and the sheriff, the chairman of the board of
14 health, and the chairman of the board of county commissioners in each county
15 subject to the authorization. The Executive Director of the Wildlife Resources
16 Commission shall inform the appropriate wildlife protectors serving the area subject
17 to the authorization.

18 (b) An authorization issued under subsection (a) of this section shall be in writing
19 and shall specify the basis upon which the local health director determined that a
20 case of rabies occurred. The authorization may place reasonable restrictions on the
21 persons who may take animals and on the time, manner, and place of taking animals.

22 (c) A copy of the authorization shall be published in a newspaper of general
23 circulation in the county for 10 consecutive days during the 30-day period
24 immediately before the authorization takes effect.

1 (d) An authorization issued under subsection (a) of this section may be renewed
2 annually for a period of up to five years after the last incidence of rabies in the
3 county, in a county with contiguous borders, or within 50 miles of the county in
4 another state.

5 (e) The provisions of this section apply to any county with borders contiguous to
6 those in which a case of rabies is found."

7 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 302

Proposed Committee Substitute - H302-PCSLN-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Wildlife Quarantine.

(Public)

Sponsors:

Referred to: Environment.

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES
3 WHERE AN OUTBREAK OF RABIES HAS OCCURRED.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 113-291.2 is amended by adding the
6 following new subsection to read:
7 "(a1) A local health director representing an area of the State
8 where rabies is found in the wild animal population as evidenced
9 by a positive diagnosis of rabies in the past year in any wild
10 animal, except a bat, may petition the Wildlife Resources
11 Commission through and with the concurrence of the State Health
12 Director for a suspension or liberalization of the statutory and
13 regulatory restrictions on taking foxes, raccoons, skunks, or
14 bobcats in that area of the State. Prior to concurrence with a
15 request from a local health director, the State Health Director
16 shall consult the Public Health Veterinarian, the State
17 Agriculture Veterinarian, and any other source of veterinary
18 expertise deemed advisable. Upon concurrence and submittal of
19 the petition from the State Health Director to the Wildlife
20 Resources Commission, the Executive Director of the Commission
21 shall develop a plan to reduce the threat of rabies exposure to

1 humans and domestic animals by foxes, raccoons, skunks, or
2 bobcats in the affected area based upon the best veterinarian and
3 wildlife management information and techniques available. The
4 plan may involve suspension or liberalization of any statutory or
5 regulatory restriction on the taking of foxes, raccoons, skunks,
6 or bobcats, except that the use of poisons shall not be permitted
7 under any circumstance. The plan shall be filed as a temporary
8 rule in accordance with G.S. 150B-21.1(1) and shall become
9 effective upon filing. The temporary rule shall expire on the
10 date the State Health Director issues a determination that the
11 rabies emergency has passed. In the event of a conflict between
12 any State or local law establishing restrictions on taking wild
13 animals and any temporary rule included in the plan prepared
14 pursuant to this section, the temporary rule shall prevail. The
15 Executive Director shall widely publicize the plan in the major
16 news outlets that serve the affected area and shall make a
17 maximum effort to inform the general public of the actions being
18 taken and the reasons for them. The plan shall remain in force
19 until the State Health Director advises the Executive Director of
20 the Commission that the emergency rabies problem has passed."

21 Section 2. This act is effective when it becomes law.



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Legislative Services Office**

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Memorandum

April 16, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 302 (Wildlife Quarantine)

Section 1.

Section 1 of the bill amends Part 6 (Rabies) of Article 6 (Communicable Diseases) of Chapter 130A (Public Health) by adding G.S. 130A-194.1 (Wildlife quarantine). This new section provides that a local health director (director) may authorize the taking of bobcats, foxes, raccoons, and skunks if the director determines that a case of rabies has occurred in any animal, other than a bat, in a county the director serves or, if the case occurs in another state, within 50 miles of the county line. These provisions apply to any county with borders contiguous to those in which a case of rabies is found.

Before authorizing the taking, the director must notify the Executive Director of the Wildlife Resources Commission and the sheriff, the chair of the board of health, and the chair of the board of county commissioners in each county subject to the authorization. The Executive Director of the Wildlife Resources Commission must inform wildlife protectors serving the area subject to the authorization that an authorization has been issued.

The authorization must be in writing, must specify the basis for the determination that a case of rabies has occurred, and may place restrictions on the taking of animals. The authorization must be published in a newspaper in the county for 10 consecutive days during the 30-day period prior to the authorization taking effect. The authorization may be renewed annually for up to five years after the last case of rabies in the county, in a neighboring county, or within 50 miles of the county in another state.

Section 2.

Section 2 of this bill makes this act effective when it becomes law.

Chatham tops N.C. in rabies cases

BY JAY PRICE
STAFF WRITER

PITTSBORO — Chatham County has earned an unwanted distinction: the rabies capital of North Carolina.

The presence of rabies has been confirmed in 60 counties across the state, but nearly a third of all cases this year have been in Chatham. Through Wednesday, 70 animals from Chatham had tested positive for the deadly disease out of the 237 found positive by the state's public health laboratory in 1997.

Chatham had just four cases last year, but starting in January they began to pop up almost daily. Many of the early cases came from southern Chatham, with the rural community of Bear Creek chalking up many of them.

But now, said Randee Linke, the county's animal control supervisor, the disease is "pretty much everywhere" in Chatham.

"Just this morning, we had a report of a dog fighting with a raccoon near [U.S.] 15-501 and the Orange County line, and our guess is that the raccoon is rabid," she said. That could be bad news for Orange, which has confirmed some rabies cases, but none so far in the heavily populated southern part of the county around Chapel Hill.

In one of the most recent Chatham cases, a fox attacked and bit a 4-year-old boy Sunday at a mobile home park in Pittsboro, Linke said. The animal tested positive, and the boy is receiving the six-shot series of inoculations,

RABIES VACCINATION CLINICS FOR PETS

WAKE COUNTY

Tuesday: East Wake High in Wendell and Davis Drive Elementary in Apex

Wednesday: Jones Dairy Elementary in Wake Forest, Rand Road Elementary in Garner.

Thursday, April 17: Leesville Road Middle School in Raleigh and Fuquay-Varina Elementary.

Saturday, April 19: Wake County Health Department, 10 Sunnybrook Road, Raleigh.

Clinics at schools are from 5 to 8 p.m. The clinic at the health department is from 9 a.m. to 1 p.m.

Vaccinations are \$4.

something more than 20 people in Chatham have had to undergo this year.

Pressure on the county's animal-control staff has grown to the point where it has decided to treat all incidents involving contact between wild animals and vaccinated pets as rabies exposure, Linke said.

This means it won't test the wild animals involved, but will simply recommend that the pet owners get their animals a rabies booster shot. Testing still will be used in cases involving unvaccinated pets or potential exposure to humans.

Although Chatham has more than its share of cases this year, rabies is a problem for the rest of the region, too.

There have been confirmed cases in every county in the Triangle, although none of the other counties approaches Chatham's total.

In Wake County, four animals have tested positive for rabies this year. Orange County has had 15 confirmed cases, Durham nine and Johnston two.

Jay Price can be reached
at 932-2008 or jprice@nando.com

NC Rabies Activity: Report for December 1996

Section 1

December data summary: 58 rabid animals

Ashe County - 1 raccoon	Harnett County - 1 raccoon	Ferson County - 1 dog
Beaufort County - 2 raccoons	Hoke County - 1 raccoon	Ferson County - 3 raccoons
Brunswick County - 1 bobcat	Johnston County - 2 raccoons	Ferson County - 1 skunk
Brunswick County - 1 cat	Lee County - 1 cat	Howan County - 3 raccoons
Cabarrus County - 1 raccoon	Lee County - 4 raccoons	Rowan County - 1 skunk
Cassell County - 1 raccoon	Lenoir County - 2 raccoons*	Sampson County - 2 raccoons
Chatham County - 1 raccoon	Moore County - 8 raccoons	Stanly County - 1 raccoon
Columbus County - 1 raccoon	New Hanover County - 1 raccoon	Stanly County - 1 skunk
Cumberland County - 1 raccoon	Onslow County - 1 raccoon*	Tyrrell County - 2 raccoons*
Duplin County - 1 raccoon	Orange County - 1 bat	Wake County - 2 raccoons
Durham County - 1 raccoon	Orange County - 2 raccoons	Washington County - 1 fox
Granville County - 2 raccoons	Orange County - 3 skunks	Wayne County - 2 raccoons

* = 1st terrestrial animal

Section 2

Year-To-Date (December 31) Rabies Summary

[illegible]

Orange	2	0	0	0	0	0	0	0	0	0	14	3	19
Pasquotank	0	0	0	0	0	0	0	0	0	0	1	0	1
Pender	0	0	2	0	0	0	0	0	0	0	19	0	21
Perquimans	0	0	0	0	0	0	0	0	0	0	1	0	1
Person	1	0	1	0	1	2	0	0	0	0	34	8	47
Pitt	0	0	1	0	1	1	0	0	0	0	13	0	16
Randolph	1	0	0	0	0	0	0	0	0	0	0	0	1
Richmond	0	0	0	0	0	0	0	0	0	0	2	0	2
Robeson	0	0	0	0	0	0	0	0	0	0	5	0	5
Rockingham	0	0	0	0	0	0	0	0	0	0	2	0	2
Rowan	0	0	0	0	0	6	0	0	0	0	28	9	43
Sampson	0	0	2	0	2	0	0	0	0	0	28	0	32
Scotland	0	0	1	0	0	0	0	0	0	0	0	0	1
Stanly	0	0	1	0	0	3	0	0	0	0	14	5	23
Tyrrell	0	0	0	0	0	0	0	0	0	0	2	0	2
Union	1	0	0	1	0	0	0	0	0	0	2	2	6
Vance	0	0	0	0	0	0	0	0	0	0	1	0	1
Wake	3	0	3	0	0	0	0	0	0	0	42	0	48
Warren	0	0	0	0	0	0	0	0	0	0	1	0	1
Washington	0	0	0	0	0	1	0	0	0	0	6	0	7
Wayne	0	0	0	0	0	0	0	0	0	0	13	0	13
Wilson	0	0	0	0	0	0	0	0	0	0	6	0	6
total	12	6	29	1	10	50	1	3	1	1	581	46	740

1995 Comparison to date 466

1994 Comparison to date 175

Section 3

Historical Data

Last dog case: 1996 (November) - Person County
 Last cat case: 1996 (October) - Sampson County (2)
 Last cow case: 1996 (August) - Union County
 Last horse case: 1996 (September) - Lee County

1995 Rabies data: 362 raccoons, 11 bats, 52 foxes, 15 cats, 23 skunks, 1 cow, 1 horse, 1 dog
 1994 Rabies data: 143 raccoons, 7 bats, 8 foxes, 4 cats, 8 skunks, 1 cow, 1 horse, 3 bobcats
 1993 Rabies data: 71 raccoons, 15 bats, 7 foxes, 8 cats, 3 skunks, 2 dogs
 1992 Rabies data: 30 raccoons, 13 bats, 5 foxes, 1 cat, 1 skunk
 1991 Rabies data: 12 raccoons, 10 bats, 1 fox, 1 cat
 1990 Rabies data: 6 bats, 4 skunks

State of North Carolina
Department of Environment,
Health and Natural Resources
State Center for Health Statistics

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
Delton Atkinson, Director



March 18, 1997

The Honorable Howard Hunter
NC House of Representatives
Legislative Office Building - Room 613
Raleigh, North Carolina 27603

Dear Representative Hunter:

Per your request, I am providing statistics on rabies in North Carolina. As shown in the table below, the number of cases has increased each year by 60% in North Carolina. In four of the six years, the number of cases more than doubled each year.

NUMBER OF RABIES BY YEAR FOR NORTH CAROLINA 1990-1996

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
RABIES	10	24	50	106	175	465	740

I have attached more detailed tables for you. If you have questions, please contact me at (919) 715-4499.

Sincerely,

Delton Atkinson

DA:jla

Attachment

cc: Chris Hoke
Richard Rogers
Lee Hunter

VISITOR REGISTRATION SHEET

Environment

9/16/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. R Rogers	EHNR
2. Charles Gander	EHNR
3. Allen Ternigan	AGO
4. George Everett	MCIC
5. Kim Smith	NCLW
6. Ed Regor	N.C.A.C.C.
7. David Meredith	N. L. State Charge
8. Robert Mayfield	citizen
9. Laura Hartwell	MCIC
10. Tula Nelson	MFC
11. Molly Diggins	NC Sierra Club
12. David B. B. B.	NCSU
13. Marion Manton	NCSU
14. Marya McMillan	NCSU
15. Cathy Zimmer	NCSU
16. Ode Mythe	SCENIC NC
17. Lee Hunter	DEHNR
18. H. S. Atkinson Jr	NCWRC
19. Charles Fullwood	Wildlife
20. Don Lemire	DEHNR
21. Diane Cherry	DEHNR
22. John Alley	J. J. J.
23. John H. H.	N.C. Port Council

32. Ruth Swank
33. TANTA VUTIC
34. ~~DR~~ JOE RYDER
35. H. L. Holm
36. V. S. James
37. John G. Smith
38. James E. Lee
39. Peter Daniel
40. PA
41. Michelle Cook
42. Ann Case
43. Malie Haskins
44. Nancy Bradley
45. A. B. Swindell, IV
46. R. Paul Wilkins
47. James C. Davies
48. Miles Simpson
49. Ed Power
50. Sheri Ann Smith
51. John Hunt
John Carpenter
Bill Flournoy
Steve Lator
Jon Madison

EHNK
 NC EDF
 NC EDF
 cum / sum club
 N.C. State Grange
 N.C. State Grange
 IP
 NC SD
 NFB
 Weyhauser
 DEHNK
 Charlotte Chamber of Commerce
 NCCBD
 BFI
 NCHBA
 N. C. C. U.
 NCCU
 L. W. Brown
 DEHNK
 PCS Nitrogen
 PCS Phosphate
 DEHNK
 Senate Page
 " "

MINUTES

COMMITTEE ON ENVIRONMENT

APRIL 23, 1997

The House Committee on Environment met on April 23, 1997. Rep. Eddins was the presiding Chairman and called the meeting to order.

HB771 -

Rep. Redwine explained the bill. Rep. Hall moved for a favorable report. Rep. Culp asked how many sanitary districts are across the state now and Rep. Redwine responded. Having no further discussion, the vote was taken and given a favorable report.

HB-224 Brownfield / Property Use Restrictions

Rep Weatherly explained the bill. The chairman moved for the adoption of the Proposed Committee Substitute for discussion. So moved. Rep. Nichols spoke on the bill and moved for a favorable report, unfavorable as to the original bill. Rep. Hackney asked if this had been made available to the public and it was advised they had.. Rep. Gamble asked staff for a more defined definition and Mr. George Givens, Research Staff, gave a further explanation. Rep. Hackney asked how this connected with underground storage tank legislation. Mr. Givens responded. Rep. Hall asked how this affected household garbage and Rep. Weatherly responded to his inquiry. Rep. Gamble asked about farmers spreading contaminated soil over an area and how this legislation affects this. Mr. Givens responded. Rep. Weatherly made additional comments. Having no further discussion, the vote was taken and the PCS was given a favorable report., unfavorable to the original bill.

HB-900

Rep. Watson moved for adoption of the PCS for discussion. So moved. Rep. Watson then explained the PCS. She urged support. Rep. Nichols agreed with Rep. Watson's comments and gave additional information. Rep. Mitchell asked for the fiscal impact on cities and their position on this bill from the League of Municipalities. Ms. Kim Smith, General Counsel, League of Municipalities, responded. Rep. Baddour spoke in favor of the PCS and asked for a commitment that would not change the levels in this legislation. Mr. Steve Tedder, Division of Water Quality, responded. Rep. Hackney made additional comments. Rep. Hall questioned the financing through the Clean Water Finance Fund. Rep. Watson answered and Mr. Givens gave further explanation. Rep. Warwick asked about the nitrogen levels mentioned in the bill and Mr. Steve Tedder responded again. Rep. Warwick made additional comments. Rep. McCombs asked if there was adequate

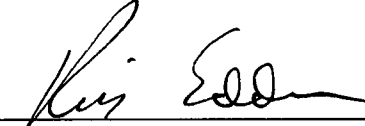
time for the League of Municipalities to comply with what is in the bill. Mr. Givens responded. Rep. Hall asked Mr. Tedder what is the desirable level of nitrogen content and he answered. Rep. Weatherly commented. Rep. Hill asked Mr. Tedder if this bill will affect Cape Fear and the Regal Wood paper plant. Mr. Tedder responded. Rep. Mitchell asked Mr. Andy Romani, League of Municipalities how much this will cost. He responded. Rep. Warwick asked if Mr. Tedder could provide costs for all 17 river basins. Rep. Watson commented. Rep. Nichols asked Mr. Tedder which rivers had nitrogen content. Rep. Nichols moved for a favorable report for the PCS, unfavorable to the original bill. Rep. Yongue asked Mr. Tedder what other sources contribute to the problems and he answered his inquiry. Rep. Hackney asked if this bill will discourage EMC to reduce the levels of 6%. Mr. Tedder responded. Rep. Hackney supports the bill but shared concerns he feels needs to be addressed. Rep. Baddour asked about the Neuse River basin. Mr. Tedder responded. Chairman Eddins took the vote and it passed with a favorable report, unfavorable as the original bill.

HB-1097

Chairman Eddins moved for the adoption of the PCS for discussion. So moved. Rep. Preston explained the bill. Rep. Culp asked if this was subject to cross-over. Rep. Eddins responded. Rep. Gamble for a more defined explanation of what this does. Rep. Preston explained. Rep. Mitchell commended Rep. Preston for her good work, but he feels that this may not work. Rep. Preston responded to his comments. Rep. Preston moved for a favorable report to the PCS, unfavorable to the original bill. Vote taken and passed.

Chairman Eddins asked members to review HB- Fisheries Reform Act Appropriations which needed to have action taken on it now. Rep. Mitchell moved for a favorable report. Mr. Givens advised that the motion is that the Committee introduce this bill. Vote taken and motion carried.

Meeting adjourned.


Rep. Eddins, Presiding Chair


Ebern Watson, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 771

Short Title: Sanitary District Staggered Terms.

(Public)

Sponsors: Representative Redwine.

Referred to: Environment.

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE BOARD OF A SANITARY DISTRICT WITH FOUR-
3 YEAR TERMS THAT ARE NOT STAGGERED TO PROVIDE FOR
4 STAGGERED TERMS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 130A-50(b) reads as rewritten:

7 "(b) The sanitary district board shall be composed of either three or five members
8 as the county commissioners in their discretion shall determine. The members first
9 appointed shall serve as the governing body of the sanitary district until the next
10 regular election for municipal and special district officers as provided in G.S. 163-
11 279, which occurs more than 90 days after their appointment. At that election, their
12 successors shall be elected. The terms of the members shall be for two years or four
13 years and may be staggered as determined by the county board of commissioners so
14 that some members are elected at each biennial election. The members of the sanitary
15 district board shall be residents of the district. The county board of commissioners
16 shall notify the county board of elections of any decision made under this subsection.
17 If the sanitary district board consists of three members, the county commissioners
18 may at any time increase the sanitary district board to five members. The increase
19 shall become effective with respect to any election where the filing period for
20 candidacy opens at least 30 days after approval of the expansion to five members.
21 The effective date of the expansion is the organizational meeting of the sanitary
22 district board after the election.

23 The county commissioners may provide for staggering terms of an existing sanitary
24 district board whose members serve two-year terms by providing for some of the

1 members to be elected at the next election to be for four-year terms. The change shall
2 become effective with respect to any election where the filing period for candidacy
3 opens at least 30 days after approval of the staggering of terms.

4 The sanitary district board may provide for staggering its terms if its members
5 serve unstaggered four-year terms by providing for some of the members to be
6 elected at the next election for two-year terms. The change shall become effective
7 with respect to any election where the filing period for candidacy opens at least 30
8 days after approval of the staggering of terms.

9 The county commissioners may provide for changing a sanitary district board from
10 two-year terms to unstaggered four-year terms. This may be done either by providing
11 that at the next election, all members shall be elected for four-year terms, or by
12 extending the terms of existing members from two years to four years. The change
13 shall become effective with respect to any election where the filing period for
14 candidacy opens at least 30 days after approval of the change of length of terms."

15 Section 2. This act is effective when it becomes law.



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April 23, 1997

MEMORANDUM

To: House Committee on Environment

From: Mary Beach Shuping, Administrative Assistant

Re: **HB 771 - Sanitary District Staggered Terms**

House Bill 771 authorizes sanitary district boards with four-year terms that are not staggered to establish staggered terms.

Section 1 amends G.S. 130A-50(b) to authorize a sanitary district board to stagger its terms if its members serve unstaggered four-year terms by providing for some of the members to be elected to two-year terms at the next election for municipal and special district officers. This section also makes the change effective for any election where the filing period opens at least 30 days after the approval of the staggering of the terms. Currently, the terms of members of sanitary district boards are either for two years or four years, as determined by the county commissioners. Current law permits the county commissioners to provide for staggered terms for existing boards whose members serve two-year terms.

Section 2 makes the bill effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

- ☐ Committee Substitute for
H.B. 771 A BILL TO BE ENTITLED AN ACT TO ALLOW THE BOARD OF A
SANITARY DISTRICT WITH FOUR-YEAR TERMS THAT ARE NOT STAGGERED TO
PROVIDE FOR STAGGERED TERMS.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(a), the bill is placed on the Calendar of ____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on ____.

____ The (committee substitute) bill/resolution (, as amended,) is placed on the Consent Calendar of _____. The original bill/resolution is placed on the Unfavorable Calendar.

____ The bill/resolution is re-referred to the Committee on ____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(a), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).

____ Rep. _____ offers Amendment No. ____ which (is adopted.) (fails of adoption.) (by EV _____.) () This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ RC) (, by EV _____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ RC) (, by EV _____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
____ House amendment (s).
____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate
____ (by the following vote, ____ RC) (, by EV _____,) and
the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 224*

Short Title: Inactive Haz. Sites/Property Use Restrict.

(Public)

Sponsors: Representatives Weatherly; Brown, Culp, Dickson, Fox, McCombs,
Mitchell, Thompson, Tolson, and G. Wilson.

Referred to: Environment.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH,
3 AND NATURAL RESOURCES TO APPROVE THE IMPOSITION OF
4 RESTRICTIONS ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE
5 DISPOSAL SITES, AS RECOMMENDED BY THE ENVIRONMENTAL
6 REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 130-310.3 is amended by adding a new subsection to
9 read:

10 "(f) In order to reduce or eliminate the endangerment of public health or the
11 environment posed by an inactive hazardous substance or waste disposal site, the
12 Secretary may approve, in accordance with standards set out in rules adopted
13 pursuant to Chapter 150B of the General Statutes, the imposition of restrictions on
14 the current or future use of property comprising any part of the site. The restrictions
15 shall be included in a remedial action program approved by the Secretary and agreed
16 to by the landowner. Activities on, over, or under the land, including, but not
17 limited to, building, filling, grading, excavating, or mining may be restricted. Any
18 restriction approved by the Secretary on the current or future use of the site may be
19 enforced by any and all responsible parties. Such restrictions may also be enforced
20 by the Department or by any unit of local government having jurisdiction over any
21 part of the site. A restriction shall not be declared unenforceable on account of lack
22 of privity of estate or contract or lack of benefit to particular land."

23 Section 2. G.S. 130A-310.8(a) reads as rewritten:

1 "(a) After determination by the Department of the existence and location of an
2 inactive hazardous substance or waste disposal site, the owner of the real property on
3 which the site is located, within 180 days after official notice to him to do so, shall
4 submit to the Department a survey plat of areas designated by the Department which
5 has been prepared and certified by a professional land surveyor, and entitled
6 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL
7 SITE'. The Notice shall include a legal description of the site that would be
8 sufficient as a description in an instrument of conveyance, shall meet the
9 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 10 (1) The location and dimensions of the disposal areas with respect to
11 permanently surveyed ~~benchmarks, and~~ benchmarks.
12 (2) The type, location, and quantity of hazardous substances disposed
13 of on the site, to the best of the owner's knowledge.
14 (3) Any restrictions approved by the Department on the current or
15 future use of the site. Where an Inactive Hazardous Substance or
16 Waste Disposal Site is located on more than one parcel or tract of
17 land, a composite map or plat showing all such sites may be
18 recorded."

19 Section 3. G.S. 130A-310.8(b) reads as rewritten:

20 "(b) After the Department approves and certifies the Notice, the owner of the site
21 shall file the certified copy of the Notice in the register of deeds' office in the county
22 or counties in which the land is ~~located~~. located within 30 days of the owner's receipt
23 of the Department's approval of the Notice."

24 Section 4. G.S. 130A-310.9(b) reads as rewritten:

25 "(b) The Secretary may enter into an agreement with an owner, operator, or other
26 responsible party which provides for implementation of a voluntary remedial action
27 program in accordance with a remedial action plan approved by the Department.
28 Investigations, evaluations, and voluntary remedial actions are subject to the
29 provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f),
30 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A
31 voluntary remedial action and all documents that relate to the voluntary remedial
32 action shall be fully subject to inspection and audit by the Department. At least 30
33 days prior to entering into any agreement providing for the implementation of a
34 voluntary remedial action program, the Secretary shall mail notice of the proposed
35 agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary
36 remedial actions shall be so identified as a separate category in the inventory of sites
37 maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive
38 Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

39 Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 224*

Short Title: Inactive Haz. Sites/Property Use Restrict.

(Public)

Sponsors: Representatives Weatherly; Brown, Culp, Dickson, Fox, McCombs,
Mitchell, Thompson, Tolson, and G. Wilson.

Referred to: Environment.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES TO APPROVE THE IMPOSITION OF
RESTRICTIONS ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE
DISPOSAL SITES, AS RECOMMENDED BY THE ENVIRONMENTAL
REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130-310.3 is amended by adding a new subsection to
read:

"(f) In order to reduce or eliminate the endangerment of public health or the
environment posed by an inactive hazardous substance or waste disposal site, the
Secretary may approve, in accordance with standards set out in rules adopted
pursuant to Chapter 150B of the General Statutes, the imposition of restrictions on
the current or future use of property comprising any part of the site. The restrictions
shall be included in a remedial action program approved by the Secretary and agreed
to by the landowner. Activities on, over, or under the land, including, but not
limited to, building, filling, grading, excavating, or mining may be restricted. Any
restriction approved by the Secretary on the current or future use of the site may be
enforced by any and all responsible parties. Such restrictions may also be enforced
by the Department or by any unit of local government having jurisdiction over any
part of the site. A restriction shall not be declared unenforceable on account of lack
of privity of estate or contract or lack of benefit to particular land."

Section 2. G.S. 130A-310.8(a) reads as rewritten:

1 "(a) After determination by the Department of the existence and location of an
2 inactive hazardous substance or waste disposal site, the owner of the real property on
3 which the site is located, within 180 days after official notice to him to do so, shall
4 submit to the Department a survey plat of areas designated by the Department which
5 has been prepared and certified by a professional land surveyor, and entitled
6 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL
7 SITE'. The Notice shall include a legal description of the site that would be
8 sufficient as a description in an instrument of conveyance, shall meet the
9 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 10 (1) The location and dimensions of the disposal areas with respect to
11 permanently surveyed ~~benchmarks~~ and benchmarks.
12 (2) The type, location, and quantity of hazardous substances disposed
13 of on the site, to the best of the owner's knowledge.
14 (3) Any restrictions approved by the Department on the current or
15 future use of the site. Where an Inactive Hazardous Substance or
16 Waste Disposal Site is located on more than one parcel or tract of
17 land, a composite map or plat showing all such sites may be
18 recorded."

19 Section 3. G.S. 130A-310.8(b) reads as rewritten:

20 "(b) After the Department approves and certifies the Notice, the owner of the site
21 shall file the certified copy of the Notice in the register of deeds' office in the county
22 or counties in which the land is ~~located~~ located within 30 days of the owner's receipt
23 of the Department's approval of the Notice."

24 Section 4. G.S. 130A-310.9(b) reads as rewritten:

25 "(b) The Secretary may enter into an agreement with an owner, operator, or other
26 responsible party which provides for implementation of a voluntary remedial action
27 program in accordance with a remedial action plan approved by the Department.
28 Investigations, evaluations, and voluntary remedial actions are subject to the
29 provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f),
30 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A
31 voluntary remedial action and all documents that relate to the voluntary remedial
32 action shall be fully subject to inspection and audit by the Department. At least 30
33 days prior to entering into any agreement providing for the implementation of a
34 voluntary remedial action program, the Secretary shall mail notice of the proposed
35 agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary
36 remedial actions shall be so identified as a separate category in the inventory of sites
37 maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive
38 Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

39 Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 224
Committee Substitute Favorable 4/23/97

Short Title: Brownfields/Property Use Restrict.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT
OF BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS
ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES
AND ON OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR
RELEASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.3 is amended by adding a new subsection to
read:

"(f) In order to reduce or eliminate the danger to public health or the
environment posed by an inactive hazardous substance or waste disposal site, an
owner, operator, or other responsible party may impose restrictions on the current or
future use of the real property comprising any part of the site if the restrictions meet
the requirements of this subsection. The restrictions must be agreed to by the owner
of the real property included in a remedial action plan for the site that has been
approved by the Secretary and implemented as a part of the remedial action program
for the site. The Secretary may approve restrictions included in a remedial action
plan in accordance with standards determined as provided in subsection (d) of this
section or pursuant to rules adopted under Chapter 150B of the General Statutes.
Restrictions may apply to activities on, over, or under the land, including, but not
limited to, building, filling, grading, excavating, and mining. Any approved

1 restriction shall be enforced by any owner, operator, or other party responsible for
2 the inactive hazardous substance or waste disposal site. Restrictions may also be
3 enforced by the Department or by any unit of local government having jurisdiction
4 over any part of the site. A restriction shall not be declared unenforceable on
5 account of lack of privity of estate or contract or lack of benefit to particular land."

6 Section 2. G.S. 130A-310.8(a) reads as rewritten:

7 "(a) After determination by the Department of the existence and location of an
8 inactive hazardous substance or waste disposal site, the owner of the real property on
9 which the site is located, within 180 days after official notice to ~~him~~ the owner to do
10 so, shall submit to the Department a survey plat of areas designated by the
11 Department ~~which~~ that has been prepared and certified by a professional land
12 surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR
13 WASTE DISPOSAL SITE'. Where an inactive hazardous substance or waste
14 disposal site is located on more than one parcel or tract of land, a composite map or
15 plat showing all parcels or tracts may be recorded. The Notice shall include a legal
16 description of the site that would be sufficient as a description in an instrument of
17 conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall
18 identify:

- 19 (1) The location and dimensions of the disposal areas with respect to
- 20 permanently surveyed ~~benchmarks; and~~ benchmarks.
- 21 (2) The type, location, and quantity of hazardous substances disposed
- 22 of on the site, to the best of the owner's knowledge.
- 23 (3) Any restrictions approved by the Department on the current or
- 24 future use of the site.

25 ~~Where an Inactive Hazardous Substance or Waste Disposal Site is located on more~~
26 ~~than one parcel or tract of land, a composite map or plat showing all such sites may~~
27 ~~be recorded."~~

28 Section 3. G.S. 130A-310.8(b) reads as rewritten:

29 "(b) After the Department approves and certifies the Notice, the owner of the site
30 shall file the certified copy of the Notice in the register of deeds' office in the county
31 or counties in which the land is ~~located.~~ located within 30 days of date on which the
32 owner receives approval of the Notice from the Department."

33 Section 4. G.S. 130A-310.9(b) reads as rewritten:

34 "(b) The Secretary may enter into an agreement with an owner, operator, or other
35 responsible party ~~which~~ that provides for implementation of a voluntary remedial
36 action program in accordance with a remedial action plan approved by the
37 Department. Investigations, evaluations, and voluntary remedial actions are subject
38 to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f),
39 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A
40 voluntary remedial action and all documents that relate to the voluntary remedial
41 action shall be fully subject to inspection and audit by the Department. At least 30
42 days prior to entering into any agreement providing for the implementation of a
43 voluntary remedial action program, the Secretary shall mail notice of the proposed
44 agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary

1 remedial actions shall be so identified as a separate category in the inventory of sites
2 maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive
3 Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

4 Section 5. G.S. 143-215.84 is amended by adding a new subsection to
5 read:

6 "(e) In order to reduce or eliminate the danger to public health or the
7 environment posed by a discharge or release of oil or a hazardous substance, an
8 owner, operator, or other responsible party may impose restrictions on the current or
9 future use of the real property comprising any part of the site if the restrictions meet
10 the requirements of this subsection. The restrictions must be agreed to by the owner
11 of the real property, included in a remedial action plan for the site that has been
12 approved by the Secretary, and implemented as a part of the remedial action
13 program for the site. The Secretary may approve restrictions included in a remedial
14 action plan in accordance with standards determined: (i) pursuant to rules for
15 remediation of soil or groundwater contamination adopted by the Commission; (ii)
16 with respect to the cleanup of a discharge or release from a petroleum underground
17 storage tank, pursuant to rules adopted by the Commission pursuant to G.S.
18 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to
19 activities on, over, or under the land, including, but not limited to, building, filling,
20 grading, excavating, and mining. Any approved restriction shall be enforced by any
21 owner, operator, or other party responsible for the oil or hazardous substance
22 discharge site. Restrictions may also be enforced by the Department or by any unit
23 of local government having jurisdiction over any part of the site. A restriction shall
24 not be declared unenforceable on account of lack of privity of estate or contract or
25 lack of benefit to particular land."

26 Section 6. Article 21A of Chapter 143 of the General Statutes is
27 amended by adding a new section to read:

28 **"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

29 (a) The owner of the real property on which a site is located that is subject to
30 current or future use restrictions approved as provided in G.S. 143-215.84(e) shall
31 submit to the Department a survey plat as required by this section within 180 days
32 after the owner is notified to do so. The survey plat shall identify areas designated by
33 the Department, shall be prepared and certified by a professional land surveyor, and
34 shall be entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE
35 SITE'. Where an oil or hazardous substance discharge site is located on more than
36 one parcel or tract of land, a composite map or plat showing all parcels or tracts may
37 be recorded. The Notice shall include a legal description of the site that would be
38 sufficient as a description in an instrument of conveyance, shall meet the
39 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 40 (1) The location and dimensions of the disposal areas with respect to
41 permanently surveyed benchmarks.
42 (2) The type, location, and quantity of hazardous substances disposed
43 of on the site, to the best of the owner's knowledge.

1 (3) Any restrictions approved by the Department on the current or
2 future use of the site.

3 (b) After the Department approves and certifies the Notice, the owner of the site
4 shall file the certified copy of the Notice in the register of deeds office in the county
5 or counties in which the land is located within 30 days of date on which the owner
6 receives approval of the Notice from the Department.

7 (c) The register of deeds shall record the certified copy of the Notice and index it
8 in the grantor index under the names of the owners of the lands.

9 (d) In the event that the owner of the site fails to submit and file the Notice
10 required by this section within the time specified, the Secretary may prepare and file
11 the Notice. The costs thereof may be recovered by the Secretary from any
12 responsible party. In the event that an owner of a site who is not a responsible party
13 submits and files the Notice required by this section, he may recover the reasonable
14 costs thereof from any responsible party.

15 (e) When an oil or hazardous substance discharge site is sold, leased, conveyed, or
16 transferred, the deed or other instrument of transfer shall contain in the description
17 section, in no smaller type than that used in the body of the deed or instrument, a
18 statement that the property has been used as an oil or hazardous substance discharge
19 site and a reference by book and page to the recordation of the Notice.

20 (f) A Notice of oil or hazardous substance discharge site shall be cancelled by the
21 Secretary after the hazards have been eliminated. The Secretary shall send to the
22 register of deeds of the county where the Notice is recorded a statement that the
23 hazards have been eliminated and request that the Notice be cancelled of record.
24 The Secretary's statement shall contain the names of the landowners as shown in the
25 Notice and reference the plat book and page where the Notice is recorded. The
26 register of deeds shall record the Secretary's statement in the deed books and index it
27 on the grantor index in the name of the landowner as shown in the Notice and on the
28 grantee index in the name 'Secretary of Environment, Health, and Natural
29 Resources'. The register of deeds shall make a marginal entry on the Notice showing
30 the date of cancellation and the book and page where the Secretary's statement is
31 recorded, and the register of deeds shall sign the entry. If a marginal entry is
32 impracticable because of the method used to record maps and plats, the register of
33 deeds shall not be required to make a marginal entry."

34 Section 7. G.S. 143-215.88B is amended by adding a new subsection to
35 read:

36 "(h) Any person who knowingly makes any false statement, representation, or
37 certification in any application, record, report, plan, or other document filed or
38 required to be maintained under this Article or rules adopted under this Article; or
39 who knowingly makes a false statement of a material fact in a rule-making proceeding
40 or contested case under this Article; or who falsifies, tampers with, or knowingly
41 renders inaccurate any recording or monitoring device or method required to be
42 operated or maintained under this Article or rules adopted under this Article is guilty
43 of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense
44 under this section is ten thousand dollars (\$10,000)."

1

Section 8. This act is effective when it becomes law.



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Memorandum

April 23, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute (Brownfields/Property Use
Restrictions) for House Bill 224 (Inactive Hazardous Sites/Property
Use Restrictions)

House Bill 224 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). House Bill 224, as introduced, would allow the Secretary of Environment, Health, and Natural Resources (Secretary), in the Secretary's discretion, to approve property use restrictions on inactive hazardous substance or waste disposal sites. In addition to the provisions of House Bill 224, as introduced, this proposed committee substitute would allow the Secretary, in the Secretary's discretion, to approve property use restrictions on oil or hazardous substance discharges or releases. The proposed committee substitute also provides that making a false statement, representation, or certification in a document filed under Article 21A (Oil Pollution and Hazardous Substance Control) is a Class 2 misdemeanor and is punishable by a fine of up to ten thousand dollars (\$10,000). This enforcement provision is similar to those found in other environmental statutes (see below).

Proposed Committee Substitute for House Bill 224

Section 1 adds a subsection (f) to G.S. 130A-310.3 (Remedial action programs for inactive hazardous or waste disposal sites). The new subsection authorizes the Secretary to approve use restrictions on inactive hazardous substance or waste disposal sites. These use restrictions must be enforced by responsible parties and may be enforced by the Department of Environment, Health, and Natural Resources (DEHNR) or any unit of local government having jurisdiction over any part of the inactive hazardous substance or waste disposal site.

Section 2 amends G.S. 130A-310.8(a) to require the Notice of an inactive hazardous substance or waste disposal site (currently required by G.S. 130A-310.8(a)) to include any use restrictions approved by the DEHNR.

Section 3 amends G.S. 130A-310.8(b) to require the owner of an inactive hazardous substance or waste disposal site to file the Notice within 30 days of the owner's receipt of DEHNR's approval of the Notice.

Section 4 amends G.S. 130A-310.9(b) to add the new subsection (f) created by Section 1 of this act to the list of statutes applicable to investigations, evaluations, and voluntary remedial actions related to inactive hazardous substance or waste disposal sites.

Section 5 adds a subsection (e) to G.S. 143-215.84 (Removal of prohibited discharges). The new subsection authorizes the Secretary to approve use restrictions on sites contaminated by a release of oil or hazardous substance. These use restrictions must be enforced by responsible parties and may be enforced by DEHNR or any unit of local government having jurisdiction over any part of the oil or hazardous substance discharge site.

Section 6 amends Article 21A (Oil Pollution and Hazardous Substance Control) of Chapter 143 of the General Statutes by adding section 143-215.85A. This new section requires the owner of a contaminated site to file with the register of deeds a plat entitled NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE and including any restrictions approved by DEHNR on current or future use of the site. (These recording requirements are similar to the requirements for inactive hazardous substance or waste disposal sites.)

Section 7 amends G.S. 143-215.88B by adding a subsection (h) to provide that making a false statement, representation, or certification in a document filed under Article 21A (Oil Pollution and Hazardous Substance Control) is a Class 2 misdemeanor and is punishable by a fine of up to ten thousand dollars (\$10,000). Similar provisions apply to:

- Article 9 (Solid Waste Management) of Chapter 130A of the General Statutes.
- Article 21 (Water and Air Resources) of Chapter 143 of the General Statutes.
- Part 2B (Underground Storage Tank Regulation) of Article 21A of Chapter 143 of the General Statutes.
- Article 21B (Air Pollution Control) of Chapter 143 of the General Statutes.

Section 8 makes this act effective when it becomes law.

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

OK
del previous not

The following report(s) from standing committee(s) is/are presented: —

➔ By Representative(s) Eddins, Hill, Watson for the Committee on Environment.

☐ Committee Substitute for

Co-Chairs,

H.B. 224 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO APPROVE THE IMPOSITION OF RESTRICTIONS ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#224~~), ☒ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #224~~), (and recommendation that the committee substitute bill # —) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

(over)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 900

Short Title: Nitrogen Limit/Clean Water Fund Mod.

(Public)

Sponsors: Representatives Watson; Hill and Nichols.

Referred to: Environment, if favorable, Appropriations.

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE WATER QUALITY OF THE SURFACE WATERS
3 OF THIS STATE BY FURTHER LIMITING THE AMOUNT OF NITROGEN
4 THAT CERTAIN LARGE FACILITIES DISCHARGE TO NUTRIENT
5 SENSITIVE WATERS WHERE NITROGEN IS A NUTRIENT OF CONCERN,
6 TO AUTHORIZE THE USE OF UP TO TWENTY-FIVE PERCENT OF THE
7 FUNDS IN THE CLEAN WATER MANAGEMENT TRUST FUND FOR A
8 PORTION OF THE COSTS TO LOCAL GOVERNMENTS OF MODIFYING
9 EXISTING FACILITIES TO SATISFY THIS STRICTER LIMIT, AND TO
10 AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT FUND
11 FOR LOANS.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 143-215.1 is amended by adding a new subsection to
14 read:

15 "(c1) Any person who is required to obtain a permit under this section for a
16 facility discharging to surface waters of the State that have been classified as nutrient
17 sensitive waters under rules adopted by the Commission and where nitrogen is
18 determined by the Commission to be a nutrient of concern shall not discharge more
19 nitrogen, on a permitted annual average basis expressed as pounds per day, than
20 would result from a discharge having a concentration of three and one-half
21 milligrams of nitrogen per liter (3.5 mg/l) times the volume of discharge that the
22 permit for that facility allows that person to discharge during the year that ended 31
23 December 1995. Any person subject to this subsection shall monitor the facility's
24 discharge for nitrogen at least weekly. This subsection does not apply to facilities

1 that have a design capacity to discharge less than 500,000 gallons per day. The
2 Commission may adopt rules to implement this subsection."

3 Section 2. G.S. 143-215.6A(a) is amended by adding a new subdivision
4 to read:

5 "(10) Violates G.S. 143-215.1(c1) or a rule adopted pursuant to G.S.
6 143-215.1(c1)."

7 Section 3. G.S. 113-145.3 reads as rewritten:

8 **"§ 113-145.3. Clean Water Management Trust Fund: established.**

9 (a) Fund Established. -- There is established a Clean Water Management Trust
10 Fund in the State Treasurer's Office that shall be used to finance projects to clean up
11 or prevent surface water pollution in accordance with this Article.

12 (b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the
13 Fund separate and apart from all other moneys, funds, and accounts. Investment
14 earnings credited to the assets of the Fund shall become part of the Fund. Any
15 balance remaining in the Fund at the end of any fiscal year shall be carried forward
16 in the Fund for the next succeeding fiscal year. Payments from the Fund shall be
17 made on the warrant of the Chair of the Board of Trustees.

18 (c) Fund Purposes. -- Moneys from the Fund may be used for any of the following
19 purposes:

- 20 (1) To acquire land for riparian buffers for the purposes of providing
21 environmental protection for surface waters and urban drinking
22 water supplies and establishing a network of riparian greenways for
23 environmental, educational, and recreational uses.
- 24 (2) To acquire conservation easements or other interests in real
25 property for the purpose of protecting and conserving surface
26 waters and urban drinking water supplies.
- 27 (3) To coordinate with other public programs involved with lands
28 adjoining water bodies to gain the most public benefit while
29 protecting and improving water quality.
- 30 (4) To restore previously degraded lands to reestablish their ability to
31 protect water quality.
- 32 (5) To repair failing waste treatment systems if: (i) an application has
33 first been submitted to receive a loan or grant from the Clean
34 Water Revolving Loan and Grant Fund and the application was
35 denied during the latest review cycle; (ii) the repair is a reasonable
36 remedy for resolving an existing waste treatment problem; and (iii)
37 the repair is not for the purpose of expanding the system to
38 accommodate future anticipated growth of a community. Priority
39 shall be given to economically distressed units of local government.
- 40 (6) To repair and eliminate failing septic tank systems, to eliminate
41 illegal drainage connections, and to expand waste treatment
42 systems if the system is being expanded as a remedy to eliminate
43 failing septic tank systems or illegal drainage connections. Priority
44 shall be given to economically distressed units of local government.

- 1 (7) To improve stormwater controls and management practices.
- 2 (8) To facilitate planning that targets reductions in surface water
- 3 pollution.
- 4 (9) To fund operating expenses of the Board of Trustees and its staff.
- 5 (10) To modify an existing permitted wastewater treatment facility that
- 6 is owned or operated by a unit of local government and that is
- 7 subject to G.S. 143-215.1(c1) to enable the unit of local
- 8 government to comply with G.S. 143-215.1(c1).

9 (d) ~~Limit on Operating and Administrative Expenses.~~ Limitations on Uses of
10 Fund. -- No more than two percent (2%) of the annual balance of the Fund on July 1
11 or a total sum of eight hundred fifty thousand dollars (\$850,000), whichever is less,
12 may be used each fiscal year for administrative and operating expenses of the Board
13 of Trustees and its staff. No more than twenty-five percent (25%) of the amount
14 credited to the Fund during the year ending 30 June shall be used as provided by
15 subdivision (10) of subsection (c) of this section."

16 Section 4. G.S. 113-145.4 reads as rewritten:

17 "**§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants; loans or**
18 **grants; grant matching funds or property requirement. funds; loan limit.**

19 (a) Eligible ~~Grant~~ Applicants. -- Any of the following are eligible to apply for a
20 loan or grant from the Fund for the purpose of protecting and enhancing water
21 quality:

- 22 (1) A State agency.
- 23 (2) A local government or other political subdivision of the State or a
- 24 combination of such entities.
- 25 (3) A nonprofit corporation whose primary purpose is the
- 26 conservation, preservation, and restoration of our State's
- 27 environmental and natural resources.

28 (b) Grant Matching Requirement. -- The Board of Trustees shall establish
29 matching requirements for grants awarded under this Article. ~~The~~ For all eligible
30 projects or activities other than projects eligible under G.S. 113-145.3(c)(10), the
31 Board of Trustees may require a match of up to twenty percent (20%) of the amount
32 of the grant awarded. For projects eligible under G.S. 113-145.3(c)(10), the Board of
33 Trustees may require a match of up to fifty percent (50%) of the amount of the grant
34 awarded. This requirement may be satisfied by the donation of land to a public or
35 private nonprofit conservation organization as approved by the Board of Trustees.
36 The Board of Trustees may also waive the requirement to match a grant pursuant to
37 guidelines adopted by the Board of Trustees.

38 (b1) Loan Limit. -- The Board of Trustees shall establish requirements regarding
39 limits on loans provided under this Article. The Board of Trustees may require that
40 the maximum principal amount of a loan not exceed eighty percent (80%) of the
41 nonfederal share of the costs of any eligible project or activity. This requirement may
42 be satisfied by the donation of land to a public or private nonprofit conservation
43 organization as approved by the Board of Trustees. The Board of Trustees may also

1 waive the requirement to limit loans pursuant to guidelines adopted by the Board of
2 Trustees.

3 (c) ~~Grants~~ Loans or Grants Not Available to Satisfy Compensatory Mitigation
4 Requirements. -- No loan and no grant shall be ~~awarded~~ provided under this ~~article~~
5 Article to satisfy compensatory mitigation requirements under 33 ~~USC~~ U.S.C. § 1344
6 or G.S. 143-214.11."

7 Section 5. G.S. 113-145.6 reads as rewritten:

8 "**§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and**
9 **duties.**

10 (a) Allocate Loan and Grant Funds. -- The Trustees shall allocate moneys from
11 the Fund as loans or grants. A loan or grant may be ~~awarded~~ provided only for a
12 project or activity that satisfies the criteria and furthers the purposes of this Article.

13 (b) Develop ~~Grant~~ Criteria. -- The Trustees shall develop criteria for ~~awarding~~
14 providing loans and grants under this Article. The criteria developed shall include
15 consideration of the following:

- 16 (1) The significant enhancement and conservation of water quality in
17 the State.
- 18 (2) The objectives of the basinwide management plans for the State's
19 river basins and watersheds.
- 20 (3) The promotion of regional integrated ecological networks insofar
21 as they affect water quality.
- 22 (4) The specific areas targeted as being environmentally sensitive.
- 23 (5) The geographic distribution of funds as appropriate.
- 24 (6) The preservation of water resources with significant recreational or
25 economic value and uses.
- 26 (7) The development of a network of riparian buffer-greenways
27 bordering and connecting the State's waterways that will serve
28 environmental, educational, and recreational uses.

29 (c) Develop Additional Guidelines. -- The Trustees may develop guidelines in
30 addition to the loan and grant criteria consistent with and as necessary to implement
31 this Article.

32 (d) Acquisition of Land. -- The Trustees may acquire land by purchase,
33 negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed
34 and approved by the Council of State and the deed for the land subject to approval
35 of the Attorney General before the acquisition can become effective. In determining
36 whether to acquire land as permitted by this Article, the Trustees shall consider
37 whether the acquisition furthers the purposes of this Article and may also consider
38 recommendations from the Council. Nothing in this section shall allow the Trustees
39 to acquire land under the right of eminent domain.

40 (e) Exchange of Land. -- The Trustees may exchange any land they acquire in
41 carrying out the powers conferred on the Trustees by this Article.

42 (f) Land Management. -- The Trustees may designate managers or managing
43 agencies of the lands acquired under this Article.

1 (g) Tax Credit Certification. -- The Trustees shall develop guidelines to determine
2 whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are
3 suitable for one of the purposes under this Article and may be certified for a tax
4 credit.

5 (h) Rule-making Authority. -- The Trustees may adopt rules to implement this
6 Article. Chapter 150B of the General Statutes applies to the adoption of rules by the
7 Trustees.

8 (i) The Chair of the Board of Trustees of the Clean Water Management Trust
9 Fund shall report to the Environmental Review Commission beginning November 1,
10 1996, and annually thereafter on implementation of this section. A written copy of
11 the report shall also be sent to the Fiscal Research Division of the General Assembly
12 beginning November 1, 1996, and annually thereafter on implementation of this
13 section."

14 Section 6. By 1 November 1997, the Environmental Management
15 Commission shall develop a schedule of dates between 1 November 1997, and 1
16 January 2005, by which existing facilities must comply with G.S. 143-215.1(c1), as
17 enacted by Section 1 of this act. The schedule of compliance dates shall follow as
18 closely as possible the dates on which permits for existing facilities must be renewed.
19 New facilities and expansions of existing facilities for which an application for a
20 permit is received by the Department of Environment, Health, and Natural Resources
21 on behalf of the Environmental Management Commission prior to the date this act
22 becomes effective shall be treated as existing facilities.

23 Section 7. This act is effective when it becomes law.



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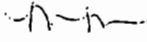
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Memorandum

To: Representative Cindy Watson

From: Mona Moon 
Fiscal Research Division

Date: April 15, 1997

Re: House Bill 900 Nitrogen Limit/Clean Water Fund Modification

You requested a fiscal note for House Bill 900. I will not be able to complete the fiscal note for this bill prior to the House Environment meeting scheduled for Wednesday, April 16.

However, I am attaching information I received from the Division of Water Quality regarding the estimated compliance costs for a 3.5 mg/l nitrogen limit in the Neuse River Basin. I understand your bill applies not only to the Neuse River Basin, but limits nitrogen discharge from large wastewater facilities (discharge capacity of 500,000 gallons per day or more) permitted to discharge to any of the state's surface waters classified as nutrient sensitive.

The information provided by the department is based on a study completed by a private engineering firm conducted for the Lower Neuse Basin Association. The study attempted to identify those facilities that could be retrofitted to meet the requirement versus wastewater treatment facilities that could not meet the requirement without building a new treatment plant. The firm estimates that it will cost a total of \$125 million for facilities in the Neuse River Basin to meet the more stringent nitrogen requirement. Of the \$125 million, \$69 million will be required to build new treatment plants for five facilities that cannot be retrofitted for compliance; the remaining \$56 million will be required to retrofit all other facilities. Please note the study evaluated treatment plants operated by members of the Lower Neuse Basin Association. This organization includes industrial wastewater treatment plants as well as plants operated by local governments.

According to the department, sufficient information is not available to estimate the cost for the Cape Fear, the Tar-Pamlico, the White Oak and the Chowan River Basins, which also contain

surface waters classified as nutrient sensitive. However, the study for the Neuse River Basin does provide a general idea of the magnitude of the potential fiscal impact for the other basins.

Your bill also allows up to 25% of the annual general fund earmarking or set aside for the Clean Water Management Trust Fund (CWMTF) to be used to modify local government treatment facilities to comply with the new nitrogen limit. The earmarking for the CWMTF for the 1997-98 fiscal year is currently expected to be approximately \$30 million. Earmarkings for subsequent years are anticipated to be between \$30 million and \$40 million annually. Your proposal would allow up to \$7.5 million to be used in the 1997-98 fiscal year to modify local wastewater treatment plants, and between \$7.5 million and \$10 million to be used annually in subsequent years for this purpose.

Authorizing the Board of Trustees to provide for loans under the program creates the opportunity to reallocate funds upon the repayment of the loans. This effectively increases the total availability in the fund in future fiscal years, but the amount of that availability depends upon the terms of any loans granted.

I hope you find this information helpful. Please let me know if you have any questions or need additional information. I will try to complete the fiscal note as soon as possible.

cc: Tom Covington

Author: "Coleen" <coleen@dem.ehnr.state.nc.us> at Internet

Date: 4/15/97 2:45 PM

Priority: Normal

Diane Cherry at NRDCS01P

Jane Smith at NRDCS01P

CC: dons@dem.ehnr.state.nc.us at Internet

CC: greg@dem.ehnr.state.nc.us at Internet

CC: steve@dem.ehnr.state.nc.us at Internet

Subject: Nutrient Bill (HB900) Cost Estimates

----- Message Contents -----

Jane - as we discussed, we have done some research on the cost associated with meeting a 3.5 mg/l limit of total nitrogen ONLY on the Neuse River facilities. These costs were based upon a report that was put together by Piedmont, Olson, Hensley, a consulting engineering firm for the Lower Neuse Basin Association. POH did an evaluation of each member's existing wastewater treatment plant (WWTP) to determine whether the WWTP could be upgraded to meet the nitrogen limits or if the WWTP was not able to be retrofitted for the removal. They identified five facilities that could not meet the more stringent limit [Apex (3.6 MGD), Kinston Northside (4.5 MGD), New Bern (4.7 MGD) and Contentnea (2.85 MGD)].

Assuming that these five facilities have to build new plants, at a cost of \$4/gallon, the cost would be \$69 million.

The remaining facilities evaluated by POH totaled 128.6 MGD of discharge volume. The average rate of cost in the report was approximately \$4/gallon for retrofitting these WWTPs. Therefore, the cost associated with these facilities would be about \$56 million. Bringing the total cost to approximately \$125 million for the NEUSE FACILITIES ONLY.

No estimation has been done on other basins. To do an estimation for the other waters that are classified as nutrient sensitive, a considerable amount of research would be required to evaluate each individual WWTP to determine whether each one could be retrofitted to meet the nitrogen limits or require that a new plant be built.

Please let me know if you have questions on the above information.

Coleen



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Memorandum

April 23, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute (Nitrogen Limit/Clean Water Loans
OK) for House Bill 900 (Nitrogen Limit/Clean Water Fund Mod.)

Section 1 amends G.S. 143-215.1 (Control of sources of water pollution; permits required) by adding subsection (c1) to prohibit an annual discharge of nitrogen by mass greater than would result from a permitted flow discharge having a nitrogen concentration of six milligrams of nitrogen per liter (6.0 mg/l). This nitrogen discharge limit is only applicable to facilities:

- (1) Required to obtain a permit under G.S. 143-215.1 (those making outlets into waters of the State).
- (2) Discharging into waters classified as nutrient sensitive and where nitrogen has been determined to be a nutrient of concern.
- (3) That were placed into operation or for which an authorization to construct was issued prior to July 1, 1997 and that have a design capacity to discharge 500,000 gallons per day or more.
- (4) For which an authorization to construct is issued on or after July 1, 1997.

If the Environmental Management Commission (EMC) determines that a particular nutrient sensitive water body cannot assimilate the amount of nitrogen allocated, it may establish a maximum mass load of nitrogen for that nutrient sensitive water body, not to exceed that required to meet the wastewater discharge allocation or the annual discharge of nitrogen by mass based on the permitted flow and six milligrams of nitrogen per liter (6.0 mg/l), whichever is less.

Section 1 also amends G.S. 143-215.1 by adding subsection (c2) to allow facilities subject to the nitrogen discharge limit established in subsection (c1) to meet the discharge limit individually or on a cooperative basis with other discharging facilities if the Commission approves the cooperative agreement. If a facility subject to subsection (c1) agrees to accept wastewater from another facility discharging into the same nutrient sensitive water body and the agreement results in the elimination of discharge from the other facility, the facility will be

allowed to increase the average annual mass load of nitrogen that it discharges by the average annual mass load of nitrogen eliminated. A facility subject to this subsection will comply with nitrogen discharge monitoring requirements established by the EMC.

Section 2 amends G.S. 143-215.6A(a) (Enforcement procedures: civil penalties) by adding a subdivision (10) to authorize the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of up to ten thousand (\$10,000) for violations of the nitrogen discharge limit established by G.S. 143-215.1(c1) or the rules implementing the nitrogen discharge limit.

Section 3 amends the catchline and subsections (a) and (c) of G.S. 113-145.4 (Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement) to allow moneys from the Fund to be disbursed in the form of loans as well as grants. Section 4 adds a subsection (b1) to G.S. 113-145.4 to provide that loans available from the Fund would be limited to eighty percent (80%) of the cost of the eligible project or activity

Section 4 amends G.S. 113-145.6 (Clean Water Management Trust Fund Board of Trustees: powers and duties) to require the Trustees to allocate moneys from the Fund as loans as well as grants. The Trustees are also directed to develop criteria for issuing loans as well as grants.

Section 5 makes this act effective when it becomes law.



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Memorandum

April 9, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 900 (Nitrogen Limit/Clean Water Fund Mod.)

Section 1 amends G.S. 143-215.1 (Control of sources of water pollution; permits required) by adding a subsection (c1) that prohibits a discharge containing an annual average concentration of nitrogen greater than three and one-half milligrams of nitrogen per liter (3.5 mg N/l). This nitrogen discharge limit is only applicable to facilities that are: (1) required to obtain a permit under G.S. 143-215.1 (those making outlets into waters of the State); (2) designed with the capacity to discharge five hundred thousand gallons per day (500,000 gal./day); and (3) making discharges into surface waters of the State that have been classified as nutrient sensitive and that have been determined to have nitrogen as a nutrient of concern.

Section 2 amends G.S. 143-215.6A (Enforcement procedures: civil penalties) by adding a subdivision (10) that authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of up to ten thousand (\$10,000) for violations of the nitrogen discharge limit established by G.S. 143-215.1(c1) or the rules implementing the nitrogen discharge limit.

Section 3 amends subsections (c) and (d) of G.S. 113-145.3 (Clean Water Management Trust Fund: established). Subsection (c) is amended by adding a subdivision (10) to allow moneys from the Fund to be used enable units of local government to comply with the nitrogen discharge limit established by G.S. 143-215.1(c1). Subsection (d) is amended to limit the amount of Clean Water Management Trust Fund (Fund) moneys that may be used to enable units of local government to comply with the nitrogen discharge limit to no more than twenty-five percent (25%) of the amount credited to the Fund.

Section 4 amends the catchline and subsections (a) and (c) of G.S. 113-145.4 (Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement) to allow moneys from the Fund to be disbursed in the form of loans as well as grants. Section 4 adds a subsection (b1) to G.S. 113-145.4 to provide that loans available from the Fund would be limited to eighty percent (80%) of the cost of the eligible project or activity. Section 4 also amends

subsection (b) of G.S. 113-145.4 to provide that the Fund's Board of Trustees (Trustees) may require up to a fifty percent (50%) match for projects eligible under G.S. 113-145.3(c)(10) (compliance with the nitrogen limit) rather than the up to twenty percent (20%) matching requirement for other eligible projects.

Section 5 amends G.S. 113-145.6 (Clean Water Management Trust Fund Board of Trustees: powers and duties) to require the Trustees to allocate moneys from the Fund as loans as well as grants. The Trustees are also directed to develop criteria for issuing loans as well as grants.

Section 6 directs the Environmental Management Commission to develop a nitrogen discharge limit compliance schedule. The schedule will run between November 1, 1997 and January 1, 2005 and will follow, as closely as possible, the permit renewal dates of existing facilities. New or expanding facilities for which a permit application is received by the Department of Environment, Health, and Natural Resources prior to the date this act becomes effective will be treated as existing facilities.

Section 7 makes this act effective when it becomes law.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

☐ Committee Substitute for

H.B. 900 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE WATER QUALITY OF THE SURFACE WATERS OF THIS STATE BY FURTHER LIMITING THE AMOUNT OF NITROGEN THAT LARGE FACILITIES DISCHARGE TO NUTRIENT SENSITIVE WATERS WHERE NITROGEN IS A NUTRIENT OF CONCERN, TO AUTHORIZE THE USE OF UP TO TWENTY-FIVE PERCENT OF THE FUNDS IN THE CLEAN WATER MANAGEMENT TRUST FUND FOR A PORTION OF THE COSTS TO LOCAL GOVERNMENTS OF MODIFYING EXISTING FACILITIES TO SATISFY THIS STRICTER LIMIT, AND TO AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT FUND FOR LOANS..

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (# _____), ☒ which changes the title, unfavorable as to original bill, ~~(Committee Substitute Bill # _____), (and recommendation that the committee substitute bill # _____) be re-referred to the Committee on _____)~~

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

HB 900
Introduced by
Rep. Cindy Watson
House Committee on Environment
Debate continued
April 16, 1997

Thank you Mr. Chairman, members of the Environment Committee.

The consensus of the Committee and Chairman, following our last debate on HB 900, was to have a follow up meeting of interested persons, agencies, individuals, to incorporate the various amendments or changes necessary to help make HB 900 reflect those suggestions that were brought forth at our regular meeting.

It is my understanding that a committee substitute reflecting those changes, for which a consensus was determined by those attending that meeting, is forthcoming.

I do not propose that this committee substitute is the answer to achieving a consensus by all of you concerning this bill, just as the original bill, it also will generate debate.

You have received an initial fiscal impact memorandum from the Fiscal Research Division addressing the probable cost of implementing the requirements of HB 900.

Just as when HB 900 was introduced, this fiscal memorandum will create the cries of anguish "we can not afford it, it is too costly or if we are required to conform we must close down".

Mr. Chairman. Members of the Committee I know of Court cases in which the cost of allowing a certain thing, or loss of money was not determined to be "irreparable harm". In other words, the Court recognized that money (costs) is recoverable... the loss of money can in time be overcomeI implore of you that we must do something..... can Mother Earth overcome "irreparable harm?...

I ask you my fellow members of this Committee, at what point does Mother Earth, our rivers and waterways receive "irreparable harm" because we said "it costs too much to protect it, we cannot afford it"...what legacy will this Assembly leave our grandchildren or even our children concerning the environment that they inherit from us ...will they really understand that "to do the right thing just cost too much"...

.....

HB 900 is by no means the answer to the pollution in our rivers and streams, but it is a good start....

Mr. Chairman I wish to make a motion concerning the Committee Substitute of HB 900 at the proper time.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1097

Short Title: Fisheries Reform Act-2.

(Public)

Sponsors: Representatives Preston, Redwine, Reynolds, Smith, Grady; Buchanan, Culpepper, Daughtry, Eddins, Hill, Mitchell, Nichols, and Wainwright.

Referred to: Environment, if favorable, Judiciary I, if favorable, Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
3 ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
4 CAROLINA.

5 Whereas, the State of North Carolina has one of the most diverse fisheries
6 in the United States; and

7 Whereas, the General Assembly recognizes that commercial fishermen
8 perform an essential function by providing wholesome food for the citizens of the
9 State and thereby properly earn a livelihood; and

10 Whereas, the General Assembly recognizes the economic contribution
11 and important heritage of traditional full-time and part-time commercial fishing; and

12 Whereas, the General Assembly recognizes that for many citizens fishing
13 is an important recreational activity and that recreational fishing is a source of great
14 personal enjoyment and satisfaction; and

15 Whereas, the General Assembly recognizes the importance of providing
16 plentiful fishery resources to maintain and enhance tourism as a major contributor to
17 the economy of the State; and

18 Whereas, the General Assembly recognizes the need to protect our
19 coastal fishery resources and to balance the commercial and recreational interests
20 through better management of these resources; Now, therefore,
21 The General Assembly of North Carolina enacts:

22

23 PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 March 1998.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"§ 143B-289.20. Definitions.

(a) As used in this Part:

- (1) 'Commission' means the Marine Fisheries Commission.
- (2) 'Department' means the Department of Environment, Health, and Natural Resources.
- (3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.
- (4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 shall apply throughout this Part.

"§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

- (1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.
- (2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.
- (3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

1 "§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

2 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
3 management, protection, preservation, and enhancement of the marine and estuarine
4 resources of the State including commercial and sports fisheries resources. The
5 Marine Fisheries Commission shall have the power and duty:

6 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all
7 forms of marine and estuarine resources in coastal fishing waters
8 with respect to:

9 a. Time, place, character, or dimensions of any methods or
10 equipment that may be employed in taking fish.

11 b. Seasons for taking fish.

12 c. Size limits on and maximum quantities of fish that may be
13 taken, possessed, bailed to another, transported, bought,
14 sold, or given away.

15 (2) To provide fair regulation of commercial and recreational fishing
16 groups in the interest of the public.

17 (3) To adopt rules and take all steps necessary to develop and improve
18 mariculture, including the cultivation, harvesting, and marketing of
19 shellfish and other marine resources in the State, involving the use
20 of public grounds and private beds as provided in G.S. 113-201.

21 (4) To close areas of public bottoms under coastal fishing waters for
22 such time as may be necessary in any program of propagation of
23 shellfish as provided in G.S. 113-204.

24 (5) In the interest of conservation of the marine and estuarine
25 resources of the State, to institute an action in the superior court to
26 contest the claim of title or claimed right of fishery in any
27 navigable waters of the State registered with the Department as
28 provided in G.S. 113-206(d).

29 (6) To make reciprocal agreements with other jurisdictions respecting
30 any of the matters governed in this Subchapter as provided by G.S.
31 113-223.

32 (7) To adopt relevant provisions of federal laws and regulations as
33 State rules pursuant to G.S. 113-228.

34 (8) To delegate to the Fisheries Director the authority by proclamation
35 to suspend or implement, in whole or in part, a particular rule of
36 the Commission that may be affected by variable conditions as
37 provided in G.S. 113-221(e).

38 (9) To comment on and otherwise participate in the determination of
39 permit applications received by State agencies that may have an
40 effect on the marine and estuarine resources of the State.

41 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1,
42 to establish a Priority List to determine the order in which Fishery
43 Management Plans are developed, to establish a Schedule for the
44 development and adoption of each Fishery Management Plan, and

1 to establish guidance criteria as to the contents of Fishery
2 Management Plans.

3 (11) To approve Coastal Habitat Protection Plans as provided in G.S.
4 143B-279.8.

5 (12) To hear appeals by persons denied a fishing license, permit, or
6 lease under this Chapter.

7 (b) The Marine Fisheries Commission shall have the power and duty to establish
8 standards and adopt rules:

9 (1) To implement the provisions of Subchapter IV of Chapter 113 as
10 provided in G.S. 113-134.

11 (2) To manage the disposition of confiscated property as set forth in
12 G.S. 113-137.

13 (3) To govern all license requirements and taxes prescribed in Article
14 14A of Chapter 113 of the General Statutes.

15 (4) To regulate the importation and exportation of fish, and equipment
16 that may be used in taking or processing fish, as necessary to
17 enhance the conservation of marine and estuarine resources of the
18 State as provided in G.S. 113-170.

19 (5) To regulate the possession, transportation, and disposition of
20 seafood, as provided in G.S. 113-170.4.

21 (6) To regulate the disposition of the young of edible fish, as provided
22 by G.S. 113-185.

23 (7) To manage the leasing of public grounds for mariculture, including
24 oysters and clam production, as provided in G.S. 113-202.

25 (8) To govern the utilization of private fisheries, as provided in G.S.
26 113-205.

27 (9) To impose further restrictions upon the throwing of fish offal in
28 any coastal fishing waters, as provided in G.S. 113-265.

29 (10) To regulate the location and utilization of artificial reefs in coastal
30 waters.

31 (11) To regulate the placement of nets and other sports or commercial
32 fishing apparatus in coastal fishing waters with regard to
33 navigational or recreational safety as well as from a conservation
34 standpoint.

35 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
36 restrict:

37 (1) The opening and closing of coastal fishing waters, except as to
38 inland game fish, whether entirely or only as to the taking of
39 particular classes of fish, use of particular equipment, or as to other
40 activities.

41 (2) The possession, cultivation, transportation, importation,
42 exportation, sale, purchase, acquisition, and disposition of all
43 marine and estuarine resources and all related equipment,

1 implements, vessels, and conveyances as necessary to carry out its
2 duties.

3 (d) The Commission may adopt rules required by the federal government for
4 grants-in-aid for coastal resource purposes that may be made available to the State by
5 the federal government. This section is to be liberally construed in order that the
6 State and its citizens may benefit from federal grants-in-aid.

7 (e) The Commission shall adopt rules as provided in this Chapter. All rules
8 adopted by the Commission shall be enforced by the Department of Environment,
9 Health, and Natural Resources.

10 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
11 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
12 necessary to accomplish the purposes for which it was created.

13 **"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

14 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
15 Commission shall exercise quasi-judicial powers in accordance with the provisions of
16 Chapter 150B of the General Statutes. This section and any rules adopted by the
17 Marine Fisheries Commission shall govern the following proceedings:

18 (1) Exceptions to recommended decisions in contested cases shall be
19 filed with the Secretary within 30 days of the receipt by the
20 Secretary of the official record from the Office of Administrative
21 Hearings, unless additional time is allowed by the Chair of the
22 Commission.

23 (2) Oral arguments by the parties may be allowed by the Chair of the
24 Commission upon request of the parties.

25 (3) Deliberations of the Commission shall be conducted in its public
26 meeting unless the Commission determines that consultation with
27 its counsel should be held in a closed session pursuant to G.S.
28 143-318.11.

29 (b) The final agency decision in contested cases that arise from civil penalty
30 assessments shall be made by the Commission. In the evaluation of each violation, the
31 Commission shall recognize that harm to the natural resources of the State arising
32 from the violation of standards or limitations established to protect those resources
33 may be immediately observed through damaged resources or may be incremental or
34 cumulative with no damage that can be immediately observed or documented.
35 Penalties up to the maximum authorized may be based on any one or combination of
36 the following factors:

37 (1) The degree and extent of harm to the natural resources of the
38 State, to the public health, or to private property resulting from the
39 violation.

40 (2) The duration and gravity of the violation.

41 (3) The effect on ground or surface water quantity.

42 (4) The cost of rectifying the damage.

43 (5) Whether the violation was committed willfully or intentionally.

(6) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(7) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

- 1 (2) One person actively engaged in, or recently retired from,
2 commercial fishing as demonstrated by currently or recently
3 deriving at least fifty percent (50%) of earned income from taking
4 and selling fishery resources in coastal fishing waters of the State.
5 The spouse of a commercial fisherman who meets the criteria of
6 this subdivision may be appointed under this subdivision.
- 7 (3) One person actively connected with, and experienced as, a licensed
8 fish dealer or in seafood processing or distribution as demonstrated
9 by deriving at least fifty percent (50%) of earned annual income
10 from activities involving the buying, selling, processing, or
11 distribution of seafood landed in this State. The spouse of a
12 person qualified under this subdivision may be appointed provided
13 that the spouse is actively involved in the qualifying business.
- 14 (4) One person actively engaged in recreational sports fishing in
15 coastal waters in this State. An appointee under this subdivision
16 may not derive more than ten percent (10%) of earned annual
17 income from sports fishing activities.
- 18 (5) One person actively engaged in recreational sports fishing in
19 coastal waters in this State. An appointee under this subdivision
20 may not derive more than ten percent (10%) of earned annual
21 income from sports fishing activities.
- 22 (6) One person actively engaged in the sports fishing industry as
23 demonstrated by deriving at least fifty percent (50%) of earned
24 annual income from selling goods or services in this State. The
25 spouse of a person qualified under this subdivision may be
26 appointed provided that the spouse is actively involved in the
27 qualifying business.
- 28 (7) One person having general knowledge of and experience related to
29 subjects and persons regulated by the Commission.
- 30 (8) One person having general knowledge of and experience related to
31 subjects and persons regulated by the Commission.
- 32 (9) One person who is a fisheries scientist having special training and
33 expertise in marine and estuarine fisheries biology, ecology,
34 population dynamics, water quality, habitat protection, or similar
35 knowledge. A person appointed under this subdivision may not
36 receive more than ten percent (10%) of earned annual income
37 from either the commercial or sports fishing industries, including
38 the processing and distribution of seafood.
- 39 (b) Residential Qualifications. -- For purposes of providing regional representation
40 on the Commission, the following three coastal regions of the State are designated: (i)
41 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare,
42 Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
43 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
44 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region

1 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
2 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
3 subsection (a) of this section shall be residents of one of the coastal regions of the
4 State. The membership of the Commission shall include at least one person who is a
5 resident of each of the three coastal regions of the State.

6 (c) Additional Considerations. -- In making appointments to the Commission, the
7 Governor shall provide for appropriate representation of women and minorities on
8 the Commission.

9 (d) Terms. -- The term of office of members of the Commission is three years. A
10 member may be reappointed to any number of successive three-year terms. Upon the
11 expiration of a three-year term, a member shall continue to serve until a successor is
12 appointed and duly qualified as provided by G.S. 128-7. An appointment to fill a
13 vacancy shall be for the unexpired balance of the term. The term of members
14 appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall
15 expire on 30 June of years evenly divisible by three. The term of members appointed
16 under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30
17 June of years that precede by one year those years that are evenly divisible by three.
18 The term of members appointed under subdivisions (7), (8), and (9) of subsection (a)
19 of this section shall expire on 30 June of years that follow by one year those years
20 that are evenly divisible by three.

21 (e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
22 balance of the term.

23 (f) Oath of Office. -- Each member of the Commission, before assuming the duties
24 of office, shall take an oath of office as provided in Chapter 11 of the General
25 Statutes.

26 (g) Ethical Standards. --

27 (1) Disclosure statements. -- Any person under consideration for
28 appointment to the Commission shall provide both a financial
29 disclosure statement and a potential bias disclosure statement to
30 the Governor. A financial disclosure statement shall include
31 statements of the nominee's financial interests in and related to
32 State fishery resources use, licenses issued by the Division of
33 Marine Fisheries held by the nominee or any business in which the
34 nominee has a financial interest, and uses made by the nominee or
35 by any business in which the nominee has a financial interest of
36 the regulated resources. A potential bias disclosure statement shall
37 include a statement of the nominee's membership or other
38 affiliation with, including offices held in societies, organizations, or
39 advocacy groups pertaining to the management and use of the
40 State's coastal fishery resources. Disclosure statements shall be
41 treated as public records under Chapter 132 of the General
42 Statutes and shall be updated on an annual basis.

43 (2) Voting/conflict of interest. -- A member of the Commission shall
44 not vote on any issue before the Commission that would have a

'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate benefit shared only by a minority of persons within the same industry sector or gear group to the financial interest of the member. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Commission shall elect one of its members to serve as Vice-Chair. Officers shall serve a one-year term beginning 1 July and ending 30 June of the following year. An officer may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by three standing advisory committees and three regional advisory committees. The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b). In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented. The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Habitat/Water Quality Committee, which shall be a technical committee comprised of scientists or other experts in fisheries biology, ecology, water quality, sociology, and economics.

(2) The Fisheries Assessment Committee, which shall be a technical committee comprised of scientists or other experts in fisheries biology, ecology, water quality, sociology, and economics.

(3) The Fisheries Resources/Users Committee, which shall be comprised of members of the fishing public, including the chairs of five ad hoc regional committees.

(b) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(c) Each standing and regional advisory committee shall consist of 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered

1 three-year terms as determined by the Commission. The Commission shall establish
2 other policies and procedures for standing and regional advisory committees that are
3 consistent with those governing the Commission as set out in this Part.

4 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

5 (a) Recognizing the inestimable importance to the State and its people of
6 conserving the marine and estuarine resources of the State, and for the purpose of
7 providing the opportunity for citizens and residents of the State to invest in the future
8 of its marine and estuarine resources, there is created the North Carolina Marine
9 Fisheries Endowment Fund, the income and principal of which shall be used only for
10 the purpose of supporting marine and estuarine resource conservation programs of
11 the State in accordance with this section.

12 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
13 Fund of the Marine Fisheries Commission, with full authority over the administration
14 of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
15 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
16 Commission. The State Treasurer shall be the custodian of the Marine Fisheries
17 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
18 147-69.2 and G.S. 147-69.3.

19 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
20 following:

21 (1) The proceeds of any gifts, grants, and contributions to the State
22 that are specifically designated for inclusion in the Fund.

23 (2) Any other sources specified by law.

24 (d) The Marine Fisheries Endowment Fund is declared to constitute a special
25 trust derived from a contractual relationship between the State and the members of
26 the public whose investments contribute to the Fund. In recognition of this special
27 trust, the following limitations and restrictions are placed on expenditures from the
28 Fund:

29 (1) Any limitations or restrictions specified by the donors on the uses
30 of the income derived from the gifts, grants, and voluntary
31 contributions shall be respected but shall not be binding.

32 (2) No expenditure or disbursement shall be made from the principal
33 of the Marine Fisheries Endowment Fund except as otherwise
34 provided by law.

35 (3) The income received and accruing from the investments of the
36 Marine Fisheries Endowment Fund must be spent only to further
37 the conservation of marine and estuarine resources.

38 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
39 accumulate the investment income of the Fund until the income, in the sole judgment
40 of the trustees, can provide a significant supplement to the budget for the
41 conservation and management of marine and estuarine resources. After that time the
42 trustees, in their sole discretion and authority, may direct expenditures from the
43 income of the Fund for the purposes set out in subdivision (3) of subsection (d)
44 above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"§ 143B-289.29. Conservation Fund; Commission may accept gifts.

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars (\$5.00).

"§ 143B-289.30. Article subject to Chapter 113.

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"§ 143B-289.31. Jurisdictional questions.

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.8. Coastal Habitat Protection Plans.

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, it shall be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission for adoption. These commissions shall meet jointly to review and revise the draft Plan. In adopting final Coastal Habitat Protection Plans, each of the three commissions shall vote independently of the other two. If the three commissions are unable to agree on any aspect of a Plan, the Chair of each commission shall appoint two members of the commission he or she chairs to a six-member conference committee to facilitate the resolution of any differences. Each final Coastal Habitat Protection Plan shall consist of those provisions concurrently adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the findings and recommendations of the Coastal Habitat Protection Plans. If any of the three commissions fail to act in accordance with the Coastal Habitat Protection Plans, the commission shall provide a written explanation to the other two commissions, either on its own motion or upon the request of either of the other two commissions.

(d) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Environmental Review Commission and to the Joint Legislative Commission on Seafood and Aquaculture on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-182.1. Fishery Management Plans.

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria

1 will facilitate or improve the development of Fishery Management Plans or is
2 necessary to restore, conserve, or protect the marine and estuarine resources of the
3 State. The Marine Fisheries Commission may not revise the Schedule for the
4 development of a Fisheries Management Plan, once adopted, without the approval of
5 the Secretary of Environment, Health, and Natural Resources.

6 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
7 progress in the development and adoption of Fishery Management Plans in relation
8 to the Schedule for development and adoption of the plans established by the Marine
9 Fisheries Commission. The Secretary of Environment, Health, and Natural
10 Resources shall report to the Joint Legislative Commission on Seafood and
11 Aquaculture on progress in developing and implementing the Fishery Management
12 Plans on or before 1 September of each year."

14 PART IV. MARINE FISHERIES LAW ENFORCEMENT

16 Section 4.1. G.S. 113-136(d1) reads as rewritten:

17 "(d1) In addition to law enforcement authority granted elsewhere, ~~a protector has~~
18 inspectors and protectors have the authority to enforce criminal laws under the
19 following circumstances:

20 (1) When the inspector or protector has probable cause to believe that
21 a person committed a criminal offense in his presence and at the
22 time of the violation the inspector or protector is engaged in the
23 enforcement of laws otherwise within his ~~jurisdiction; or~~
24 jurisdiction.

25 (2) When the inspector or protector is asked to provide temporary
26 assistance by the head of a State or local law enforcement agency
27 or his designee and the request is within the scope of the agency's
28 subject matter jurisdiction.

29 While acting pursuant to this subsection, an inspector or a protector shall have the
30 same powers invested in law enforcement officers by statute or common law. When
31 acting pursuant to (2) of this subsection an inspector or a protector shall not be
32 considered an officer, employee, or agent for the state or local law enforcement
33 agency or designee asking for temporary assistance. Nothing in this subsection shall
34 be construed to expand the authority of inspectors or protectors to initiate or conduct
35 an independent investigation into violations of criminal laws outside the scope of
36 their subject matter or territorial jurisdiction."

37 Section 4.2. G.S. 113-187 reads as rewritten:

38 "§ 113-187. Penalties for violations of Subchapter and rules.

39 (a) Any person who participates in a commercial fishing operation conducted in
40 violation of any provision of this Subchapter and its implementing rules or in an
41 operation in connection with which any vessel is used in violation of any provision of
42 this Subchapter and its implementing rules is guilty of a ~~Class 4~~ Class A1
43 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.
- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.3. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

1 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
2 and the specific reasons therefor by registered or certified mail or by any means
3 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to
4 G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary
5 shall make the final decision regarding assessment of a civil penalty under this
6 section.

7 (f) Requests for remission of civil penalties shall be filed with the Secretary.
8 Remission requests shall not be considered unless made within 30 days of receipt of
9 the notice of assessment. Remission requests must be accompanied by a waiver of the
10 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
11 and a stipulation of the facts on which the assessment was based. Consistent with the
12 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the
13 Secretary and the violator. If the Secretary and the violator are unable to resolve the
14 request, the Secretary shall deliver remission requests and his recommended action to
15 the Committee on Civil Penalty Remissions of the Marine Fisheries Commission
16 appointed pursuant to G.S. 143B-289.23(c).

17 (g) If any civil penalty has not been paid within 30 days after notice of assessment
18 has been served on the violator, the Secretary shall request the Attorney General to
19 institute a civil action in the superior court of any county in which the violator
20 resides or has his or its principal place of business to recover the amount of the
21 assessment, unless the violator contests the assessment as provided in subsection (e) of
22 this section, or requests remission of the assessment in whole or in part as provided in
23 subsection (f) of this section. If any civil penalty has not been paid within 30 days
24 after the final agency decision or court order has been served on the violator, the
25 Secretary shall request the Attorney General to institute a civil action in the superior
26 court of any county in which the violator resides or has his or its principal place of
27 business to recover the amount of the assessment. Civil actions must be filed within
28 three years of the date the final agency decision or court order was served on the
29 violator."

30 Section 4.4. G.S. 113-221(e) reads as rewritten:

31 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
32 authority to issue proclamations suspending or implementing, in whole or in part,
33 particular rules of the Commission which may be affected by variable conditions.
34 Such proclamations are to be issued by the Fisheries Director or by a person
35 designated by the Fisheries Director. All proclamations must state the hour and date
36 upon which they become effective and must be issued at least 48 hours in advance of
37 the effective date and time. In those situations in which the proclamation prohibits
38 the taking of certain fisheries resources for reasons of public health, the proclamation
39 can be made effective immediately upon issuance. Notwithstanding any other
40 provisions of this subsection, a proclamation can be issued at least 12 hours in
41 advance of the effective date and time to reopen the taking of certain fisheries
42 resources closed for reason of public health through a prior proclamation made
43 effective immediately upon issuance. Persons violating any proclamation which is
44 made effective immediately shall not be charged with a criminal offense during the

1 time between the issuance and 48 hours after such issuance unless such person had
2 actual notice of the issuance of such proclamation. Fisheries resources taken or
3 possessed by any person in violation of any proclamation may be seized regardless of
4 whether such person had actual notice of the proclamation. A permanent file of the
5 text of all proclamations shall be maintained in the office of the Fisheries Director.
6 Certified copies of proclamations are entitled to judicial notice in any civil or
7 criminal proceeding.

8 The Fisheries Director must make every reasonable effort to give actual notice of
9 the terms of any proclamation to the persons who may be affected thereby. ~~Such~~
10 Reasonable effort includes press releases to communications media, posting of notices
11 at docks and other places where persons affected may gather, personal
12 communication by inspectors and other agents of the Fisheries Director, and such
13 other measures designed to reach the persons who may be affected. The Fisheries
14 Director may determine, on a case-by-case basis, that a proclamation did not apply to
15 an individual licensee when an act of God or unforeseeable circumstance occurred
16 that prevented the licensee from receiving notice of the proclamation."

17 Section 4.5. The Marine Fisheries Commission shall develop a Violation
18 Points System applicable to the fishing licenses of all persons who violate marine
19 fisheries statutes or rules. In developing this system, the Marine Fisheries
20 Commission shall consider the recommendations made in the Final Report of the
21 Moratorium Steering Committee and the suspension, revocation, and reissuance
22 procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop
23 an implementation schedule for the Violation Points System. The Marine Fisheries
24 Commission shall report to the Joint Legislative Commission on Seafood and
25 Aquaculture no later than 1 July 1999, on the development of the Violation Points
26 System and the implementation schedule.

28 PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

30 Section 5.1. Chapter 113 of the General Statutes is amended by adding a
31 new Article to read:

32 "ARTICLE 14A.

33 "Coastal and Estuarine Commercial Fishing Licenses.

34 "§ 113-168. Definitions.

35 As used in this Article:

- 36 (1) 'Commercial fishing operation' means any activity preparatory to,
37 during, or subsequent to the taking of any fish, the taking of which
38 is subject to regulation by the Commission, either with the use of
39 commercial fishing equipment or gear or by any means if the
40 purpose of the taking is to obtain fish for sale.
41 (2) 'Commission' means the Marine Fisheries Commission.
42 (3) 'Division' means the Division of Marine Fisheries in the
43 Department of Environment, Health, and Natural Resources.

- 1 (4) 'License year' means the period beginning 1 July of a year and
2 ending on 1 July of the following year.
- 3 (5) 'North Carolina resident' means a person is a resident within the
4 meaning of G.S. 113-130(4) and who filed a State income tax
5 return as a resident of the State for the previous calendar or tax
6 year.
- 7 (6) 'RCGL' means Recreational Commercial Gear License.
- 8 (7) 'RSCFL' means Retired Standard Commercial Fishing License.
- 9 (8) 'SCFL' means Standard Commercial Fishing License.
- 10 **"§ 113-168.1. General provisions for commercial licenses and endorsements.**
- 11 (a) Duration, Fees. -- All licenses and endorsements issued under this Article
12 expire on the last day of the license year. An applicant for any license shall pay the
13 full annual license fee at the time the applicant applies for the license regardless of
14 when application is made.
- 15 (b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any
16 person to engage in a commercial fishing operation without having first obtained a
17 license as required by this Article. It is unlawful for anyone to command a vessel
18 engaged in a commercial fishing operation without complying with the provisions of
19 this Article and rules adopted by the Commission under this Article.
- 20 (c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any
21 person to engage in a commercial fishing operation in the State without having ready
22 at hand for inspection all currently valid licenses and endorsements required under
23 this Article. To comply with this subsection, a person must have either a currently
24 valid (i) license issued in the person's true name and bearing the person's current
25 address or (ii) an assignment of a SCFL authorized under this Article. A licensee or
26 assignee shall not refuse to exhibit the licenses and endorsements upon the request of
27 an inspector or any other law enforcement officer authorized to enforce federal or
28 State laws, regulations, or rules relating to marine fisheries.
- 29 (d) No Dual Residency. -- It is unlawful for any person to hold any currently valid
30 license issued under this Article to the person as a North Carolina resident if that
31 person holds any currently valid license issued by another state to the person as a
32 resident of that state.
- 33 **"§ 113-168.2. Standard Commercial Fishing License.**
- 34 (a) Requirement. -- No person shall harvest, land, and sell fish from the coastal
35 fishing waters of this State without having first obtained a Standard Commercial
36 Fishing License issued by the Commission.
- 37 (b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the
38 Division. The SCFL and endorsements may be renewed by mail by forwarding a
39 completed application, including applicable fees, to the Division's Morehead City
40 office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL
41 or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or
42 revoked.
- 43 (c) Replacement License. -- A licensee may obtain a replacement license for a lost
44 or destroyed license, including all endorsements, upon receipt of a proper application

1 in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division
2 shall not accept an application for a replacement license unless the Division
3 determines that the applicant's current license has not been suspended or revoked. A
4 copy of an application duly filed with the Division shall serve as the license until the
5 replacement license has been received. The Commission may provide by rule for the
6 replacement of lost, obliterated, destroyed, or otherwise illegible license plates or
7 decals upon tender of the original license receipt or upon other evidence that the
8 Commission deems sufficient.

9 (d) Nonresident Certification Required. -- Persons obtaining licenses who are not
10 North Carolina residents shall certify that their conviction record in their state of
11 residence is such that they would not be denied a license under the standards in G.S.
12 113-171. When a license application is denied for violations of fisheries laws,
13 whether the violations occurred in North Carolina or another jurisdiction, the license
14 fees shall not be refunded and shall be applied to the costs of processing the
15 application.

16 (e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two
17 hundred fifty dollars (\$250.00). The annual SCFL fee for a person who is not a
18 resident of North Carolina shall be two thousand five hundred dollars (\$2,500) or the
19 amount charged to a North Carolina resident in the nonresident's state, whichever is
20 lesser.

21 (f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual,
22 provided that the individual has not been issued a SCFL or RSCFL that has been
23 suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel
24 endorsement may be assigned, independently of the SCFL, to another holder of a
25 SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a
26 holder or assignee of a SCFL in the operation of the vessel for which the SCFL is
27 endorsed. The assignment shall be in writing on a form provided by the Division and
28 shall include the name of the licensee, the license number, any endorsements, the
29 assignee's name and mailing address, and the duration of the assignment. A
30 notarized copy of the assignment shall be filed with the Division. The assignee shall
31 carry the assignment on the assignee's person and have the assignment available for
32 inspection at all times while using the vessel. The assignment may be revoked by: (i)
33 written notification by the assignor that the assignment has been terminated; or (ii) a
34 determination by the Division that the assignee is operating in violation of the terms
35 and conditions applicable to the assignment.

36 (g) Transferability. -- A SCFL may be transferred:

- 37 (1) By the license holder to a member of the license holder's
38 immediate family.
- 39 (2) By the State to a surviving family member of the license holder
40 upon the death of the license holder.
- 41 (3) By a surviving family member of the license holder to a third-party
42 purchaser of the license holder's fishing vessel upon the death of
43 the license holder.

1 (4) By the license holder to a third-party purchaser of the license
2 holder's fishing vessel upon retirement of the license holder from
3 commercial fishing.

4 (5) Under any other circumstance authorized by rule of the
5 Commission.

6 (h) Identification as Commercial Fisherman. -- The receipt of a current and valid
7 SCFL, RSCFL, or shellfish license issued by the Department shall serve as proper
8 identification of the licensee as a commercial fisherman.

9 (i) Record-Keeping Requirements. -- The fish dealer shall record each transaction
10 on a form provided by the Department. The transaction form shall include the
11 information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the
12 identity of the fish dealer, and other information as the Department deems necessary
13 to accomplish the purposes of this Subchapter. The person who records the
14 transaction shall provide a completed copy of the transaction form to the Department
15 and to the other party of the transaction. The Department copy of each transaction
16 from the preceding month shall be transmitted to the Department by the fish dealer
17 on or before the tenth day of the following month.

18 (j) Permanent Appeals Panel Established. -- There is established a permanent
19 three-member Appeals Panel comprised of the Fisheries Director or designee, the
20 Chair of the Commission or designee, and a commercial fisherman selected jointly by
21 the Fisheries Director and the Chair of the Commission. The Appeals Panel shall
22 review appeals in cases where an application for a SCFL, a RSCFL, or a shellfish
23 license was denied, except in cases arising under G.S. 113-171. The Appeals Panel
24 may grant a license if it finds that the denial of the license application would create
25 an emergency or a hardship on the applicant or the State. The Commission shall
26 adopt rules to govern the operation of the Appeals Panel and standards to govern the
27 determination of appeals. The Appeals Panel is exempt from the provisions of
28 Article 3 of Chapter 150B of the General Statutes. Decisions of the Appeals Panel
29 shall be subject to judicial review under the provisions of Article 4 of Chapter 150B
30 of the General Statutes.

31 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

32 (a) SCFL Provisions Applicable. -- Except as provided below, the provisions set
33 forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

34 (b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is
35 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
36 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the
37 time the application is made.

38 (c) Transferability. -- The holder of a RSCFL may transfer the RSCFL as
39 provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a
40 third-party purchaser of the RSCFL holder's fishing vessel. If the third-party
41 purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL
42 set forth in G.S. 113-168.2.

43 (d) Assignability. -- The RSCFL shall not be assignable.

44 **"§ 113-168.4. Regulations concerning the sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without having first procured a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL or RSCFL, or shellfish license at the time of the transaction, any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) Any person who held an endorsement to sell under G.S. 113-154.1, and who was authorized to sell fish taken in a recreational fishing tournament, may obtain a special fisheries sale permit for a fee of one hundred dollars (\$100.00) upon application to the Division. After 1 January 2001, it shall be unlawful to sell fish taken in a recreational fishing tournament.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL, RSCFL, or shellfish license may be endorsed to authorize:

(1) The use of a vessel in a commercial fishing operation.

(2) Taking and selling menhaden.

(3) Taking and selling shellfish by a North Carolina resident.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel that is titled under Article 4 of Chapter 75A of the General Statutes has its primary situs in the State. A vessel whose documentation with the United States Coast Guard lists an address in the State for the owner of the vessel or a port in the State as the home port of the vessel has its primary situs in the State. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. It is unlawful for a North Carolina vessel to land fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. No endorsement is required, however, for a vessel of any length that does not have a

motor if the vessel is used only in connection with another vessel for which a SCFL, RSCFL, or shellfish license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The fee for a vessel endorsement is:

a. One dollar (\$1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents (\$1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars (\$3.00) per foot for a vessel over 38 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Commission and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Commission shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

1 "§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

2 A person who is not a resident of North Carolina, who is not eligible for a SCFL
3 under this Article, and who only seeks to engage in menhaden fishing shall be
4 eligible to purchase a menhaden license for nonresidents. The fee for vessels engaged
5 in menhaden fishing shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
6 measurements for the mother ship. The menhaden license shall be required for the
7 mother ship to harvest, land, or sell menhaden in North Carolina taken by purse
8 seine. No separate endorsement shall be required for a purse boat carrying a purse
9 seine. The application for a menhaden license must state the name of the person in
10 command of the vessel. Upon change in command of a menhaden vessel, the owner
11 must notify the Division within 30 days.

12 "§ 113-169.1. Other commercial licenses and permits authorized by the Commission.

13 The Commission may adopt rules to establish licenses or permits as set forth in this
14 section. Licenses or permits shall be issued upon the payment of fees as prescribed
15 by the Commission in its duly adopted rules at a rate to be established by the
16 Commission. The fee rate for licenses or permits authorized under this section shall,
17 at a minimum, be adequate to compensate the Division for the actual and
18 administrative cost associated with the conservation and management of the fishery.

19 (1) Crew licenses. -- The Commission may adopt rules to establish an
20 individual crew license for persons working on commercial vessels
21 at a rate not to exceed one hundred dollars (\$100.00) per license.

22 (2) Permits. -- The Commission may adopt rules to establish permits
23 for gear, equipment, and specialized activities at a rate not to
24 exceed fifty dollars (\$50.00) per permit. Permits may be required
25 for commercial fishing operations that do not involve the use of a
26 vessel.

27 "§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

28 (a) License or Endorsement Necessary to Harvest or Sell Shellfish. -- It is
29 unlawful for an individual to take shellfish from the public grounds of the State by
30 mechanical means or for commercial use by any means without having first procured
31 either a SCFL with a shellfish endorsement or an individual shellfish license. A
32 North Carolina resident who seeks only to harvest and sell shellfish shall be eligible
33 to purchase a shellfish license without having first obtained a SCFL. The license
34 includes the privilege to sell shellfish to a licensed fish dealer.

35 (b) Purchase; Renewal. -- A person may purchase a shellfish license at any office
36 of the Division. The shellfish license and endorsements may be renewed by mail by
37 forwarding a completed application, including applicable fees, to the Division's
38 Morehead City Office. Any person who is issued a shellfish license is eligible to
39 renew the shellfish license and any endorsements if the shellfish license has not been
40 suspended or revoked.

41 (c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of
42 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina
43 resident; Provided, that persons under 16 years of age are exempt from the license
44 requirements of this section if accompanied by a parent or guardian who is in

1 compliance with the requirements of this section or if in possession of a parent's or
2 guardian's shellfish license.

3 (d) License Available for Inspection. -- It is unlawful for any individual to take
4 shellfish for commercial use from the public grounds of the State without having
5 ready at hand for inspection a current and valid shellfish license issued to the licensee
6 personally and bearing the licensee's correct name and address. It is unlawful for any
7 individual taking or possessing freshly taken shellfish to refuse to exhibit the
8 individual's license upon the request of an officer authorized to enforce the fishing
9 laws.

10 (e) Vessel Endorsement Required. -- A license holder under this section shall be
11 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in
12 the harvest or sale of shellfish.

13 (f) Name or Address Change. -- In the event of a change in name or address or
14 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
15 for a replacement shellfish license bearing the correct name and address. Upon a
16 showing by the individual that the name or address change occurred within the past
17 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to
18 this subsection.

19 (g) Transferability Not Allowed. -- It is unlawful for an individual issued a shellfish
20 license to transfer or offer to transfer the license, either temporarily or permanently,
21 to another. It is unlawful for an individual to secure or attempt to secure a shellfish
22 license from a source not authorized by the Commission.

23 "§ 113-169.3. Licenses for fish dealers.

24 (a) Eligibility. -- A consolidated fish dealer license shall be issued to a North
25 Carolina resident upon receipt of a proper application in the Morehead City Office
26 of the Division together with all license fees including the total number of dealer
27 categories set forth in this section. The license shall be issued in the name of the
28 applicant and shall include all dealer categories on the license.

29 (b) Application for License. -- Applications shall not be accepted from persons
30 ineligible to hold a license issued by the Division, including any applicant whose
31 license is suspended or revoked on the date of the application. The applicant shall be
32 provided with a copy of the application marked received. The copy shall serve as the
33 fish dealer's license until the license issued by the Division is received, or the
34 Division determines that the applicant is ineligible to hold a license. Where an
35 applicant does not have an established location for transacting the fisheries business
36 within the State, the license application shall be denied unless the applicant satisfies
37 the Secretary that his residence, or some other office or address within the State, is a
38 suitable substitute for an established location and that records kept in connection
39 with licensing, sale, and purchase requirements will be available for inspection when
40 necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a
41 fee as set forth herein upon proof, satisfactory to the Secretary, that the license
42 applicant is a North Carolina resident.

43 (c) License Requirement. -- Except as otherwise provided in this section, it is
44 unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer.

Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish harvested or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: \$50.00;

(2) Dealing in scallops: \$50.00;

(3) Dealing in clams: \$50.00;

(4) Dealing in hard or soft crabs: \$50.00;

(5) Dealing in shrimp, including bait: \$50.00;

(6) Dealing in finfish, including bait: \$50.00;

1 (7) Operating menhaden or other fish-dehydrating or oil-extracting
2 processing plants: \$50.00; or

3 (8) Consolidated license (all categories): \$300.00.

4 Any person subject to fish dealer licensing requirements who deals in fish not
5 included in the above categories shall secure a finfish dealer license. The Commission
6 may adopt rules implementing and clarifying the dealer categories of this subsection.
7 Bait operations shall be licensed under either the finfish or shrimp dealer license
8 categories.

9 (g) License Format. -- The format of the license shall include the name of the
10 licensee, date of birth, name and physical address of each business location,
11 expiration date of the license, and any other information the Division deems
12 necessary to accomplish the purposes of this Subchapter.

13 (h) Application for Replacement License. -- A replacement license shall only be
14 obtained from an office of the Division. The Division shall not accept an application
15 for a replacement license unless the Division determines that the applicant's current
16 license has not been suspended or revoked. A copy of an application duly filed with
17 the Division shall serve as the license until the replacement license has been received.

18 (i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless
19 the seller possesses a current and valid SCFL, RSCFL, shellfish license, or menhaden
20 license for nonresidents, and the dealer records the transaction consistent with the
21 record-keeping requirements of G.S. 113-168.2(i). It is unlawful for a fish dealer to
22 possess or sell fish taken from coastal fishing waters in violation of this Subchapter or
23 the rules adopted by the Commission implementing this Subchapter.

24 (j) License Nontransferable. -- Any fish dealer license issued under this section is
25 nontransferable. It is unlawful to use a fish dealer license issued to another person in
26 the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer
27 license for the purpose of circumventing the requirements of this section.

28 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

29 (a) Every manager of an ocean fishing pier within the coastal fishing waters who
30 charges the public a fee to fish in any manner from the pier shall secure a current
31 and valid pier license from the Division. An application for a pier license shall
32 disclose the names of all parties involved in the pier operations, including the owner
33 of the property, owner of the pier if different, and all leasehold or other corporate
34 arrangements, and all persons with a substantial financial interest.

35 (b) Within 30 days following a change of ownership of a pier, or a change as to
36 the manager, the manager or new manager shall secure a replacement pier license
37 from the Division. The replacement license is issued without charge.

38 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to
39 the nearest foot, that the pier extends into coastal fishing waters beyond the mean
40 high tide line. The length of the pier shall be measured to include all extensions of
41 the pier.

42 (d) The manager who secures the pier license shall be the individual with the duty
43 of executive-level supervision of pier operations.

44 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel owned by a person who is not a North Carolina resident is two hundred dollars (\$200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"§ 113-170.1. Nonresidents reciprocal agreements.

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"§ 113-170.2. Fraud or deception as to licenses, permits, or records.

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

"§ 113-170.3. Record-keeping requirements.

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and

1 accounts as may be necessary to the equitable and efficient administration and
2 enforcement of this Article. In addition, licensees may be required to keep additional
3 information of a statistical nature or relating to location of catch as may be needed to
4 determine conservation policy. Records and accounts required to be kept must be
5 preserved for inspection for not less than three years.

6 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
7 to keep records and accounts as may be reasonably required. The Department may
8 distribute forms to licensees to aid in securing compliance with its requirements, or it
9 may inform licensees of requirements in other effective ways such as distributing
10 memoranda and sending agents of the Department to consult with licensees who have
11 been remiss. Detailed forms or descriptions of records, accounts, collection and
12 inspection procedures, and the like that reasonably implement the objectives of this
13 Article need not be embodied in rules of the Commission in order to be validly
14 required.

15 (c) The following records collected and compiled by the Department shall not be
16 considered public records within the meaning of Chapter 132 of the General Statutes,
17 but shall be confidential and shall be used only for the equitable and efficient
18 administration and enforcement of this Article or for determining conservation
19 policy, and shall not be disclosed except when required by the order of a court of
20 competent jurisdiction: all records, accounts, and reports that licensees are required
21 by the Commission to make, keep, and exhibit pursuant to the provisions of this
22 section, and all records, accounts, and memoranda compiled by the Department from
23 records, accounts, and reports of licensees and from investigations and inspections,
24 containing data and information concerning the business and operations of licensees
25 reflecting their assets, liabilities, inventories, revenues, and profits; the number,
26 capacity, capability, and type of fishing vessels owned and operated; the type and
27 quantity of fishing gear used; the catch of fish or other seafood by species in numbers,
28 size, weight, quality, and value; the areas in which fishing was engaged in; the
29 location of catch; the time of fishing, number of hauls, and the disposition of the fish
30 and other seafood. The Department may compile statistical information in any
31 aggregate or summary form that does not directly or indirectly disclose the identity of
32 any licensee who is a source of the information, and any compilation of statistical
33 information by the Department shall be a public record open to inspection and
34 examination by any person, and may be disseminated to the public by the
35 Department.

36 **"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
37 **resources.**

38 The Commission may adopt rules governing possession, transportation, and
39 disposition of fisheries resources by all persons, including those not subject to fish
40 dealer licensing requirements, in order that inspectors may adequately distinguish
41 regulated coastal fisheries resources from those not so regulated and enforce the
42 provisions of this Article equitably and efficiently. These rules may include
43 requirements as to giving notice, filing declarations, securing permits, marking
44 packages, and the like.

1 "§ 113-170.5. Violations with respect to coastal fisheries resources.

2 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
3 coastal fisheries resources without conforming with the provisions of this Article or of
4 rules adopted under the authority of this Article.

5 "§ 113-171. Suspension, revocation, and reissuance of licenses.

6 (a) Upon receipt of reliable notice that a person licensed under this Article has
7 had imposed against the person a conviction of a criminal offense within the
8 jurisdiction of the Department under the provisions of this Subchapter or of rules of
9 the Commission adopted under the authority of this Subchapter, the Secretary must
10 suspend or revoke all licenses held by the person in accordance with the terms of this
11 section. Reliable notice includes information furnished the Secretary in prosecution
12 or other reports from inspectors. As used in this section, a conviction includes a plea
13 of guilty or nolo contendere, any other termination of a criminal prosecution
14 unfavorably to the defendant after jeopardy has attached, or any substitute for
15 criminal prosecution whereby the defendant expressly or impliedly confesses the
16 defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in
17 lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or
18 prayer for judgment continued are deemed convictions. The Secretary may act to
19 suspend or revoke licenses upon the basis of any conviction in which:

20 (1) No notice of appeal has been given;

21 (2) The time for appeal has expired without an appeal having been
22 perfected; or

23 (3) The conviction is sustained on appeal. Where there is a new trial,
24 finality of any subsequent conviction will be determined in the
25 manner set out above.

26 (b) The Secretary must initiate an administrative procedure designed to give the
27 Secretary systematic notice of all convictions of criminal offenses by licensees
28 covered by subsection (a) of this section above and keep a file of all convictions
29 reported. Upon receipt of notice of conviction, the Secretary must determine whether
30 it is a first, a second, a third, or a fourth or subsequent conviction of some offense
31 covered by subsection (a). In the case of second convictions, the Secretary must
32 suspend all licenses issued to the licensee for a period of 10 days. In the case of third
33 convictions, the Secretary must suspend all licenses issued to the licensee for a period
34 of 30 days. In the case of fourth or subsequent convictions, the Secretary must
35 revoke all licenses issued to the licensee. Where several convictions result from a
36 single transaction or occurrence, they are to be treated as a single conviction so far as
37 suspension or revocation of the licenses of any licensee is concerned. Anyone
38 convicted of taking or of knowingly possessing, transporting, buying, selling, or
39 offering to buy or sell oysters or clams from areas closed because of suspected
40 pollution will be deemed by the Secretary to have been convicted of two separate
41 offenses on different occasions for license suspension or revocation purposes.

42 (c) Where a license has been suspended or revoked, the former licensee is not
43 eligible to apply for reissuance of license or for any additional license authorized in
44 this Article during the suspension or revocation period. Licenses must be returned to

1 the licensee by the Secretary or the Secretary's agents at the end of a period of
2 suspension. Where there has been a revocation, application for reissuance of license
3 or for an additional license may not be made until six months following the date of
4 revocation. In such case of revocation, the eligible former licensee must satisfy the
5 Secretary that the licensee will strive in the future to conduct the operations for
6 which the license is sought in accord with all applicable laws and rules. Upon the
7 application of an eligible former licensee after revocation, the Secretary, in the
8 Secretary's discretion, may issue one license sought but not another, as deemed
9 necessary to prevent the hazard of recurring violations of the law.

10 (d) Upon receiving reliable information of a licensee's conviction of a second or
11 subsequent criminal offense covered by subsection (a) of this section, the Secretary
12 shall promptly cause the licensee to be personally served with written notice of
13 suspension or revocation, as the case may be. The written notice may be served upon
14 any responsible individual affiliated with the corporation, partnership, or association
15 where the licensee is not an individual. The notice of suspension or revocation may
16 be served by an inspector or other agent of the Department, must state the ground
17 upon which it is based, and takes effect immediately upon personal service. The
18 agent of the Secretary making service shall then or subsequently, as may be feasible
19 under the circumstances, collect all license certificates and plates and other forms or
20 records relating to the license as directed by the Secretary. It is unlawful for any
21 licensee willfully to evade the personal service prescribed in this subsection.

22 (e) A licensee served with a notice of suspension or revocation may obtain an
23 administrative review of the suspension or revocation by filing a petition for a
24 contested case under G.S. 150B-23 within 20 days after receiving the notice. The
25 only issue in the hearing shall be whether the licensee was convicted of a criminal
26 offense for which a license must be suspended or revoked. A license remains
27 suspended or revoked pending the final decision by the Secretary.

28 (f) If the Secretary refuses to reissue the license of or issue an additional license to
29 an applicant whose license was revoked, the applicant may contest the decision by
30 filing a petition for a contested case under G.S. 150B-23 within 20 days after the
31 Secretary makes the decision. The Commission shall make the final agency decision
32 in a contested case under this subsection. An applicant whose license is denied
33 under this subsection may not reapply for the same license for at least six months.

34 (g) The Commission may adopt rules to provide for the disclosure of the identity
35 of any individual or individuals in responsible positions of control respecting
36 operations of any licensee that is not an individual. For the purposes of this section,
37 individuals in responsible positions of control are deemed to be individual licensees
38 and subject to suspension and revocation requirements in regard to any applications
39 for license they may make -- either as individuals or as persons in responsible
40 positions of control in any corporation, partnership, or association. In the case of
41 individual licensees, the individual applying for a license or licensed under this
42 Article must be the real party in interest.

43 (h) In determining whether a conviction is a second or subsequent offense under
44 the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Commission. The fee for a license for a spotter plane is one hundred dollars (\$100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue all licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license

1 agent and may impound or require the return of all licenses, moneys, record books,
2 reports, license forms and other documents, ledgers, and materials pertinent or
3 apparently pertinent to the license agency. The Secretary shall report evidence or
4 misuse of State property, including license fees, by a license agent to the State Bureau
5 of Investigation as provided by G.S. 114-15.1.

6 (b) License agents shall be compensated by adding a surcharge of one dollar
7 (\$1.00) to each license sold and retaining the surcharge. If more than one license is
8 listed on a consolidated license form, the license agent shall be compensated as if a
9 single license were sold. It is unlawful for a license agent to add more than the
10 surcharge authorized by this section to the fee for each license sold.

11 **"§ 113-173. Recreational Commercial Gear License.**

12 (a) Eligibility. -- It is unlawful for any person to take or attempt to take fish for
13 recreational purposes by means of commercial gear in the coastal fishing waters of
14 the State without having first procured a current and valid RCGL. The RCGL
15 entitles the licensee to use authorized commercial gear to harvest fish for personal
16 use subject to recreational quotas or limits. A RCGL shall be issued to an individual
17 in the individual's true name and shall bear the individual's current address.

18 (b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL to sell fish
19 taken under the RCGL.

20 (c) Authorized Commercial Gear. -- The Commission shall adopt rules
21 authorizing the use of a limited amount of commercial gear for recreational fishing
22 under a RCGL. In authorizing the limited use of commercial gear, the Commission
23 may provide for different authorizations based on coastal regions. The Commission
24 shall periodically evaluate and revise the authorized use of commercial gear for
25 recreational fishing. Authorized commercial gear shall be identified by visible
26 colored tags or other means specified by the Commission in order to distinguish
27 between commercial gear used in a commercial operation and commercial gear used
28 for recreational purposes.

29 (d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the
30 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
31 renewed by mail.

32 (e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar
33 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
34 unexpired RCGL that has been lost or destroyed.

35 (f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the
36 date of purchase. The fee for a RCGL for a North Carolina resident shall be
37 twenty-five dollars (\$25.00). The fee for a RCGL for an individual who is not a
38 North Carolina resident shall be two hundred fifty dollars (\$250.00).

39 (g) RCGL and Vessel Endorsement Available for Inspection. -- It is unlawful for
40 any person to engage in recreational fishing by means of restricted commercial gear
41 in the State without having ready at hand for inspection a valid RCGL and, if using a
42 vessel, a vessel endorsement. A holder of a RCGL shall not refuse to exhibit the
43 RCGL and endorsement upon the request of an inspector or any other law

1 enforcement officer authorized to enforce federal or State laws, regulations, or rules
2 relating to marine fisheries.

3 (h) Vessel Endorsement Required. -- Any holder of a RCGL who uses a vessel to
4 harvest fish shall be required to purchase a vessel endorsement under G.S. 113-168.5
5 in addition to the RCGL.

6 (i) Assignability and Transferability Prohibited. -- A RCGL is not transferable. It
7 is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to
8 attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

9 (j) Reporting Requirements. -- The holder of a RCGL shall comply with the
10 biological data sampling and survey programs of the Commission and the Division."

11 Section 5.2. (a) The definitions set out in G.S. 113-168 apply to this
12 section. A citation to a provision of the General Statutes in this section means that
13 provision of the General Statutes as enacted by this act.

14 (b) In order to effect an orderly implementation of this act and the
15 transition from the moratorium imposed by subsection (a) of Section 3 of Chapter
16 675 of the 1993 Session Laws (1994 Regular Session), as amended by subsection (a)
17 of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 6.1 of this act,
18 to the licensing provisions of Article 14A of Chapter 113 of the General Statutes, the
19 provisions of this section shall apply to the issuance of licenses under Article 14A of
20 Chapter 113 of the General Statutes until all Fishery Management Plans have been
21 adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

22 (c) There is hereby imposed a temporary cap on the total number of
23 SCFLs that the Commission may issue. The temporary cap equals the total number
24 of endorsements to sell fish that establish eligibility for a SCFL under subsection (g)
25 of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

26 (d) For the 1998-99 license year, the Commission is authorized to issue
27 SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs as
28 provided in subsection (h) of this section.

29 (e) For license years beginning with the 1999-2000 license year, the
30 Commission is authorized to issue SCFLs from the pool of available SCFLs as
31 provided in subsection (h) of this section.

32 (f) The number of SCFLs in the pool of available SCFLs in license years
33 beginning with the 1999-2000 license year is the temporary cap less the number of
34 SCFLs that are renewed. The Commission may increase or decrease the number of
35 SCFLs that are issued from the pool of available SCFLs. The Commission may
36 increase the number of SCFLs that are issued from the pool of available SCFLs up to
37 the temporary cap. The Commission may decrease the number of SCFLs that are
38 issued from the pool of available SCFLs but may not refuse to renew a SCFL that is
39 issued during the previous license year and that has not been suspended or revoked.
40 The Commission shall increase or decrease the number of SCFLs that are issued to
41 reflect its determination as to the effort that the fishery can support, based on the best
42 available scientific evidence.

43 (g) Any person who held a valid endorsement to sell fish prior to 1 July
44 1998 is eligible to receive a SCFL. Any person who filed a petition with the Appeals

1 Panel under 15A NCAC 3O.0303 for an endorsement to sell fish and whose petition
2 was denied by the Appeals Panel prior to 1 May 1997 is eligible to receive a SCFL.
3 The Commission shall issue a SCFL to any person who is eligible under this
4 subsection upon receipt of an application and required fees. If the person held more
5 than one endorsement to sell fish, the person is eligible to receive a SCFL for each
6 endorsement to sell previously held. Eligibility to receive a SCFL under this
7 subsection shall expire 1 July 1999.

8 (h) The Commission shall determine a procedure for issuing the 500
9 additional SCFLs authorized by subsection (d) of this section for the 1998-99 license
10 year and for issuing SCFLs from the pool of available SCFLs authorized by
11 subsection (e) of this section. The procedure shall set a date on which the
12 Commission will begin receiving applications and a date on which the determination
13 by lot of which applicants will receive a SCFL will be made. The Commission shall
14 develop criteria for determining eligibility for a SCFL under this subsection. Criteria
15 shall include the past involvement of the applicant and the applicant's family in
16 commercial fishing; the extent to which the applicant has relied on commercial
17 fishing for the applicant's livelihood; the extent to which the applicant has complied
18 with federal and State laws, regulations, and rules relating to coastal fishing and
19 protection of the environment; and any other factors the Commission determines to
20 be relevant. The Commission shall review each application for a SCFL that it
21 receives during the application period to determine whether the applicant is eligible
22 under the eligibility criteria established by the Commission. The Commission shall
23 issue SCFLs under this subsection by lot. All applicants who are determined to be
24 eligible shall have an equal chance of being issued a SCFL.

25 Section 5.3. The Marine Fisheries Commission shall adopt rules
26 authorizing the use of a limited amount commercial gear for recreational fishing
27 under a Recreational Commercial Gear License, as required by G.S. 113-173, as
28 enacted by Section 5.1 of this act, on or before 1 August 1999. Until the Marine
29 Fisheries Commission has adopted rules as required by this section, the holder of a
30 Recreational Commercial Gear License may use only the following specific types and
31 amounts of commercial gear:

- 32 (1) One hundred yards of gill net.
- 33 (2) Five crab or fish pots.
- 34 (3) A single trawl employing a headrope not to exceed 25 feet in
35 length.

36 Section 5.4. G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A
37 of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act. All
38 other sections of Article 14 of Chapter 113 of the General Statutes are repealed.

39 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
40 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
41 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of
42 this act, no later than 1 January 1999.

43 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S.
44 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take

1 crabs from the coastal fishing waters of the State for commercial use without having
2 first obtained an individual crab license under G.S. 113-168.9.

3 Section 5.7. G.S. 113-153.1, recodified as G.S. 113-168.9 by Section 5.4
4 of this act, is repealed.

5 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as
6 a note to G.S. 113-168.2, as enacted by Section 5.1 of this act. The Revisor of
7 Statutes shall set out Section 5.3 of this act as a note to G.S. 113-173, as enacted by
8 Section 5.1 of this act.

9
10 **PART VI. APPROPRIATIONS**

11
12 Section 6.1. There is appropriated from the General Fund to the Office
13 of the State Auditor the sum of twenty-five thousand dollars (\$25,000) for the 1997-98
14 fiscal year to be used for expenses incurred in connection with a performance audit
15 of the Division of Marine Fisheries of the Department of Environment, Health, and
16 Natural Resources. Notwithstanding the provisions of Article 3C of Chapter 143 of
17 the General Statutes, the Office of the State Auditor may hire consultants to assist in
18 conducting the work required by this section. If, in conducting the audit required by
19 this section, the Office of the State Auditor incurs expenses prior to 1 July 1997, the
20 Office of the State Auditor may pay or reimburse those expenses from funds
21 appropriated by this section. The performance audit report shall be delivered to the
22 Joint Legislative Commission on Seafood and Aquaculture no later than 1 March
23 1998.

24 Section 6.2. There is appropriated to the Department of Environment,
25 Health, and Natural Resources the sum of two hundred ninety-four thousand eight
26 hundred forty-six dollars (\$294,846) for the 1997-98 fiscal year and the sum of two
27 hundred seventy-seven thousand three hundred forty-six dollars (\$277,346) for the
28 1998-99 fiscal year to establish five positions and for administrative and other costs
29 associated with development of Coastal Habitat Protection Plans.

30 Section 6.3. There is appropriated to the Department of Environment,
31 Health, and Natural Resources the sum of one million two hundred fifteen thousand
32 four hundred sixty-seven dollars (\$1,215,467) for the 1997-98 fiscal year and the sum
33 of one million twenty-five thousand ninety-nine dollars (\$1,025,099) for the 1998-99
34 fiscal year to establish 16 positions and for administrative and other costs associated
35 with development of Fishery Management Plans.

36 Section 6.4. There is appropriated to the Department of Environment,
37 Health, and Natural Resources the sum of two hundred sixty-four thousand five
38 hundred sixty-three dollars (\$264,563) for the 1997-98 fiscal year and the sum of two
39 hundred forty-seven thousand five hundred sixty-three dollars (\$247,563) for the
40 1998-99 fiscal year for administrative and other expenses of the Marine Fisheries
41 Commission and its advisory committees and to establish two positions to support the
42 Marine Fisheries Commission.

43 Section 6.5. There is appropriated from the General Fund to the
44 Department of Environment, Health, and Natural Resources the sum of forty-six

1 thousand eighty dollars (\$46,080) for each year of the 1997-99 biennium to support
2 the activities of the Fishery Management Plan Advisory Councils.

3 Section 6.6. There is appropriated from the General Fund to the
4 Department of Environment, Health, and Natural Resources the sum of sixty-seven
5 thousand dollars (\$67,000) for the 1997-98 fiscal year and the sum of sixty-seven
6 thousand dollars (\$67,000) for the 1998-99 fiscal year to be transferred to the
7 Department of Justice to establish a position for an attorney to be assigned to the
8 Department of Environment, Health, and Natural Resources. The attorney's duties
9 shall include advising departmental law enforcement personnel on matters related to
10 the enforcement and administration of criminal laws; assisting in the training of
11 departmental law enforcement officers; acting as a liaison between departmental law
12 enforcement officers and the State judicial system; and assisting in the prosecution of
13 environmental, criminal enforcement cases when requested to do so by the district
14 attorney of a local judicial district.

15 Section 6.7. There is appropriated from the General Fund to the
16 Department of Environment, Health, and Natural Resources the sum of one hundred
17 sixteen thousand five hundred twenty dollars (\$116,520) for the 1997-98 fiscal year
18 and the sum of sixteen thousand five hundred twenty dollars (\$16,520) for the
19 1998-99 fiscal year for constructing, equipping, and maintaining an oceangoing patrol
20 vessel for use by the Division of Marine Fisheries in the Department of Environment,
21 Health, and Natural Resources.

22
23 **PART VII. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;**
24 **EFFECTIVE DATES**

25
26 Section 7.1. Subsection (a) of Section 3 of Chapter 675 of the 1993
27 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of
28 Chapter 507 of the 1995 Session Laws, reads as rewritten:

29 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
30 Department shall not issue any new licenses for a period beginning 1 July 1, 1994,
31 1994 and ending June 30, 1997, 1 July 1998 under the following statutes:

- 32 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
33 equipment, and operations; fees.
34 (2) G.S. 113-153.1. ~~Crab license.~~ License.
35 (3) G.S. 113-154. ~~Shellfish license license.~~
36 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement
37 to sell fish."

38 Section 7.2. Subsection (a) of Section 3 of Chapter 675 of the 1993
39 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of
40 Chapter 507 of the 1995 Session Laws and Section 6.1 of this act, reads as rewritten:

41 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
42 Department shall not issue any new licenses for a period beginning 1 July 1994 and
43 ending 1 July 1998 1999 under ~~the following statutes:~~

(1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

(2) G.S. 113-153.1. Crab license.

(3) ~~G.S. 113-154. Shellfish license.~~

(4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

Section 7.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"§ ~~143B-289.19. 143B-289.40. Office of Marine Affairs -- creation.~~

~~There~~ **The Office of Marine Affairs** is created in the Department of ~~Administration~~ **Environment, Health, and Natural Resources.**"

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22. 143B-289.42.~~"

Section 7.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 7.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S.

1 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member
2 is appointed and duly qualified and shall expire on 30 June 1999.

3 Section 7.6. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the
4 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

5 Section 7.7. All of the Coastal Habitat Protection Plans required by G.S.
6 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
7 2002. The Coastal Resources Commission, the Environmental Management
8 Commission, and the Marine Fisheries Commission shall make the first report on
9 progress in developing and implementing Coastal Habitat Protection Plans, as
10 required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1
11 September 1998. The Secretary of Environment, Health, and Natural Resources shall
12 make the first report on progress in developing and implementing Fishery
13 Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this
14 act, on or before 1 September 1998.

15 Section 7.8. The Joint Legislative Commission on Seafood and
16 Aquaculture shall study the establishment of a comprehensive State program to
17 acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The
18 Joint Legislative Commission on Seafood and Aquaculture shall report its findings
19 and recommendations, if any, to the 1998 Regular Session of the 1997 General
20 Assembly.

21 Section 7.9. This act constitutes a recent act of the General Assembly
22 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
23 authorized to adopt rules to implement the provisions of this act may adopt
24 temporary rules to implement the provisions of this act. This section shall continue
25 in effect until all rules necessary to implement the provisions of this act have become
26 effective as either temporary rules or permanent rules.

27 Section 7.10. The headings to the Parts of this act are a convenience to
28 the reader and are for reference only. The headings do not expand, limit, or define
29 the text of this act.

30 Section 7.11. If any section or provision of this act is declared
31 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
32 provision does not affect the validity of this act as a whole or any part of this act
33 other than the part declared to be unconstitutional or invalid.

34 Section 7.12. Sections 1.1, 5.8, 7.6, 7.8, 7.9, 7.10, 7.11, and 7.12 of this act
35 are effective when this act becomes law. Sections 2.1, 3.1, 3.2, 3.3, 3.4, 4.5, 7.3, 7.4,
36 7.5, and 7.7 become effective 1 September 1997. Sections 4.1 through 4.4 become
37 effective 1 September 1997 and apply to violations and offenses on or after 1
38 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997.
39 Section 7.1 of this act becomes effective 30 June 1997. Sections 5.1 through 5.7,
40 Sections 6.1 through 6.7, and Section 7.2 of this act become effective 1 July 1998.
41 Sections 5.1, 5.2, 5.3, and 5.6 expire 1 September 2002.



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April 23, 1997

MEMORANDUM

To: House Committee on Environment

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **HB 1097 - Fisheries Reform Act-2**

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by March 1, 1998

Effective Date: *Audit is effective retroactively to March 1, 1997*

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 7.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
 - two persons actively engaged in, or recently retired from, commercial fishing;
 - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
 - two persons actively engaged in recreational sports fishing;
 - one person actively engaged in the sports fishing industry;
 - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
 - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 3 standing advisory committees (Habitat/Water Quality, Fisheries Assessment, Fisheries Resources/Users) and 3 regional advisory committees representing the different coastal regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. The CHPPs shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats.

Sections 2.1, 3.2, and 3.3 direct the MFC, Environmental Management Commission (EMC), and the Coastal Resources Commission (CRC) to jointly review, revise, and adopt the CHPPs.

Section 3.1 provides that the final CHPPs must consist of the provisions concurrently agreed upon by the MFC, EMC, and CRC, and that the CHPPs must be reviewed and revised at least every five years. This section also provides that the MFC, along with the EMC, and the CRC, must, to the maximum extent practicable, ensure that their actions are consistent with CHPPs and must report annually to Seafood and Aquaculture on progress and implementation of CHPPs.

Sections 7.7 requires that the CHPPs must be adopted by July 1, 2002.

Effective Date: Sept. 1, 1997.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC, and FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs and recommend management actions. This section also provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to Seafood and Aquaculture on this progress.

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: Sept. 1, 1997.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S. 113-136(d1) to expand the jurisdiction of marine patrol inspectors to that of Wildlife Resources Commission protectors.

Section 4.2 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.3 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to \$10,000 for illegal sale or purchase of fish.

Section 4.4 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.5 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: \$250 for residents; \$2,500 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;

- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's immediate family; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC;
- Permanent Appeals Panel established to review denials of license applications; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of \$100;
- Shellfish license for NC residents not holding a SCFL available for \$25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who held an endorsement to sell or whose petition was denied by the Appeals Panel;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell and Appeals Panel denials that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1998-99 license year, the MFC is authorized to:
 - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1998;
 - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
 - distribute an additional 500 SCFLs by lot.

For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1998.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: \$25 for residents; \$250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by August 1, 1999. This Section also provides that, until those rules are adopted, the holder of a Recreational Commercial Gear License may use only (i) 100 yards of gill net; (ii) 5 crab pots; and (iii) a single trawl employing a headrope not to exceed 25 feet in length.

Effective Date: July 1, 1998

Sections 5.4, 5.5, 5.6, 5.7 and 7.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 1999;
- Directing the MFC to adopt a blue crab FMP by January 1, 1999; and
- Providing that only those persons currently holding crab licenses may take crabs.

PART VI. APPROPRIATIONS

Sections 6.1 - 6.7 provide for the following appropriations:

Section	Description	Positions	1997-98	1998-99
Section 6.1	Audit	0	\$25,000	0
Section 6.2	Coastal Habitat Protection Plans	5	\$294,846	\$277,346
Section 6.3	Fishery Management Plans	16	\$1,215,467	\$1,025,099
Section 6.4	Marine Fisheries Commission	2	\$264,563	\$247,563
Section 6.5	FMP Advisory Councils	0	\$46,080	\$46,080
Section 6.6	Environmental Attorney (AG's Office)	1	\$67,000	\$67,000
Section 6.7	Oceangoing patrol vessel	0	\$116,520	\$16,520
Total		24	\$2,029,476	\$1,679,608

PART VII. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 7.1 extends moratorium on issuance of licenses from June 30, 1997, to July 1, 1998; effective June 30, 1997.

Section 7.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 7.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 7.5 establishes staggered terms for members of the MFC.

Section 7.6 recodifies G.S. 113-190 to G.S. 113-200.

Section 7.8 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 7.9 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 7.11 Severability Clause.

Section 7.12 Effective Dates.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

~~The following report(s) from standing committee(s) is/are presented:~~

~~By Representative(s) Eddins, Hill, Watson for the Committee on Environment.~~

☐ Committee Substitute for

H.B. 1097 A BILL TO BE ENTITLED AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☐ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), and recommendation that the committee substitute bill ~~#~~ be re-referred to the Committee on *Judiciary I.*

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

(over)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON ENVIRONMENT Wed. April 23, , 1997

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
John Cyrus	N.C. State Grange
John Daniel	NCDFA
DG	NCFB
AB Smeed	BFT
Mark Munnick	Payson & Spence
Natalie Haskins	Charlotte Chamber of Commerce
Nancy Bradley	NCCB
Michelle Cook	Wynhamer
Gene Upchurch	CP+L
Don Saffrit	DEHAR - DWQ
Alan Todd	DEHAR - DWQ
Ed Scott	NCCB
Mike Conner	NCHSA
Paul Wilm	NCHSA
Jim Blackburn	Co. Commrs Assoc.
L. LOCKE	FANR
Bruce Hain	Carroll County Club
Twila Nelson	MFC
Damon Tatem	MSC
Molly Digging	NC Sierra Club
Tom Bean	NC Wildlife Federation
Patty Berry	CCNC
Dick Brame	CCA-NC
Paul Duncan	CCA-NC
Lawrence Davis	CCA-NC
Sandy Saff	WCSR
Anna Tefft	OSBM
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON ENVIRONMENT Wed. April 23, , 1997

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Gandy Lomax	N.C.L.M.
Gary Harris	NCPMA
Doug Howey	NCPMA
Joe Hardie	Black & Veatch
Lloyd Watkins	CCA - NC
Daryl M. Rade	NCEOF
TANJA VUTIC	NCEDF
Joe Rudek	NCEDF
Charles Case	Hunter + Williams
Richard Whitson	DEHNR
James Hartwell	MALC
Mon. Smith	Ruth R. Smith & Son 1734
Ed Brown	Com. Medical Fisheries Highport P.O. Box 2765
James L. Lee	IP
MURRAY FULCHER	MSC
Dan Whitte	EHNR
Loft Bissard	N.C. Senate Staff
Pete Rindbach	Marine Patrol
JERRY SCHILL	NC Fisheries Assoc.
JERRY HANDESH	NC Park Council
Michael W. Street	N.C. Div. Marine Fisheries
Jim N. Hawkins	NC Marine Fisheries
Michael G. Bohl	NC MARINE FISHERIES
Susan West	Marathon Steaming Committee
Terry Pratt	1435 NC 45 N Merry Hill, N.C. 27957
Lee Wynns	PO Box 6 Colerain, NC 27924 Herring Processor
Sherri Evans-Stanton	DEHNR
BOB LUCAS	Mont. Steaming Com. : Chair of MFC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON ENVIRONMENT Wed. April 23, , 1997

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

MINUTES

HOUSE COMMITTEE ON ENVIRONMENT

WEDNESDAY, APRIL 23, 1997

CALL MEETING
AFTER SESSION
HOUSE CHAMBERS
Representatives Eddins Desk

The House Committee on Environment met at a called meeting on Wednesday, April 23, 1997 in the House Chambers immediately after session at the Desk of Representative Rick Eddins. A silent roll was taken (roll list denotes members present). Chairman Rick Eddins called the meeting to order.

HB-1032 - AUTHORIZE LANDFILL LINER

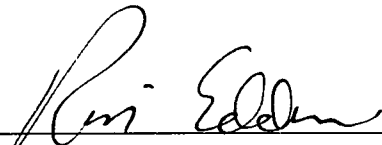
Representative Allred was recognized to explain his bill.


Chairman Eddins called up a proposed committee substitute to HB-1032 for discussion.

After discussion by various committee members, Representative Mitchell made a motion for a favorable report for the Environment committee substitute of HB 1032 unfavorable to the original bill.

A voice vote was taken and the Mitchell motion passed.

The meeting adjourned.


Rep. Eddins
Presiding Chair


Ebern Watson
Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1032

Committee Substitute Favorable 4/24/97

Senate Agriculture, Environment, and Natural Resources Committee Substitute
Adopted 6/26/97

Short Title: Authorize Alternate Landfill Liners.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO
3 ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR
4 MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH
5 FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL
6 LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY
7 AUTHORIZED LANDFILL LINER.

8 The General Assembly of North Carolina enacts:

9 Section 1. The Commission for Health Services shall adopt a rule
10 regarding design criteria for municipal solid waste landfills that complies with 40
11 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfill liners
12 that are at least as protective as the liner currently authorized under the rules of the
13 Commission for Health Services.

14 Section 2. This act constitutes a recent act of the General Assembly
15 within the meaning of G.S. 150B-21.1. The Commission for Health Services shall
16 adopt the rule required by Section 1 of this act as a temporary rule no later than 1
17 July 1998.

18 Section 3. This act is effective when it becomes law.

72

~~1997 COMMITTEE REPORT~~
~~HOUSE OF REPRESENTATIVES~~

~~The following report(s) from standing committee(s) is/are presented:~~

By Representative(s) Eddins, Hill and Watson for the Committee on **ENVIRONMENT**.

- ☐ Committee Substitute for *Co-Chair,*
H.B. 1032 A BILL TO BE ENTITLED AN ACT TO DIRECT THE ADOPTION OF
RULES THAT AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL
SANITARY LANDFILLS THAT PROVIDE FOR AN EQUALLY PROTECTIVE
LANDFILL LINER.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable
as to original bill.
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

(over)

ENVIRONMENT COMMITTEE MINUTES
SUB-COMMITTEE
April 29, 1997

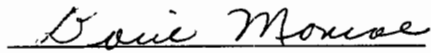
The Committee met at a special meeting, called by Representative Hill. Representative Rick Eddins, Co-Chair, called the meeting to order to discuss HB 302 AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES WHERE AN OUTBREAK OF CERTAIN WILDLIFE IN COUNTIES WHERE AN OUTBREAK OF RABIES HAD OCCURRED.

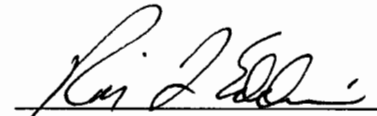
The Bill was discussed at the regular meeting of the Environment Committee, that date, and a sub-committee was appointed to consider a Proposed Committee Substitute for the bill.

Representative Hunter explained the bill and reviewed the Committee Substitute. He discussed two different parts of the bill in question.

Co-counsel, George Givens, commented on the bill, stating there were other problems in the bill, relating to the rules and he was instructed to submit a Committee Substitute at the next meeting of the Committee, to be held on Wednesday, April 30, 1997.

The substitute was adopted for consideration.


Dorie Monroe, Committee Clerk


Rick Eddins, Co-Chairman

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
April 30, 1997

The Committee on Environment met in Room 643 of the Legislative Office Building on April 30, 1997, at 12:00 Noon. Representative Rick Eddins presided at the meeting and welcomed the pages, Melissa Faulkner, Jamie Howard and Adam Lloyd from Franklin County.

The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, John Brown, Rep. Nelson Cole, Rep. Arlie Culp, John Gamble, Rep. Charlotte Gardner, Jim Gulley, Rep. Joe Hackney, Rep. Bobby Hall, Rep. Foyle Hightower, Rep. Ted Kinney, Rep. Frank Mitchell, Rep. Chuck Neely, , Rep. Jean Preston, Rep. Alex Warner, Rep. Nurham Warwick, Rep John Weatherly and Rep. Douglas Yongue.

There were forty-three visitors present.

Representative Eddins called upon Representative Hunter to speak on HB 302 - **AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES WHERE AN OUTBREAK OF RABIES HAS OCCURRED.**

As a result of an ad hoc sub-committee meeting on April 29, a proposed Committee Substitute bill was presented. The substitute amended the bill in Section 1. G.S. 113-291.2 (Attachment I).

There were several questions from representatives regarding the rabies question, and raccoons. Representative Hunter explained that the increase in rabies would not take place and something will have to be done because the problem is almost in epidemic proportions. It is hoped this bill would help.

Representative Hall commented on the seriousness of the rabies problem in his territory, and he moved for a favorable report on the bill at the appropriate time.

Representative Hightower asked if the Chairman of the Wildlife Commission, Charles Ford could speak. Mr. Ford, Director of the Wildlife Commission had briefly reviewed the committee substitute contents with Dr. Levine, and it was agreed the bill was fine in its present form and he endorsed the Committee Substitute.

It was agreed that the local health director, in whose county or district rabies is found in any wild animal except bats may petition Wildlife Resources Commissioner for suspension or liberalization of restrictions on taking foxes, raccoons, skunks, or bobcats

in that county or district. State Health Director may investigate and may concur in petition only if he or she finds that rabies emergency exists. If State Health Director concurs, Wildlife Resources Commission Director must develop plan to reduce threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in affected area. Plan must be based on best veterinary techniques available, and may involve a suspension or liberalization of restrictions on taking foxes, raccoons, skunks or bobcats, but no use of poisons may be permitted. If Director decides on plan of suspension or liberalization of restrictions on taking foxes, raccoons, or bobcats, he or she must issue temporary rule, which expires when State Health Director determines that the rabies emergency no longer exists.

Representative Weatherly commented that we certainly need the bill.

Representative Gamble asked how the bill compares with similar problems in other states. The bill sponsor did not know what the problem is in other states but that it certainly exists here. He commented that the movement of the rabies epidemic came from South Carolina, up.

Dr. Levine is not aware of any other states that have approached the problem.

Representative Hightower asked Dr. Levine if he had the authority to go into an area with an epidemic and set up a clinic, on a mass scale. Dr. Levine replied that he has been doing that since the epidemic started and has increased the frequency of the low-cost clinics in order to have a barrier that the domestic animals are immunized. There is a special low fee in these clinics. The cost is minimum.

Representative Hightower asked if there was anyway the state could subsidize the cost of vaccinations whenever a person had a lot of cats. He asked if the bill could go to Appropriations.

Representative Hunter responded that it was a good idea but in light of the current budget situation he would rather it go without an appropriation at this time, and perhaps have another bill later on. He would like to move with the bill as it is presented now, due to budget restrictions.

At this point the Committee voted on the Committee Substitute unanimously.

The next bill on the calendar is HB 1009 - **AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.**

Representative Morris explained that the bill has a Committee Substitute and explained the bill. (Attachment II). Representatives from DEHNR and the Manufacturing Industry got together to draw up the bill because currently if you spill any amount of oil you are required to report it. This bill changes the reporting requirement to if you spill up to five gallons of oil, you do not have to report it. You still have to clean it up but it doesn't require a phone call and the bureaucratic message you have to go through in order to report it. If you spill any amount of oil that is going to get near or reasonably likely to reach the waters of this state or that spills into the waters of the state you do have to report it.

Representative Hightower moved for a favorable report.

Representative Hackney asked what the problem is that is being fixed now, and is there someone being bothered by the present law.

Representative Morris explained that the current law now is that you have to report any amount of spillage, no matter what. The federal law says that if you spill up to twenty-five gallons you don't need to report it. This law makes it easier for reporting purposes and it is a matter of loosening bureaucratic paperwork and having to make the phone call to DEHNR. This would help in the sense that a small amount of spillage doesn't have to be reported. It makes things easier as far as paper work and phone calls and followup is concerned.

Representative Hackney directed a question to George Givens or Mary Shuping to explain that "oil" means. Mr. Givens explained the Oil and Hazardous Substances Spill Act which is Article 21(a). Legally oil is not a hazardous substance unless it has had something added to it.

Representative Hackney asked about the scientific input into this problem and Mr. Givens explained that under federal law EPA is required to establish reporting requirements for reportable quantities and they have done that in CFR's. He asked someone to comment on the five gallons. There is not a minimum reportable quantity for oil, but our law is patterned after the federal law. Mr. Givens reported the state has adopted the federal CFR's as far as the hazardous substances are concerned.

Representative Warwick asked about the bill on Page 2, lines 5-8, what the wording "or other hazardous substance" means. Does this connect with the directions of using pesticides, herbicides or any kind of oil based products on agriculture

Mr. Givens reported that hazardous substances are listed in the CFR's and there is a long list in a table , page after page, of what constitutes a hazardous substance. Representative wanted to be reassured that the amendment does not do more than is intended.

Representative Morris explained that the amendment does not add additional hazardous substances other than those that are defined by federal regulations that are already defined as hazardous substances.

Representative Warwick asked whether anyone that might be following directions on a chemical that would fall under that definition , they in no way would be required to report, would they? Representative Morris stated that if it were less than five gallons they wouldn't be required to report it. Rep. Warwick also questioned the word "discharge" .

Representative Mitchell asked if diesel fuel included, the same as oil and learned that it is included as oil.

Mr. Givens commented that this it should be clear that this bill and the current statutes should be clear that this bill deals with oil and hazardous substances is another thing. Under oil any discharge to the waters of the state requires a report and any discharge in excess of five gallons that is likely to reach the waters of the state requires a report. With respect to hazardous substances the five gallons has nothing to do with that. That is termed a reportable quantity which varies from hazardous substances to hazardous substance as set out in the tables.

Representative Weatherly commented that the present North Carolina regulation reflects regulation overkill and we should repeal it by using this bill.

Representative Hightower commented that this bill would help the average person who just changes his oil. He questioned the use of the word "discharge" instead of "spill".

George Givens stated that discharge means a lot of different things, including spilling.

Representative Nichols stated that the bill needs to move on and make crossover and asked if a motion had been made. Representative Hightower had already made the motion.

Representative Yongue questioned the wording under (c) (2) "reasonably likely" and George Givens indicated that it had to be determined on a case by case basis and that this could be a source of debate in particular situations. That is why the negotiated agreement was at five gallons on the belief that any larger quantity it would be hard to say that it

was not reasonably likely at some point to reach any of the surface waters or the ground waters.

A spokesman, Charles Case, representing General Electric, asked to speak. He has talked with the Manufacturers Chemical Council about the bill. They support the bill and the purposes behind it. He answered a question about the federal release level and also made the comment that the bill as drafted may not accomplish what is intended because of the ambiguity in the way it is drawn. I want to suggest that it would be very easy to fix. The way it is drawn is that it could be read to have the jurisdiction of the law be based on the reportable quantity, for example, the way it seems to read is that if you have control over five gallons of oil that you're subject to the law. As I understand that is the intent of this bill which is a good one to say that if you discharge less than five gallons and it is not going to get to the water, then that's not reportable. That's what it ought to be.

He suggest to counsel or to the committee that it would be clearer if the phrase, "a reportable quantity" would be used after the word, "discharged" on line No. 10, rather than after the phrase, "control over," so that it would be clear that what you're talking about is discharging a reportable quantity. He apologized for speaking out at this time.

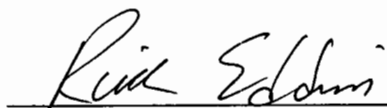
Mr. Givens was asked to change the wording at this time, since this is a Committee Substitute and it can just be reprinted with those words moved.

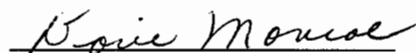
It was suggested that since the meaning is the same that the bill be left alone as it is.

Mr. Givens read, "every person owning or having control over oil or other substances discharged in a reportable quantity under any circumstances other than pursuant to ." He agreed with Mr. Case and Representative Baddour. He thinks the change in wording would be a good fix, and indicated he would reprint the Committee Substitute with that change.

Representative Hightower moved that Representative Baddour's amendment is accepted and that the Committee Substitute be given a favorable report, unfavorable to the original bill.

The meeting adjourned at 12:50 PM.


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 302

Short Title: Wildlife Quarantine.

(Public)

Sponsors: Representative H. Hunter.

Referred to: Environment.

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN
3 COUNTIES WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

4 The General Assembly of North Carolina enacts:

5 Section 1. Part 6 of Article 6 of Chapter 130A of the General Statutes is
6 amended by adding the following section to read:

7 "**§ 130A-194.1. Wildlife quarantine.**

8 (a) Notwithstanding any other provision of law, a local health director may
9 authorize the taking of bobcats, foxes, raccoons, and skunks if the director determines
10 that a case of rabies has occurred in any animal, other than a bat, in a county the
11 director serves or, if the case occurs in another state, within 50 miles of the county
12 line. Before authorizing the taking, the director shall notify the Executive Director of
13 the Wildlife Resources Commission, and the sheriff, the chairman of the board of
14 health, and the chairman of the board of county commissioners in each county
15 subject to the authorization. The Executive Director of the Wildlife Resources
16 Commission shall inform the appropriate wildlife protectors serving the area subject
17 to the authorization.

18 (b) An authorization issued under subsection (a) of this section shall be in writing
19 and shall specify the basis upon which the local health director determined that a
20 case of rabies occurred. The authorization may place reasonable restrictions on the
21 persons who may take animals and on the time, manner, and place of taking animals.

22 (c) A copy of the authorization shall be published in a newspaper of general
23 circulation in the county for 10 consecutive days during the 30-day period
24 immediately before the authorization takes effect.

1 (d) An authorization issued under subsection (a) of this section may be renewed
2 annually for a period of up to five years after the last incidence of rabies in the
3 county, in a county with contiguous borders, or within 50 miles of the county in
4 another state.

5 (e) The provisions of this section apply to any county with borders contiguous to
6 those in which a case of rabies is found."

7 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 302
Committee Substitute Favorable 4/30/97

Short Title: Wildlife/Rabies Emergency.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROCEDURE TO AUTHORIZE THE TAKING OF
3 CERTAIN WILDLIFE IN COUNTIES OR DISTRICTS WHERE AN
4 OUTBREAK OF RABIES HAS OCCURRED.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 113-291.2 is amended by adding the following new
7 subsection to read:
8 "(a1) A local health director in whose county or district rabies is found in the
9 wild animal population as evidenced by a positive diagnosis of rabies in the past year
10 in any wild animal, except a bat, may petition the Wildlife Resources Commission,
11 through and with the concurrence of the State Health Director, for a suspension or
12 liberalization of the statutory and regulatory restrictions on taking foxes, raccoons,
13 skunks, or bobcats in that county or district. The State Health Director shall concur
14 in the petition only if the State Health Director finds that a rabies emergency exists.
15 In determining whether a rabies emergency exists, the State Health Director shall
16 consult the Public Health Veterinarian and the State Agriculture Veterinarian, and
17 may consult with any other source of veterinary expertise the State Health Director
18 deems advisable. When the Executive Director of the Wildlife Resources
19 Commission receives a petition from a local health director in which the State Health
20 Director has concurred, the Executive Director shall develop a plan to reduce the
21 threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks,
22 or bobcats in the affected area. The plan shall be based upon the best veterinary and
23 wildlife management information and techniques available. The plan may involve a

suspension or liberalization of any statutory or regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, except that the use of poisons shall not be permitted under any circumstance. If the plan involves a suspension or liberalization of any statutory or regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, the Executive Director shall prepare and adopt a temporary rule setting out the suspension or liberalization pursuant to G.S. 150B-21.1(1). The temporary rule shall become effective as provided in G.S. 150B-21.3. The temporary rule shall expire as of the adjournment of the next meeting of the Wildlife Resources Commission following the adoption of the temporary rule by the Executive Director unless the temporary rule is extended by the Wildlife Resources Commission. In any event the temporary rule shall expire on the date that the State Health Director issues a determination that the rabies emergency has passed. When the State Health Director issues a determination that the rabies emergency no longer exists, the State Health Director shall immediately notify the Executive Director of the Wildlife Resources Commission and the Codifier of Rules that the temporary rule has expired. In the event of a conflict between any State or local law establishing restrictions on taking wild animals and any temporary rule authorized by this section, the temporary rule shall prevail. The Executive Director shall publicize the plan and the temporary rule in the major news outlets that serve the county or district to inform the public of the actions being taken and the reasons for them."

Section 2. This act is effective when it becomes law.

File

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, and Watson** for the Committee on **ENVIRONMENT**.

☐ Committee Substitute for

H.B. 302 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~); (and recommendation: ~~that the committee substitute bill #~~) be re-referred to the Committee on

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1009
Committee Substitute Favorable 4/30/97

Short Title: Notice of Hazardous Discharge.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR
3 ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE
4 DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL
5 RESOURCES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143-215.85 reads as rewritten:

8 "§ 143-215.85. Required notice.

9 (a) Every person owning or having control over oil or other substances discharged
10 in a reportable quantity under any circumstances other than pursuant to a rule
11 adopted by the Commission, a regulation of the U. S. Environmental Protection
12 Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution
13 Control Act, upon notice that such discharge has occurred, shall immediately notify
14 the Department, or any of its agents or employees, of the nature, location and time of
15 the discharge and of the measures which are being taken or are proposed to be taken
16 to contain and remove the discharge. The agent or employee of the Department
17 receiving the notification shall immediately notify the Secretary or such member or
18 members of the permanent staff of the Department as the Secretary may designate. If
19 the discharged substance of which the Department is notified is a pesticide regulated
20 by the North Carolina Pesticide Board, the Department shall immediately inform the
21 Chairman of the Pesticide Board. Removal operations under this Article of substances
22 identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance
23 with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board;

1 provided that, in instances where entry of such hazardous substances into waters of
2 the State is imminent, the Department may take such actions as are necessary to
3 physically contain or divert such substance so as to prevent entry into the surface
4 waters.

5 (b) Any person who owns or has control over oil or other hazardous substance
6 that is discharged and who is not required to notify the Department of the discharge
7 under subsection (a) of this section shall comply with the removal and restoration
8 provisions of G.S. 143-215.84.

9 (c) As used in subsection (a) of this section, 'reportable quantity' means:

- 10 (1) Any amount of oil discharged into the waters of the State;
11 (2) Five gallons or more of oil discharged in any manner that makes it
12 reasonably likely for any amount of the oil to reach the waters of
13 the State; or
14 (3) Any amount of a hazardous substance discharged in a quantity
15 equal to or greater than the reportable quantity, as defined in
16 federal regulations adopted pursuant to 33 U.S.C. § 1321(b)(2)(A),
17 including Part 302 of 40 Code of Federal Regulations (1 July 1996
18 Edition), and in comparable rules adopted by the Commission."

19 Section 2. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Office**

minutes
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April 30, 1997

MEMORANDUM

To: House Committee on Environment

From: Mary Beach Shuping

Re: **Proposed Committee Substitute for HB 1009 - Notice of Hazardous Discharge**

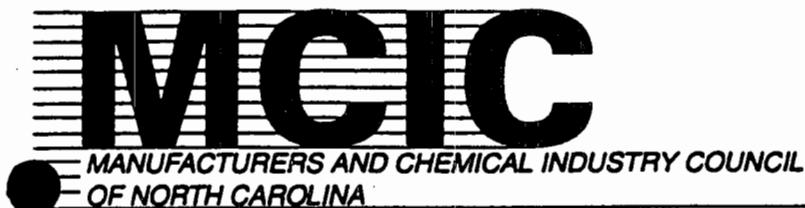
House Bill 1009 revises the duty of persons to report the discharge of oil or any hazardous substance to the Department of Environment, Health, and Natural Resources (DEHNR).

Section 1 amends G.S. 143-215.85, to require a person owning or having control over a reportable quantity of oil or other substances discharged in any circumstances other than pursuant to rules adopted by the Environmental Management Commission (EMC); a federal law or regulation; or a permit required under G.S. 143-215.1, to notify DEHNR of the discharge. "Reportable quantity" is defined in subsection (c).

This section also adds a subsection (b) that requires persons who are not required to notify DEHNR under subsection (a) to comply with the removal and restoration provisions of G.S. 143-215.84.

Finally, Section 1 adds a subsection (c) that defines "reportable quantity" as used in G.S. 143-215.85(a) as (1) the discharge of any amount of oil into the waters of the State; (2) 5 gallons or more of oil discharged in any manner that makes it reasonably likely for any amount of oil to reach the waters of the State; or (3) any hazardous substance discharged in an amount equal to or greater than the reportable quantity as defined by federal regulations.

Section 2 makes this act effective when it becomes law.



April 24, 1997

Dear Environment Committee Member:

Representative Mia Morris has introduced House Bill 1009 entitled Notice of Hazardous Discharge. Because the Committee's time is scarce prior to the cross-over deadline, here is a brief explanation of the bill:

- Presently, if you spill *any amount* of oil, you are required by law to report the spill to DEHNR. That means if you spill some oil on the driveway while working on your car, you have to call the Department and let them know what you did in addition to cleaning it up.
- DEHNR and manufacturers sat down together and drafted HB 1009 to remedy this bureaucratic problem. The environmental community has expressed their support, saying the bill is a matter of "good government."
- The bill establishes that if you spill less than five gallons of oil, you don't have to report it. **You still must clean it up**, but you just don't have to make the phone call.
- The bill does not apply to oil that is spilled directly into the waters of the State. Any amount discharged into the water must still be reported.
- For amounts of oil that are five gallons or more, the bill states that you need to report these discharges if they are "reasonably likely to reach the waters of the State."

Thank you for your attention. If you have any questions, please contact us or Representative Morris.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hartsell".

Laura Hartsell
Director of Legislative Affairs

A handwritten signature in cursive script that reads "George T. Everett".

George Everett
Executive Director

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill and Watson** for the Committee on Environment

☐ Committee Substitute for

H.B. 1009 A BILL TO BE ENTITLED AN ACT TO AMEND THE DUTY OF
PERSONS WHO DISCHARGE OIL OR ANY HAZARDOUS SUBSTANCE TO REPORT
THE DISCHARGE TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill #~~), ~~(and recommendation~~
~~that the committee substitute bill #~~) be re-referred to the Committee on .
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1009
Proposed Committee Substitute H1009-PCSA376

Short Title: Notice of Hazardous Discharge.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE DUTY OF PERSONS WHO DISCHARGE OIL OR
3 ANY HAZARDOUS SUBSTANCE TO REPORT THE DISCHARGE TO THE
4 DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL
5 RESOURCES.

6 The General Assembly of North Carolina enacts:

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9 (a) Every person owning or having control over oil or other substances discharged
10 in a reportable quantity under any circumstances other than pursuant to a rule
11 adopted by the Commission, a regulation of the U. S. Environmental Protection
12 Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution
13 Control Act, upon notice that such discharge has occurred, shall immediately notify
14 the Department, or any of its agents or employees, of the nature, location and time of
15 the discharge and of the measures which are being taken or are proposed to be taken
16 to contain and remove the discharge. The agent or employee of the Department
17 receiving the notification shall immediately notify the Secretary or such member or
18 members of the permanent staff of the Department as the Secretary may designate. If
19 the discharged substance of which the Department is notified is a pesticide regulated
20 by the North Carolina Pesticide Board, the Department shall immediately inform the
21 Chairman of the Pesticide Board. Removal operations under this Article of substances
22 identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance
23 with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board;

1 provided that, in instances where entry of such hazardous substances into waters of
2 the State is imminent, the Department may take such actions as are necessary to
3 physically contain or divert such substance so as to prevent entry into the surface
4 waters.

5 (b) Any person who owns or has control over oil or other hazardous substance
6 that is discharged and who is not required to notify the Department of the discharge
7 under subsection (a) of this section shall comply with the removal and restoration
8 provisions of G.S. 143-215.84.

9 (c) As used in subsection (a) of this section, 'reportable quantity' means:

- 10 (1) Any amount of oil discharged into the waters of the State;
11 (2) Five gallons or more of oil discharged in any manner that makes it
12 reasonably likely for any amount of the oil to reach the waters of
13 the State; or
14 (3) Any amount of a hazardous substance discharged in a quantity
15 equal to or greater than the reportable quantity, as defined in
16 federal regulations adopted pursuant to 33 U.S.C. § 1321(b)(2)(A),
17 including Part 302 of 40 Code of Federal Regulations (1 July 1996
18 Edition), and in comparable rules adopted by the Commission."

19 Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Environment

Name of Committee

4/30/97

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Amy Henderson	Huntton & Williams
Michael E. Johnson	DePout
BILL STANHOUSE	DePout
Laura Hartwell	MCIC
Doug Hawey	NCPMA
John Cyrus	nc. state Grange
Roslie Bevacqua	NCCBT
Charles Case	Huntton & Williams
Richard Whirnaat	DEHNR
Rachel ROGERS	DEHNR
LEE HUNTER	"
Charles Tullwood	Wildlife
Hal S. ATKINSON JR	"
Dick Hamilton	Wildlife
Tam BERN	NC Wildlife Education

VISITOR REGISTRATION SHEET

Environment

Name of Committee

4/30/97

222

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

[illegible]

HOUSE COMMITTEE ON ENVIRONMENT

Minutes: May 14, 1997

The Committee on Environment met in room 643 of the Legislative Office Building on Wednesday, May 14, 1997. Rep. Rick Eddins presided at the meeting and the following members were in attendance: Rep. Dewey Hill, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. Nelson Cole, Rep. Arlie Culp, Rep. Jim Gulley; Rep. Joe Hackney; Rep. Bobby Hall; Rep. Foyle Hightower; Rep. Ted Kinney; Rep. Danny McComas; Rep. Chuck Neely; Rep. John Nichols; Rep. Jean Preston; Rep. Alex Warner; Rep. Nurham Warwick and Re. Douglas Yongue.

Chairman Eddins called the meeting to order and recognized Sarah White and Caroline Wood from Wake County who were serving as Pages for the General Assembly. Chairman Eddins recognized Rep. McComas to come forward and explain HB 1121, Brownfields Property Reuse Act, and stated that, without objection, the committee would have before them, for the purposes of discussion, a committee substitute for the bill.

Rep. McComas stated that these sites typically provide no positives for the areas in which they are located, and that by recycling them you bring them into productive use. He further stated that his bill sets up a program within the Department of Environment, Health and Natural Resources to oversee the cleanup and procedures of standards set forth in the bill to recycle these sites. He further stated that this bill does not include underground storage tanks and that the bill does not bring in Superfund Sites - only sites sitting idle. (Please see "Attachment "A" for staff explanation of HB1121).

Chairman Eddins recognized Rep. Gamble with a question as to why these particular sites were not eligible for the Superfund Program. Committee Counsel, George Givens stated that that particular fund only includes the absolute worst sites in the nation, and that there are approximately 1,000 such sites in the nation, but that only 22 or 23 are on the national priority list. Mr. Givens further stated that this bill provides that these sites be cleaned up for industrial use - it does not bring them up to pristine conditions, but it does bring them up to conditions for industrial use, and that basically the Brownfields Agreement is a contract between a prospective buyer of such a site and the State. Once evidence had been presented that a contract had been fulfilled, you are protected from further responsibility of cleanup. Chairman Eddins recognized Rep. Cole who had a question with regard to how many states have passed similar legislation and Rep. McComas stated that he had just been advised that President Clinton has stated his commitment to the Brownfields Program, and that several other states have similar legislation. Rep. McComas stated that at the present time he was not aware of any opposition to the bill. Chairman Eddins recognized Rep. Cole who made the motion for a favorable report on the committee substitute and unfavorable as to the original bill. Further discussion continued, and Rep. Hackney stated that he felt the committee should look at the liability protections offered and asked if committee counsel could help them look at those issues. Rep. Hackney stated that he had introduced legislation in a previous

session which sets up a state superfund, but that even though these sites have been catalogued, but money is not available to do anything about them. Rep. Hackney stated that these sites will probably not be cleaned up, but the committee needed to recognize what sort of a failure of past regulation and present cleanup that this bill represents.

Further discussion continued and Committee Counsel, George Givens, explained some questions with regard to liability which are stated in the bill. Rep. Hackney asked to be recognized with a question regarding the standard which DEHNR must follow with regard to acceptable risk to which people can be exposed after the site has been redeveloped. Mr. Givens explained that there was not a specific standard, but that the department is currently developing a risk assessment protocol for programs of this nature. He called to the members attention page 3, line 39 of the bill which outlines the basic standard, and that the department would do this on a case by case basis. Rep. Hackney had a further question with regard to the Constitutional Standard. Mr. Givens stated that everyone was awaiting the Supreme Court decision on the town of Spruce Pines which would give them guidelines, and that they may have to insert some numerical standards.

Further discussion continued on title to Brownfields and liability. Rep. Watson questioned who would be liable for someone with health problems from one of these sites. Mr. Givens stated that this bill does not alter liability responsibility for injuries to third parties, it addresses liability for cleanup. Essentially the person responsible for causing the contamination would be liable. Rep. Hackney stated that he was confused as to the responsible party. Mr. Givens stated that as a practical matter many of these situations where that you will have insolvent or otherwise unreachable parties.

Rep. Nichols had a question with regard to whether or not sites considered hazardous would be eligible for the Brownfields Agreements, and Rep. McComas stated that as long as these sites were not superfund sites they could be considered, and he reiterated once again that this does not apply to the underground tanks.

Chairman Eddins called for a vote on Rep. Coles's motion, and the motion carried. The Chairman then called upon Rep. Mitchell to come forward and explain HB 225, Dry Cleaning Solvent Act. Rep. Mitchell stated that he was here on behalf of Rep. Weatherly who was unable to attend the meeting as a result of a family death.

Chairman Eddins stated that, without objection, the committee would adopt a proposed committee substitute for the bill. Rep. Mitchell stated that the bill came out of the Environmental Review Commission. He recognized the need for cleaning up these sites contaminated with solvent and that the dry cleaning industry has proposed putting a tax on these solvents which would go into a fund that would enable them to go in and proceed with a cleanup. He further stated that the bill was controversial and that DEHNR has some objections, but he felt that this new substitute would address some of the objections. Rep. Mitchell asked if Mr. Denny Shaffer, President of One-Hour Koretizing Dry Cleaning and Laundry would be allowed to speak to the committee.


Chairman Eddins recognized Rep. Nichols who stated that he had a question with regard to page 3 line 22 and stated that the ERC had made it perfectly clear that there would be no appropriations from the State of North Carolina and he will not support the bill with this part in it, and he would offer an amendment to take that line out of the bill.

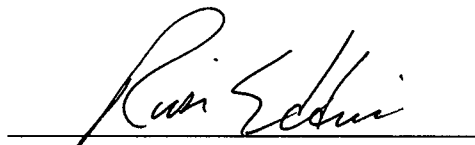
Chairman Eddins asked Mr. Shaffer to come forward. He stated that his industry did not request the portion of the bill Rep. Nichols questioned, and they had not ownership of it. Mr. Shaffer stated that the cost of cleanup of these sites is quite high, and that the dry cleaning industry is mostly family owned businesses who are unable to absorb the cost of such cleanups. He further stated that at the outset his industry went to DEHNR regarding this matter, because it is their problem under the law, and the industry as well. He stated that two chief issues were there was not enough money in the bill to solve the problem and the second, not enough money for DEHNR to administer. The industry came up with a plan that would insure - with private insurance - some of the sites. The continuing question is adequate funding. The bill would create a state fund - a tax on the solvent (\$5.85 a gallon). This fund would raise approximately a million and a half dollars a year. People insurable would be required to have insurance, and you would be required to have this insurance which would go into this fund to clean up uninsurable and abandoned sites. It also requires the industry to take certain actions to prevent problems in the future. The industry strongly supports the bill.

Chairman Eddins recognized Rep. Nichols who asked that the committee take action on his amendment (See attachment "A"). Rep. Hackney stated that he felt the amendment was not worth the paper it was written on. Chairman Eddins called for a vote on the amendment and it passed.

Chairman Eddins stated that the committee would not be able to conclude discussion on HB 225 today, and that it would be scheduled for continuation at next weeks meeting. There being no further business, Chairman Eddins adjourned the meeting.

Submitted by:


Virginia M. McCann
Committee Clerk


Rep. Rick Eddins
Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1121

Short Title: Brownfields Property Reuse Act.

(Public)

Sponsors: Representatives McComas; Allred, Cansler, and Morris.

Referred to: Environment, if favorable, Appropriations.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE
3 ACTUAL CONTAMINATION, OR THE POSSIBILITY OF
4 CONTAMINATION, HAS IMPEDED REDEVELOPMENT AND TO CREATE
5 THE BROWNFIELDS STUDY COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. Findings. -- The General Assembly makes the following
8 findings:

- 9 (1) There are abandoned, idle, and underused properties in North
10 Carolina, often referred to as "brownfields", that may have been or
11 were contaminated by past industrial and commercial activities, but
12 that are attractive locations for redevelopment.
- 13 (2) The reuse, development, redevelopment, transfer, financing, and
14 other use of brownfields is impaired by the potential liability
15 associated with the risk of contamination.
- 16 (3) The safe redevelopment of brownfields would benefit the citizens
17 of North Carolina in many ways, including improving the tax base
18 of local government and creating job opportunities for citizens in
19 the vicinity of brownfields.
- 20 (4) Potential purchasers and developers of brownfields and other
21 parties who have no connection with the contamination of the
22 property, including redevelopment lenders, should be encouraged
23 to provide capital and labor to improve brownfields without undue

- 1 risk of liability for problems they did not create, so long as the
2 property can be and is made safe for appropriate future use.
3 (5) Public and local government involvement in commenting on the
4 safe reuse of brownfields will improve the quality and acceptability
5 of their redevelopment.

6 Section 2. Article 9 of Chapter 130A of the General Statutes is amended
7 by adding a new Part to read:

8 "Part 5. Brownfields Property Reuse.

9 "§ 130A-310.50. Short title.

10 This Part may be cited as the North Carolina Brownfields Property Reuse Act.

11 "§ 130A-310.51. Definitions.

12 (a) Unless a different meaning is required by the context, the definitions in G.S.
13 130A-2 and G.S. 130A-310 apply throughout this Part and, in addition, the following
14 definitions apply throughout this Part and shall control in the event of a conflict
15 between definitions in this Chapter:

- 16 (1) 'Affiliated' has the same meaning as provided in G.S. 58-19-5.
17 (2) 'Brownfield agreement' means an agreement under this Part that:
18 a. Is between a prospective developer and the Department;
19 b. Provides for cleanup, remediation, or other activities at a
20 brownfields property;
21 c. Ensures the property is made and kept safe for its actual use;
22 and
23 d. Provides liability protection for persons consistent with this
24 Part.
25 (3) 'Brownfields property' or 'brownfields site' means abandoned,
26 idled, or underused property at which expansion or redevelopment
27 is hindered by actual environmental contamination or the
28 possibility of environmental contamination and that is or may be
29 subject to remediation requirements under any of the State
30 programs designated under Chapter 130A or Chapter 143 of the
31 General Statutes, or under the Comprehensive Environmental
32 Response, Compensation and Liability Act of 1980, as amended
33 (42 U.S.C. § 9601).
34 (4) 'Contaminant' means a regulated substance released into the
35 environment.
36 (5) 'EPA' means the United States Environmental Protection Agency
37 or its successor agency.
38 (6) 'Local government' means a town, city, or county.
39 (7) 'Person' means an individual, firm, corporation, association,
40 partnership, consortium, joint venture, commercial entity,
41 authority, nonprofit corporation, interstate body, or other legal
42 entity that is recognized by law as the subject of rights and duties.
43 The term includes the federal government, state governments,
44 political subdivisions, and State instrumentalities.

- 1 (8) 'Potentially responsible party' means a person who is or may be
2 liable for remediation under a remedial program.
- 3 (9) 'Prospective developer' means any person who desires to either
4 buy or sell a brownfield property for the purpose of developing or
5 redeveloping that and who did not cause the contamination at the
6 brownfields property.
- 7 (10) 'Regulated substance' means a hazardous substance or a
8 contaminant regulated under any remedial program.
- 9 (11) 'Remedial program' means a program implemented by the
10 Department for the remediation of any contaminant, including the
11 North Carolina Inactive Hazardous Sites Act in Part 3 of this
12 Article, the North Carolina Superfund Program in Part 4 of this
13 Article, and the Oil Pollution and Hazardous Substances Control
14 Act in Article 21A of Chapter 143 of the General Statutes.
- 15 (12) 'Remediation' means action to clean up, mitigate, correct, abate,
16 minimize, eliminate, control, or prevent the spreading, migration,
17 leaking, leaching, volatilization, spilling, transport, or further
18 release of a contaminant into the environment in order to protect
19 public health or the environment.
- 20 (13) 'Responsible party' means a potentially responsible party that
21 admits liability or is adjudged to be liable for contamination under
22 a remedial program.

23 "§ 130A-310.52. Liability protection.

24 (a) A prospective developer that enters into a brownfields agreement with the
25 Department and that complies with the brownfields agreement with the Department
26 and that complies with the brownfields agreement shall not be held liable for
27 remediation of areas of contaminants identified in the brownfields agreement except
28 as specified in the brownfields agreement, so long as the activities conducted on the
29 property by or under the control or direction of the prospective developer do not
30 increase the risk of harm to public health or the environment. The liability
31 protection provided by this Part applies to all of the following persons to the same
32 extent as to a prospective developer, so long as these persons are not otherwise
33 potentially responsible parties or affiliated with potentially responsible parties:

- 34 (1) Any person under the direction or control of the prospective
35 developer who directs or contracts for redevelopment or
36 remediation of the property.
- 37 (2) Any future owner of the property.
- 38 (3) A person who develops or occupies the property.
- 39 (4) A successor or assign of any person to whom the liability
40 protection in this part applies.
- 41 (5) Any lender or fiduciary that provides financing for remediation or
42 redevelopment of the property.

43 (b) A person who conducts an environmental assessment or transaction screen on
44 a property is not a person responsible for remediation.

1 A prospective developer who completes the remediation or redevelopment
2 required of the developer pursuant to a brownfields agreement shall not be required
3 to under take additional remediation at the brownfields property unless any one or
4 more of the following apply:

5 (1) The prospective developer knowingly or recklessly provides false
6 information that forms a basis for the brownfields agreement or
7 that is offered to demonstrate compliance with the brownfields
8 agreement.

9 (2) New information indicates the existence of previously unreported
10 contaminants or an area of previously unreported contamination
11 on or associated with the brownfields property. If the brownfields
12 agreement sets target concentrations for contaminants, and new
13 information indicates the existence of previously unreported areas
14 of these contaminants, further remediation shall be required only if
15 (i) the levels of previously unreported contaminants exceed the
16 contaminant target concentrations set in the brownfields
17 agreement, or (ii) the areas of previously unreported contaminants
18 raise the risk of the contamination to public health or the
19 environment.

20 (3) The level of risk is increased beyond the acceptable risk range at
21 or in the vicinity of the brownfields property due to changes in
22 exposure conditions, such as a change in land use from
23 nonresidential to residential use.

24 (4) The Department obtains new information about a contaminant
25 associated with the property or exposures at or around the
26 property that raises the risk of the property beyond an acceptable
27 range and in a manner or to a degree not anticipated in the
28 brownfields agreement. Any person who changes the use of the
29 brownfields property causing the level of risk to increase beyond
30 this acceptable risk range may be required by the Department to
31 undertake additional remediation measures under the provisions of
32 this Part.

33 (5) The owner fails to file a timely and proper Notice of Brownfields
34 Development under this Part.

35 **"§ 130A-310.54. Public notice and community involvement.**

36 (a) a prospective developer who desires to enter into a brownfields agreement
37 shall notify the public and the community in which the property is located of planned
38 remediation and redevelopment activities. The prospective developer shall submit a
39 notice of intent to redevelop a brownfields property to the Department that provides,
40 to the extent known, a legal description of the location of the property, a map
41 showing the location of the property, a description of the contaminant or
42 contaminants involved and their concentrations in the media of the property, a
43 description of the intended future use of the property and any proposed investigation
44 and remediation measures. After approval of the notice of intent by the Department,

1 the prospective developer shall provide a copy of the notice to all local governments
2 having jurisdiction over the property and shall publish a summary of the notice of
3 intent in a newspaper of general circulation serving the area in which the property is
4 located. The Department shall publish an acknowledgment noting receipt of the
5 approved notice of intent in the North Carolina Register.

6 (b) Publication of the approved notice of intent in the North Carolina Register
7 and a newspaper of general circulation shall begin a period of public and local
8 government comment during which the public and local government may provide
9 input into the redevelopment plans and remediation plans for the property. The
10 public comment period shall continue for at least 60 days.

11 (c) Prior to entering into a brownfields agreement, the Department shall take into
12 account the views of the community and local government in which the brownfields
13 property is located by incorporating to the extent practicable their written comments
14 on the issues of current or future land use or land use plans, employment needs, and
15 preferences in terms of methods to achieve levels of remediation provided for in the
16 brownfields agreement where such comments are supported by or based on technical
17 information concerning the proposed means of remediation.

18 "§ 130A-310.55. Land use restrictions in deed; notice.

19 (a) In order to reduce or eliminate the danger to public health or the environment
20 posed by a property being addressed under this Part, a purchaser of a brownfields
21 property that is not otherwise noted in the chain of title as a property on which
22 contaminants are located shall submit to the Department a survey plat of areas
23 designated by the Department that has been prepared and certified by a professional
24 land surveyor, and entitled 'Notice of Brownfields Property'. The notice shall
25 include a legal description of the property that would be sufficient as a description in
26 an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and
27 plats, and shall identify all of the following:

28 (1) The location and dimensions of the areas of potential
29 environmental concern with respect to permanently surveyed
30 benchmarks.

31 (2) The type, location, and quantity of regulated substances and
32 contaminants known to exist on the property.

33 (3) Any restrictions on the current or future use of the property that
34 are necessary or useful to maintain the level of protection
35 appropriate for the designated current or future use of the property
36 and that are designated in the brownfields agreement. These
37 restrictions may apply to activities on, over, or under the land,
38 including, but not limited to, building, filling, grading, excavating,
39 and mining. Where a brownfields property encompasses more
40 than one parcel or tract of land, a composite map or plat showing
41 all parcels or tracts may be recorded.

42 (b) After the Department approves and certifies the notice of brownfields
43 property under subsection (a) of this section, the owner shall file the certified copy of
44 the notice in the register of deeds' office in the county or counties in which the land

1 is located within 30 working days of the later of the party's receipt of the
2 Department's approval of the notice.

3 (c) The register of deeds shall record the certified copy of the notice and index it
4 in the grantor index under the names of the owners of the lands, and, if different,
5 also under the name of the person conducting the redevelopment of the property.

6 (d) When a brownfields property is sold, leased, conveyed, or transferred, the
7 deed or other instrument of transfer shall contain in the description section, in no
8 smaller type than that used in the body of the deed or instrument, a statement that
9 the property has been classified and, if appropriate, cleaned up as a brownfields
10 property under this Part.

11 (e) A notice of brownfields property filed pursuant to this section may, at the
12 request of the property owner, be cancelled by the Secretary of Environment, Health,
13 and Natural Resources after the hazards have been eliminated as a result of the
14 remediation work performed and pursuant to receipt of written approval by the
15 Secretary. If requested in writing by the property owner and if the Secretary concurs
16 with the request, the Secretary shall send to the register of deeds of the county where
17 the notice is recorded a statement that the hazards have been eliminated and request
18 that the notice be cancelled of record. The Secretary's statement shall contain the
19 names of the landowners as shown in the notice and reference in the plat book and
20 page where the notice is recorded. The register of deeds shall record the Secretary's
21 statement in the deed books and index it on the grantor index in the name of the
22 landowner as shown in the Notice and on the grantee index in the name 'Secretary of
23 Environment, Health, and Natural Resources'. The register of deeds shall make a
24 marginal entry on the notice showing the date of cancellation and the book and page
25 where the Secretary's statement is recorded, and the register shall sign the entry. If a
26 marginal entry is impracticable because of the method used to record maps and plats,
27 the register of deeds shall not be required to make a marginal entry.

28 (g) Any restriction on the current or future use of the brownfields property filed
29 pursuant to this section shall be enforced by any owner of the property or other
30 responsible party and also may be enforced by the Department or any unit of local
31 government having jurisdiction over any part of the property. A restriction shall not
32 be declared unenforceable due to lack of privity of estate or contract or due to lack
33 of benefit to the particular land.

34 (h) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
35 brownfields properties remediated under this Part.

36 **"§ 130A-310.56. Appeals.**

37 A decision by the Department not to enter a brownfields agreement shall be
38 reviewable under the contested case provisions of the North Carolina Administrative
39 Procedure Act, Chapter 150B of the General Statutes.

40 **"§ 130A-310.57. Enforcement.**

41 Any person who knowingly provides false information establishing a property's
42 eligibility for application of this Part or who knowingly omits to provide or falsifies
43 information required by a brownfields agreement shall be guilty of a Class I felony,
44 which may include a fine of fifty thousand dollars (\$50,000) for each separate

1 violation, in addition to any other penalty provided by law. Each day a violation
2 occurs is a separate violation.

3 "§ 130A-310.58. Construction of Part.

4 (a) This Part does not affect the ability of local governments to regulate land
5 development under Article 19 of Chapter 160A of the General Statutes and Article
6 18 of Chapter 153A of the General Statutes. The use of the identified brownfields
7 property and any deed restrictions used as part of a redevelopment plan shall not be
8 inconsistent with local land development controls adopted under those statutes.

9 (b) This Part is not intended to nor shall it be construed to:

10 (1) Amend, modify, repeal, or otherwise alter any provision of any
11 remedial program or other provision of this Chapter or Chapter
12 143 of the General Statutes relating to civil and criminal penalties
13 or enforcement actions and remedies available to the Department,
14 or

15 (2) Amend, modify, repeal, or alter the authority of the Department to
16 take appropriate civil and criminal action under remedial
17 programs, except as provided in a brownfields agreement.

18 (c) The provisions of this Part do not prevent or impede the immediate response
19 of the Department or responsible party to an emergency that involves an imminent or
20 actual release of a regulated substance that threatens public health or the
21 environment.

22 (d) Nothing in this Part relieves a person receiving protection from remediation
23 liability under this Chapter from any liability for contamination later caused by that
24 person on a brownfields property.

25 (e) Except for the performance of further remediation of the property, nothing in
26 this Part affects the ability or authority of any person to seek any relief available
27 against any party who may have liability with respect to the brownfields property.
28 This Part does not affect the ability or authority to seek contribution from any person
29 who may have liability with respect to the property and who did not receive cleanup
30 liability protection under this Part.

31 (f) The provisions of this Part do not prevent the State from enforcing specific
32 numerical cleanup standards, monitoring, or compliance requirements specifically
33 required to be enforced by the federal government as a condition to receive program
34 authorization, delegation, primacy, or federal funds.

35 (g) The provisions of this Part do not create a defense against the imposition of
36 criminal and civil fines or penalties or administrative penalties otherwise authorized
37 by law and imposed as the result of the illegal disposal of waste or for the pollution
38 of the land, air, or waters of this State on a brownfields property.

39 (h) No action or inaction by the State in negotiating, entering, monitoring, or
40 enforcing a brownfields agreement or a notice of brownfields property under this Part
41 shall be deemed a tort or otherwise constitute a waiver of the sovereign immunity of
42 the State.

1 (i) Nothing in this Part relieves a person of any liability for failure to exercise due
2 diligence and reasonable care in performing an environmental assessment or
3 transaction screen.

4 "§ 130A-310.59. Legislative reports.

5 Beginning October 1, 1997, and thereafter, concurrently with every report on the
6 Inactive Waste Sites program, the Department shall conduct and submit to the
7 Environmental Review Commission an evaluation of the effectiveness of this Part in
8 facilitating the cleanup and reuse of existing industrial and commercial properties.
9 This evaluation shall include any recommendations for additional incentives or
10 changes, if needed, to improve the effectiveness of this Part in addressing such
11 properties."

12 Section 3. G.S. 130A-310.7 is amended by adding the following new
13 subsection to read:

14 "(c) The liability protection under G.S. 130A-310.52 applies to any party who
15 successfully completes a remediation to the current standards of contamination of any
16 site under any remedial program administered by the Department. For purposes of
17 this section, 'remediation to the current standards' means that cleanup and
18 remediation activities at the site substantially comply with standards, guidance, or
19 established methods that have been adopted or published by the Department or EPA,
20 either at the time the activities are begun or prior to the completion of those
21 activities. A change in those standards, guidance, or established methods prior to
22 completion of the work at the site shall not preclude such liability protection so long
23 as the party meets these standards, guidance, or established methods in effect at the
24 time the work was begun. Any party eligible for the liability protection under this
25 section may request and receive from the Department a written statement confirming
26 that protection upon completion of the work and payment of the fees specified in
27 G.S. 130A-310.69."

28 Section 4. (a) The Brownfields Study Commission is created. The
29 Commission shall be composed of six members. Three members shall be appointed
30 by the Speaker of the House of Representatives: one of whom shall be an
31 environmental engineer who specializes in site remediation, one of whom shall be a
32 developer, one of whom shall be a representative of the North Carolina Citizens for
33 Business and Industry. Three members shall be appointed by the President Pro
34 Tempore of the Senate: one of whom shall be a representative of the State's
35 financial institutions, one of whom shall be a representative of the North Carolina
36 League of Municipalities, one of whom shall be a representative of the organized
37 environmental community. The Secretary of Environment, Health, and Natural
38 Resources shall appoint one ex officio member who shall be an employee of the
39 Department of Environment, Health, and Natural Resources. The Commission shall,
40 with the assistance and support of the Department of Environment, Health, and
41 Natural Resources, study and report to the 1998 Session of the General Assembly and
42 to the Environmental Review Commission, no later than the first day the General
43 Assembly convenes, on all of the following:

- 1 (1) The probable number of sites in North Carolina that meet the EPA
2 definition of a "Brownfield", but are not eligible for brownfields
3 cleanup agreements pursuant to Part 5 of Article 9 of Chapter
4 130A of the General Statutes, as enacted by Section 2 of this act,
5 and the bases for and effects of extending liability protection to
6 potentially responsible parties who participate in a brownfields
7 cleanup, but who are not provided liability protection by Part 5 of
8 Article 9 of Chapter 130A of the General Statutes, as enacted by
9 Section 2 of this act.
- 10 (2) The feasibility of extending liability protection to all potentially
11 responsible parties, including any person who caused or
12 contributed to contamination or pollution at a brownfields site.
- 13 (3) The probable number of sites in North Carolina that are likely
14 eligible as subjects of brownfields cleanup agreements pursuant to
15 Part 5 of Article 9 of Chapter 130A of the General Statutes, as
16 enacted by Section 2 of this act.
- 17 (4) Actions that the State takes to encourage the remediation of all
18 contaminated sites, including providing incentives under North
19 Carolina income taxes, providing incentives under North Carolina
20 franchise taxes, providing for reductions or waivers of real estate
21 taxes, providing grants or low interest loans for use in performing
22 remediation activities, specifying preferred treatment for purposes
23 of receiving economic development incentives and permits for
24 development or operation of any facility or activity at the site, and
25 engaging in other similar legitimate means for the State to take to
26 encourage remediation of these sites.
- 27 (5) On the basis of experience under Part 5 of Article 9 of Chapter
28 130A of the General Statutes, as enacted by Section 2 of this act,
29 the resource needs of the Department of Environment, Health, and
30 Natural Resources and the propriety of imposing different or
31 additional constraints on the Department's review of
32 documentation submitted for brownfields cleanup.
- 33 (6) The need to adopt site-specific, risk-based cleanup standards that
34 can provide alternative bases for remediation of eligible sites.
- 35 (b) The Speaker of the House of Representatives shall appoint a Chair.
36 The Commission shall meet at least monthly at the call of the Chair. Members
37 appointed to the Commission shall serve until the Commission makes its final report.
38 A vacancy on the Commission shall be filled in the same manner as the original
39 appointment. Upon filing its report, the Commission shall terminate.
- 40 (c) The Commission may contract for consultant services as provided by
41 G.S. 120-32.02. Upon approval of the Legislative Services Commission, the
42 Legislative Administrative Officer shall assign professional and clerical staff to assist
43 in the work of the Commission. Clerical staff shall be furnished to the Commission
44 through the offices of the House and Senate supervisors of clerks. The Commission

1 may meet in the Legislative Building or the Legislative Office Building upon the
2 approval of the Legislative Services Commission. The Commission, while in the
3 discharge of official duties, may exercise all the powers provided under the provisions
4 of G.S. 120-19 through G.S. 120-19.4.

5 (d) Members of the Commission shall receive per diem, subsistence, and
6 travel allowances as follows:

7 (1) Commission members who are also members of the General
8 Assembly, at the rate established in G.S. 120-3.1.

9 (2) Commission members who are officials or employees of the State
10 or local government agencies, at the rate established in G.S. 138-6.

11 (3) All other Commission members, at the rate established in G.S.
12 138-5.

13 Section 5. There is appropriated from the General Fund to the General
14 Assembly, the sum of fifty thousand dollars (\$50,000) for the 1997-98 fiscal year for
15 the costs of the Brownfields Study Commission, as created in Section 4 of this act,
16 conducting its work under this act.

17 Section 6. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 1121
Proposed Committee Substitute H1121-PCS1372

Short Title: Brownfields Property Reuse Act.

(Public)

Sponsors:

Referred to:

April 21, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE
3 ACTUAL CONTAMINATION, OR THE POSSIBILITY OF
4 CONTAMINATION, HAS IMPEDED REDEVELOPMENT.
5 The General Assembly of North Carolina enacts:
6 Section 1. Findings. -- The General Assembly makes the following
7 findings:
8 (1) There are abandoned, idle, and underused properties in North
9 Carolina, often referred to as "brownfields", that may have been or
10 were contaminated by past industrial and commercial activities, but
11 that are attractive locations for redevelopment.
12 (2) The reuse, development, redevelopment, transfer, financing, and
13 other use of brownfields is impaired by the potential liability
14 associated with the risk of contamination.
15 (3) The safe redevelopment of brownfields would benefit the citizens
16 of North Carolina in many ways, including improving the tax base
17 of local government and creating job opportunities for citizens in
18 the vicinity of brownfields.
19 (4) Potential purchasers and developers of brownfields and other
20 parties who have no connection with the contamination of the
21 property, including redevelopment lenders, should be encouraged
22 to provide capital and labor to improve brownfields without undue

1 risk of liability for problems they did not create, so long as the
2 property can be and is made safe for appropriate future use.

- 3 (5) Public and local government involvement in commenting on the
4 safe reuse of brownfields will improve the quality and acceptability
5 of their redevelopment.

6 Section 2. Article 9 of Chapter 130A of the General Statutes is amended
7 by adding a new Part to read:

8 "Part 5. Brownfields Property Reuse Act.

9 "§ 130A-310.30. Short title.

10 This Part may be cited as the Brownfields Property Reuse Act of 1997.

11 "§ 130A-310.31. Definitions.

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

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

16 (1) 'Affiliate' has the same meaning as in 17 Code of Federal
17 Regulations § 240.12b-2 (1 April 1996 Edition).

18 (2) 'Brownfields agreement' means an agreement between the
19 Department and a prospective developer that meets the
20 requirements of G.S. 130A-310.32.

21 (3) 'Brownfields property' or 'brownfields site' means abandoned,
22 idled, or underused property at which expansion or redevelopment
23 is hindered by actual environmental contamination or the
24 possibility of environmental contamination and that is or may be
25 subject to remediation under any State remedial program or under
26 the Comprehensive Environmental Response, Compensation and
27 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

28 (4) 'Contaminant' means a regulated substance released into the
29 environment.

30 (5) 'Local government' means a town, city, or county.

31 (6) 'Parent' has the same meaning as in 17 Code of Federal
32 Regulations § 240.12b-2 (1 April 1996 Edition).

33 (7) 'Person' means an individual, firm, corporation, association,
34 partnership, consortium, joint venture, commercial entity,
35 authority, nonprofit corporation, interstate body, or other legal
36 entity that is recognized by law as the subject of rights and duties.
37 The term includes the federal government, state governments,
38 political subdivisions, and state instrumentalities.

39 (8) 'Potentially responsible party' means a person who is or may be
40 liable for remediation under a remedial program.

41 (9) 'Prospective developer' means any person who desires to either
42 buy or sell a brownfields property for the purpose of developing or
43 redeveloping that brownfields property and who did not cause or
44 contribute to the contamination at the brownfields property.

(10) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(11) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.

(12) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(13) 'Responsible party' means a potentially responsible party that admits liability or is adjudged to be liable for contamination under a remedial program.

(14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

"§ 130A-310.32. Brownfields agreements.

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

(1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:

a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.

b. The requirements applicable to any remediation in which the applicant has previously engaged.

c. Federal and state laws, regulations, and rules for the protection of the environment.

(2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting human health and the environment.

(3) There is a public benefit commensurate with the liability protection afforded under this Part.

(4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.

(5) The prospective developer has or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall specify remediation to be conducted and the desired results of remediation of the brownfields property; guidelines, including parameters, principles, and policies, within which the desired results are to be accomplished; resources that the prospective developer will make available; remediation standards and the times and methods by which remediation is evaluated; and the consequences of achieving or not achieving the desired results.

"§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who complies with the brownfields agreement shall not be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement, so long as the activities conducted on the brownfields property by or under the control or direction of the prospective developer do not increase the risk of harm to public health or the environment. The liability protection provided by this Part applies to all of the following persons to the same extent as to a prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties:

(1) Any person under the direction or control of the prospective developer who directs or contracts for remediation or redevelopment of the brownfields property.

(2) Any future owner of the brownfields property.

(3) A person who develops or occupies the brownfields property.

(4) A successor or assign of any person to whom the liability protection in this Part applies.

(5) Any lender or fiduciary that provides financing for remediation or redevelopment of the brownfields property.

(b) A person who conducts an environmental assessment or transaction screen on a brownfields property and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability

1 protection under this section shall not be required to undertake additional
2 remediation at the brownfields property unless any of the following apply:

3 (1) The prospective developer knowingly or recklessly provides false
4 information that forms a basis for the brownfields agreement or
5 that is offered to demonstrate compliance with the brownfields
6 agreement.

7 (2) New information indicates the existence of previously unreported
8 contaminants or an area of previously unreported contamination
9 on or associated with the brownfields property. If the brownfields
10 agreement sets maximum concentrations for contaminants, and
11 new information indicates the existence of previously unreported
12 areas of these contaminants, further remediation shall be required
13 only if the areas of previously unreported contaminants raise the
14 risk of the contamination to public health or the environment.

15 (3) The level of risk is unacceptable at or in the vicinity of the
16 brownfields property due to changes in exposure conditions,
17 including (i) a change in land use that increases the probability of
18 exposure to contaminants at the brownfields property (ii) or the
19 failure of remediation to mitigate risks as planned in the
20 brownfields agreement.

21 (4) The Department obtains new information about a contaminant
22 associated with the brownfields property or exposures at or around
23 the brownfields property that raises the risk associated with the
24 brownfields property beyond an acceptable range and in a manner
25 or to a degree not anticipated in the brownfields agreement. Any
26 person whose use, including any change in use, of the brownfields
27 property causes an unacceptable risk may be required by the
28 Department to undertake additional remediation measures under
29 the provisions of this Part.

30 (5) A prospective developer fails to file a timely and proper Notice of
31 Brownfields Development under this Part.

32 (6) The owner of the brownfields property or an agent of the owner
33 violates the land-use restrictions set out in the Notice of
34 Brownfields Property required under G.S. 130A-310.35.

35 **"§ 130A-310.34. Public notice and community involvement.**

36 (a) A prospective developer who desires to enter into a brownfields agreement
37 shall notify the public and the community in which the brownfields property is
38 located of planned remediation and redevelopment activities. The prospective
39 developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a
40 summary of the Notice of Intent to the Department. The Notice of Intent shall
41 provide, to the extent known, a legal description of the location of the brownfields
42 property, a map showing the location of the brownfields property, a description of the
43 contaminants involved and their concentrations in the media of the brownfields
44 property, a description of the intended future use of the brownfields property, any

1 proposed investigation and remediation, and a proposed Notice of Brownfields
2 Property prepared in accordance with G.S. 130A-310.35. The summary of the Notice
3 of Intent shall include a statement as to the public availability of the full Notice of
4 Intent. After approval of the Notice of Intent and summary of the Notice of Intent by
5 the Department, the prospective developer shall provide a copy of the Notice of
6 Intent to all local governments having jurisdiction over the brownfields property.
7 The prospective developer shall publish the summary of the Notice of Intent in a
8 newspaper of general circulation serving the area in which the brownfields property
9 is located and shall file a copy of the summary of the Notice of Intent with the
10 Codifier of Rules, who shall publish the summary of the Notice of Intent in the North
11 Carolina Register.

12 (b) Publication of the approved Notice of Intent in the North Carolina Register
13 and a newspaper of general circulation shall begin a public comment period of at
14 least 60 days. During the public comment period, members of the public, residents of
15 the community in which the brownfields property is located, and local governments
16 having jurisdiction over the brownfields property may submit comment on the
17 proposed brownfields agreement, including methods and degree of remediation,
18 future land uses, and impact on local employment.

19 (c) Prior to entering into a brownfields agreement, the Department shall take into
20 account the comment received during the comment period. The Department shall
21 incorporate into the brownfields agreement provisions that reflect comment received
22 during the comment period to the extent practical. The Department shall give
23 particular consideration to written comment that is supported by valid scientific and
24 technical information and analysis.

25 **"§ 130A-310.35. Notice of Brownfields Property; land use restrictions in deed.**

26 (a) In order to reduce or eliminate the danger to public health or the environment
27 posed by a brownfields property being addressed under this Part, a prospective
28 developer who desires to enter into a brownfields agreement with the Department
29 shall submit to the Department a proposed Notice of Brownfields Property. A Notice
30 of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall
31 include a survey plat of areas designated by the Department that has been prepared
32 and certified by a professional land surveyor and that meets the requirements of G.S.
33 47-30, shall include a legal description of the brownfields property that would be
34 sufficient as a description in an instrument of conveyance, and shall identify all of the
35 following:

36 (1) The location and dimensions of the areas of potential
37 environmental concern with respect to permanently surveyed
38 benchmarks.

39 (2) The type, location, and quantity of regulated substances and
40 contaminants known to exist on the brownfields property.

41 (3) Any restrictions on the current or future use of the brownfields
42 property that are necessary or useful to maintain the level of
43 protection appropriate for the designated current or future use of
44 the brownfields property and that are designated in the brownfields

1 agreement. These restrictions may apply to activities on, over, or
2 under the land, including, but not limited to, use of groundwater,
3 building, filling, grading, excavating, and mining. Where a
4 brownfields property encompasses more than one parcel or tract of
5 land, a composite map or plat showing all parcels or tracts may be
6 recorded.

7 (b) After the Department approves and certifies the Notice of Brownfields
8 Property under subsection (a) of this section, a prospective developer who enters into
9 a brownfields agreement with the Department shall file a certified copy of the Notice
10 of Brownfields Property in the register of deeds' office in the county or counties in
11 which the land is located. The prospective developer shall file the Notice of
12 Brownfields Property within 15 days of the prospective developer's receipt of the
13 Department's approval of the notice or the prospective developer's entry into the
14 brownfields agreement, whichever is later.

15 (c) The register of deeds shall record the certified copy of the notice and index it
16 in the grantor index under the names of the owners of the land, and, if different, also
17 under the name of the prospective developer conducting the redevelopment of the
18 brownfields property.

19 (d) When a brownfields property is sold, leased, conveyed, or transferred, the
20 deed or other instrument of transfer shall contain in the description section, in no
21 smaller type than that used in the body of the deed or instrument, a statement that
22 the brownfields property has been classified and, if appropriate, cleaned up as a
23 brownfields property under this Part.

24 (e) A Notice of Brownfields Property filed pursuant to this section may, at the
25 request of the owner of the land, be cancelled by the Secretary after the hazards have
26 been eliminated. If requested in writing by the owner of the land and if the Secretary
27 concurs with the request, the Secretary shall send to the register of deeds of each
28 county where the notice is recorded a statement that the hazards have been
29 eliminated and request that the notice be cancelled of record. The Secretary's
30 statement shall contain the names of the owners of the land as shown in the notice
31 and reference the plat book and page where the notice is recorded. The register of
32 deeds shall record the Secretary's statement in the deed books and index it on the
33 grantor index in the names of the owners of the land as shown in the Notice of
34 Brownfields Property and on the grantee index in the name 'Secretary of
35 Environment, Health, and Natural Resources'. The register of deeds shall make a
36 marginal entry on the Notice of Brownfields Property showing the date of
37 cancellation and the book and page where the Secretary's statement is recorded, and
38 the register of deeds shall sign the entry. If a marginal entry is impracticable because
39 of the method used to record maps and plats, the register of deeds shall not be
40 required to make a marginal entry.

41 (f) Any restriction on the current or future use of the brownfields property filed
42 pursuant to this section shall be enforced by any owner of the land or by any other
43 responsible party. Restrictions may also be enforced by the Department or any unit
44 of local government having jurisdiction over any part of the brownfields property. A

1 restriction shall not be declared unenforceable due to lack of privity of estate or
2 contract, due to lack of benefit to particular land, or due to lack of any property
3 interest in particular land.

4 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
5 brownfields properties remediated under this Part.

6 **"§ 130A-310.36. Appeals.**

7 A decision by the Department as to whether or not to enter into a brownfields
8 agreement including the terms of any brownfields agreement is reviewable under
9 Article 3 of Chapter 150B of the General Statutes.

10 **"§ 130A-310.37. Construction of Part.**

11 (a) This Part is not intended and shall not be construed to:

12 (1) Affect the ability of local governments to regulate land
13 development under Article 19 of Chapter 160A of the General
14 Statutes and Article 18 of Chapter 153A of the General Statutes.
15 The use of the identified brownfields property and any deed
16 restrictions used as part of a redevelopment plan shall not be
17 inconsistent with local land development controls adopted under
18 those statutes.

19 (2) Amend, modify, repeal, or otherwise alter any provision of any
20 remedial program or other provision of this Chapter, Chapter 143
21 of the General Statutes, or any other provision of law relating to
22 civil and criminal penalties or enforcement actions and remedies
23 available to the Department except as may be provided in a
24 brownfields agreement.

25 (3) Prevent or impede the immediate response of the Department or
26 responsible party to an emergency that involves an imminent or
27 actual release of a regulated substance that threatens public health
28 or the environment.

29 (4) Relieve a person receiving protection from liability for remediation
30 under this Chapter from any liability for contamination later
31 caused by that person on a brownfields property.

32 (5) Affect the ability or authority of any person to seek any relief
33 available against any party who may have liability with respect to
34 the brownfields property, except to compel remediation of the
35 brownfields property other than that required under the
36 brownfields agreement.

37 (6) Affect the ability or authority to seek contribution from any person
38 who may have liability with respect to the brownfields property
39 and who did not receive cleanup liability protection under this
40 Part.

41 (7) Prevent the State from enforcing specific numerical cleanup
42 standards, monitoring, or compliance requirements specifically
43 required to be enforced by the federal government as a condition

to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

"§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting interest-bearing account in the Office of the State Treasurer. The Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray a portion of the costs of implementing this Part.

"§ 130A-310.39. Fees.

(a) The Department shall collect the following fees:

(1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay a fee of one thousand dollars (\$1,000).

(2) A prospective developer who submits a final report certifying completion of remediation under a brownfields agreement shall pay a fee of five hundred dollars (\$500.00).

(b) Fees imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

"§ 130A-310.40. Legislative reports.

The Department shall prepare and submit to the Environmental Review Commission, concurrently with the report on the Inactive Hazardous Sites Response Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of this Part in facilitating the cleanup and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties. This evaluation shall also include a report on receipts by

1 and expenditures from the Brownfields Property Reuse Act Implementation
2 Account."

3 Section 3. G.S. 130A-26.1(g) is amended by adding two new subdivisions
4 to read:

5 "(5) Provides false information or fails to provide information relevant
6 to a decision by the Department as to whether or not to enter into
7 a brownfields agreement under Part 5 of Article 9 of this Chapter.

8 (6) Provides false information or fails to provide information required
9 by a brownfields agreement under Part 5 of Article 9 of this
10 Chapter."

11 Section 4. G.S. 130A-310.7 is amended by adding the following new
12 subsection to read:

13 "(c) The liability protection under G.S. 130A-310.33 applies to any party who
14 successfully completes a remediation to the current standards of contamination of any
15 site under any remedial program administered by the Department. For purposes of
16 this section, 'remediation to the current standards' means that cleanup and
17 remediation activities at the site comply with standards, guidance, or established
18 methods that have been adopted or published by the Department, either at the time
19 the activities are begun or prior to the completion of those activities. A change in
20 those standards, guidance, or established methods prior to completion of the work at
21 the site shall not preclude such liability protection so long as the party meets these
22 standards, guidance, or established methods in effect at the time the work was begun.
23 Any party eligible for the liability protection under this section may request and
24 receive from the Department a written statement confirming that protection upon
25 completion of the work and payment of the fee required under G.S.
26 130A-310.39(a)(2)."

27 Section 5. This act shall not be construed to obligate the General
28 Assembly to make any appropriation to implement the provisions of this act. The
29 Department of Environment, Health, and Natural Resources shall implement the
30 provisions of this act from funds otherwise available or appropriated to the
31 Department.

32 Section 6. This act is effective when it becomes law.



North Carolina General Assembly
Legislative Services Office

Attachment "A"

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Memorandum

May 14, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel
Mary Shuping, Administrative Assistant

SUBJECT: House Bill 1121 (Brownfields Property Reuse Act)

Section 1 sets out the findings of the General Assembly relating to the reuse of "brownfields" (abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to cleanup requirements under State or federal law).

Section 2 establishes the Brownfields Property Reuse Act.

§130A-310.30. Short Title.
Brownfields Property Reuse Act.

§130A-310.31. Definitions.
Definitions include:

"Brownfields agreement" means an agreement between the Department of Environment, Health, and Natural Resources (DEHNR) and a prospective developer that meets the requirements of G.S. 130A-310.32 (Brownfields agreements).

"Prospective developer" means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that property and who did not cause or contribute to the contamination at the brownfields property.

"Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

§130A-310.32. Brownfields agreements.

DEHNR may enter into a brownfields agreement (agreement) with a prospective developer (developer).

The developer will demonstrate: (1) The compliance history of itself and its parents, subsidiaries, and affiliates; (2) That the property is suitable for the proposed uses while protecting human health and the environment; (3) That the benefit to the public is commensurate with the liability protection afforded

under this Part; (4) The financial, managerial, and technical means to implement the agreement and assure safe use of the property; (5) Current and prospective compliance with procedural requirements.

Brownfields agreements may be negotiated on the basis of land use restrictions. Remediation standards may take into account land use restrictions. The agreement may specify the desired results of remediation activities and the consequences of achieving or not achieving those results.

§130A-310.33. Liability protection.

A developer who enters into an agreement with DEHNR and complies with the agreement will not be held liable for cleanup of areas of contaminants identified in the agreement, so long as the activities conducted on the property do not increase the risk of harm to public health or the environment. This liability protection is extended to parties who are not otherwise liable for remediation who are (1) agents of the developer involved in redevelopment or remediation; (2) future owners of the property; (3) persons who develop or occupy the property; (4) successors or assignees to any other person with liability protection; (5) parties providing financing for remediation or redevelopment of the property. Conducting an environmental assessment or transaction screen will not subject a person to liability unless the person increases the risk to public health or the environment by failing to exercise due diligence or reasonable care.

A developer who completes the remediation required by an agreement or other person with liability protection under this section will not be required to undertake additional remediation of the property unless any of the following apply: (1) the developer knowingly or recklessly gives false information in the formation of the agreement or in demonstration of compliance with the agreement; (2) new information indicates the existence of unreported contamination associated with the property; (3) the level of risk becomes unacceptable in the vicinity of the property due to changes in exposure conditions; (4) DEHNR obtains new information about a contamination or exposure that makes the risk unacceptable in a manner not anticipated in the agreement; (5) the owner fails to file a timely and proper Notice of Brownfields Development; or (6) the owner or agent of the owner violates the land use restrictions. In the case of new information indicating the existence of unreported contamination, further cleanup will only be required if the original agreement set target concentrations for contaminants and the levels of unreported contaminants exceed these target concentrations or the unreported contaminants raise the risk to public health or the environment.

§130A-310.34. Public notice and community involvement.

A developer desiring to enter into an agreement will notify the public and community in which the property is located of the planned remediation and redevelopment. The developer will also submit notice to DEHNR providing the location of the property, a map of this location, a description of contaminants and their concentrations; a description of intended future use, any proposed investigation and cleanup measures, and a proposed Notice of Brownfields Property as required by G.S. 130A-310.35 (*see below*). Notice will also be given to local governments with jurisdiction over the property, a newspaper of general circulation serving the area in which the property is located, and in the North Carolina Register. The public and local governments will have 60 days within which to provide input into the cleanup and redevelopment plans. Where public or local government input is supported by technical information, DEHNR will, to the extent practicable, incorporate the input into the agreement.

§130A-310.35. Notice of Brownfields Property; land use restrictions in deed.

A person who enters into an agreement with DEHNR will submit to DEHNR a proposed Notice of Brownfields Property that will include a survey plat prepared by a certified professional land surveyor of areas designated by DEHNR; a legal description of the property; the location and dimensions of areas of potential environmental concern; the type, location, and quantity of contaminants on the property; and any restrictions on current or future use of the property.

After DEHNR approves and certifies the Notice, the developer will file a certified copy of the Notice in the register of deeds' office in the county or counties in which the property is located. The register of deeds will record the Notice and index it in the grantor index under the names of the property owners and, if different, also under the name of the person conducting the redevelopment. When the property is transferred, the instrument of transfer will contain a statement that the property has been classified and, if appropriate, cleaned up as a brownfields property.

A property owner may request that a Notice be canceled by the Secretary of Environment, Health, and Natural Resources (Secretary) after the remediation of a property has eliminated the hazards. If the Secretary concurs with the request, the Secretary will send to the register of deeds a statement that the hazards have been eliminated and will have the Notice canceled. The register of deeds will record the Secretary's statement and index it in the grantor index.

Restrictions on the current or future use of a property will be enforced by the owner of the property, and may be enforced by DEHNR or any unit of local government having jurisdiction over the property. Notice of brownfields properties will be filed in accordance with these provisions, rather than G.S. 130A-310.8 (Recordation of inactive hazardous substance or waste disposal sites).

§130A-310.36. Appeals.

A decision by DEHNR as to whether or not to enter into an agreement, including any terms of an agreement, is reviewable under the contested case provisions of the North Carolina Administrative Procedure Act.

§130A-310.37. Construction of Part.

This program is not intended to and will not be construed to: (1) affect the ability of local governments to regulate land development; (2) modify any remedial program or enforcement authority of DEHNR, except as provided in a agreement; (3) impede the immediate response of DEHNR or a responsible party to an imminent or actual release threatening public health or the environment; (4) relieve a person from liability for contamination caused by that person on a brownfields property; (5 and 6) except for further remediation, affect the ability of any person to seek relief or contribution from any person who may have liability with respect to a property and who does not receive cleanup liability; (7) prohibit the State from complying with federal laws and standards and receive federal funds; (8) create a defense for the illegal disposal of waste; (9) relieve a person of liability for failure to exercise reasonable care in the performance of an environmental assessment or transaction screen. No action or inaction of the State, its employees, Agencies, or agents related to brownfields agreements will subject the State to tort liability or waive sovereign immunity.

§130A-310.38. Brownfields Property Reuse Act Implementation Account

The Brownfields Property Reuse Act Implementation Account (Account) is created as a nonreverting, interest-bearing account. The account will consist of fees collected under G.S. 130A-310.39 (*see below*), as well as moneys appropriated by the General Assembly, received from the federal government, contributed by private organizations, and received from any other sources. Funds from the Account will be used by DEHNR to defray the costs of implementing this act.

§130A-310.39. Fees. DEHNR will collect the following fees: (1) \$1,000 from a prospective developer who submits a proposed brownfields agreement; and (2) \$500 from a prospective developer who submits a final report certifying completion of remediation under a brownfields agreement. These fees will be credited to the Account.

§130A-310.40. Legislative reports.

Beginning October 1, 1997, DEHNR will report on this program concurrently with every report on the Inactive Waste Sites program.

Section 3 amends G.S 130A-26.1(g) regarding criminal violations to add two new subdivisions. Subdivisions (5) and (6) provide that any person who knowingly and willfully provides false information or fails to provide information that is relevant to DEHNR's decision whether or not to enter into a brownfields agreement or is required by a brownfields agreement is guilty of a Class I felony. This may include a fine not to exceed \$100,000 per day of violation, not to exceed a cumulative total of \$500,000 for each 30 day period of continuing violation.

Section 4 amends G.S. 130A-310.7 by adding a new subsection that extends the liability protection afforded under this act to the Inactive Hazardous Sites program for parties who successfully complete remediation.

Section 5 directs DEHNR to implement this act from available funds.

Section 6 makes this act effective when it becomes law.



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A developer who completes the remediation required by an agreement or other person with liability protection under this section will not be required to undertake additional remediation of the property unless any of the following apply: (1) the developer knowingly or recklessly gives false information in the formation of the agreement or in demonstration of compliance with the agreement; (2) new information indicates the existence of unreported contamination associated with the property; (3) the level of risk becomes unacceptable in the vicinity of the property due to changes in exposure conditions; (4) DEHNR obtains new information about a contamination or exposure that makes the risk unacceptable in a manner not anticipated in the agreement; (5) the owner fails to file a timely and proper Notice of Brownfields Development; or (6) the owner or agent of the owner violates the land use restrictions. In the case of new information indicating the existence of unreported contamination, further cleanup will only be required if the original agreement set target concentrations for contaminants and the levels of unreported contaminants exceed these target concentrations or the unreported contaminants raise the risk to public health or the environment.

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Section 5 directs DEHNR to implement this act from available funds.

Section 6 makes this act effective when it becomes law.

file

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill and Watson** for the Committee on ENVIRONMENT

☐ Committee Substitute for

H.B. 1121 A BILL TO BE ENTITLED AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE ACTUAL CONTAMINATION, OR THE POSSIBILITY OF CONTAMINATION, HAS IMPEDED REDEVELOPMENT AND TO CREATE THE BROWNFIELDS STUDY COMMISSION.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐
- ☒ With a favorable report as to committee substitute bill (#), ☒ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill #) be re-referred to the Committee on *Finance*.
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 225*
PROPOSED HOUSE COMMITTEE SUBSTITUTE H225-CSRT-001
11:10:16 EZT / 14-MAY-97

ATTENTION: Line numbers may change after adoption.

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 21A of Chapter 143 of the General
7 Statutes is amended by adding a new Part to read:
8 "Part 6. Dry-Cleaning Solvent Cleanup.
9 "§ 143-215.104A. Title.
10 This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup
11 Act' and may be cited by that name.
12 "§ 143-215.104B. Definitions. -- The following definitions apply
13 in this Part:
14 (1) Abandoned dry-cleaning facility site. -- Any real
15 property or individual leasehold space on which a
16 dry-cleaning facility formerly operated.
17 (2) Dry-cleaning facility. -- A place of business
18 located in this State and engaged in on-site
19 dry-cleaning operations, other than any of the
20 following:

- 1 a. A facility located on a United States military
2 base or owned by the United States or a
3 department or agency of the United States.
4 b. A commercial uniform service or commercial
5 linen supply facility.
6 c. A facility owned by the State or an agency or
7 department of the State.
8 (3) Dry-cleaning operations. -- Cleaning of apparel and
9 household fabrics by using one or more dry-cleaning
10 solvents instead of water.
11 (4) Dry-cleaning solvent. -- Perchloroethylene, F-1,1,3
12 or 1,1,1 trichloroethane, a petroleum-based
13 solvent, or another comparable product used as a
14 cleaning agent in a dry-cleaning operation.
15 (5) Dry-cleaning solvent contamination. The presence
16 of dry-cleaning solvent in the groundwater, surface
17 water, or surface or subsurface soils of the State,
18 but not the presence of dry-cleaning solvent in
19 amounts less than quantities that may be harmful as
20 determined pursuant to G.S. 143-215.77A.
21 (6) Fund. -- The Dry-Cleaning Solvent Cleanup Fund.
22 (7) Impacted party. -- Any of the following:
23 a. A current or former lessor of real property on
24 which a dry-cleaning facility or wholesale
25 distribution facility is or was located during
26 the term of the lease.
27 b. A property owner who has suffered property
28 damage caused by dry-cleaning solvent
29 contamination resulting from a release at a
30 dry-cleaning facility or wholesale
31 distribution facility,
32 c. The successor, assignee, mortgagee, or
33 successor-in-title of a person listed in
34 sub-divisions a. or b. of this subdivision.
35 (8) Pollution and remediation legal liability
36 insurance. -- Property and casualty insurance
37 covering, at a minimum, those losses for which
38 reimbursement is authorized in G.S.
39 143-215.104H(b).
40 (9) Release. -- Any spillage, leakage, pumping,
41 placement, emptying, or dumping of dry-cleaning
42 solvents from a dry-cleaning facility or wholesale
43 distribution facility, or its associated piping,

1 that results in or contributes to dry-cleaning
2 solvent contamination.

3 (10) Wholesale distributor. -- A person who operates a
4 wholesale distribution facility.

5 (11) Wholesale distribution facility. -- A place of
6 business located in this State and engaged in the
7 storage, distribution, or sale of dry-cleaning
8 solvents for use in dry-cleaning facilities.

9 "§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.

10 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is
11 established as a special revenue fund. Accordingly, revenue in
12 the Fund at the end of a fiscal year does not revert and interest
13 and other investment income earned by the Fund must be credited
14 to it. The Fund is created to provide revenue to implement this
15 Part.

16 (b) Sources of Revenue. -- The following revenue is credited to
17 the Fund:

18 (1) Dry-Cleaning solvent taxes collected under Article
19 5C of Chapter 105 of the General Statutes.

20 (2) Recoveries made pursuant to G.S. 143-215.104H(I).

21 (3) Gifts and grants made to the Fund.

22 (4) Revenue appropriated to the Fund by the General
23 Assembly.

24 (c) Disbursements. -- A claim filed against the Fund may be
25 paid only from revenue in the Fund and only for a site certified
26 in accordance with this Part. If the amount of claims exceeds
27 the amount of revenue in the Fund, the claims with the highest
28 priority must be paid before claims of lower priority are paid,
29 and claims of equal priority must be paid in the order in which
30 they were determined until the revenue is exhausted. No more
31 than fifteen percent (15%) of the amount of revenue credited to
32 the Fund in a year may be used to defray costs of administration
33 of the program described in this Part, including oversight of
34 response activities.

35 "§ 143-215.104D. Powers of the Commission.

36 (a) Administrative functions. The Commission may delegate the
37 powers enumerated in this subsection to the Department or engage
38 a private contractor or contractors to carry out the activities
39 enumerated in this subsection. If the Commission engages a
40 private contractor to carry out activities enumerated in
41 subdivisions (1) through (7) of this subsection the actions of
42 the contractor shall not be effective until ratified by the
43 Commission. The Commission shall:

- 1 (1) Accept petitions from impacted third parties, from
2 owners and operators of dry-cleaning facilities or
3 wholesale distribution facilities, and from prior
4 or current owners of abandoned dry-cleaning
5 facility sites for certification under this Part.
- 6 (2) Prioritize certified dry-cleaning facilities,
7 wholesale distribution facilities or abandoned
8 dry-cleaning facility sites for reimbursement.
- 9 (3) Develop forms to be used by persons applying for
10 reimbursement of assessment or remediation costs.
- 11 (4) Schedule funding of assessment and remedial
12 response activities.
- 13 (5) Determine that all necessary assessment and
14 remediation has been completed at a site, or
15 alternatively, that no assessment or remediation is
16 necessary with respect to a site.
- 17 (6) Make payments from the Fund to a petitioner or its
18 designee to reimburse the cost of assessment or
19 remediation, provided however, that any such
20 payments made by a private contractor engaged by
21 the Commission shall be authorized by the
22 Commission prior to disbursement to the petitioner
23 or its designee.
- 24 (b) Rulemaking. The Commission shall adopt such rules as are
25 necessary to implement the provisions of this Part. The
26 Commission shall not delegate the rulemaking powers provided in
27 this subsection.
- 28 (1) The Commission may adopt rules governing
29 a. Strategies for the assessment and remediation
30 of dry-cleaning solvent contamination
31 reimbursable pursuant to this Part, including
32 presumptive remedial responses.
- 33 b. Fees for assessment and remedial services
34 reimbursable under this Part.
- 35 c. The certification and decertification of
36 sites.
- 37 d. The prioritization of sites, and scheduling of
38 funding for assessment and remedial response
39 activities. These rules shall provide for the
40 consideration of the degree of harm or risk to
41 human health and the environment and other
42 factors the Commission finds appropriate.
- 43 e. The disbursement of revenue from the Fund for
44 payment or reimbursement of approved

1 assessment or remedial responses costs. The
2 rules shall provide for reimbursement of costs
3 as they are incurred.

4 f. The determination that all necessary
5 assessment and remedial work at a site has
6 been completed, or alternatively, that no
7 assessment or remediation is necessary with
8 respect to a site.

9 (2) The Commission may adopt rules establishing minimum
10 management practices for handling of dry-cleaning
11 solvent at facilities and wholesale distribution
12 facilities. The rules may:

13 a. Require that all perchloroethylene
14 dry-cleaning machines installed at a
15 dry-cleaning facility after the effective date
16 of the rule meet air emission standards that
17 equal or exceed the standards that apply to
18 comparable dry-to-dry perchloroethylene
19 dry-cleaning machines with integral
20 refrigerated condensation.

21 b. Prohibit the discharge of water that is
22 contaminated with dry-cleaning solvents into
23 sanitary sewers, septic systems, storm sewers,
24 or other bodies of water.

25 c. Require spill containment structures around
26 dry-cleaning machines, filters, stills, vapor
27 absorbers, solvent storage areas, and waste
28 solvent storage areas.

29 d. Require floor sealants for cleaning room
30 areas, provided the sealants are found by the
31 Commission to be effective.

32 e. Require, by 1 January 2002, the use of
33 improved solvent transfer systems for delivery
34 of solvents.

35 f. Require any solvent handling practices the
36 Commission may find necessary and appropriate
37 to minimize the risk of releases at wholesale
38 distribution sites.

39 (3) The Commission shall adopt rules establishing a
40 risk-based approach to the assessment,
41 prioritization, and cleanup of dry-cleaning solvent
42 contamination. The rules shall address, at a
43 minimum, the circumstances where site-specific
44 information should be considered, criteria for

- 1 determining acceptable cleanup levels, and the
2 acceptable level or range of levels of risk to
3 human health and the environment. These rules may,
4 without limitation, require any person eligible for
5 reimbursement under G.S. 143-215.104H to conduct
6 assessments necessary for the Commission to
7 determine the degree of risk to human health and
8 the environment that is posed by dry-cleaning
9 solvent contamination resulting from releases at a
10 dry-cleaning facilities, wholesale distribution
11 facilities, and abandoned dry-cleaning facilities.
- 12 (4) The Commission shall adopt rules governing what
13 shall constitute an uninsurable site for the
14 purposes of G.S. 143-215.104E(b). The rules shall
15 base base the determination of uninsurability on
16 the availability of pollution and remediation legal
17 liability insurance at an annual premium amount
18 that is affordable and proportionate to premium
19 amounts charged for coverage of facilities at which
20 dry-cleaning solvent contamination is not known to
21 be present. The Commission shall consult with the
22 Commissioner of Insurance before adopting rules
23 pursuant to this subdivision.
- 24 (5) The Commission may adopt rules requiring insurance
25 companies issuing pollution and remediation legal
26 liability insurance for dry-cleaning facilities in
27 this State to report to the Commission or the
28 Commissioner of Insurance the number of such
29 policies held in force by the company in this State
30 and the average premium rate for the policies. The
31 Commission shall consult with the Commissioner of
32 Insurance before adopting rules pursuant to this
33 subdivision.
- 34 (c) All rules and standards adopted by the Commission shall,
35 to the maximum extent practicable, be applicable to all
36 dry-cleaning facilities, wholesale distribution facilities, and
37 abandoned dry-cleaning facilities in the State, and in any event
38 shall be cost-effective, reasonable and technically feasible.
- 39 (d) Unless otherwise provided in this Part, the Commission may
40 delegate any of its rights, duties, and responsibilities under
41 this Part to the Department.
- 42 "§ 143-215.104E. Requirement of financial responsibility for
43 dry-cleaning facilities.

1 The owner or operator of any dry-cleaning facility operating in
2 this State shall establish financial responsibility for legal
3 liability arising in connection with dry-cleaning solvent
4 contamination resulting from a release at the facility by either

5 (1) obtaining pollution and remediation legal liability
6 insurance for the facility with coverage limits not
7 less than one million dollars (\$1,000,000) from an
8 insurance carrier recognized to do business in this
9 State, or

10 (2) deposit with the Commission securities or a
11 third-party bond acceptable to the Commission in an
12 amount not less than one million dollars
13 (\$1,000,000).

14 (b) If the owner or operator of a dry-cleaning facility
15 demonstrates to the satisfaction of the Commission that the
16 dry-cleaning facility is uninsurable, then the Commission shall
17 issue a certificate of uninsurability to the operator of the
18 facility. A dry-cleaning facility designated as uninsurable by
19 the Commission shall be exempt from the requirements of
20 subsection (a) of this section.

21 "§ 143-215.104G. Certification of facilities and sites.

22 (a) If dry-cleaning solvent contamination is found to have
23 resulted from a release at a dry-cleaning facility, a wholesale
24 distribution facility, or an abandoned dry-cleaning facility
25 site, the owner or operator of the dry-cleaning facility or
26 wholesale distribution facility, a former owner or operator of
27 the facility, or the current owner of the abandoned dry-cleaning
28 facility site, may petition the Commission to certify the
29 facility or site.

30 (b) Any request for certification of a facility or site shall
31 be accompanied by the petitioning party's written acceptance of
32 responsibility for incurring response costs for the dry-cleaning
33 solvent contamination described named in the petition according
34 to the following schedule: the following schedule:

<u>Type of Facility</u>	<u>Costs</u>
<u>Dry-cleaning facilities with fewer</u> <u>than five full time employees or the</u> <u>equivalent during the preceding calendar</u> <u>year</u>	<u>\$5,000</u>
<u>Dry-cleaning facilities with more than</u> <u>five but fewer than 10 full-time employees</u> <u>or their equivalent during the preceding</u> <u>calendar year</u>	<u>\$10,000</u>
<u>Dry-cleaning facilities with more</u>	

1 than 10 full-time employees or their
2 equivalent during the preceding
3 calendar year \$15,000
4 Wholesale distribution facilities \$25,000
5 Abandoned dry-cleaning facilities \$50,000
6 Uninsurable dry-cleaning facilities \$50,000.

7 (c) Any request for certification of a dry-cleaning facility
8 or wholesale distribution facility by a current owner or operator
9 of the facility shall be accompanied by either (i) evidence of
10 financial responsibility established in accordance with G.S.
11 143-215.104E(a) or (ii) a copy of a certificate of uninsurability
12 issued by the Commission pursuant to G.S. 143-215.104E(b).

13 (d) If it determines that the party petitioning for
14 certification of a facility or site has complied with all the
15 applicable requirements of this Part, the Commission shall
16 certify the facility, inform the party of its decision, and
17 inform the party of the priority ranking of the site.

18 (e) The Commission shall reject a petition in any of the
19 following circumstances:

20 (1) The petitioner is the owner or operator of a
21 dry-cleaning facility or wholesale distribution
22 facility for which certification is sought and the
23 operator of the facility was not in compliance with
24 minimum management practices adopted by the
25 Commission pursuant to G.S. 143-215.104D(b)(2) at
26 the time the contamination was discovered.

27 (2) The petitioner is an owner or operator of a
28 dry-cleaning facility or wholesale distribution
29 facility for which certification is sought and the
30 operator of the facility owed delinquent taxes
31 under Article 5C of Chapter 105 of the General
32 Statutes when the dry-cleaning solvent
33 contamination was discovered.

34 (3) The petitioner is subject to the requirements of
35 subsections (b) or (c) of this section and fails to
36 comply with the applicable provisions of those
37 subsections.

38 (4) The petitioner willfully falsified any information
39 in its petition.

40 (f) The rejection of any petition pursuant to subsection (e)
41 of this section shall not affect the rights of any other
42 petitioner under this Part.

43 (g) The Commission may decertify a facility or site if it
44 determines that the owner or operator of the facility on the site

1 is, at any time subsequent to the certification of the facility
2 or site, in willful violation of any of the minimum management
3 requirements adopted by the Commission pursuant to G.S.
4 143-215.104D(b)(2). Prior to decertifying any facility or site,
5 the Commission shall give the petitioner notice and opportunity
6 for hearing. The decertification of any site pursuant to this
7 subsection shall not affect the rights of any other petitioner
8 under this Part.

9 "§ 143-215.104H. Assessment and remediation.

10 (a) The owner or operator of a certified dry-cleaning facility
11 or a certified wholesale distribution facility, the current owner
12 of a certified abandoned dry-cleaning facility site, or an
13 impacted third party affected by a certified facility or site may
14 seek reimbursement from the Fund for response costs incurred in
15 connection with dry-cleaning solvent contamination found to have
16 resulted from a release at the facility or site.

17 (b) The Commission may authorize reimbursement for the
18 following response costs incurred in connection with dry-cleaning
19 solvent contamination found to have resulted from a release at
20 any certified facility or site:

- 21 (1) Costs of assessment of the dry-cleaning solvent
22 contamination.
- 23 (2) Costs of treatment or replacement of potable water
24 supplies affected by the contamination.
- 25 (3) Costs of remediation of affected soil, groundwater,
26 and surface waters.
- 27 (4) Monitoring of the contamination.
- 28 (5) Inspection and supervision of activities described
29 in this subsection.
- 30 (6) Reasonable costs of restoring property as nearly as
31 practicable to the conditions that existed prior to
32 activities associated with assessment and
33 remediation conducted pursuant to this Part.
- 34 (7) Other activities reasonably required to protect
35 human health and the environment.

36 (c) The Commission shall not authorize any reimbursement from
37 the Fund for response costs that can be paid from funds available
38 through the financial responsibility demonstrated by the owner or
39 operator of the facility or site pursuant to G.S. 143-215.104E.

40 (d) The Commission shall not authorize the disbursement of
41 moneys from the Fund in an amount in excess of two hundred
42 thousand dollars (\$200,000) per year for response costs incurred
43 in connection with any individual facility or site certified
44 pursuant to G.S. 143-215.104G; provided, however, that the

1 Commission may authorize the disbursement of up to four hundred
2 thousand dollars (\$400,000) per year for response costs incurred
3 in connection with dry-cleaning solvent contamination that poses
4 an imminent and substantial threat to human health or the
5 environment.

6 (e) The Commission shall not authorize the disbursement of
7 moneys from the Fund that would result in a diminution of the
8 Fund balance below one hundred thousand dollars (\$100,000),
9 unless an emergency exists in connection with dry-cleaning
10 solvent contamination that constitutes an imminent and
11 substantial threat to human health or the environment.

12 (f) The Commission shall not authorize distribution of moneys
13 from the Fund for any of the following:

14 (1) Dry-cleaning solvent contamination that did not
15 result from dry-cleaning operations or the
16 operation of a wholesale distribution facility.

17 (2) Any dry-cleaning solvent contamination that has
18 been identified by the United States Environmental
19 Protection Agency as a federal superfund site
20 pursuant to 40 Code of Federal Regulations, Part
21 300, except that the Commission may authorize
22 distribution of the required State match up to two
23 hundred thousand dollars (\$200,000) per year per
24 site.

25 (g) The Commission may not delegate its power to authorize
26 distribution of the required State match as provided by
27 subdivision (2) of subsection (f) of this section.

28 (h) The Commission shall not authorize any distribution of
29 moneys from the Fund which would result in remediation beyond the
30 level required under the Commission's risk-based criteria for
31 determining the appropriate level of remediation.

32 (i) In the event the owner or operator of a dry-cleaning
33 facility or wholesale distribution facility or the current owner
34 of an abandoned dry-cleaning facility site cannot be identified
35 or located or fails to comply with all the applicable
36 requirements of this Part, the Commission may direct the
37 Department or a private contractor engaged by the Commission to
38 use staff, equipment, or materials under the control of the
39 Department or contractor or provided by other cooperating
40 federal, State, or local agencies to develop and implement a
41 remediation plan for, or to provide interim alternative sources
42 of drinking water to third parties affected by dry-cleaning
43 solvent contamination resulting from a release at a dry-cleaning
44 facility, wholesale distribution facility, or abandoned

1 dry-cleaning facility site. The cost of any of these actions
2 shall be paid, to the extent funds are available, from the Fund.
3 The Department or private contractor shall keep a record of all
4 expenses incurred for personnel and for the use of equipment and
5 materials and all other expenses of developing and implementing
6 the remediation plan. The Commission may request the Attorney
7 General to commence a civil action to secure reimbursement of
8 costs incurred under this subsection. In the event a civil
9 action is commenced, the Commission may recover, in addition to
10 any amount due, the costs of the action, including reasonable
11 attorneys' fees and investigation expenses. Any moneys received
12 or recovered as reimbursement shall be paid into the Fund or
13 other source from which the expenditures were made.

14 "§ 143-215.104I. Risk assessment.

15 (a) If the Commission determines that the degree of risk to
16 human health or the environment resulting from dry-cleaning
17 solvent contamination otherwise subject to assessment or
18 remediation under this Part is acceptable in light of the
19 criteria established pursuant to G.S. 143-215.104D(b)(3), the
20 Commission shall notify the owner or operator of the site or
21 facility responsible for the contamination that no cleanup, no
22 further cleanup, or no further action is required in connection
23 with the contamination.

24 (b) If the Commission determines that no cleanup or further
25 action is required in connection with dry-cleaning solvent
26 contamination otherwise subject to assessment or remediation
27 pursuant to this Part, the Commission shall not pay or reimburse
28 any costs otherwise payable or reimbursable under this Part from
29 the Fund, other than reasonable and necessary to conduct the risk
30 assessment required by this section; provided the Commission may
31 pay or reimburse costs that were either:

32 (1) Incurred prior to or as a result of notification of
33 a determination by the Commission that no cleanup,
34 no further cleanup, or no action is required.

35 (2) Incurred as a result of a later determination by
36 the Commission that the contamination poses a
37 threat or potential threat to human health or the
38 environment.

39 "§ 143-215.104J. Enforcement procedures: civil penalties.

40 (a) A civil penalty of not more than ten thousand dollars
41 (\$10,000) may be assessed by the Secretary against any person
42 who:

- 1 (1) Fails to establish responsibility for a
2 dry-cleaning facility or a wholesale distribution
3 facility as required by this Part.
- 4 (2) Engages in dry-cleaning operations using
5 dry-cleaning solvent for which the appropriate
6 transfer fee has not been paid.
- 7 (3) Transfers dry-cleaning solvent to a dry-cleaning
8 facility or wholesale distribution facility not
9 registered pursuant to this Part.
- 10 (4) Fails to comply with rules adopted by the
11 Commission pursuant to G.S. 143-214.104D(b)(2).
- 12 (5) Fails to file, submit, or make available, as the
13 case may be, any documents, data, or reports
14 required by this Part.
- 15 (6) Violates or fails to act in accordance with the
16 terms, conditions, or requirements of any special
17 order or other appropriate document issued pursuant
18 to G.S. 143-215.2.
- 19 (7) Falsifies or tampers with any recording or
20 monitoring device or method required to be operated
21 or maintained under this Part, or rules
22 implementing this Part.
- 23 (8) Knowingly renders inaccurate any recording or
24 monitoring device or method required to be operated
25 or maintained under this Part or rules implementing
26 this Part.
- 27 (9) Knowingly makes any false statement,
28 representation, or certification in any
29 application, record, report, plan or other document
30 filed or required to be maintained under this Part
31 or a rule implementing this Part.
- 32 (10) Knowingly makes a false statement of material fact
33 in a rulemaking proceeding or contested case under
34 this Part.
- 35 (11) Refuses access to the Commission or its duly
36 designated representative to any premises for
37 purposes of conducting a lawful inspection provided
38 for in this Part or rule implementing this Part.
- 39 (b) If any action or failure to act for which a penalty may be
40 assessed under this section is continuous, the Secretary may
41 assess a penalty not to exceed ten thousand dollars (\$10,000) per
42 day for so long as the violation continues. A penalty for a
43 continuous violation shall not exceed two hundred thousand

1 dollars (\$200,000) for each period of 30 days during which the
2 violation continues.

3 (c) In determining the amount of the penalty, the Secretary
4 shall consider the factors set out in G.S. 143B-282.1(b). The
5 procedures set out in G.S. 143B-282.1 shall apply to civil
6 penalty assessments that are presented to the Commission for
7 final agency decision.

8 (d) The Secretary shall notify any person assessed a civil
9 penalty for the assessment and the specific reasons therefore by
10 registered or certified mail, or by any means authorized by G.S.
11 1A-1, Rule 4. Contested case petitions shall be filed pursuant
12 to G.S. 150B-23 within 30 days of receipt of the notice of
13 assessment. The Secretary shall make the final decision
14 regarding assessment of a civil penalty under this section.

15 (e) Requests for remission of civil penalties shall be filed
16 with the Secretary. Remission requests shall not be considered
17 unless made within 30 days of receipt of the notice of
18 assessment. Remission requests must be accompanied by a waiver
19 of the right to a contested case hearing pursuant to Chapter 150B
20 and a stipulation of the facts on which the assessment was based.
21 Consistent with the limitations in G.S. 143B-282.1(c) and (d),
22 remission requests may be resolved by the Secretary and the
23 violator. If the Secretary and the violator are unable to
24 resolve the request, the Secretary shall deliver the remission
25 request and the recommended action to the Committee on Civil
26 Penalty Remissions of the Environmental Management Commission
27 appointed pursuant to G.S. 143B.282.1(c).

28 (f) If any civil penalty has not been paid within 30 days
29 after notice of assessment has been served on the violator, the
30 Secretary shall request the Attorney General to institute a civil
31 action in the superior court of any county in which the violator
32 resides, or has his or its principal place of business to recover
33 the amount of the assessment, unless the violator contests the
34 assessment as provided in subsection (d) of this section, or
35 requests remission of the assessment in whole or in part as
36 provided in subsection (e) of this section. If any civil penalty
37 has not been paid within 30 days after the final agency decision
38 or order has been served on the violator, the Secretary shall
39 request the Attorney General to institute a civil action in the
40 superior court of any county in which the violator resides or has
41 his or its principal place of business to recover the amount of
42 the assessment. Such civil actions must be filed within three
43 years of the date the final agency decision or court order was
44 served on the violator.

1 "§ 143-215.104K. Enforcement procedures; criminal penalties.

2 (a) Any person who negligently commits any of the offenses set
3 out in subdivisions (1) through (11) of G.S. 143-215.104J(a)
4 shall be guilty of a Class 2 misdemeanor which may include a fine
5 not to exceed fifteen thousand dollars (\$15,000) per day of
6 violation, provided that such fine shall not exceed a cumulative
7 total of two hundred thousand dollars (\$200,000) for each period
8 of 30 days during which a violation continues.

9 (b) Any person who knowingly and willfully commits any of the
10 offenses set out in subdivisions (1) through (11) of G.S.
11 143-215.104J(a) shall be guilty of a Class I felony, which may
12 include a fine not to exceed one hundred thousand dollars
13 (\$100,000) per day of violation, provided that this fine shall
14 not exceed a cumulative total of five hundred thousand dollars
15 (\$500,000) for each period of 30 days during which the violation
16 continues. For the purposes of this subsection, the phrase
17 'knowingly and willfully' shall mean intentionally and
18 consciously as the courts of this State, according to the
19 principles of common law, interpret the phrase in the light of
20 reason and experience.

21 (c) (1) Any person who knowingly commits any of the
22 offenses set out in subdivisions (4) through (11)
23 of G.S. 143-215.104J(a) and who knows at that time
24 that he thereby places another person in imminent
25 danger of death or serious bodily injury shall be
26 guilty of a Class C felony.

27 (2) For the purposes of this subsection, a person's
28 state of mind is knowing with respect to:

29 a. His conduct, if he is aware of the nature of
30 his conduct.

31 b. An existing circumstance, if he is aware or
32 believes that the circumstance exists.

33 c. A result of his conduct, if he is aware or
34 believes that his conduct is substantially
35 certain to cause danger of death or serious
36 bodily injury.

37 (3) Under this subsection, in determining whether a
38 defendant who is a natural person knew that his
39 conduct placed another person in imminent danger of
40 death or serious bodily injury:

41 a. The person is responsible only for actual
42 awareness or actual belief that he possessed;
43 and

1 b. Knowledge possessed by a person other than the
2 defendant but not by the defendant himself may
3 not be attributed to the defendant.

4 (4) It is an affirmative defense to a prosecution under
5 this subsection that the conduct charged was
6 conduct consented to by the person endangered and
7 that the danger and conduct charged were reasonably
8 foreseeable hazards of an occupation, a business,
9 or a profession; or of medical treatment or medical
10 or scientific experimentation conducted by
11 professionally approved methods and such other
12 person had been made aware of the risks involved
13 prior to giving consent. The defendant may
14 establish an affirmative defense under this
15 subdivision by a preponderance of the evidence.

16 (d) No proceeding shall be brought or continued under this
17 section for or on account of a violation by any person who has
18 previously been convicted of a federal violation based upon the
19 same set of facts.

20 (e) In proving the defendant's possession of actual knowledge,
21 circumstantial evidence may be used, including evidence that the
22 defendant took affirmative steps to shield himself from relevant
23 information. Consistent with the principles of common law, the
24 subjective mental state of defendants may be inferred from their
25 conduct.

26 (f) For the purposes of the felony provisions of this section,
27 a person's state of mind shall not be found 'knowingly and
28 willfully' or 'knowingly' if the conduct that is the subject of
29 the prosecution is the result of any of the following occurrences
30 or circumstances:

31 (1) A natural disaster or other act of God which could
32 not have been prevented or avoided by the exercise
33 of due care or foresight.

34 (2) An act of third parties other than agents,
35 employees, contractors, or subcontractors of the
36 defendant.

37 (3) An act done in reliance on the written advice or
38 emergency on-site direction of an employee of the
39 Department. In emergencies, oral advice may be
40 relied upon if written confirmation is delivered to
41 the employee as soon as practicable after receiving
42 and relying on the advice.

43 (4) An act causing no significant harm to the
44 environment or risk to the public health, safety,

1 or welfare and done in compliance with other
2 conflicting environmental requirements or other
3 constraints imposed in writing by environmental
4 agencies or officials after written notice is
5 delivered to all relevant agencies that the
6 conflict exists and will cause a violation of the
7 identified standard.

8 (5) Violations causing no significant harm to the
9 environment or risk to the public health, safety,
10 or welfare for which no enforcement action or civil
11 penalty could have been imposed under any written
12 civil enforcement guidelines in use by the
13 Department at the time. This subdivision shall not
14 be construed to require the Department to develop
15 or use written civil enforcement guidelines.

16 (6) Occasional, inadvertent, short-term violations
17 causing no significant harm to the environment or
18 risk to the public health, safety, or welfare. If
19 the violation occurs within 30 days of a prior
20 violation or lasts for more than 24 hours, it is
21 not an occasional, short-term violation.

22 (g) All general defenses, affirmative defenses, and bars to
23 prosecution that may apply with respect to other criminal
24 offenses under law may apply to prosecutions brought under this
25 section or other criminal statutes that refer to this section and
26 shall be determined by the courts of this State according to the
27 principles of common law as they may be applied in light of
28 reason and experience. Concepts of justification and excuse
29 applicable under this section may be developed in light of reason
30 and experience.

31 "§ 143-215.104L. Enforcement procedures; injunctive relief.

32 Whenever the Commission has reasonable cause to believe that
33 any person has violated or is threatening to violate any of the
34 provisions of this Part or rule implementing this Part, the
35 Commission may, either before or after the institution of any
36 other action or proceeding authorized by this Part, request the
37 Attorney General to institute a civil action in the name of the
38 State upon the relation of the Commission for injunctive relief
39 to restrain the violation or threatened violation and for such
40 other and further relief in the premises as the court shall deem
41 proper. The Attorney General may institute such action in the
42 superior court of the county in which the violation occurred or
43 may occur or, in his discretion, in the superior court of the
44 county in which the person responsible for the violation or

1 threatened violation resides or has his or its principal place of
2 business. Upon a determination by the court that the alleged
3 violation of the provisions of this Part or the rules of the
4 Commission has occurred or is threatened, the court shall grant
5 the relief necessary to prevent or abate the violation or
6 threatened violation. Neither the institution of the action nor
7 any of the proceedings thereon shall relieve any part to such
8 proceedings from any penalty prescribed for violation of this
9 Part.

10 "§ 143-215.104M. Appeals.

11 An owner or operator of a dry-cleaning facility or wholesale
12 distribution facility, a current or prior owner of an abandoned
13 dry-cleaning facility site, or an impacted third party who is
14 dissatisfied with a decision of the Commission under G.S.
15 143-215.104G, G.S. 143-215.104H, or G.S. 143-215.104I may
16 commence a contested case by filing a petition under G.S. 150B-23
17 within 60 days after the Commission's decision. If no contested
18 case is initiated within the allotted time period, the
19 Commission's decision shall be final and not subject to review.
20 The Commission shall make the final agency decision in contested
21 cases initiated pursuant to this section. The Commission shall
22 not delegate its authority to make a final agency decision
23 pursuant to this section.

24 "§ 143-215.104N. Preemption.

25 (a) If a dry-cleaning facility, wholesale distribution
26 facility or abandoned dry-cleaning facility site is certified by
27 the Commission in accordance with G.S. 143-215.104G, the remedies
28 provided in this Part shall be the sole and exclusive remedies
29 available to any person seeking to either:

30 (1) Compel any assessment, monitoring, treatment,
31 mitigation or remediation of any dry-cleaning
32 solvent contamination described in the Commission's
33 certification.

34 (2) Recover damages to property or costs of assessment,
35 monitoring, treatment, mitigation, or remediation
36 incurred in connection with any dry-cleaning
37 solvent contamination described in the Commission's
38 certification.

39 (b) Nothing in this section shall preclude an action to compel
40 the payment of response costs with moneys obligated pursuant to
41 G.S. 143-215.104E(a) or G.S. 143-215.104G(b).

42 (c) Nothing in this section shall preclude persons who have
43 successfully petitioned for certification of facilities under
44 this Part from seeking contribution from a current or former

1 owner or operator of the certified facility for funds obligated
2 pursuant to G.S. 143-215.104G(b).

3 "§ 143-215.1040. Reporting requirements.

4 (a) The Secretary shall present an annual report to the
5 Environmental Review Commission which shall include at least the
6 following:

7 (1) A list of all dry-cleaning solvent contamination
8 reported to the Department.

9 (2) A list of all dry-cleaning facilities, wholesale
10 distribution facilities, and abandoned dry-cleaning
11 facilities certified by the Commission, and the
12 status of contamination associated with each such
13 facility or site.

14 (3) An estimate of the cost of assessment and
15 remediation required in connection with facilities
16 or sites certified by the Commission, and an
17 estimate of such assessment and remediation costs
18 expected to be paid from the Fund.

19 (4) A statement of receipts and disbursements for the
20 Fund.

21 (5) A statement of all claims against the Fund,
22 including claims paid, claims denied, pending
23 claims, anticipated claims, and any other
24 obligations.

25 (6) The adequacy of the Fund to carry out the purposes
26 of this Part together with any recommendations as
27 to measures that may be necessary to assure the
28 continued solvency of the Fund.

29 (b) The annual reports required by this section shall be made
30 by the Secretary on 1 June of each year."

31 Section 2. Subchapter I of Chapter 105 of the General
32 Statutes is amended by adding a new Article to read:

33 "ARTICLE 5C.

34 "Dry-Cleaning Solvent Tax.

35 "§ 105-187.30. Definitions.

36 The definitions in G.S. 105-164.3 apply to this Article and the
37 following definitions apply to this Article:

38 (1) Dry-cleaning facility. -- Defined in G.S.
39 143-215.104A.

40 (2) Dry-cleaning solvent. -- Defined in G.S.
41 143-215.104A.

42 "§ 105-187.31. Tax imposed.

43 A privilege tax is imposed on a dry-cleaning solvent retailer
44 at a flat rate for each gallon of dry-cleaning solvent sold by

1 the retailer to a dry-cleaning facility. An excise tax is
2 imposed on dry-cleaning solvent purchased outside the State for
3 storage, use, or consumption by a dry-cleaning facility in this
4 State. The rate of the privilege tax and the excise tax is five
5 dollars and eighty-five cents (\$5.85) for each gallon of
6 dry-cleaning solvent that is chlorine-based and is eighty cents
7 (80¢) for each gallon of dry-cleaning solvent that is
8 hydrocarbon-based. These taxes are in addition to all other
9 taxes.

10 "§ 105-187.32. Administration.

11 The privilege tax this Article imposes on a dry-cleaning
12 solvent retailer is an additional State sales tax and the excise
13 tax this Article imposes on the storage, use, or consumption of
14 dry-cleaning solvent by a dry-cleaning facility in this State is
15 an additional State use tax. Except as otherwise provided in
16 this Article, these taxes shall be collected and administered in
17 the same manner as the State sales and use taxes imposed by
18 Article 5 of this Chapter. As under Article 5 of this Chapter,
19 the additional State sales tax paid when dry-cleaning solvent is
20 sold at retail is a credit against the additional State use tax
21 imposed on the storage, use, or consumption of the same
22 dry-cleaning solvent.

23 "§ 105-187.33. Exemptions and refunds.

24 The exemptions in G.S. 105-164.13 do not apply to the taxes
25 imposed by this Article. The refunds allowed in G.S. 105-164.14
26 do not apply to the taxes imposed by this Article.

27 "§ 105-187.34. Use of tax proceeds.

28 The Secretary must credit the taxes collected under this
29 Article, less the Department of Revenue's allowance for
30 administrative expenses, to the Dry-Cleaning Solvent Cleanup
31 Fund. The Secretary may retain the Department's cost of
32 collection, not to exceed two hundred twenty-five thousand
33 dollars (\$225,000) a year, as reimbursement to the Department."

34 Section 3. This act constitutes a recent act of the
35 General Assembly under G.S. 150B-21.3 and, accordingly, serves as
36 a basis for the adoption of temporary rules.

37 Section 4. The statutes in Sections 1 and 2 of this act
38 become effective on the date specified in the following table:

39 Statute	Effective Date
40 143-215.104A	When this act becomes law
41 143-215.104B	When this act becomes law
42 143-215.104C	When this act becomes law
43 143-215.104D	When this act becomes law
44 143-215.104E	1 January 1998

- | | | |
|----|--------------|----------------|
| 1 | 143-215.104G | 1 January 2000 |
| 2 | 143-215.104H | 1 January 2000 |
| 3 | 143-215.104I | 1 January 2000 |
| 4 | 143-215.104J | 1 January 1998 |
| 5 | 143-215.104K | 1 January 1998 |
| 6 | 143-215.104L | 1 January 1998 |
| 7 | 143-215.104M | 1 January 2000 |
| 8 | 143-215.104N | 1 January 2000 |
| 9 | 143-215.104O | 1 January 1998 |
| 10 | 105-187.30 | 1 October 1997 |
| 11 | 105-187.31 | 1 October 1997 |
| 12 | 105-187.32 | 1 October 1997 |
| 13 | 105-187.33 | 1 October 1997 |
| 14 | 105-187.34 | 1 October 1997 |
- 15 (b) The Commission shall have until 1 January 2000, to develop
16 any rules, forms, strategies or other procedures required or
17 authorized by subsections (1) and (3) of G.S. 143-215.104D.
- 18 (c) Reimbursements authorized under this act shall be
19 available for eligible expenses incurred by petitioners after 1
20 January 2000, provided that any funds expended by a petitioner
21 for assessment or remediation of a site prior to 1 January 2000
22 shall be credited by the Commission toward the applicant's
23 required financial contribution to the cost of assessment or
24 remedial actions at the site.
- 25 (d) The Commission shall establish a moratorium on
26 administrative and judicial actions by the Commission or the
27 Department concerning dry-cleaning facilities, wholesale
28 distribution facilities and abandoned dry-cleaning facility sites
29 resulting from the release of dry cleaning solvents. The
30 moratorium shall apply only to:
- 31 (1) Dry-cleaning facility sites abandoned as of the
32 date this act becomes law.
- 33 (2) Facilities for which financial responsibility has
34 been demonstrated.
- 35 (3) facilities found to be uninsurable pursuant to the
36 provisions of G.S. 143-215.104E(b), provided the
37 moratorium shall not apply to a facility if
38 dry-cleaning solvent contamination resulting from
39 releases at the facility is discovered after 1
40 January 1998.
- 41 (c) The moratorium shall not apply to administrative or
42 judicial actions by the Department that are required to address
43 contamination of drinking water supplies resulting from releases
44 of dry-cleaning solvent at a dry-cleaning facility or wholesale

1 distribution facility. The moratorium established by this
2 subsection shall begin on the date this act becomes law and
3 remain in effect until 1 January 2000.

4 Section 5. Section 3 of this act is repealed effective
5 1 January 2010. Section 2 of this act is repealed effective 1
6 January 2012; provided, however, that G.S. 143-215.104N is not
7 repealed to the extent that it applies to liability arising from
8 dry-cleaning solvent contamination described the certifications
9 issued by the Commission pursuant to G.S. 143-215.104G and
10 regarding which the Commission has determined in writing that no
11 further assessment or remediation of the contamination is
12 required to adequately protect the public health and environment;
13 and provided further that the Commission shall continue to be
14 authorized to adopt rules described in G.S. 143-215.104D(b)(2)
15 and to enforce the rules in accordance with the provisions of
16 G.S. 143-215.104J, 143-215.104K, and 143-215.104L.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H 225-CSRT-001

H. B. No. 225

DATE 14 May 1997

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE Yes

(to be filled in by
Principal Clerk)

Rep. ☒
Sen. ☐

Nichols

1 moves to amend the bill on page 3, line 22 and 23

2 () WHICH CHANGES THE TITLE

3 by deleting those lines

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

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11 _____

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13 _____

14 _____

15 _____

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17 _____

18 _____

19 _____

SIGNED John R. Nichols

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

ENVIRONMENT

Wednesday, May 14

, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
M. K. Roubenberger	retired AMTRAK
D. Everhard	NC Citizen Action
Brian Bell	LAW ENGINEERING
[Signature]	" some "
MARY Wills	ONE HOUR KOLETIZING
Mack Davis	Medlin-Davis Cleaners
JAMES Hilker	Hilker's Cleaners - Ral.
Patty Berry	CCNC
George Jones	NC DOR
Chris Edwards	A Cleaner World Dry Cleaners - High Point
Lawrence Davis	Womble Carlyle
Johnny Shaffer	One Hour KOLETIZING, Fayetteville
David Lazzo	Barlett Kutz & Assoc
Allen Edwards	Shellette Cleaners
John Cyrus	N.C. State College
LUCIUS PULLEN	ATTORNEY
PERRI MORGAN	NEFB
Gary Harris	NC PMA
Doug Haney	NCPMA
Andy Allen	NC Farm Bureau
ALB Swingle	R + T
Jane B. Gray	DOJ
Don McLaughlin	DOJ
Phil Telfer	DOJ
BRUCE NICHOLSON	DEHNR TDWM
GRACE NICHOLSON	DEHNR
Jack Butler	DEHNR
Diane Cherry	DEHNR

Rocky Mt
Raleigh
Carry

VISITOR REGISTRATION SHEET

ENVIRONMENT

Wednesday, May 14, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

MINUTES
COMMITTEE ON ENVIRONMENT

MAY 21, 1997

Chairman Eddins called the meeting to order. A silent roll was taken, (roll list denotes members present).

HB-225 DRY CLEANING SOLVENT CLEAN UP ACT

Rep. Weatherly explained the bill and made comments on the cleaning solvent assessment in order to provide funding so clean-up can take place. It is his understanding that this self imposed clean-up has begun to become accepted by some dry cleaners. He asked that staff member, Mr. George Givens, Research Division, give further explanation.

Mr. Givens explained how this was incorporated with the principals of HB-1121 Brownfield. He advised members of the progress that has been made that he was aware of and that this bill would have to go to the Finance Committee of both Chambers. He feels that substantial progress has been made.

Rep. Weatherly reminded members that the bill includes strict operating requirements that will prevent pollution in the future.

Rep. Culp questioned the sponsor about the tax per gallon on the solution.

Mr. Danny Schafer, was recognized to answer the question. Rep. Weatherly made additional comments and asked Mr. Schafer to respond again about the solvent being used over and over again so that the cost per gallon is acceptable to the industry.

Rep. McComas questioned the million dollar pollution remediation liability insurance requirement being available. Mr. George Givens responded it is available.

Rep. Gamble asked why this bill is necessary. Why can't owners be responsible and clean up their own mess. Rep. Weatherly responded it was to band together as an industry. Mr. Schafer also responded that it is to pool the money for insurance for the industry in case of bankrupt owners and there would be funds that would help with clean up in those types of situations. Rep. Gamble

followed up with why this couldn't be done with trustees for the industry and not have to create a bill to take care of this. Mr. Schafer responded that the insurance is a very key part and the industry and the insurance company is rightfully interested in having all parties insured. He advised he didn't know of any opposition to this.

Rep. Warwick asked Mr. Schafer if they were comfortable with the bill. He responded they were put are still willing to work with parties who have suggestions for improvement. Rep. Warwick followed up with an additional question regarding an advisory board to work with Departments on these funds to give additional assurance to the industry that funds are being used appropriately. Mr. Schafer responded that there are boards and they are amenable to working this way but there was strong feelings in the working sessions held and this was the way they were most comfortable dealing with. Rep. Warwick asked if the strong feelings were on the side of the industry or the Departments. Mr. Schafer advised that there was good reason for it being done this way and he wasn't sure which side had the strong feelings.

Rep. Hall asked him to identify sites that needed to be cleaned up. Mr. Schafer did not have with him a list of sites that have been identified as being polluted and having received notification from the Department. He has requested it from the Department and has not received it yet. Rep. Hall followed up and advised he had been contacted by his local dry cleaners and they feel this bill will put them out of business. He was concerned because Mr. Schafer couldn't identify these sites and he would like more information because he wasn't sure of the purpose of the bill.

Rep. Weatherly asked that Mr. Givens give an additional statement. Mr. Givens responded that this program was requested by the industry. It was modeled after the underground storage tank program. They need clean up and they are not likely to receive federal funding.

Rep. Hall mentioned again that sites have not been identified and how much it will cost to clean them up, and if more than a million dollars before this bill kicks in, what is the basic need of this bill. He advised he was not opposed to cleaning them up, he just wants to know where they are.

Rep. Weatherly asked members to pass the bill and let it move forward to the Finance Committee. He urged not to find fault and make progress as we go so that these sites can be cleaned up.

Rep. Hightower asked what happens after the sites are cleaned up. Is there a time limit? Does it cease to exist after the clean ups have been done. Rep. Weatherly read the portion of the bill that answered these questions.

Rep. Warwick agreed to move this forward, however, he asked for staff to advise what happens if funds run short, would it create a situation where the state would have to put in additional funding. Mr. Givens responded that the state has no obligation to support this. He also advised that the Department had advised that there are 70 sites within the state that needs clean up. Rep. Warwick asked what would prohibit the industry to do this on their own, are there problems with the industry doing this and then coming to the state. Mr. Givens responded and gave the features of the bill. Rep. Weatherly gave additional comments also.

Rep. Hackney urged support and reminded how much it has been rewritten to help the industry and the environmental status of our state. He moved for a favorable report to the committee substitute.

Rep. Mosley agreed with Rep. Hackney' motion.

Rep. Hill agreed, but mentioned the sales and use tax mentioned on page 22.

Rep. Yongue also asked about the sales tax on this solvent and purchasing it out of state. Mr. Sam Taylor, Attorney, responded that the sales tax applies to in state transactions and the use tax applies to out of state transactions and it will be enforced like any other taxes are.

Rep. Hall advised he will support the bill, but still concerned because sites are not specified.

The vote was taken and the committee substitute was given a favorable report, unfavorable to the original bill and be referred to the committee on Finance.

Mr. Givens gave an additional comment that an error has been found in the sunset date and with permission of the committee, he would fix that error.

Rep. Hightower moved for this to be done. There were no objections and Chairman Eddins advised it would be done.

SB-947 AMEND INTERBASIN TRANSFERS

Chairman Eddins advised the vote would not be taken on this bill today but would be heard for discussion.

Senator Cochran explained the bill.

Rep. Mitchell asked what the problem was in the Yadkin River. Senator Cochran advised there were no problems. Rep. Mitchell made additional comments about the rivers in his district. He was not satisfied that interbasin transfers were a big problem today as it was years ago. Sen. Cochran advised there were no


problems but with increased development it was a good time to address the transfer before problems arise.

Rep. Hall agreed with Senator Cochran and advised he thinks this is a reasonable approach.

Rep. Gamble asked if there are repairian right laws under the federal government. Senator Cochran responded he was correct and explained why North Carolina had put a law in place in 1993. Rep. Gamble made additional comments.

Rep. Brown advised he would support this bill, but would like to remind her that some things don't need to be messed with, just as Rep. Gamble mentioned in his comments regarding repairian rights. Senator Cochran assured him she would not do anything to impair repairian rights.

Time expired and Chairman Eddins adjourned the meeting.



Rep. Eddins, Chairman



Ebern Watson, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 225*
Committee Substitute Favorable 5/22/97

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 CONTAMINATION, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 21A of Chapter 143 of the General Statutes is
7 amended by adding a new Part to read:

8 "Part 6. Dry-Cleaning Solvent Cleanup.

9 "§ 143-215.104A. Title.

10 This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup Act' and may be
11 cited by that name.

12 "§ 143-215.104B. Definitions. -- The following definitions apply in this Part:

13 (1) Abandoned dry-cleaning facility site. -- Any real property or
14 individual leasehold space on which a dry-cleaning facility
15 formerly operated.

16 (2) Dry-cleaning facility. -- A place of business located in this State
17 and engaged in on-site dry-cleaning operations, other than any of
18 the following:

19 a. A facility located on a United States military base or owned
20 by the United States or a department or agency of the
21 United States.

22 b. A commercial uniform service or commercial linen supply
23 facility.

- 1 c. A facility owned by the State or an agency or department of
2 the State.
- 3 (3) Dry-cleaning operations. -- Cleaning of apparel and household
4 fabrics by using one or more dry-cleaning solvents instead of water.
- 5 (4) Dry-cleaning solvent. -- Perchloroethylene, F-1,1,3 or 1,1,1
6 trichloroethane, a petroleum-based solvent, or another comparable
7 product used as a cleaning agent in a dry-cleaning operation.
- 8 (5) Dry-cleaning solvent contamination. -- The presence of
9 dry-cleaning solvent in the groundwater, surface water, or surface
10 or subsurface soils of the State, but not the presence of
11 dry-cleaning solvent in amounts less than quantities that may be
12 harmful as determined pursuant to G.S. 143-215.77A.
- 13 (6) Fund. -- The Dry-Cleaning Solvent Cleanup Fund.
- 14 (7) Impacted party. -- Any of the following:
- 15 a. A current or former lessor of real property on which a
16 dry-cleaning facility or wholesale distribution facility is or
17 was located during the term of the lease.
- 18 b. A property owner who has suffered property damage caused
19 by dry-cleaning solvent contamination resulting from a
20 release at a dry-cleaning facility or wholesale distribution
21 facility.
- 22 c. The successor, assignee, mortgagee, or successor-in-title of a
23 person listed in sub-subdivisions a. or b. of this subdivision.
- 24 (8) Pollution and remediation legal liability insurance. -- Property and
25 casualty insurance covering, at a minimum, those losses for which
26 reimbursement is authorized in G.S. 143-215.104H(b).
- 27 (9) Release. -- Any spillage, leakage, pumping, placement, emptying,
28 or dumping of dry-cleaning solvents from a dry-cleaning facility or
29 wholesale distribution facility, or its associated piping, that results
30 in or contributes to dry-cleaning solvent contamination.
- 31 (10) Wholesale distributor. -- A person who operates a wholesale
32 distribution facility.
- 33 (11) Wholesale distribution facility. -- A place of business located in this
34 State and engaged in the storage, distribution, or sale of
35 dry-cleaning solvents for use in dry-cleaning facilities.
- 36 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**
- 37 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a
38 special revenue fund. Accordingly, revenue in the Fund at the end of a fiscal year
39 does not revert and interest and other investment income earned by the Fund must
40 be credited to it. The Fund is created to provide revenue to implement this Part.
- 41 (b) Sources of Revenue. -- The following revenue is credited to the Fund:
- 42 (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter
43 105 of the General Statutes.
- 44 (2) Recoveries made pursuant to G.S. 143-215.104H(j).

1 (3) Gifts and grants made to the Fund.

2 (c) Disbursements. -- A claim filed against the Fund may be paid only from
3 revenue in the Fund and only for a site certified in accordance with this Part. If the
4 amount of claims exceeds the amount of revenue in the Fund, the claims with the
5 highest priority must be paid before claims of lower priority are paid, and claims of
6 equal priority must be paid in the order in which their priority was determined until
7 the revenue is exhausted. No more than fifteen percent (15%) of the amount of
8 revenue credited to the Fund in a year may be used to defray costs of administration
9 of the program described in this Part, including oversight of response activities.

10 **"§ 143-215.104D. Powers of the Commission.**

11 (a) Administrative functions. -- The Commission may delegate the powers
12 enumerated in this subsection to the Department or engage a private contractor or
13 contractors to carry out the activities enumerated in this subsection. If the
14 Commission engages a private contractor to carry out the functions enumerated in
15 subdivisions (1) through (7) of this subsection, the actions of the contractor shall not
16 be effective until ratified by the Commission. The Commission shall:

- 17 (1) Accept petitions for certification under this Part.
- 18 (2) Prioritize certified dry-cleaning facilities, wholesale distribution
19 facilities, or abandoned dry-cleaning facility sites for
20 reimbursement.
- 21 (3) Develop forms to be used by persons applying for reimbursement
22 of assessment or remediation costs.
- 23 (4) Schedule funding of assessment and remedial response activities.
- 24 (5) Determine whether assessment or remediation is necessary at a site.
- 25 (6) Determine that all necessary assessment and remediation has been
26 completed at a site.
- 27 (7) Make payments from the Fund to a petitioner or its designee to
28 reimburse the cost of assessment or remediation, provided,
29 however, that any such payments made by a private contractor
30 engaged by the Commission shall be authorized by the
31 Commission prior to disbursement to the petitioner or its designee.

32 (b) Rulemaking. -- The Commission shall adopt such rules as are necessary to
33 implement the provisions of this Part. The Commission shall not delegate the rule-
34 making powers provided in this subsection.

- 35 (1) The Commission may adopt rules governing:
 - 36 a. Fees for assessment and remedial services reimbursable
37 under this Part.
 - 38 b. The certification and decertification of sites.
 - 39 c. The prioritization of sites and scheduling of funding for
40 assessment and remedial response activities. These rules
41 shall provide for the consideration of the degree of harm or
42 risk to human health and the environment and other factors
43 the Commission finds appropriate.

- 1 d. The disbursement of revenue from the Fund for payment or
2 reimbursement of approved assessment or remedial
3 responses costs.
- 4 e. The determination whether assessment or remediation is
5 necessary at a site.
- 6 f. The determination that all necessary assessment and
7 remediation has been completed at a site.
- 8 (2) The Commission may adopt rules establishing minimum
9 management practices for handling of dry-cleaning solvent at
10 dry-cleaning facilities and wholesale distribution facilities. The
11 rules may:
- 12 a. Require that all perchloroethylene dry-cleaning machines
13 installed at a dry-cleaning facility after the effective date of
14 the rule meet air emission standards that equal or exceed
15 the standards that apply to comparable dry-to-dry
16 perchloroethylene dry-cleaning machines with integral
17 refrigerated condensation.
- 18 b. Prohibit the discharge of water that is contaminated with
19 dry-cleaning solvents into sanitary sewers, septic systems,
20 storm sewers, or other bodies of water.
- 21 c. Require spill containment structures around dry-cleaning
22 machines, filters, stills, vapor adsorbers, solvent storage
23 areas, and waste solvent storage areas.
- 24 d. Require floor sealants for cleaning room areas, provided that
25 the Commission finds the sealants to be effective.
- 26 e. Require, by 1 January 2002, the use of improved solvent
27 transfer systems for delivery of solvents.
- 28 f. Require any solvent handling practices the Commission may
29 find necessary and appropriate to minimize the risk of
30 releases at wholesale distribution sites.
- 31 (3) The Commission shall adopt rules establishing a risk-based
32 approach applicable to the assessment, prioritization, and cleanup
33 of dry-cleaning solvent contamination. The rules shall address, at a
34 minimum:
- 35 a. Criteria and methods for determining cleanup requirements,
36 including the level of cleanup necessary to assure adequate
37 protection of human health and the environment.
- 38 b. The circumstances under which information specific to the
39 dry-cleaning solvent contamination site should be
40 considered.
- 41 c. The circumstances under which restrictions on the future
42 use of any remediated dry-cleaning solvent contamination
43 site should be considered as a means of achieving and

1 maintaining an adequate level of protection for human
2 health and the environment.

3 d. Strategies for the assessment and remediation of
4 dry-cleaning solvent release sites reimbursable pursuant to
5 this Part, including presumptive remedial responses
6 sufficient to provide an adequate level of protection as
7 described under sub-subdivision a. of this subdivision.

8 The rules may require any person eligible for reimbursement under
9 G.S. 143-215.104H to conduct assessments necessary for the
10 Commission to determine the degree of risk to human health and
11 the environment that is posed by dry-cleaning facilities, wholesale
12 distribution facilities, and abandoned dry-cleaning facilities.

13 (4) The Commission shall adopt rules governing what shall constitute
14 an uninsurable site for the purposes of G.S. 143-215.104E(b). The
15 rules shall base the determination of uninsurability on the
16 availability of pollution and remediation legal liability insurance at
17 an annual premium amount that is affordable and proportionate to
18 premium amounts charged for coverage of facilities at which
19 dry-cleaning solvent contamination is not known to be present.
20 The Commission shall consult with the Commissioner of Insurance
21 before adopting rules pursuant to this subdivision.

22 (5) The Commission may adopt rules requiring insurance companies
23 issuing pollution and remediation legal liability insurance for
24 dry-cleaning facilities in the State to report to the Commission or
25 the Commissioner of Insurance the number of such policies held in
26 force by the company in the State and the average premium rate
27 for the policies. The Commission shall consult with the
28 Commissioner of Insurance before adopting rules pursuant to this
29 subdivision.

30 (c) All rules and standards adopted by the Commission shall, to the maximum
31 extent practicable, be applicable to all dry-cleaning facilities, wholesale distribution
32 facilities, and abandoned dry-cleaning facilities in the State, and shall be cost-effective
33 and technically feasible.

34 (d) Unless otherwise provided in this Part, the Commission may delegate any of its
35 rights, duties, and responsibilities under this Part to the Department.

36 **"§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

37 (a) The owner or operator of any dry-cleaning facility operating in the State shall
38 establish financial responsibility for legal liability arising in connection with
39 dry-cleaning solvent contamination resulting from a release at the facility by either:

40 (1) Obtaining pollution and remediation legal liability insurance for
41 the facility with coverage limits not less than one million dollars
42 (\$1,000,000) from an insurance carrier authorized to do business in
43 this State, or

(2) Depositing with the Commission securities or a third-party bond acceptable to the Commission in an amount not less than one million dollars (\$1,000,000).

(b) If the owner or operator of a dry-cleaning facility demonstrates to the satisfaction of the Commission that the dry-cleaning facility is uninsurable, then the Commission shall issue a certificate of uninsurability to the operator of the facility. A dry-cleaning facility designated as uninsurable by the Commission shall be exempt from the requirements of subsection (a) of this section.

"§ 143-215.104F. Certification of facilities and sites.

(a) If dry-cleaning solvent contamination is found to have resulted from a release at a dry-cleaning facility, a wholesale distribution facility, or an abandoned dry-cleaning facility site, a current or former owner or operator of the dry-cleaning facility or wholesale distribution facility, the owner of the property on which the dry-cleaning or wholesale distribution facility is located, or the owner of the abandoned dry-cleaning facility site may petition the Commission to certify the facility or site.

(b) Any request for certification of a facility or site shall be accompanied by the petitioning party's written acceptance of responsibility for incurring response costs for the dry-cleaning solvent contamination described in the petition according to the following schedule:

<u>Type of Facility</u>	<u>Costs</u>
<u>Dry-cleaning facilities with fewer than five full-time employees or the equivalent during the preceding calendar year</u>	<u>\$5,000</u>
<u>Dry-cleaning facilities with at least five but fewer than 10 full-time employees or their equivalent during the preceding calendar year</u>	<u>\$10,000</u>
<u>Dry-cleaning facilities with 10 or more full-time employees or their equivalent during the preceding calendar year</u>	<u>\$15,000</u>
<u>Wholesale distribution facilities</u>	<u>\$25,000</u>
<u>Abandoned dry-cleaning facilities</u>	<u>\$50,000</u>
<u>Uninsurable dry-cleaning facilities</u>	<u>\$50,000.</u>

(c) Any request for certification of a dry-cleaning facility or wholesale distribution facility by a current owner or operator of the facility shall be accompanied by either evidence of financial responsibility established in accordance with G.S. 143-215.104E(a) or a copy of a certificate of uninsurability issued by the Commission pursuant to G.S. 143-215.104E(b).

1 (d) If it determines that the party petitioning for certification of a facility or site
2 has complied with all the applicable requirements of this Part, the Commission shall
3 certify the facility, inform the party of its decision, and inform the party of the
4 priority ranking of the site.

5 (e) The Commission shall reject a petition in any of the following circumstances:

6 (1) The petitioner is the owner or operator of a dry-cleaning facility or
7 wholesale distribution facility for which certification is sought and
8 the operator of the facility was not in compliance with minimum
9 management practices adopted by the Commission pursuant to
10 G.S. 143-215.104D(b)(2) at the time the contamination was
11 discovered.

12 (2) The petitioner is an owner or operator of a dry-cleaning facility or
13 wholesale distribution facility for which certification is sought and
14 the operator of the facility owed delinquent taxes under Article 5D
15 of Chapter 105 of the General Statutes when the dry-cleaning
16 solvent contamination was discovered.

17 (3) The petitioner is subject to the requirements of subsections (b) or
18 (c) of this section and fails to comply with the applicable
19 provisions of those subsections.

20 (4) The petitioner willfully falsified any information in its petition.

21 (f) The rejection of any petition pursuant to subsection (e) of this section shall not
22 affect the rights of any other petitioner under this Part.

23 (g) The Commission may decertify a facility or site if:

24 (1) The owner or operator of the facility on the site is, at any time
25 subsequent to the certification of the facility or site, in willful
26 violation of any of the minimum management requirements
27 adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).

28 (2) In the case of dry-cleaning contamination on property that is
29 owned by the petitioner, the petitioner refuses to comply with a
30 request by the Commission to file a notice of dry-cleaning solvent
31 remediation as provided in G.S. 143-215.104G.

32 (3) The Commission is unable to reach an agreement authorized by
33 subsection (i) of this section.

34 (h) Prior to decertifying any facility or site, the Commission shall give the
35 petitioner notice and opportunity for hearing. The decertification of any site
36 pursuant to this subsection shall not affect the rights of any other petitioner under
37 this Part.

38 (i) If at any time it should appear that response costs paid from the Fund for
39 assessment or remediation of a dry-cleaning contamination site will exceed one
40 million dollars (\$1,000,000), the Commission is authorized to enter into an agreement
41 with the petitioner or other interested parties whereby they make additional resources
42 available, restrict the future use of the property on which the dry-cleaning solvent
43 contamination is located in the manner provided in G.S. 143-215.104G, or otherwise
44 demonstrate the financial and technical means to ensure the safe use of the property

1 in a way that is adequately protective of human health and the environment. An
2 agreement made pursuant to this section may specify the desired results of risk
3 assessment and management activities to be carried out in addressing the dry-cleaning
4 solvent contamination; the nature of restrictions on the use of the property on which
5 the dry-cleaning solvent contamination is located; guidelines, including parameters,
6 principles, or policies within which the desired results are to be accomplished;
7 resources that the parties will make available under the agreement; the standards of
8 performance and time or times of evaluation of any risk assessment or management
9 measures required under the agreement; and the consequences that will occur as a
10 result of achieving or not achieving the desired results. No agreement made pursuant
11 to this subsection shall require assessment or remediation measures in excess of those
12 specified in rules adopted by the Commission pursuant to G.S. 143-215.104D(b)(3).
13 **"§ 143-215.104G. Dry-Cleaning Solvent Remediation Notice; land-use restrictions in**
14 **deeds.**

15 (a) The owner of property upon which dry-cleaning solvent contamination has
16 been discovered may prepare a Dry-Cleaning Solvent Remediation Notice identifying
17 the site on which the contamination has been discovered and providing for current or
18 future restrictions on the use of the property.

19 (b) A Dry-Cleaning Solvent Remediation Notice shall include:

- 20 (1) A survey plat of the site that has been prepared and certified by a
21 professional land surveyor and that meets the requirements of G.S.
22 47-30.
- 23 (2) A legal description of the property that would be sufficient as a
24 description in an instrument of conveyance.
- 25 (3) A description of the location and dimensions of the areas of
26 potential environmental concern with respect to permanently
27 surveyed benchmarks.
- 28 (4) The location and quantity of dry-cleaning solvent known to exist
29 on the property.
- 30 (5) Any restrictions on the current or future use of the property that
31 are necessary to assure adequate protection of human health and
32 the environment as provided in rules adopted pursuant to G.S.
33 143-215.104D(b)(3).

34 (c) A certified copy of a Dry-Cleaning Solvent Remediation Notice shall be filed
35 in the office of the register of deeds of the county or counties in which the property
36 described is located. The register of deeds shall record the certified copy of the
37 Dry-Cleaning Solvent Remediation Notice and index it in the grantor index under
38 the names of the owners of the land.

39 (d) When property for which a Dry-Cleaning Solvent Remediation Notice has
40 been filed is sold, leased, conveyed, or transferred, the deed or other instrument of
41 transfer shall contain in the description section, in no smaller type than that used in
42 the body of the deed or instrument, a statement that the property has been
43 contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this
44 Part.

1 (e) A Dry-Cleaning Solvent Remediation Notice filed pursuant to this Part may, at
2 the request of the owner of the property subject to the Dry-Cleaning Solvent
3 Remediation Notice, be cancelled by the Secretary after the risk to human health and
4 the environment associated with the dry-cleaning solvent contamination has been
5 eliminated as a result of remediation of the property. The Secretary shall forward
6 notice of cancellation to the register of deeds of the county or counties where the
7 Dry-Cleaning Solvent Remediation Notice is recorded and request that the
8 Dry-Cleaning Solvent Remediation Notice be cancelled. The notice of cancellation
9 shall contain the names of the landowners as shown in the Dry-Cleaning Solvent
10 Remediation Notice. The register of deeds shall record the notice of cancellation in
11 the deed books and index it on the grantor index in the name of the landowner as
12 shown in the Dry-Cleaning Solvent Remediation Notice and on the grantee index in
13 the name 'Secretary of Environment, Health, and Natural Resources'. The register of
14 deeds shall make a marginal entry on the Dry-Cleaning Solvent Remediation Notice
15 showing the date of cancellation and the book and page where the notice of
16 cancellation is recorded, and the register of deeds shall sign the entry. If a marginal
17 entry is impracticable because of the method used to record maps and plats, the
18 register of deeds shall not be required to make a marginal entry.

19 (f) Any restriction on the current or future use of property subject to a
20 Dry-Cleaning Solvent Remediation Notice filed pursuant to this section shall be
21 enforced by any owner of the property or by any other responsible party.
22 Restrictions also may be enforced by the Department or any unit of local government
23 having jurisdiction over any part of the property. A restriction shall not be declared
24 unenforceable due to lack of privity of estate or contract, due to lack of benefit to
25 particular land, or due to lack of privity of any property interest in particular land.

26 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
27 properties remediated under this Part.

28 **"§ 143-215.104H. Assessment and remediation.**

29 (a) The owner or operator of a certified dry-cleaning facility or a certified
30 wholesale distribution facility, the current owner of a certified abandoned
31 dry-cleaning facility site, or an impacted party affected by a certified facility or site
32 may seek reimbursement from the Fund for response costs incurred in connection
33 with dry-cleaning solvent contamination found to have resulted from a release at the
34 facility or site.

35 (b) The Commission may authorize reimbursement for the following response
36 costs incurred in connection with dry-cleaning solvent contamination found to have
37 resulted from a release at any certified facility or site:

- 38 (1) Costs of assessment or risk assessment with respect to dry-cleaning
39 solvent contamination.
- 40 (2) Costs of treatment or replacement of potable water supplies
41 affected by the contamination.
- 42 (3) Costs of remediation of affected soil, groundwater, and surface
43 waters.
- 44 (4) Monitoring of the contamination.

1 (5) Inspection and supervision of activities described in this subsection.

2 (6) Reasonable costs of restoring property as nearly as practicable to
3 the conditions that existed prior to activities associated with
4 assessment and remediation conducted pursuant to this Part.

5 (7) Other activities reasonably required to protect human health and
6 the environment.

7 (c) The Commission shall not authorize any reimbursement from the Fund for
8 response costs that can be paid from funds available through the financial
9 responsibility demonstrated by the owner or operator of the facility or site pursuant
10 to G.S. 143-215.104E or by a petitioner pursuant to G.S. 143-215.104F(b).

11 (d) The Commission shall not authorize the disbursement of moneys from the
12 Fund in an amount in excess of two hundred thousand dollars (\$200,000) per year for
13 response costs incurred in connection with any individual facility or site certified
14 pursuant to G.S. 143-215.104; provided, however, that the Commission may authorize
15 the disbursement of up to four hundred thousand dollars (\$400,000) per year for
16 response costs incurred in connection with dry-cleaning solvent contamination that
17 poses an imminent and substantial threat to human health or the environment.

18 (e) The Commission shall not authorize the disbursement of moneys from the
19 Fund that would result in a diminution of the Fund balance below one hundred
20 thousand dollars (\$100,000), unless an emergency exists in connection with
21 dry-cleaning solvent contamination that constitutes an imminent and substantial
22 threat to human health or the environment.

23 (f) The Commission shall not authorize distribution of moneys from the Fund for
24 any of the following:

25 (1) Dry-cleaning solvent contamination that did not result from
26 dry-cleaning operations or the operation of a wholesale distribution
27 facility.

28 (2) Any dry-cleaning solvent contamination that has been identified by
29 the United States Environmental Protection Agency as a federal
30 Superfund site pursuant to 40 Code of Federal Regulations, Part
31 300, except that the Commission may authorize distribution of the
32 required State match up to two hundred thousand dollars
33 (\$200,000) per year per site.

34 (g) The Commission may not delegate its power to authorize distribution of the
35 required State match as provided by subdivision (2) of subsection (f) of this section.

36 (h) The Commission shall not authorize any distribution of moneys from the Fund
37 which would result in remediation beyond the level required under the Commission's
38 risk-based criteria for determining the appropriate level of remediation.

39 (i) The Department shall reimburse the response costs of eligible parties as they
40 are incurred.

41 (j) In the event the owner or operator of a dry-cleaning facility or wholesale
42 distribution facility or the current owner of an abandoned dry-cleaning facility site
43 cannot be identified or located or fails to comply with all the applicable requirements
44 of this Part, the Commission may direct the Department or a private contractor

1 engaged by the Commission to use staff, equipment, or materials under the control of
2 the Department or contractor or provided by other cooperating federal, State, or
3 local agencies to develop and implement a remediation plan for, or to provide
4 interim alternative sources of drinking water to, third parties affected by dry-cleaning
5 solvent contamination resulting from a release at a dry-cleaning facility, wholesale
6 distribution facility, or abandoned dry-cleaning facility site. The cost of any of these
7 actions shall be paid, to the extent funds are available, from the Fund. The
8 Department or private contractor shall keep a record of all expenses incurred for
9 personnel and for the use of equipment and materials and all other expenses of
10 developing and implementing the remediation plan. The Commission may request
11 the Attorney General to commence a civil action to secure reimbursement of costs
12 incurred under this subsection. In the event a civil action is commenced, the
13 Commission may recover, in addition to any amount due, the costs of the action,
14 including reasonable attorneys' fees and investigation expenses. Any moneys
15 received or recovered as reimbursement shall be paid into the Fund or other source
16 from which the expenditures were made.

17 **"§ 143-215.104I. Risk assessment.**

18 (a) If the Commission determines that the degree of risk to human health or the
19 environment resulting from dry-cleaning solvent contamination otherwise subject to
20 assessment or remediation under this Part is acceptable in light of the criteria
21 established pursuant to G.S. 143-215.104D(b)(3), the Commission shall notify the
22 owner or operator of the site or facility responsible for the contamination that no
23 cleanup, no further cleanup, or no further action is required in connection with the
24 contamination.

25 (b) If the Commission determines that no cleanup or further action is required in
26 connection with dry-cleaning solvent contamination otherwise subject to assessment
27 or remediation pursuant to this Part, the Commission shall not pay or reimburse any
28 costs otherwise payable or reimbursable under this Part from the Fund other than
29 reasonable and necessary to conduct the risk assessment required by this section,
30 provided that the Commission may pay or reimburse costs that were either:

- 31 (1) Incurred prior to or as a result of notification of a determination
32 by the Commission that no cleanup, no further cleanup, or no
33 action is required.
34 (2) Incurred as a result of a later determination by the Commission
35 that the contamination poses a threat or potential threat to human
36 health or the environment.

37 **"§ 143-215.104J. Enforcement procedures; civil penalties.**

38 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
39 assessed by the Secretary against any person who:

- 40 (1) Fails to establish responsibility for a dry-cleaning facility or a
41 wholesale distribution facility as required by this Part.
42 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
43 which the appropriate transfer fee has not been paid.

- 1 (3) Transfers dry-cleaning solvent to a dry-cleaning facility or
2 wholesale distribution facility not registered pursuant to this Part.
- 3 (4) Fails to comply with rules adopted by the Commission pursuant to
4 G.S. 143-214.104D(b)(2).
- 5 (5) Fails to file, submit, or make available, as the case may be, any
6 documents, data, or reports required by this Part.
- 7 (6) Violates or fails to act in accordance with the terms, conditions, or
8 requirements of any special order or other appropriate document
9 issued pursuant to G.S. 143-215.2.
- 10 (7) Falsifies or tampers with any recording or monitoring device or
11 method required to be operated or maintained under this Part, or
12 rules implementing this Part.
- 13 (8) Knowingly renders inaccurate any recording or monitoring device
14 or method required to be operated or maintained under this Part
15 or rules implementing this Part.
- 16 (9) Knowingly makes any false statement, representation, or
17 certification in any application, record, report, plan, or other
18 document filed or required to be maintained under this Part or
19 rule implementing this Part.
- 20 (10) Knowingly makes a false statement of material fact in a rule-
21 making proceeding or contested case under this Part.
- 22 (11) Refuses access to the Commission or its duly designated
23 representative to any premises for purposes of conducting a lawful
24 inspection provided for in this Part or rule implementing this Part.
- 25 (b) If any action or failure to act for which a penalty may be assessed under this
26 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
27 dollars (\$10,000) per day for so long as the violation continues. A penalty for a
28 continuous violation shall not exceed two hundred thousand dollars (\$200,000) for
29 each period of 30 days during which the violation continues.
- 30 (c) In determining the amount of the penalty, the Secretary shall consider the
31 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
32 apply to civil penalty assessments that are presented to the Commission for final
33 agency decision.
- 34 (d) The Secretary shall notify any person assessed a civil penalty for the
35 assessment and the specific reasons therefore by registered or certified mail, or by any
36 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed
37 pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The
38 Secretary shall make the final decision regarding assessment of a civil penalty under
39 this section.
- 40 (e) Requests for remission of civil penalties shall be filed with the Secretary.
41 Remission requests shall not be considered unless made within 30 days of receipt of
42 the notice of assessment. Remission requests must be accompanied by a waiver of the
43 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
44 and a stipulation of the facts on which the assessment was based. Consistent with the

1 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
2 Secretary and the violator. If the Secretary and the violator are unable to resolve the
3 request, the Secretary shall deliver the remission request and the recommended
4 action to the Committee on Civil Penalty Remissions of the Environmental
5 Management Commission appointed pursuant to G.S. 143B-282.1(c).

6 (f) If any civil penalty has not been paid within 30 days after notice of assessment
7 has been served on the violator, the Secretary shall request the Attorney General to
8 institute a civil action in the superior court of any county in which the violator
9 resides or the violator's principal place of business is located in order to recover the
10 amount of the assessment, unless the violator contests the assessment as provided in
11 subsection (d) of this section or requests remission of the assessment in whole or in
12 part as provided in subsection (e) of this section. If any civil penalty has not been
13 paid within 30 days after the final agency decision or order has been served on the
14 violator, the Secretary shall request the Attorney General to institute a civil action in
15 the superior court of any county in which the violator resides or the violator's
16 principal place of business is located to recover the amount of the assessment. Such
17 civil actions must be filed within three years of the date the final agency decision or
18 court order was served on the violator.

19 **"§ 143-215.104K. Enforcement procedures; criminal penalties.**

20 (a) Any person who negligently commits any of the offenses set out in
21 subdivisions (1) through (11) of G.S. 143-215.104J(a) shall be guilty of a Class 2
22 misdemeanor which may include a fine not to exceed fifteen thousand dollars
23 (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative
24 total of two hundred thousand dollars (\$200,000) for each period of 30 days during
25 which a violation continues.

26 (b) Any person who knowingly and willfully commits any of the offenses set out
27 in subdivisions (1) through (11) of G.S. 143-215.104J(a) shall be guilty of a Class I
28 felony, which may include a fine not to exceed one hundred thousand dollars
29 (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative
30 total of five hundred thousand dollars (\$500,000) for each period of 30 days during
31 which the violation continues. For the purposes of this subsection, the phrase
32 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of
33 this State, according to the principles of common law, interpret the phrase in the
34 light of reason and experience.

35 (c) (1) Any person who knowingly commits any of the offenses set out in
36 subdivisions (4) through (11) of G.S. 143-215.104J(a) and who
37 knows at that time that he thereby places another person in
38 imminent danger of death or serious bodily injury shall be guilty of
39 a Class C felony.

40 (2) For the purposes of this subsection, a person's state of mind is
41 knowing with respect to:

42 a. His conduct, if he is aware of the nature of his conduct.

43 b. An existing circumstance, if he is aware or believes that the
44 circumstance exists.

1 c. A result of his conduct, if he is aware or believes that his
2 conduct is substantially certain to cause danger of death or
3 serious bodily injury.

4 (3) Under this subsection, the following should be considered in
5 determining whether a defendant who is a natural person knew
6 that his conduct placed another person in imminent danger of
7 death or serious bodily injury:

8 a. The person is responsible only for actual awareness or actual
9 belief that he possessed, and

10 b. Knowledge possessed by a person other than the defendant
11 but not by the defendant himself may not be attributed to
12 the defendant.

13 (4) It is an affirmative defense to a prosecution under this subsection
14 that the conduct charged was conduct consented to by the person
15 endangered and that the danger and conduct charged were
16 reasonably foreseeable hazards of an occupation, a business, or
17 profession, or of medical treatment or medical or scientific
18 experimentation conducted by professionally approved methods,
19 and such other person had been made aware of the risks involved
20 prior to giving consent. The defendant may establish an
21 affirmative defense under this subdivision by a preponderance of
22 the evidence.

23 (d) No proceeding shall be brought or continued under this section for or on
24 account of a violation by any person who has previously been convicted of a federal
25 violation based upon the same set of facts.

26 (e) In proving the defendant's possession of actual knowledge, circumstantial
27 evidence may be used, including evidence that the defendant took affirmative steps to
28 shield himself from relevant information. Consistent with the principles of common
29 law, the subjective mental state of defendants may be inferred from their conduct.

30 (f) For the purposes of the felony provisions of this section, a person's state of
31 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that
32 is the subject of the prosecution is the result of any of the following occurrences or
33 circumstances:

34 (1) A natural disaster or other act of God which could not have been
35 prevented or avoided by the exercise of due care or foresight.

36 (2) An act of third parties other than agents, employees, contractors,
37 or subcontractors of the defendant.

38 (3) An act done in reliance on the written advice or emergency on-site
39 direction of an employee of the Department. In emergencies, oral
40 advice may be relied upon if written confirmation is delivered to
41 the employee as soon as practicable after receiving and relying on
42 the advice.

43 (4) An act causing no significant harm to the environment or risk to
44 the public health, safety, or welfare and done in compliance with

1 other conflicting environmental requirements or other constraints
2 imposed in writing by environmental agencies or officials after
3 written notice is delivered to all relevant agencies that the conflict
4 exists and will cause a violation of the identified standard.

5 (5) Violations causing no significant harm to the environment or risk
6 to the public health, safety, or welfare for which no enforcement
7 action or civil penalty could have been imposed under any written
8 civil enforcement guidelines in use by the Department at the time.
9 This subdivision shall not be construed to require the Department
10 to develop or use written civil enforcement guidelines.

11 (6) Occasional, inadvertent, short-term violations causing no significant
12 harm to the environment or risk to the public health, safety, or
13 welfare. If the violation occurs within 30 days of a prior violation
14 or lasts for more than 24 hours, it is not an occasional, short-term
15 violation.

16 (g) All general defenses, affirmative defenses, and bars to prosecution that may
17 apply with respect to other criminal offenses under law may apply to prosecutions
18 brought under this section or other criminal statutes that refer to this section and
19 shall be determined by the courts of this State according to the principles of common
20 law as they may be applied in light of reason and experience. Concepts of
21 justification and excuse applicable under this section may be developed in light of
22 reason and experience.

23 **"§ 143-215.104L. Enforcement procedures; injunctive relief.**

24 Whenever the Commission has reasonable cause to believe that any person has
25 violated or is threatening to violate any of the provisions of this Part or rule
26 implementing this Part, the Commission may, either before or after the institution of
27 any other action or proceeding authorized by this Part, request the Attorney General
28 to institute a civil action in the name of the State upon the relation of the
29 Commission for injunctive relief to restrain the violation or threatened violation and
30 for such other and further relief in the premises as the court shall deem proper. The
31 Attorney General may institute such action in the superior court of the county in
32 which the violation occurred or may occur or, in his discretion, in the superior court
33 of the county in which the person responsible for the violation or threatened
34 violation resides or has his or its principal place of business. Upon a determination
35 by the court that the alleged violation of the provisions of this Part or the rules of the
36 Commission has occurred or is threatened, the court shall grant the relief necessary to
37 prevent or abate the violation or threatened violation. Neither the institution of the
38 action nor any of the proceedings thereon shall relieve any part to such proceedings
39 from any penalty prescribed for violation of this Part.

40 **"§ 143-215.104M. Appeals.**

41 An owner or operator of a dry-cleaning facility or wholesale distribution facility, a
42 current or prior owner of an abandoned dry-cleaning facility site, or an impacted
43 third party who is dissatisfied with a decision of the Commission under G.S.
44 143-215.104F, 215.104G, 143-215.104H, or 143-215.104I may commence a contested

1 case by filing a petition under G.S. 150B-23 within 60 days after the Commission's
2 decision. If no contested case is initiated within the allotted time period, the
3 Commission's decision shall be final and not subject to review. The Commission
4 shall make the final agency decision in contested cases initiated pursuant to this
5 section. The Commission shall not delegate its authority to make a final agency
6 decision pursuant to this section.

7 **"§ 143-215.104N. Preemption.**

8 (a) If a dry-cleaning facility, wholesale distribution facility, or abandoned
9 dry-cleaning facility site is certified by the Commission in accordance with G.S.
10 143-215.104F, the remedies provided in this Part shall be the sole and exclusive
11 remedies available to any person seeking to either:

- 12 (1) Compel any assessment, monitoring, treatment, mitigation, or
13 remediation of any dry-cleaning solvent contamination described in
14 the Commission's certification.
- 15 (2) Recover damages to property or costs of assessment, monitoring,
16 treatment, mitigation, or remediation incurred in connection with
17 any dry-cleaning solvent contamination described in the
18 Commission's certification.

19 (b) Nothing in this section shall preclude an action to compel the payment of
20 response costs with moneys obligated pursuant to G.S. 143-215.104E(a) or G.S.
21 143-215.104F(b).

22 (c) Nothing in this section shall preclude persons who have successfully petitioned
23 for certification of facilities under this Part from seeking contribution from a current
24 or former owner or operator of the certified facility for funds obligated pursuant to
25 G.S. 143-215.104F.

26 **"§ 143-215.104O. Reporting requirements.**

27 (a) The Secretary shall present an annual report to the Environmental Review
28 Commission which shall include at least the following:

- 29 (1) A list of all dry-cleaning solvent contamination reported to the
30 Department.
- 31 (2) A list of all dry-cleaning facilities, wholesale distribution facilities,
32 and abandoned dry-cleaning facilities certified by the Commission,
33 and the status of contamination associated with each such facility
34 or site.
- 35 (3) An estimate of the cost of assessment and remediation required in
36 connection with facilities or sites certified by the Commission and
37 an estimate of such assessment and remediation costs expected to
38 be paid from the Fund.
- 39 (4) A statement of receipts and disbursements for the Fund.
- 40 (5) A statement of all claims against the Fund, including claims paid,
41 claims denied, pending claims, anticipated claims, and any other
42 obligations.

1 (6) The adequacy of the Fund to carry out the purposes of this Part
2 together with any recommendations as to measures that may be
3 necessary to assure the continued solvency of the Fund.

4 (b) The Secretary shall make the annual report required by this section on or
5 before 1 October of each year."

6 Section 2. Subchapter I of Chapter 105 of the General Statutes is
7 amended by adding a new Article to read:

8 "ARTICLE 5D.

9 "Dry-Cleaning Solvent Tax.

10 "§ 105-187.30. Definitions.

11 The definitions in G.S. 105-164.3 apply to this Article and the following definitions
12 apply to this Article:

13 (1) Dry-cleaning facility. -- Defined in G.S. 143-215.104B.

14 (2) Dry-cleaning solvent. -- Defined in G.S. 143-215.104B.

15 "§ 105-187.31. Tax imposed.

16 A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each
17 gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise
18 tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or
19 consumption by a dry-cleaning facility in this State. The rate of the privilege tax and
20 the excise tax is five dollars and eighty-five cents (\$5.85) for each gallon of
21 dry-cleaning solvent that is chlorine-based and eighty cents (80¢) for each gallon of
22 dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all
23 other taxes.

24 "§ 105-187.32. Administration.

25 The privilege tax this Article imposes on a dry-cleaning solvent retailer is an
26 additional State sales tax, and the excise tax this Article imposes on the storage, use,
27 or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an
28 additional State use tax. Except as otherwise provided in this Article, these taxes
29 shall be collected and administered in the same manner as the State sales and use
30 taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the
31 additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit
32 against the additional State use tax imposed on the storage, use, or consumption of
33 the same dry-cleaning solvent.

34 "§ 105-187.33. Exemptions and refunds.

35 The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this
36 Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed
37 by this Article.

38 "§ 105-187.34. Use of tax proceeds.

39 The Secretary must credit the taxes collected under this Article, less the
40 Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning
41 Solvent Cleanup Fund. The Secretary may retain the Department's cost of
42 collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year,
43 as reimbursement to the Department."

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act.

Section 4. (a) The statutes in Sections 1 and 2 of this act become effective on the date specified in the following table:

<u>Statute</u>	<u>Effective Date</u>
143-215.104A	When this act becomes law
143-215.104B	When this act becomes law
143-215.104C	When this act becomes law
143-215.104D	When this act becomes law
143-215.104E	1 January 1998
143-215.104F	1 January 2000
143-215.104G	1 January 2000
143-215.104H	1 January 2000
143-215.104I	1 January 2000
143-215.104J	1 January 1998
143-215.104K	1 January 1998
143-215.104L	1 January 1998
143-215.104M	1 January 2000
143-215.104N	1 January 2000
143-215.104O	1 January 1998
105-187.30	1 October 1997
105-187.31	1 October 1997
105-187.32	1 October 1997
105-187.33	1 October 1997
105-187.34	1 October 1997.

(b) The Secretary of Environment, Health, and Natural Resources shall make the first annual report required under G.S. 143-215.104O on or before 1 October 1998.

(c) The Environmental Management Commission shall adopt rules and develop forms, strategies, and other procedures required or authorized by subsections (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 2000.

(d) Reimbursements authorized under this act shall be available for eligible expenses incurred by petitioners after 1 January 2000, provided that any funds expended by a petitioner for assessment or remediation of a site prior to 1 January 2000 shall be credited by the Commission toward the applicant's required financial contribution to the cost of assessment or remedial actions at the site.

(e) The Commission shall establish a moratorium on administrative and judicial actions by the Commission or the Department concerning dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facility sites resulting from the release of dry-cleaning solvents. The moratorium shall apply only to:

- (1) Dry-cleaning facility sites abandoned as of the date this act becomes law.

1 (2) Facilities for which financial responsibility has been demonstrated.
2 (3) Facilities found to be uninsurable pursuant to the provisions of
3 G.S. 143-215.104E(b), provided the moratorium shall not apply to
4 a facility if dry-cleaning solvent contamination resulting from
5 releases at the facility is discovered after 1 January 1998.
6 (f) The moratorium shall not apply to administrative or judicial actions
7 by the Department that are required to address contamination of drinking water
8 supplies resulting from releases of dry-cleaning solvent at a dry-cleaning facility or
9 wholesale distribution facility. The moratorium established by this subsection shall
10 begin on the date this act becomes law and remain in effect until 1 January 2000.
11 Section 5. Section 2 of this act is repealed effective 1 January 2010.
12 Section 1 of this act is repealed effective 1 January 2012, provided however, that G.S.
13 143-215.104N is not repealed to the extent that it applies to liability arising from
14 dry-cleaning solvent contamination described in the certifications issued by the
15 Environmental Management Commission pursuant to G.S. 143-215.104F and
16 regarding which the Commission has determined in writing that no further assessment
17 or remediation of the contamination is required to adequately protect the public
18 health and environment; and provided further that the Commission shall continue to
19 be authorized to adopt rules described in G.S. 143-215.104D(b)(2) and to enforce the
20 rules in accordance with the provisions of G.S. 143-215.104J, 143-215.104K, and
21 143-215.104L.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 225*

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors: Representatives Weatherly; Bonner, Brown, Culp, Dickson, Fox, McCombs, McCrary, Mitchell, Thompson, Tolson, and G. Wilson.

Referred to: Environment, if favorable, Finance.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 RELEASES IN NORTH CAROLINA, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 21A of Chapter 143 of the General Statutes is
7 amended by adding a new Part to read:
8 "Part 6. Dry-Cleaning Solvent Cleanup.
9 "§ 143-215.104A. Title.
10 This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup Act' and may be
11 cited by that name.
12 "§ 143-215.104B. Definitions. -- The following definitions apply in this Part:
13 (1) Abandoned dry-cleaning facility site. -- Any real property or
14 individual leasehold space on which a dry-cleaning facility
15 formerly operated.
16 (2) Commission. -- Defined in G.S. 143-215.77.
17 (3) Department. -- Defined in G.S. 143-215.77.
18 (4) Dry-cleaning facility. -- A place of business located in this State
19 and engaged in on-site dry-cleaning operations, other than any of
20 the following:
21 a. A facility located on a United States military base or owned
22 by the United States or a department or agency of the
23 United States.

- 1 b. A commercial uniform service or commercial linen supply
2 facility.
- 3 c. A facility owned by the State or an agency or department of
4 the State.
- 5 (5) Dry-cleaning operations. -- Cleaning of apparel and household
6 fabrics by using one or more dry-cleaning solvents instead of water.
- 7 (6) Dry-cleaning solvent. -- Perchloroethylene, F-1,1,3 or 1,1,1
8 trichloroethane, a petroleum-based solvent, or another comparable
9 product used as a cleaning agent in a dry-cleaning operation.
- 10 (7) Fund. -- The Dry-Cleaning Solvent Cleanup Fund.
- 11 (8) Impacted third party. -- Any of the following:
- 12 a. A lessor of real property on which a dry-cleaning facility or
13 wholesale distribution facility is located,
- 14 b. A property owner who has suffered property damage caused
15 by a release from a dry-cleaning facility or wholesale
16 distribution facility,
- 17 c. The predecessor, successor, assignee, mortgagee,
18 predecessor-in-title, or successor-in-title of a person listed in
19 subparts a. or b. of this subdivision.
- 20 (9) Pollution and remediation legal liability insurance. -- Property and
21 casualty insurance covering, at a minimum, those losses for which
22 reimbursement is authorized in G.S. 143-215.104H(b).
- 23 (10) Release. -- Any spilling, pouring, overfilling, leaking, leaching,
24 emitting, discharging, or escaping of dry-cleaning solvents from a
25 dry-cleaning facility or wholesale distribution facility, or its
26 associated piping, that impacts groundwater, surface water, or
27 surface or subsurface soils, but shall not include amounts less than
28 quantities that may be harmful as determined pursuant to G.S. 143-
29 215.77A.
- 30 (11) Secretary. -- Defined in G.S. 143-215.77.
- 31 (12) Wholesale distributor. -- A person who operates a wholesale
32 distribution facility.
- 33 (13) Wholesale distribution facility. -- A place of business located in this
34 State and engaged in the storage, distribution, or sale of dry-
35 cleaning solvents and supplies for use in dry-cleaning facilities.
- 36 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**
- 37 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a
38 special revenue fund. Accordingly, revenue in the Fund at the end of a fiscal year
39 does not revert and interest and other investment income earned by the Fund must
40 be credited to it. The Fund is created to provide revenue to implement this Part.
41 The Department shall administer the Fund.
- 42 (b) Sources of Revenue. -- The following revenue is credited to the Fund:
- 43 (1) Dry-Cleaning solvent taxes collected under Article 5C of Chapter
44 105 of the General Statutes.

- 1 (2) Registration fees collected under G.S. 143-215.104E.
- 2 (3) Recoveries made pursuant to G.S. 143-215.104H(i).
- 3 (4) Gifts and grants made to the Fund.
- 4 (5) Revenue appropriated to the Fund by the General Assembly.
- 5 (c) Disbursements. -- Revenue in the Fund cannot be disbursed unless the
- 6 Department has approved the disbursement. A claim filed against the Fund may be
- 7 paid only from revenue in the Fund and only for a site certified by the Commission.
- 8 If the amount of claims exceeds the amount of revenue in the Fund, the claims with
- 9 the highest priority must be paid before claims of lower priority are paid, and claims
- 10 of equal priority must be paid in the order in which they were determined until the
- 11 revenue is exhausted. The Department must administer this Part in a manner that
- 12 ensures that no more than ten percent (10%) of the amount of revenue credited to
- 13 the Fund in a year is required to cover the Department's costs of administration.
- 14 **"§ 143-215.104D. Duties and powers of the Commission.**
- 15 (a) The Commission has the following duties and powers:
- 16 (1) Develop assessment and remediation strategies for dry-cleaning
- 17 solvent release sites reimbursable pursuant to this Part, including
- 18 presumptive remedial responses.
- 19 (2) Establish a schedule of fees for assessment and remedial services
- 20 reimbursable under this Part.
- 21 (3) Accept or reject petitions from impacted third parties, from owners
- 22 and operators of dry-cleaning facilities or wholesale distribution
- 23 facilities, and from prior or current owners of abandoned dry-
- 24 cleaning facility sites for reimbursement of the costs of assessments
- 25 or remedial responses.
- 26 (4) Prioritize petitions for reimbursement. In establishing priorities for
- 27 sites, the Commission shall consider the degree of harm or risk to
- 28 human health and the environment and other factors the
- 29 Commission finds appropriate.
- 30 (5) Authorize payments from the Fund to a petitioner or its designee
- 31 to reimburse the cost of an assessment or remedial response.
- 32 (6) Adopt rules establishing minimum management practices for
- 33 handling of dry-cleaning facilities and wholesale distribution
- 34 facilities. The rules may:
- 35 a. Require that all perchloroethylene dry-cleaning machines
- 36 installed at a dry-cleaning facility meet air emission
- 37 standards that equal or exceed the standards that apply to
- 38 comparable dry-to-dry perchloroethylene dry-cleaning
- 39 machines with integral refrigerated condensation.
- 40 b. Limit or prohibit the discharge of dry-cleaning solvents into
- 41 sanitary sewers, septic systems, storm sewers, or other bodies
- 42 of water.

- 1 c. Require spill containment structures around dry-cleaning
2 machines, related equipment, solvent storage areas, and
3 waste solvent storage areas.
- 4 d. Require floor sealants for cleaning room areas, provided the
5 sealants are found by the Commission to be effective.
- 6 e. Require, by January 1, 2002, the use of improved solvent
7 transfer systems for delivery of solvents.
- 8 f. Require any solvent handling practices the Commission may
9 find necessary and appropriate for wholesale distribution
10 sites.
- 11 (7) Implement a risk-based approach applicable to the assessment,
12 prioritization, and cleanup of releases at dry-cleaning facilities,
13 wholesale distribution facilities, and abandoned dry-cleaning
14 facilities. The rules shall address, at a minimum, the circumstances
15 where site-specific information should be considered, criteria for
16 determining acceptable cleanup levels, and the acceptable level or
17 range of levels of risk to human health and the environment.
18 These rules may, without limitation, require any person eligible for
19 reimbursement under G.S. 143-215.104H to conduct assessments
20 necessary for the Commission to determine the degree of risk to
21 human health and the environment that is posed by a release from
22 dry-cleaning facilities, wholesale distribution facilities, and
23 abandoned dry-cleaning facilities.
- 24 (8) Adopt rules in consultation with the Commissioner of Insurance
25 governing what shall constitute an uninsurable site for the purposes
26 of G.S. 143-215.104E(a)(3). The rules shall base the determination
27 of uninsurability on the availability of pollution and remediation
28 legal liability insurance at an annual premium amount that is not
29 more than two-and-one-half times the average annual premium for
30 all pollution and remediation legal liability insurance policies that
31 are in force for dry-cleaning facilities in this State and are reported
32 to the Commission pursuant to subdivision (9) of this subsection.
- 33 (9) Adopt rules in consultation with the Commissioner of Insurance
34 requiring insurance companies issuing pollution and remediation
35 legal liability insurance for dry-cleaning facilities in this State to
36 report to the Commission or the Commissioner of Insurance the
37 number of such policies held in force by the company in this State
38 and the average premium rate for the policies.
- 39 (10) Adopt other rules necessary to implement the provisions of this
40 Part, including rules governing:
- 41 a. Applications for reimbursement of assessment or remedial
42 response costs.
- 43 b. Standards for evaluating releases of dry-cleaning solvent at
44 or from affected dry-cleaning facilities, wholesale

- 1 distribution facilities, or abandoned dry-cleaning facilities
2 and for determining what, if any, response action is
3 necessary for a release.
- 4 c. Scheduling of assessment and remedial measures.
5 d. Withdrawal of the Commission's certification of a site.
6 e. Disbursement of revenue from the Fund for payment or
7 reimbursement of approved investigative or remedial
8 response costs.
9 f. Certification of completion of all necessary assessment and
10 remedial work, or alternatively, that no assessment or
11 remediation is necessary with respect to a site.
- 12 (11) Assess civil penalties under this Part.
13 (12) Perform remediations under this Part.
14 (13) Request the Attorney General to bring appropriate actions under
15 this Part.
- 16 (b) All rules and standards adopted by the Commission shall, to the maximum
17 extent practicable, be applicable to all dry-cleaning facilities, wholesale distribution
18 facilities, and abandoned dry-cleaning facilities in the State, and in any event shall be
19 cost-effective, reasonable and technically feasible.
- 20 (c) Unless otherwise provided in this Part, the Commission may delegate any of its
21 rights, duties, and responsibilities under this Part to the Department, except the
22 power to make a final agency decision in a contested case and the power to adopt
23 rules.
- 24 "§ 143-215.104E. Registration of dry-cleaning facilities.
- 25 (a) The owner or operator of each dry-cleaning facility and the owner or operator
26 of each wholesale distribution facility shall register with the Department before
27 October 1 of each year on forms provided by the Department. The Department shall
28 issue a registration certificate to the owner or operator of each facility when the
29 owner or operator has done all of the following:
- 30 (1) Has paid the registration fee for the facility as required by
31 subsection (c) of this section.
32 (2) Certifies that the facility is in compliance with the best
33 management practices adopted by the Commission pursuant to
34 G.S. 143-215.104D(a)(6).
35 (3) Either has demonstrated financial responsibility by obtaining
36 pollution and remediation legal liability insurance with coverage
37 limits not less than one million dollars (\$1,000,000) from an
38 insurance carrier authorized to do business in this State; or, in lieu
39 of obtaining pollution and remediation legal liability insurance, has
40 deposited with the Commission securities or a third-party bond
41 acceptable to the Commission for the purpose of securing payment
42 for pollution and remediation of legal liability occurring during the
43 registration period in and amount not less than one million dollars
44 (\$1,000,000), or in lieu of demonstrating financial responsibility has

present evidence satisfactory to the Commission that the dry cleaning facility or the wholesale distribution facility is uninsurable.

(b) Current or prior owners or operators of abandoned dry-cleaning facility sites may register the site on which the facility was located as provided in subsection (a) of this section; provided, however, no certification or compliance with minimum management practices shall be required for abandoned dry-cleaning facility sites.

(c) The owner or operator of every dry-cleaning facility or wholesale distribution facility shall pay an annual registration fee based on the average number of full-time employees, or their equivalent, during the preceding calendar year and on whether the facility has demonstrated financial responsibility pursuant to subdivision (3) of subsection (a) of this section as follows:

Type of Facility	Financial Responsibility	No Financial Responsibility
Dry-cleaning facilities with five or fewer full-time employees	\$250.00	\$2,250
Dry-cleaning facilities with more than five but 10 or fewer full-time employees	\$500.00	\$2,500
Dry-cleaning facilities with more than 10 full-time employees	\$750.00	\$2,750
Wholesale distribution facilities	\$750.00	\$2,750.

A current or prior owner of an abandoned dry-cleaning facility site who elects to register the site shall pay a one-time registration fee of two hundred dollars (\$200.00) upon initial registration of the site.

(d) At least 30 days before payment of a registration fee is due, the Department shall attempt to furnish each dry-cleaning facility, each wholesale distribution facility, and each current or prior owner or operator of an abandoned dry-cleaning facility site in the State with forms necessary for registration pursuant to this Part.

"§ 143-215.104G. Certification of facilities and sites.

(a) If a release is discovered at a dry-cleaning facility, a wholesale distribution facility, or an abandoned dry-cleaning facility site, the owner or operator of the dry-cleaning facility or wholesale distribution facility, or the current owner of the abandoned dry-cleaning facility site, may petition the Commission to certify the facility or site.

(b) Any request for certification of a facility or site shall be accompanied by the petitioning party's written acceptance of responsibility for incurring response costs per occurrence for the site named in the petition according to the following schedule:

Type of Facility	Costs
Dry-cleaning facilities with fewer than five full time employees or the equivalent during the preceding calendar year	\$5,000
Dry-cleaning facilities with more than	

- (1) Costs of assessment of releases occurring at a dry-cleaning facility, abandoned dry-cleaning facility, or wholesale distribution facility.
- (2) Costs of treatment or replacement of potable water supplies contaminated as a result of a release occurring at a dry-cleaning facility, abandoned dry-cleaning facility, or wholesale distribution facility.
- (3) Costs of remediation of affected soil, groundwater, and surface waters.
- (4) Monitoring of contamination that results from a release occurring at a dry-cleaning facility, abandoned dry-cleaning facility, and wholesale distribution facility.
- (5) Inspection and supervision of activities described in this subsection.
- (6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.
- (7) Other activities reasonably required to protect human health and the environment.

(c) The Commission shall not authorize any reimbursement from the Fund for response costs that can be paid from funds available through the financial responsibility demonstrated by the owner or operator of the facility or site pursuant to G.S. 143-215.104E.

(d) The Commission shall not authorize the disbursement of moneys from the Fund except as required based on a risk assessment.

(e) The Commission shall not authorize the disbursement of moneys from the Fund in an amount in excess of two hundred thousand dollars (\$200,000) per year for releases from any individual dry-cleaning facility or wholesale distribution facility; provided, however, that the Commission may authorize the disbursement of up to four hundred thousand dollars (\$400,000) per year for releases from any individual dry-cleaning facility or wholesale distribution facility that pose an imminent and substantial threat to human health or the environment.

(f) The Commission shall not authorize any distribution of moneys from the Fund that would result in a diminution of the Fund balance below one hundred thousand dollars (\$100,000), unless an emergency exists at a dry-cleaning facility, abandoned dry-cleaning facility, or wholesale distribution facility that constitutes an imminent and substantial threat to human health or the environment. The Commission may not delegate its power to approve these disbursements.

(g) The Commission shall not authorize distribution of moneys from the Fund for any of the following:

- (1) Sites that are contaminated by solvents normally used in dry-cleaning operations where the contamination at the site did not result from dry-cleaning operations or the operation of a wholesale distribution facility.
- (2) Sites that are contaminated by a release that results from dry-cleaning solvents being transported to or from a dry-cleaning

1 facility or wholesale distribution facility, but are not sites on which
2 dry-cleaning facilities, wholesale distribution facilities, or
3 abandoned dry-cleaning facilities are located.

4 (3) Any dry-cleaning facility that has been identified by the United
5 States Environmental Protection Agency as a federal superfund site
6 pursuant to 40 Code of Federal Regulations, Part 300, except that
7 the Commission may authorize distribution of the required State
8 match up to two hundred thousand dollars (\$200,000) per year per
9 site.

10 (h) The Commission may not delegate its power to authorize distribution of the
11 required State match as provided by subdivision (3) of subsection (f) of this section.

12 (i) The Commission shall not authorize any distribution of moneys from the Fund
13 which would result in remediation beyond the level required under the Commission's
14 risk-based criteria for determining the appropriate level of remediation.

15 (j) In the event the owner or operator of a dry-cleaning facility or wholesale
16 distribution facility or the current owner of an abandoned dry-cleaning facility site
17 cannot be identified or located or fails to comply with all the applicable requirements
18 of this Part, the Commission may use staff, equipment, or materials under its control
19 or provided by other cooperating federal, State, or local agencies and may contract
20 with any agent or subcontractor it deems appropriate to develop and implement a
21 remediation plan, to provide interim alternative sources of drinking water to third
22 parties, and shall pay the costs resulting from any release. The cost of any of these
23 actions shall be paid, to the extent funds are available, from the Fund. The
24 Department shall keep a record of all expenses incurred for State personnel and for
25 the use of the State's equipment and materials and all other expenses of developing
26 and implementing the remediation plan and shall seek reimbursement through any
27 legal means available. In the event that a civil action is commenced to secure
28 reimbursement, the Department may recover, in addition to any amount due, the
29 costs of the action, including reasonable attorneys' fees and investigation expenses.
30 Any moneys received or recovered as reimbursement shall be paid into the Fund or
31 other source from which the expenditures were made.

32 **"§ 143-215.104I. Risk assessment.**

33 (a) If the Commission determines that the degree of risk to human health or the
34 environment resulting from a release is acceptable in light of the criteria established
35 pursuant to G.S. 143-215.104D(1)(9), the Commission shall notify the owner or
36 operator of the release site that no cleanup, no further cleanup, or no further action
37 is required in connection with the release site.

38 (b) If the Commission determines that no cleanup or further action is required in
39 connection with a release site, the Department shall not pay or reimburse any costs
40 otherwise payable or reimbursable under this Part from the Fund, other than
41 reasonable and necessary to conduct the risk assessment required by this section;
42 provided the Commission may pay or reimburse costs that were either:

(1) Incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(2) Incurred as a result of a later determination by the Commission that the release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

"§ 143-215.104J. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who:

(1) Fails to apply for or to secure registration of a dry-cleaning facility or a wholesale distribution facility as required by this Part.

(2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate transfer fee has not been paid.

(3) Transfers dry-cleaning solvent to a dry-cleaning facility or wholesale distribution facility not registered pursuant to this Part.

(4) Otherwise violates any provision of this Part or rule adopted pursuant to this Part.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefore by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B.282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to

1 institute a civil action in the superior court of any county in which the violator
2 resides, or has his or its principal place of business to recover the amount of the
3 assessment, unless the violator contests the assessment as provided in subsection (d)
4 of this section, or requests remission of the assessment in whole or in part as provided
5 in subsection (e) of this section. If any civil penalty has not been paid within 30 days
6 after the final agency decision or order has been served on the violator, the Secretary
7 shall request the Attorney General to institute a civil action in the superior court of
8 any county in which the violator resides or has his or its principal place of business to
9 recover the amount of the assessment. Such civil actions must be filed within three
10 years of the date the final agency decision or court order was served on the violator.

11 "§ 143-215.104K. Enforcement procedures; criminal penalties.

12 (a) Any person who negligently commits any of the offenses set out in
13 subdivisions (1) through (4) of G.S. 143-215.104J(a) shall be guilty of a Class 2
14 misdemeanor which may include a fine not to exceed fifteen thousand dollars
15 (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative
16 total of two hundred thousand dollars (\$200,000) for each period of 30 days during
17 which a violation continues.

18 (b) Any person who knowingly and willfully commits any of the offenses set out
19 in subdivisions (1) through (3) of G.S. 143-215.104J(a) shall be guilty of a Class I
20 felony, which may include a fine not to exceed one hundred thousand dollars
21 (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative
22 total of five hundred thousand dollars (\$500,000) for each period of 30 days during
23 which the violation continues. For the purposes of this subsection, the phrase
24 'knowingly and willfully' shall mean intentionally and consciously as the courts of
25 this State, according to the principles of common law, interpret the phrase in the
26 light of reason and experience.

27 (c) (1) Any person who knowingly commits any of the offenses set out in
28 subdivision (4) of G.S. 143-215.104J(a) and who knows at that time
29 that he thereby places another person in imminent danger of death
30 or serious bodily injury shall be guilty of a Class C felony.

31 (2) For the purposes of this subsection, a person's state of mind is
32 knowing with respect to:

- 33 a. His conduct, if he is aware of the nature of his conduct.
34 b. An existing circumstance, if he is aware or believes that the
35 circumstance exists.
36 c. A result of his conduct, if he is aware or believes that his
37 conduct is substantially certain to cause danger of death or
38 serious bodily injury.

39 (3) Under this subsection, in determining whether a defendant who is
40 a natural person knew that his conduct placed another person in
41 imminent danger of death or serious bodily injury:

- 42 a. The person is responsible only for actual awareness or actual
43 belief that he possessed; and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time.

1 This subdivision shall not be construed to require the Department
2 to develop or use written civil enforcement guidelines.

3 (6) Occasional, inadvertent, short-term violations causing no significant
4 harm to the environment or risk to the public health, safety, or
5 welfare. If the violation occurs within 30 days of a prior violation
6 or lasts for more than 24 hours, it is not an occasional, short-term
7 violation.

8 (g) All general defenses, affirmative defenses, and bars to prosecution that may
9 apply with respect to other criminal offenses under law may apply to prosecutions
10 brought under this section or other criminal statutes that refer to this section and
11 shall be determined by the courts of this State according to the principles of common
12 law as they may be applied in light of reason and experience. Concepts of
13 justification and excuse applicable under this section may be developed in light of
14 reason and experience.

15 "§ 143-215.104L. Enforcement procedures; injunctive relief.

16 Whenever the Department has reasonable cause to believe that any person has
17 violated or is threatening to violate any of the provisions of this Part or rule
18 implementing this Part, the Department may, either before or after the institution of
19 any other action or proceeding authorized by this Part, request the Attorney General
20 to institute a civil action in the name of the State upon the relation of the
21 Department for injunctive relief to restrain the violation or threatened violation and
22 for such other and further relief in the premises as the court shall deem proper. The
23 Attorney General may institute such action in the superior court of the county in
24 which the violation occurred or may occur or, in his discretion, in the superior court
25 of the county in which the person responsible for the violation or threatened
26 violation resides or has his or its principal place of business. Upon a determination
27 by the court that the alleged violation of the provisions of this Part or the rules of the
28 Commission has occurred or is threatened, the court shall grant the relief necessary to
29 prevent or abate the violation or threatened violation. Neither the institution of the
30 action nor any of the proceedings thereon shall relieve any part to such proceedings
31 from any penalty prescribed for violation of this Part.

32 "§ 143-215.104M. Appeals.

33 An owner or operator of a dry-cleaning facility or wholesale distribution facility, a
34 current or prior owner of an abandoned dry-cleaning facility site, or an impacted
35 third party who is dissatisfied with a decision of the Commission under this Part may
36 commence a contested case by filing a petition under G.S. 150B-23 within 60 days
37 after the Commission's decision. If no contested case is initiated within the allotted
38 time period, the Commission's decision shall be final and not subject to review. The
39 Commission shall make the final agency decision in contested cases initiated pursuant
40 to this section.

41 "§ 143-215.104N. Preemption.

42 (a) If a facility or site is certified by the Commission in accordance with G.S. 143-
43 215.104G, the remedies provided in this Part shall be the sole and exclusive remedies
44 available to any person seeking to either:

(1) Compel any assessment, monitoring, treatment, mitigation, replacement, or remediation activities made necessary by the release of any dry-cleaning solvent described in the petition.

(2) Recover damages to property or costs of assessment, monitoring, treatment, mitigation, replacement, or remediation incurred in connection with the release of dry-cleaning solvent described in the petition.

(b) Nothing in this section shall preclude an action to compel the payment of response costs with moneys obligated pursuant to G.S. 143-215.104E(a)(3) or G.S. 143-215.104G(b).

"§ 143-215.104O. Reporting requirements.

(a) The Secretary shall present an annual report to the Environmental Review Commission which shall include at least the following:

(1) A list of all releases or dry-cleaning solvent discovered in the State.

(2) A list of all cleanups requiring State funding through the Fund and a comprehensive budget to complete such cleanups.

(3) A list of all dry-cleaning facilities and wholesale distribution facilities certified by the Commission.

(4) A list of all cleanups of dry-cleaning solvent releases undertaken by owners or operators of dry-cleaning facilities or wholesale distribution facilities.

(5) A statement of receipts and disbursements for the Fund.

(6) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(7) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) The annual reports required by this section shall be made by the Secretary on 1 June and 1 December of each year."

Section 2. Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5C.

"Dry-Cleaning Solvent Tax.

"§ 105-187.30. Definitions.

The definitions in G.S. 105-164.3 apply to this Article and the following definitions apply to this Article:

(1) Dry-cleaning facility. -- Defined in G.S. 143-215.104A.

(2) Dry-cleaning solvent. -- Defined in G.S. 143-215.104A.

"§ 105-187.31. Tax imposed.

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and

1 the excise tax is four dollars and twenty-five cents (\$4.25) for each gallon of dry-
2 cleaning solvent that is chlorine-based and is eighty-five cents (85c) for each gallon of
3 dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all
4 other taxes.

5 **"§ 105-187.32. Administration.**

6 The privilege tax this Article imposes on a dry-cleaning solvent retailer is an
7 additional State sales tax and the excise tax this Article imposes on the storage, use,
8 or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an
9 additional State use tax. Except as otherwise provided in this Article, these taxes
10 shall be collected and administered in the same manner as the State sales and use
11 taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the
12 additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit
13 against the additional State use tax imposed on the storage, use, or consumption of
14 the same dry-cleaning solvent.

15 **"§ 105-187.33. Exemptions and refunds.**

16 The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this
17 Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed
18 by this Article.

19 **"§ 105-187.34. Use of tax proceeds.**

20 The Secretary must credit the taxes collected under this Article, less the
21 Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning
22 Solvent Cleanup Fund. The Secretary may retain the Department's cost of
23 collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year,
24 as reimbursement to the Department."

25 Section 3. This act constitutes a recent act of the General Assembly
26 under G.S. 150B-21.3 and, accordingly, serves as a basis for the adoption of
27 temporary rules.

28 Section 4. The statutes in Section 1 of this act become effective on the
29 date specified in the following table:

<u>Statute</u>	<u>Effective Date</u>
30 143-215.104A	Ratification
31 143-215.104B	Ratification
32 143-215.104C	Ratification
33 143-215.104D	Ratification
34 143-215.104E	January 1, 1998
35 143-215.104F	January 1, 1998
36 143-215.104G	July 1, 1998
37 143-215.104H	July 1, 1998
38 143-215.104I	July 1, 1998
39 143-215.104J	January 1, 1998
40 143-215.104K	January 1, 1998
41 143-215.104L	January 1, 1998
42 143-215.104M	July 1, 1998
43 143-215.104N	July 1, 1997

1 143-215.104O

January 1, 1998

2 Reimbursements authorized under this act shall be available for eligible
3 expenses incurred by petitioners after 1 January 1998, provided that any funds
4 expended by a petitioner for assessment or remediation of a site prior to 1 January
5 1998 shall be credited by the Commission toward the applicant's required financial
6 contribution to the cost of assessment or remedial actions at the site.

7 The remaining sections of this act become effective July 1, 1997.

8 Section 5. G.S. 143-215.104E, 143-215.104F, and 143-215.104M are
9 repealed effective 1 January 2010. The remaining sections in Part 6 of Article 21A of
10 Chapter 143 of the General Statutes are repealed effective 1 January 2012; provided,
11 however, that G.S. 143-215.104N is not repealed to the extent that it applies to
12 liability arising from releases on any sites for which a petition has been accepted by
13 the Commission pursuant to G.S. 143-215.104G and regarding which the Commission
14 has determined in writing that no further assessment or remediation of the release is
15 required to adequately protect the public health and environment; and provided
16 further that the Commission shall continue to be authorized to adopt rules described
17 in G.S. 143-215.104D(a)(6) and to enforce the rules in accordance with the provisions
18 of G.S. 143-215.104J, 143-215.104K, and 143-215.104L.

42

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented: —

By Representative(s) Eddins, Hill and Watson, for the Committee on ENVIRONMENT.

☐ Committee Substitute for

H.B. 225 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT RELEASES IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill ~~#~~) be re-referred to the Committee on FINANCE.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

(over)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 947

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED
3 TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER
4 OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW
5 COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN
6 TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON
7 CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE
8 STUDY.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.22I(g) reads as rewritten:

11 "(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission
12 concludes by a preponderance of the evidence based upon the findings of fact made
13 under subsection (f) of this section that the ~~potential detriments of the proposed~~
14 ~~transfer outweigh the~~ benefits of the transfer. proposed transfer outweigh the
15 potential detriments of the transfer and that those detriments have been mitigated to
16 a reasonable degree."

17 Section 2. The Environmental Review Commission shall study issues
18 relating to the transfer of surface waters between river basins in the State. As a part
19 of this study, the Environmental Review Commission shall consider whether, and on
20 what basis, the total volume of water that may be transferred from any river basin
21 should be limited and whether the Environmental Management Commission should
22 be authorized to issue special orders to remedy violations of laws or rules regulating
23 transfers. The Environmental Review Commission shall report its findings,

1 recommendations, and legislative proposals, if any, to the 1998 Regular Session of the
2 General Assembly.

3 Section 3. As used in this section, "transfer" has the same meaning as in
4 G.S. 143-215.22G. There is hereby imposed a moratorium on any new transfer and
5 on any increase in the permitted volume of an existing transfer for which a certificate
6 is required under G.S. 143-215.22I. The Environmental Management Commission
7 shall not issue a certificate for a new transfer or approve an increase in the permitted
8 volume of an existing transfer during the period that the moratorium imposed by this
9 section is in effect. The moratorium imposed by this section does not apply to an
10 application to increase the volume of an existing transfer that, on 1 May 1997, is
11 registered under G.S. 143-215.22H and:

12 (1) Was not permitted under G.S. 153A-285, repealed by Section 4 of
13 Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by
14 Section 6 of Chapter 348 of the 1993 Session Laws; and

15 (2) For which a certificate has not been issued under G.S. 143-215.22I.

16 Section 4. This act is effective when it becomes law. Section 3 of this act
17 expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session
18 sine die.



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Memorandum

May 21, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 947 (Amend Interbasin Transfers)

Section 1 amends G.S. 143-215.22I(g) to modify the burden of proof that must be satisfied to obtain an interbasin transfer certificate. Under current law, a certificate **will be granted** unless the Environmental Management Commission (EMC) concludes by a preponderance of the evidence based on its findings of fact that the potential detriments of the proposed transfer outweigh the benefits of the transfer. Under Senate Bill 947, a certificate **will not be granted** unless the EMC concludes by a preponderance of the evidence based on its findings of fact that the benefits of the proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree.

Section 2 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically study whether, and on what basis, the total volume of water transferred may be limited and whether the Environmental Management Commission (EMC) should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly.

Section 3 imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment, Health, and Natural Resources, but is not a permitted transfer.

Section 4 makes this act effective when it becomes law. The moratorium on new transfers and increases in the volume of existing transfers imposed by Section 3 of this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session.



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Section 2 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically study whether, and on what basis, the total volume of water transferred may be limited and whether the Environmental Management Commission (EMC) should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly.

Section 3 imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment, Health, and Natural Resources, but is not a permitted transfer.

Section 4 makes this act effective when it becomes law. The moratorium on new transfers and increases in the volume of existing transfers imposed by Section 3 of this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session.

VISITOR REGISTRATION SHEET

House Committee on Environment

May 21, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Kim Smith	NCLM
Laura Hartwell	MCIC
Patty Berry	CCNC
Jon Olney	CCNC/Sierra Club
Molly Biegans	Sierra Club
MARC BERNSTEIN	AG's OFFICE
Tony Young	NC DWR
John Morris	NC DWR
Beth Warden	AG's Office
Art Parr	DEHNR
RICHARD WASHNET	DEHNR
Nickie Cal	DWR
R. ROGERS	DEHNR
Jenny Sialke	NC LCA
E. Gumbert/Davis	Assoc of Launderers + Cleaners
J. Taylor	"
Steve Wenzel	NIALC / (DRY CLEANERS) ASSOC.
Chris Edwards	NICALC
JACK CARTER	NICALC
Mack Davis	North Carolina Assoc. Launderers & Cleaners
MARY Wells	NC ASSOC LAUNDRIES + CLEANERS
Cam Over	BNHL
R. Scott Johnson	Barrett Kays & Assoc.
David Lizzo	BKA
Arthur Monberry	DEHNR - DWQ - Groundwater
Doug Howey	NCPMA
CHARLES COLLINS	DOR
Glenn Dunn	Poyner & Spruill
Mus Marshall	Poyner & Spruill

VISITOR REGISTRATION SHEET

House Committee on Environment

May 21, 1997

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

MINUTES

HOUSE COMMITTEE ON ENVIRONMENT

WEDNESDAY , JUNE 25, 1997

ROOM 415-LOB

The House Committee on Environment met on Wednesday, June 25, 1997 in room 415-LOB during the recess of the full assembly.

A silent roll was taken,(roll list denotes members present).

Due to a meeting time and room change that was announced from the floor immediately before the recess of the House, there was some delay before a quorum was present . Representative Hill finally announced a quorum present and called the meeting to order.

SB- 947- AMEND INTERBASIN TRANSFERS

In the absence bill sponsor Senator Cochran, Chairman Hill called for the adoption of a committee substitute of SB-947, a favorable vote was taken and the committee substitute was adopted for discussion.

Representative Hackney was recognized for discussion. Representative Hackney stated that he felt that the bill was burdensome on small upstream interbasin transfers and that the change in "the burden of proof" as written in the bill was unnecessary. He sent forth an amendment to make certain changes in section one. After a request from the floor concerning clarification of what section one means, Representative Hackney gave a detailed explanation of his opinion of the meaning of Section one but was interrupted by Chairman Hill who temporarily displaced the SB-947 awaiting the bill sponsor and to save time called forth Senator Odom to explain his bill.

SB 125 BROWNFIELDS/PROPERTY USE RESTRICT

Representative Gamble moved that a committee substitute for SB 125 be adopted for discussion. A vote being taken favorable to adopt the committee substitute for discussion, Senator Odom proceeded to explain the bill and stated that although he had not reviewed the committee substitute he was advised that it was along the same lines as the original bill that was recommended by the Environmental Review Commission. The bill would allow restrictions to be placed on record of oil or hazardous discharges so that lessor or purchaser of property would know what had been the problem on the property and that if the past problem was not determined a danger to the

public health by the Secretary of DEHNR the property then could be then be used for commercial purposes.

Representative Hackney asked if this was a new bill or had the committee reviewed a similar bill. Staff Jeff Hudson reported that this was identical to HB 224 that was adopted by this committee and given a favorable report in April.

After much discussion by various members (Chair did not identify each by name) questioning if this was the McComas House bill that the committee had previously passed favorably. Jeff Hudson stated that this was not the McComas bill but this committee substitute was trying to conform Senator Odom's bill to the McComas brownfields bill. Sen. Odom's bill deals with petroleum contamination and McComas bill deals with other hazardous contamination. This bill identifies inactive sites that have been contaminated by petroleum spills.

Rep. Hightower questioned to what extent the Secretary would be notified.

Richard Whisnant, General counsel for DEHNR explained the details of the recording process with the Secretary.

Senator Odom stated that this bill would allow some of the sites that had been determined hazardous to be allowed to have limited commercial use. This recording process is a way to allow people to use property that otherwise would be abandoned.

Senator Odom stated that this is a voluntary recording by the property owner. It is not mandated by DEHNR.

Much discussion between Rep. Hightower and Senator ensued concerning this voluntary declaration.

Rep. Cole questioned if this would help alleviate problems with the financial institutions loaning money on the property. Senator Odom stated that the banks liked this bill because there was a public notice of the restrictions and that the purchaser was not the responsible party.

Rep. Hackney stated that he assumed that this was a department bill and questioned if DEHNR was satisfied with the bill. A spokesman for DEHNR(not identified by name) stated that the department was comfortable with the bill.

Chairman Hill asked if anyone else wanted to speak on the bill. There being none, Rep. Yongue made a motion that a favorable report be given to the SB 125 House Committee Substitute unfavorable to original bill. A voice vote being taken , the motion passed.

Chairman Hill again called up SB 947 INTERBASIN TRANSFER and requested Senator Cochrane to explain the bill.

After a thorough explanation of the bill by Senator Cochrane, Rep. Hackney again questioned way this bill should affect small transfers when the small transfers did not present a problem and why there was a moratorium. He explained the amendment that he had sent forth.

Senator Cochrane spoke against the amendment and explained the moratorium and stated that the moratorium in her opinion was not, to her, an important part of the bill.

Representative Hackney questioned lines 17 through 23 of the bill and Senator Cochrane responded.

Rep. Hackney and Senator Cochrane continued in technical debate of the bill and discussion about how four attorneys had worked on this bill and agreed on the merits of the bill.

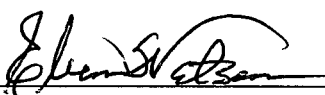
Chairman Hill interrupted the discussion and stated that because he believed that no action was forthcoming on SB 947 today, he wanted to stop the discussion on this bill until another meeting and in the interest of time called for Sen. Horton to explain his bill.

SB 178 AMEND NATURAL HERITAGE TRUST FUND

Representative Watson called for a motion to accept a House Committee substitute for SB 178 and receiving a favorable vote the committee substitute was adopted for discussion.

After a brief explanation of the bill by Senator Horton, Rep. Hackney stated that he desired to have time to read the committee substitute before discussing the bill and Chairman Hill stated that no time remained for discussion and the meeting was adjourned.


Rep. Hill
Presiding Chair


Ebern Watson
Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 947

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97
Proposed House Committee Substitute S947-PCS1841

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED
3 TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER
4 OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW
5 COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN
6 TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON
7 CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE
8 STUDY.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.22I(g) reads as rewritten:

11 "(g) A certificate shall be granted for a water transfer ~~unless if the applicant~~
12 ~~establishes and~~ the Commission concludes by a preponderance of the evidence based
13 upon the findings of fact made under subsection (f) of this section ~~that the potential~~
14 ~~detriments of the proposed transfer outweigh the benefits of the transfer. that: (i) the~~
15 benefits of the proposed transfer outweigh the detriments of the proposed transfer,
16 and (ii) the detriments have been or will be mitigated to a reasonable degree. The
17 conditions necessary to ensure that the detriments are and continue to be mitigated to
18 a reasonable degree shall be attached to the certificate in accordance with subsection
19 (h) of this section."

20 Section 2. The Environmental Review Commission shall study issues
21 relating to the transfer of surface waters between river basins in the State. As a part
22 of this study, the Environmental Review Commission shall consider whether, and on

1 what basis, the total volume of water that may be transferred from any river basin
2 should be limited and whether the Environmental Management Commission should
3 be authorized to issue special orders to remedy violations of laws or rules regulating
4 transfers. The Environmental Review Commission shall report its findings,
5 recommendations, and legislative proposals, if any, to the 1998 Regular Session of the
6 General Assembly.

7 Section 3. As used in this section, "transfer" has the same meaning as in
8 G.S. 143-215.22G. There is imposed a moratorium on any new transfer and on any
9 increase in the permitted volume of an existing transfer for which a certificate is
10 required under G.S. 143-215.22I. The Environmental Management Commission shall
11 not issue a certificate for a new transfer or approve an increase in the permitted
12 volume of an existing transfer during the period that the moratorium imposed by this
13 section is in effect. During the moratorium imposed by this section, the
14 Environmental Management Commission may hold public meetings or hearings,
15 gather information, and analyze additional data relevant to any interbasin transfer
16 application submitted to it.

17 The moratorium imposed by this section does not apply to an application
18 to increase the volume of an existing transfer that, on 1 May 1997, is registered under
19 G.S. 143-215.22H and:

20 (1) Was not permitted under G.S. 153A-285, repealed by Section 4 of
21 Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by
22 Section 6 of Chapter 348 of the 1993 Session Laws; and

23 (2) For which a certificate has not been issued under G.S. 143-215.22I.

24 Section 4. This act is effective when it becomes law. Section 3 of this act
25 expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session
26 sine die.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 947

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED
3 TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER
4 OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW
5 COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN
6 TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON
7 CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE
8 STUDY.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.22I(g) reads as rewritten:

11 "(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission
12 concludes by a preponderance of the evidence based upon the findings of fact made
13 under subsection (f) of this section that the ~~potential detriments of the proposed~~
14 ~~transfer outweigh the~~ benefits of the transfer. proposed transfer outweigh the
15 potential detriments of the transfer and that those detriments have been mitigated to
16 a reasonable degree."

17 Section 2. The Environmental Review Commission shall study issues
18 relating to the transfer of surface waters between river basins in the State. As a part
19 of this study, the Environmental Review Commission shall consider whether, and on
20 what basis, the total volume of water that may be transferred from any river basin
21 should be limited and whether the Environmental Management Commission should
22 be authorized to issue special orders to remedy violations of laws or rules regulating
23 transfers. The Environmental Review Commission shall report its findings,

1 recommendations, and legislative proposals, if any, to the 1998 Regular Session of the
2 General Assembly.

3 Section 3. As used in this section, "transfer" has the same meaning as in
4 G.S. 143-215.22G. There is hereby imposed a moratorium on any new transfer and
5 on any increase in the permitted volume of an existing transfer for which a certificate
6 is required under G.S. 143-215.22I. The Environmental Management Commission
7 shall not issue a certificate for a new transfer or approve an increase in the permitted
8 volume of an existing transfer during the period that the moratorium imposed by this
9 section is in effect. The moratorium imposed by this section does not apply to an
10 application to increase the volume of an existing transfer that, on 1 May 1997, is
11 registered under G.S. 143-215.22H and:

12 (1) Was not permitted under G.S. 153A-285, repealed by Section 4 of
13 Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by
14 Section 6 of Chapter 348 of the 1993 Session Laws; and

15 (2) For which a certificate has not been issued under G.S. 143-215.22I.

16 Section 4. This act is effective when it becomes law. Section 3 of this act
17 expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session
18 sine die.



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June 25, 1997

MEMORANDUM

To: House Committee on the Environment

From: Mary Beach Shuping

Re: **Proposed Committee Substitute for SB 178, 2nd edition - Amend Natural Heritage Trust Fund**

This bill was recommended to the 1997 Session of the General Assembly by the Environmental Review Commission. The proposed committee substitute makes clarifying changes to the portion of Section 2 that amends G.S. 113-77.9(c).

Section 1 amends G.S. 113-77.7(c) to permit the Trustees of the Natural Heritage Trust Fund to authorize the establishment of a special stewardship account for the management of lands acquired by the Fund. The special stewardship account will be used for the management of land acquired by the Natural Heritage Trust Fund under the direction of the Trustees.

Section 2 amends G.S. 113-77.9 by adding the Secretary of Cultural Resources to the list of officials that may propose to the Trustees lands to be acquired with moneys from the Fund. This section also provides that the Trustees may authorize expenditures from the Fund to pay for conservation and protection planning and educational programs for owners of natural areas defined under the Nature Preserves Act. A "natural area" is defined as an area of land, water, or both land and water, whether publicly or privately owned, that (i) retains or has reestablished its natural character, (ii) provides habitat for rare or endangered species of plants or animals, (iii) or has biotic, geological, scenic, or paleontological features of scientific or educational value. Finally, this section authorizes a State agency with management responsibility for any lands acquired with moneys from the Fund to enter into a management agreement with a qualified private non-profit organization to aid in managing the land.

Section 3 makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 125*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97
Proposed House Committee Substitute S125-PCS4621

Short Title: Brownfields/Property Use Restrict.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH,
3 AND NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT
4 OF BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS
5 ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES
6 AND ON OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR
7 RELEASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
8 COMMISSION.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 130A-310.3 is amended by adding a new subsection to
11 read:

12 "(f) In order to reduce or eliminate the danger to public health or the
13 environment posed by an inactive hazardous substance or waste disposal site, an
14 owner, operator, or other responsible party may impose restrictions on the current or
15 future use of the real property comprising any part of the site if the restrictions meet
16 the requirements of this subsection. The restrictions must be agreed to by the owner
17 of the real property, included in a remedial action plan for the site that has been
18 approved by the Secretary, and implemented as a part of the remedial action
19 program for the site. The Secretary may approve restrictions included in a remedial
20 action plan in accordance with standards determined as provided in subsection (d) of
21 this section or pursuant to rules adopted under Chapter 150B of the General Statutes.
22 Restrictions may apply to activities on, over, or under the land, including, but not

1 Section 3. G.S. 130A-310.9(b) reads as rewritten:

2 "(b) The Secretary may enter into an agreement with an owner, operator, or other
3 responsible party ~~which~~ that provides for implementation of a voluntary remedial
4 action program in accordance with a remedial action plan approved by the
5 Department. Investigations, evaluations, and voluntary remedial actions are subject
6 to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f),
7 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A
8 voluntary remedial action and all documents that relate to the voluntary remedial
9 action shall be fully subject to inspection and audit by the Department. At least 30
10 days prior to entering into any agreement providing for the implementation of a
11 voluntary remedial action program, the Secretary shall mail notice of the proposed
12 agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary
13 remedial actions shall be so identified as a separate category in the inventory of sites
14 maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive
15 Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

16 Section 4. G.S. 143-215.84 is amended by adding a new subsection to
17 read:

18 "(e) In order to reduce or eliminate the danger to public health or the
19 environment posed by a discharge or release of oil or a hazardous substance, an
20 owner, operator, or other responsible party may impose restrictions on the current or
21 future use of the real property comprising any part of the site if the restrictions meet
22 the requirements of this subsection. The restrictions must be agreed to by the owner
23 of the real property, included in a remedial action plan for the site that has been
24 approved by the Secretary, and implemented as a part of the remedial action
25 program for the site. The Secretary may approve restrictions included in a remedial
26 action plan in accordance with standards determined: (i) pursuant to rules for
27 remediation of soil or groundwater contamination adopted by the Commission; (ii)
28 with respect to the cleanup of a discharge or release from a petroleum underground
29 storage tank, pursuant to rules adopted by the Commission pursuant to G.S.
30 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to
31 activities on, over, or under the land, including, but not limited to, use of
32 groundwater, building, filling, grading, excavating, and mining. Any approved
33 restriction shall be enforced by any owner, operator, or other party responsible for
34 the oil or hazardous substance discharge site. Any land-use restriction may also be
35 enforced by the Department through the remedies provided in this Article, Part 2 of
36 Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The
37 Department may enforce any land-use restriction without first having exhausted any
38 available administrative remedies. A land-use restriction may also be enforced by
39 any unit of local government having jurisdiction over any part of the site. A land-use
40 restriction shall not be declared unenforceable due to lack of privity of estate or
41 contract, due to lack of benefit to particular land, or due to lack of any property
42 interest in particular land. Any person who owns or leases a property subject to a
43 land-use restriction under this Part shall abide by the land-use restriction."

Section 5. Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143-215.84(e) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE'. Where an oil or hazardous substance discharge site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

(1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of hazardous substances disposed of known by the owner of the site to exist on the site, to the best of the owner's knowledge.

(3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an oil or hazardous substance discharge site that is subject to current or future land-use restrictions under this section is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as an oil or hazardous substance discharge site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Oil or Hazardous Substance Discharge Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the

1 register of deeds of each county where the Notice is recorded a statement that the
2 hazards have been eliminated and request that the Notice be cancelled of record.
3 The Secretary's statement shall contain the names of the owners of the land as shown
4 in the Notice and reference the plat book and page where the Notice is recorded.
5 The register of deeds shall record the Secretary's statement in the deed books and
6 index it on the grantor index in the names of the owners of the land as shown in the
7 Notice and on the grantee index in the name 'Secretary of Environment, Health, and
8 Natural Resources'. The register of deeds shall make a marginal entry on the Notice
9 showing the date of cancellation and the book and page where the Secretary's
10 statement is recorded, and the register of deeds shall sign the entry. If a marginal
11 entry is impracticable because of the method used to record maps and plats, the
12 register of deeds shall not be required to make a marginal entry."

13 Section 6. G.S. 143-215.88B is amended by adding a new subsection to
14 read:

15 "(h) Any person who knowingly and willfully makes any false statement,
16 representation, or certification in any application, record, report, plan, or other
17 document filed or required to be maintained under this Article or rules adopted
18 under this Article; or who knowingly and willfully makes a false statement of a
19 material fact in a rule-making proceeding or contested case under this Article; or who
20 falsifies, tampers with, or knowingly and willfully renders inaccurate any recording or
21 monitoring device or method required to be operated or maintained under this
22 Article or rules adopted under this Article is guilty of a Class I felony, which may
23 include a fine not to exceed one hundred thousand dollars (\$100,000) per day of
24 violation, provided that the fine shall not exceed a cumulative total of five hundred
25 thousand dollars (\$500,000) for each period of 30 days during which a violation
26 continues."

27 Section 7. This act becomes effective 1 October 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 125*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97

Short Title: Brownfields/Property Use Restrict.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH,
3 AND NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT
4 OF BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS
5 ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES
6 AND ON OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR
7 RELEASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
8 COMMISSION.
9 The General Assembly of North Carolina enacts:
10 Section 1. G.S. 130A-310.3 is amended by adding a new subsection to
11 read:
12 "(f) In order to reduce or eliminate the danger to public health or the
13 environment posed by an inactive hazardous substance or waste disposal site, an
14 owner, operator, or other responsible party may impose restrictions on the current or
15 future use of the real property comprising any part of the site if the restrictions meet
16 the requirements of this subsection. The restrictions must be agreed to by the owner
17 of the real property included in a remedial action plan for the site that has been
18 approved by the Secretary and implemented as a part of the remedial action program
19 for the site. The Secretary may approve restrictions included in a remedial action
20 plan in accordance with standards determined as provided in subsection (d) of this
21 section or pursuant to rules adopted under Chapter 150B of the General Statutes.
22 Restrictions may apply to activities on, over, or under the land, including, but not
23 limited to, building, filling, grading, excavating, and mining. Any approved

1 restriction shall be enforced by any owner, operator, or other party responsible for
2 the inactive hazardous substance or waste disposal site. Restrictions may also be
3 enforced by the Department or by any unit of local government having jurisdiction
4 over any part of the site. A restriction shall not be declared unenforceable on
5 account of lack of privity of estate or contract or lack of benefit to particular land."

6 Section 2. G.S. 130A-310.8(a) reads as rewritten:

7 "(a) After determination by the Department of the existence and location of an
8 inactive hazardous substance or waste disposal site, the owner of the real property on
9 which the site is located, within 180 days after official notice to ~~him~~ the owner to do
10 so, shall submit to the Department a survey plat of areas designated by the
11 Department ~~which~~ that has been prepared and certified by a professional land
12 surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR
13 WASTE DISPOSAL SITE'. Where an inactive hazardous substance or waste
14 disposal site is located on more than one parcel or tract of land, a composite map or
15 plat showing all parcels or tracts may be recorded. The Notice shall include a legal
16 description of the site that would be sufficient as a description in an instrument of
17 conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall
18 identify:

- 19 (1) The location and dimensions of the disposal areas with respect to
20 permanently surveyed ~~benchmarks, and~~ benchmarks.
21 (2) The type, location, and quantity of hazardous substances disposed
22 of on the site, to the best of the owner's knowledge.
23 (3) Any restrictions approved by the Department on the current or
24 future use of the site.

25 ~~Where an Inactive Hazardous Substance or Waste Disposal Site is located on more~~
26 ~~than one parcel or tract of land, a composite map or plat showing all such sites may~~
27 ~~be recorded."~~

28 Section 3. G.S. 130A-310.8(b) reads as rewritten:

29 "(b) After the Department approves and certifies the Notice, the owner of the site
30 shall file the certified copy of the Notice in the register of deeds' office in the county
31 or counties in which the land is ~~located.~~ located within 30 days of date on which the
32 owner receives approval of the Notice from the Department."

33 Section 4. G.S. 130A-310.9(b) reads as rewritten:

34 "(b) The Secretary may enter into an agreement with an owner, operator, or other
35 responsible party ~~which~~ that provides for implementation of a voluntary remedial
36 action program in accordance with a remedial action plan approved by the
37 Department. Investigations, evaluations, and voluntary remedial actions are subject
38 to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f),
39 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A
40 voluntary remedial action and all documents that relate to the voluntary remedial
41 action shall be fully subject to inspection and audit by the Department. At least 30
42 days prior to entering into any agreement providing for the implementation of a
43 voluntary remedial action program, the Secretary shall mail notice of the proposed
44 agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary

1 remedial actions shall be so identified as a separate category in the inventory of sites,
2 maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive
3 Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

4 Section 5. G.S. 143-215.84 is amended by adding a new subsection to
5 read:

6 "(e) In order to reduce or eliminate the danger to public health or the
7 environment posed by a discharge or release of oil or a hazardous substance, an
8 owner, operator, or other responsible party may impose restrictions on the current or
9 future use of the real property comprising any part of the site if the restrictions meet
10 the requirements of this subsection. The restrictions must be agreed to by the owner
11 of the real property, included in a remedial action plan for the site that has been
12 approved by the Secretary, and implemented as a part of the remedial action
13 program for the site. The Secretary may approve restrictions included in a remedial
14 action plan in accordance with standards determined: (i) pursuant to rules for
15 remediation of soil or groundwater contamination adopted by the Commission; (ii)
16 with respect to the cleanup of a discharge or release from a petroleum underground
17 storage tank, pursuant to rules adopted by the Commission pursuant to G.S.
18 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to
19 activities on, over, or under the land, including, but not limited to, building, filling,
20 grading, excavating, and mining. Any approved restriction shall be enforced by any
21 owner, operator, or other party responsible for the oil or hazardous substance
22 discharge site. Restrictions may also be enforced by the Department or by any unit
23 of local government having jurisdiction over any part of the site. A restriction shall
24 not be declared unenforceable on account of lack of privity of estate or contract or
25 lack of benefit to particular land."

26 Section 6. Article 21A of Chapter 143 of the General Statutes is
27 amended by adding a new section to read:

28 **"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.**

29 (a) The owner of the real property on which a site is located that is subject to
30 current or future use restrictions approved as provided in G.S. 143-215.84(e) shall
31 submit to the Department a survey plat as required by this section within 180 days
32 after the owner is notified to do so. The survey plat shall identify areas designated by
33 the Department, shall be prepared and certified by a professional land surveyor, and
34 shall be entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE
35 SITE'. Where an oil or hazardous substance discharge site is located on more than
36 one parcel or tract of land, a composite map or plat showing all parcels or tracts may
37 be recorded. The Notice shall include a legal description of the site that would be
38 sufficient as a description in an instrument of conveyance, shall meet the
39 requirements of G.S. 47-30 for maps and plats, and shall identify:

- 40 (1) The location and dimensions of the disposal areas with respect to
41 permanently surveyed benchmarks.
42 (2) The type, location, and quantity of hazardous substances disposed
43 of on the site, to the best of the owner's knowledge.

1 (3) Any restrictions approved by the Department on the current or
2 future use of the site.

3 (b) After the Department approves and certifies the Notice, the owner of the site
4 shall file the certified copy of the Notice in the register of deeds office in the county
5 or counties in which the land is located within 30 days of date on which the owner
6 receives approval of the Notice from the Department.

7 (c) The register of deeds shall record the certified copy of the Notice and index it
8 in the grantor index under the names of the owners of the lands.

9 (d) In the event that the owner of the site fails to submit and file the Notice
10 required by this section within the time specified, the Secretary may prepare and file
11 the Notice. The costs thereof may be recovered by the Secretary from any
12 responsible party. In the event that an owner of a site who is not a responsible party
13 submits and files the Notice required by this section, he may recover the reasonable
14 costs thereof from any responsible party.

15 (e) When an oil or hazardous substance discharge site is sold, leased, conveyed, or
16 transferred, the deed or other instrument of transfer shall contain in the description
17 section, in no smaller type than that used in the body of the deed or instrument, a
18 statement that the property has been used as an oil or hazardous substance discharge
19 site and a reference by book and page to the recordation of the Notice.

20 (f) A Notice of oil or hazardous substance discharge site shall be cancelled by the
21 Secretary after the hazards have been eliminated. The Secretary shall send to the
22 register of deeds of the county where the Notice is recorded a statement that the
23 hazards have been eliminated and request that the Notice be cancelled of record.
24 The Secretary's statement shall contain the names of the landowners as shown in the
25 Notice and reference the plat book and page where the Notice is recorded. The
26 register of deeds shall record the Secretary's statement in the deed books and index it
27 on the grantor index in the name of the landowner as shown in the Notice and on the
28 grantee index in the name 'Secretary of Environment, Health, and Natural
29 Resources'. The register of deeds shall make a marginal entry on the Notice showing
30 the date of cancellation and the book and page where the Secretary's statement is
31 recorded, and the register shall sign the entry. If a marginal entry is impracticable
32 because of the method used to record maps and plats, the register of deeds shall not
33 be required to make a marginal entry."

34 Section 7. G.S. 143-215.88B is amended by adding a new subsection to
35 read:

36 "(h) Any person who knowingly makes any false statement, representation, or
37 certification in any application, record, report, plan, or other document filed or
38 required to be maintained under this Article or rules adopted under this Article; or
39 who knowingly makes a false statement of a material fact in a rule-making proceeding
40 or contested case under this Article; or who falsifies, tampers with, or knowingly
41 renders inaccurate any recording or monitoring device or method required to be
42 operated or maintained under this Article or rules adopted under this Article is guilty
43 of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense
44 under this section is ten thousand dollars (\$10,000)."

1

Section 8. This act is effective when it becomes law.



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Memorandum

June 25, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 947 (Amend Interbasin Transfers)

Section 1 amends G.S. 143-215.22I(g) to modify the burden of proof that must be satisfied to obtain an interbasin transfer certificate. Under current law, a certificate will be granted unless the Environmental Management Commission (EMC) concludes by a preponderance of the evidence based on its findings of fact that the potential detriments of the proposed transfer outweigh the benefits of the transfer. Under Senate Bill 947, a certificate will be granted if the applicant establishes and the EMC concludes by a preponderance of the evidence based upon findings of fact that (i) the benefits of the proposed transfer outweigh the potential detriments of the transfer and (ii) those detriments have been or will be mitigated to a reasonable degree. The conditions necessary to mitigate the detriments will be attached to the transfer certificate.

Section 2 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically study whether, and on what basis, the total volume of water transferred may be limited and whether the Environmental Management Commission (EMC) should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly.

Section 3 imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment, Health, and Natural Resources, but is not a permitted transfer. This section also authorizes the EMC, during the period of the moratorium, to hold public meetings and hearings, gather information, and analyze data relevant to any interbasin transfer application.

Section 4 makes this act effective when it becomes law. The moratorium on new transfers and increases in the volume of existing transfers imposed by Section 3 of this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session.

-1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES—

The following report(s) ^{and permanent subcommittees} from standing committee(s) is/are presented:
By Representative(s) Hill, Eddins & Watson for the Committee on **ENVIRONMENT**.

- ☒ Committee Substitute for ^{to Chair}
S.B. 125 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT OF BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES AND ON OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR RELEASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
- ☒ With a favorable report as to House committee substitute bill (~~#~~); ☐ which changes the title, unfavorable as to Senate committee substitute bill.
- ☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

(over)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 178*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97
Proposed House Committee Substitute S178-PCS4620

Short Title: Amend Natural Heritage Trust Fund.

(Public)

Sponsors:

Referred to:

February 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE SECRETARY OF CULTURAL RESOURCES TO
3 PROPOSE LANDS TO BE ACQUIRED WITH FUNDS FROM THE NATURAL
4 HERITAGE TRUST FUND, TO AUTHORIZE EXPENDITURES FROM THE
5 FUND FOR CONSERVATION AND PROTECTION PLANNING AND
6 EDUCATIONAL PROGRAMS FOR OWNERS OF NATURE PRESERVES
7 UNDER THE NATURE PRESERVES ACT, AND TO AUTHORIZE THE
8 BOARD OF TRUSTEES OF THE FUND TO ENTER INTO AGREEMENTS
9 FOR THE MANAGEMENT OF ACQUIRED LANDS WITH QUALIFIED
10 NONPROFIT ORGANIZATIONS.
11 The General Assembly of North Carolina enacts:
12 Section 1. G.S. 113-77.7(c) reads as rewritten:
13 "(c) When the State acquires land pursuant to this Article, the ~~Chairman of the~~
14 ~~Board of Trustees shall~~ may direct a request to the State Treasurer to set aside an
15 amount from the Fund not to exceed twenty percent (20%) of the appraised value of
16 the land acquired, or the land affected if less than a fee interest was acquired, to be
17 placed in a special stewardship account in the Fund. The special stewardship account
18 shall be a nonlapsing account, and income derived from investment of the account
19 shall be credited to the account. The special stewardship account shall be used for
20 the management of land acquired pursuant to this ~~Article, as directed by the~~
21 ~~Trustees, so long as such land remains in the Trust.~~ Article under the direction of the
22 Trustees."

Section 2. G.S. 113-77.9 reads as rewritten:

"§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

(a) From time to time, but at least once each year, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, ~~and the Commissioner of Agriculture shall~~ Agriculture, and the Secretary of Cultural Resources may propose to the Trustees lands to be acquired with funds from the Fund. For each tract or interest proposed, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, ~~and the Commissioner of Agriculture~~ Agriculture, and the Secretary of Cultural Resources shall provide the Trustees with the following information:

- (1) The value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State's comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and ~~objectives;~~ objectives.
- (2) Any rare or endangered species on or near the ~~land;~~ land.
- (3) Whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now ~~uncommon;~~ uncommon.
- (4) Whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic ~~feature;~~ feature.
- (5) The extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural ~~areas;~~ areas.
- (6) Other sources of funds that may be available to assist in acquiring the ~~land;~~ land.
- (7) The State department or division that will be responsible for managing the ~~land;~~ land.
- (8) What assurances exist that the land will not be used for purposes other than those for which it is being ~~acquired;~~ and acquired.
- (9) Whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.

(b) The Trustees may authorize expenditures from the Fund to acquire:

- (1) Land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes.
- (2) Land as additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers,

1 and natural areas for the beneficial use and enjoyment of the
2 public.

3 (3) Subject to the limitations of subsection ~~(b1); (b2)~~ of this section,
4 land that contributes to the development of a balanced State
5 program of historic properties.

6 ~~(b1) The Trustees may designate managers or managing agencies of the lands so~~
7 ~~acquired to receive grants from the Fund's stewardship account.~~ In authorizing
8 expenditures from the Fund to acquire land pursuant to this Article, the first priority
9 shall be the protection of land with outstanding natural or cultural heritage values.
10 Land with outstanding natural heritage values is land that is identified by the North
11 Carolina Natural Heritage Program as having State or national significance. Land
12 with outstanding cultural heritage values is land that is identified, inventoried, or
13 evaluated by the Department of Cultural Resources. The Trustees shall be guided by
14 any priorities established by the Secretary, the Chairman of the Wildlife Resources
15 Commission, ~~and the Commissioner of Agriculture~~ Agriculture, and the Secretary of
16 Cultural Resources in their proposals made pursuant to subsection ~~(a); above: (a)~~ of
17 this section.

18 ~~(b1) (b2)~~ The Trustees may authorize expenditure of up to twenty-five percent
19 (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the
20 preceding fiscal year to acquire land under subdivision (3) of subsection ~~(b); (b)~~ of
21 this section. No other funds in the Fund may be used for expenditures to acquire
22 land under subdivision (3) of subsection ~~(b); (b)~~ of this section.

23 (c) The Trustees may authorize expenditures from the Fund to pay for the
24 inventory of natural areas ~~by the Secretary's conducted under the~~ Natural Heritage
25 Program ~~conducted pursuant to Chapter 113A, Article 9A, of the General Statutes.~~
26 established pursuant to the Nature Preserves Act, Article 9A of Chapter 113A of the
27 General Statutes. The Trustees may also authorize expenditures from the Fund to
28 pay for conservation and protection planning and for informational programs for
29 owners of natural areas, as defined in G.S. 113A-164.3.

30 (d) The Department of Administration may, pursuant to G.S. 143-341, acquire by
31 purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to
32 this Article. Title to any land acquired pursuant to this Article shall be vested in the
33 State. ~~State agencies~~ A State agency with management responsibilities for lands
34 management responsibility for land acquired pursuant to this Article may enter into a
35 management ~~agreements in the form of leases with counties, cities, and towns~~
36 agreement or lease with a county, city, town, or private nonprofit organization
37 qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section
38 501(c)(3) of the Internal Revenue Code to aid in managing the lands, and such lease
39 agreements land. A management agreement or lease shall be executed by the
40 Department of Administration pursuant to G.S. 143-341.

41 (d1) In any county in which real property was purchased pursuant to subsection
42 (d) of this section as additions to the fish and wildlife management areas and where
43 less than twenty-five percent (25%) of the land area is privately owned at the time of
44 purchase, that county and any other local taxing unit shall be annually reimbursed,

1 for a period of 20 years, from funds available to the North Carolina Wildlife
2 Resources Commission in an amount equal to the amount of ad valorem taxes that
3 would have been paid to the taxing unit if the property had remained subject to
4 taxation.

5 (e) The Secretary shall maintain and annually revise a list of acquisitions made
6 pursuant to this Article. The list shall include the acreage of each tract, the county in
7 which the tract is located, the amount paid from the Fund to acquire the tract, and
8 the State department or division responsible for managing the tract. The Secretary
9 shall furnish a copy of the list to each Trustee and to each House of the General
10 Assembly after each revision.

11 (f) No provision of this Article shall be construed to eliminate hunting and fishing,
12 as regulated by the laws of the State of North Carolina, upon properties purchased
13 pursuant to this Article."

14 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 178*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97

Short Title: Amend Natural Heritage Trust Fund.

(Public)

Sponsors:

Referred to:

February 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE SECRETARY OF CULTURAL RESOURCES TO
3 PROPOSE LANDS TO BE ACQUIRED WITH FUNDS FROM THE NATURAL
4 HERITAGE TRUST FUND, TO AUTHORIZE EXPENDITURES FROM THE
5 FUND FOR CONSERVATION AND PROTECTION PLANNING AND
6 EDUCATIONAL PROGRAMS FOR OWNERS OF NATURE PRESERVES
7 UNDER THE NATURE PRESERVES ACT, AND TO AUTHORIZE THE
8 BOARD OF TRUSTEES OF THE FUND TO ENTER INTO AGREEMENTS
9 FOR THE MANAGEMENT OF ACQUIRED LANDS WITH QUALIFIED
10 NONPROFIT ORGANIZATIONS.

11 The General Assembly of North Carolina enacts:

12 Section 1. G.S. 113-77.7(c) reads as rewritten:

13 "(c) When the State acquires land pursuant to this Article, the ~~Chairman of the~~
14 ~~Board of Trustees shall~~ may direct a request to the State Treasurer to set aside an
15 amount from the Fund not to exceed twenty percent (20%) of the appraised value of
16 the land acquired, or the land affected if less than a fee interest was acquired, to be
17 placed in a special stewardship account in the Fund. The special stewardship account
18 shall be a nonlapsing account, and income derived from investment of the account
19 shall be credited to the account. The special stewardship account shall be used for
20 the management of land acquired pursuant to this Article, ~~as directed by the~~
21 ~~Trustees, so long as such land remains in the Trust.~~ Article under the direction of the
22 Trustees."

23 Section 2. G.S. 113-77.9 reads as rewritten:

1 "§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

2 (a) From time to time, but at least once each year, the Secretary, the Chairman of
3 the North Carolina Wildlife Resources Commission, ~~and~~ the Commissioner of
4 ~~Agriculture shall~~ Agriculture, and the Secretary of Cultural Resources may propose
5 to the Trustees lands to be acquired with funds from the Fund. For each tract or
6 interest proposed, the Secretary, the Chairman of the North Carolina Wildlife
7 Resources Commission, ~~and~~ the Commissioner of ~~Agriculture~~ Agriculture, and the
8 Secretary of Cultural Resources shall provide the Trustees with the following
9 information:

- 10 (1) The value of the land for recreation, forestry, fish and wildlife
11 habitat, and wilderness purposes, and its consistency with the plan
12 developed pursuant to the State Parks Act, the State's
13 comprehensive plan for outdoor recreation, parks, natural areas
14 development, and wildlife management goals and ~~objectives~~;
15 objectives.
- 16 (2) Any rare or endangered species on or near the ~~land~~; land.
- 17 (3) Whether the land contains a relatively undisturbed and outstanding
18 example of a native North Carolina ecological community that is
19 now ~~uncommon~~; uncommon.
- 20 (4) Whether the land contains a major river or tributary, watershed,
21 wetland, significant littoral, estuarine, or aquatic site, or important
22 geologic ~~feature~~; feature.
- 23 (5) The extent to which the land represents a type of landscape,
24 natural feature, or natural area that is not currently in the State's
25 inventory of parks and natural ~~areas~~; areas.
- 26 (6) Other sources of funds that may be available to assist in acquiring
27 the ~~land~~; land.
- 28 (7) The State department or division that will be responsible for
29 managing the ~~land~~; land.
- 30 (8) What assurances exist that the land will not be used for purposes
31 other than those for which it is being ~~acquired~~; and acquired.
- 32 (9) Whether the site or structure is of such historical significance as to
33 be essential to the development of a balanced State program of
34 historic properties.

35 (b) The Trustees may authorize expenditures from the Fund to acquire:

- 36 (1) Land that represents the ecological diversity of North Carolina,
37 including natural features such as riverine, montane, coastal, and
38 geologic systems and other natural areas to ensure their
39 preservation and conservation for recreational, scientific,
40 educational, cultural, and aesthetic purposes.
- 41 (2) Land as additions to the system of parks, State trails, aesthetic
42 forests, fish and wildlife management areas, wild and scenic rivers,
43 and natural areas for the beneficial use and enjoyment of the
44 public.

1 (3) Subject to the limitations of subsection ~~(b1)~~, (b2) of this section,
2 land that contributes to the development of a balanced State
3 program of historic properties.

4 ~~(b1) The Trustees may designate managers or managing agencies of the lands so~~
5 ~~acquired to receive grants from the Fund's stewardship account.~~ In authorizing
6 expenditures from the Fund to acquire land pursuant to this Article, the first priority
7 shall be the protection of land with outstanding natural or cultural heritage values.
8 Land with outstanding natural heritage values is land that is identified by the North
9 Carolina Natural Heritage Program as having State or national significance. Land
10 with outstanding cultural heritage values is land that is identified, inventoried, or
11 evaluated by the Department of Cultural Resources. The Trustees shall be guided by
12 any priorities established by the Secretary, the Chairman of the Wildlife Resources
13 Commission, ~~and the Commissioner of Agriculture~~ Agriculture, and the Secretary of
14 Cultural Resources in their proposals made pursuant to subsection ~~(a), above.~~ (a) of
15 this section.

16 ~~(b1) (b2)~~ The Trustees may authorize expenditure of up to twenty-five percent
17 (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the
18 preceding fiscal year to acquire land under subdivision (3) of subsection ~~(b)~~. (b) of
19 this section. No other funds in the Fund may be used for expenditures to acquire
20 land under subdivision (3) of subsection ~~(b)~~. (b) of this section.

21 (c) The Trustees may authorize expenditures from the Fund to pay for the
22 inventory of natural areas ~~by the Secretary's Natural Heritage Program conducted~~
23 ~~pursuant to Chapter 113A, Article 9A, of the General Statutes.~~ under the Nature
24 Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees
25 may also authorize expenditures from the Fund to pay for conservation and
26 protection planning and for informational programs for owners of natural areas that
27 are dedicated as nature preserves under the Nature Preserves Act.

28 (d) The Department of Administration may, pursuant to G.S. 143-341, acquire by
29 purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to
30 this Article. Title to any land acquired pursuant to this Article shall be vested in the
31 State. ~~State agencies~~ A State agency with management responsibilities for lands
32 management responsibility for land acquired pursuant to this Article may enter into a
33 management ~~agreements in the form of leases with counties, cities, and towns~~
34 ~~agreement or lease with a county, city, town, or private nonprofit organization~~
35 qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section
36 501(c)(3) of the Internal Revenue Code to aid in managing the lands, and such lease
37 ~~agreements~~ land. A management agreement or lease shall be executed by the
38 Department of Administration pursuant to G.S. 143-341.

39 (d1) In any county in which real property was purchased pursuant to subsection
40 (d) of this section as additions to the fish and wildlife management areas and where
41 less than twenty-five percent (25%) of the land area is privately owned at the time of
42 purchase, that county and any other local taxing unit shall be annually reimbursed,
43 for a period of 20 years, from funds available to the North Carolina Wildlife
44 Resources Commission in an amount equal to the amount of ad valorem taxes that

1 would have been paid to the taxing unit if the property had remained subject to
2 taxation.

3 (e) The Secretary shall maintain and annually revise a list of acquisitions made
4 pursuant to this Article. The list shall include the acreage of each tract, the county in
5 which the tract is located, the amount paid from the Fund to acquire the tract, and
6 the State department or division responsible for managing the tract. The Secretary
7 shall furnish a copy of the list to each Trustee and to each House of the General
8 Assembly after each revision.

9 (f) No provision of this Article shall be construed to eliminate hunting and fishing,
10 as regulated by the laws of the State of North Carolina, upon properties purchased
11 pursuant to this Article."

12 Section 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Environment6.26.97VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. <u>Kim Smith</u>	<u>NCLM</u>
2. <u>Tom Franzen</u>	<u>Division of Water Resources</u>
3. <u>Tony Young</u>	
4. <u>TOM BEAN</u>	<u>NC Wildlife Federation</u>
5. <u>RICHARD WIMMART</u>	<u>DEHNR</u>
6. <u>Linda Pearsall</u>	<u>DEHNR</u>
7. <u>Susan Giles</u>	<u>DEHNR</u>
8. <u>Laura Hartzell</u>	<u>MCIC</u>
9. _____	_____
10. _____	_____
11. _____	_____
22. _____	_____
23. _____	_____
24. _____	_____
25. _____	_____
26. _____	_____
27. _____	_____
28. _____	_____
29. _____	_____
30. _____	_____
31. _____	_____

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT
JULY 2, 1997

The meeting of the Committee on Environment met in Room 643 of the Legislative Office Building on , July 2, 1997, at 3:00 PM. Representative Rick Eddins presided at the meeting. .

The following members were present:

Rep. Rick Eddins, Co-Chair; Rep. Cindy Watson, Co-Chair; Rep. Phil Baddour, Rep. John Brown, Rep. Nelson Cole, Rep. Arlie Culp, Rep. John Gamble, Rep. Jim Gulley, Rep. Joe Hackney, Rep. Bobby Hall, Rep. Foyle Hightower, Rep. Dan McComas, Rep. Eugene McCombs, Rep. Frank Mitchell, Rep. Charles Neely, Rep. John Nichols, Rep. Jean Preston, Nurham Warwick, Rep. John Weatherly and Rep. Douglas Yongue.

There were thirty visitors.

Co-Chairman Eddins called the meeting to order. He welcomed the pages, Aaron Wosnak from Wake County and Timothy Hagen from Robeson County.

Rep. Eddins recognized Senator Betsy Cochrane to come forward and explain her bill **SB 947 - A Bill to be Entitled an Act to Modify the Burden of Proof that must be satisfied to obtain a certificate authorizing an Interbasin Transfer of Surface Waters to Direct the Environmental Review Commission to Study Issues Relating to Inter-Basin Transfers, and to Impose a Temporary Moratorium on Certain Interbasin Transfers during the Pendency of the Study.**

Rep Cochrane thanked the members of the Committee for the additional opportunity to present additional information on the bill in order to convince them of the good idea presented in the bill. She explained that one part of the bill was to determine how much water could be taken out of any of the seventeen river basins and do no harm and see to it that there is adequate water for everyone thought the basin, including the lower ends of the basin. She is asking the Environmental Review Commission (ERC) to look at proposing to the General Assembly a possible yard stick benchmark standard that could be applied to the seventeen basins to help protect our water resources long term.

Another request comes as a result of the 1993 legislation which put in place the interbasin law that we have. At that time the Senate passed where the applicant was the one that bore the burden of evidence. That was changed in the House. This bill proposes to put it back as it passed the Senate. The applicant will be the one responsible for the burden of evidence in the application. A third piece of this that came about because of

action in the House in an effort to see to it that ERC did go forward with looking at the issue and perhaps coming back with a proposal in the short session. A moratorium for the year was put on and I did see to it that the moratorium is not impacting what is currently in place. We have nineteen transfers and two impoundments and that section towards the end of the bill shows that those nineteen are not impacted, nor are the impoundments, because what we are looking at is that everything that is end place continues. There is no question that a new one could not begin. You could begin an application, do all the paper work, have a public hearing and the certificate itself would be given next summer; according to John Morris, it would take until next summer for all of this process to take place.

Representative Hackney had submitted a pending amendment . (Attachment I).

Representative Cochrane reminded the Committee that she does not accept the amendment because it puts things back as they currently are and that is a substantive change in the legislation. The Committee would have to make a decision if the Committee would want to put the state in the position of determining and denying as opposed to putting lawyers or others who bring the applications forward in the position of proving. In most instances someone coming to the state for a permit, they have the burden of evidence on themselves as opposed to on the state.

Rep. Hackney explained the amendment and indicated it would delete Section I of G. S. 143-215.22(g) as it now stands, on Page 1, lines 10-19. See Attachment II. He further explained the problems this bill is causing the Virginia side of the state. He further explained that the local governments should retain control of the situation unless the state believes that there is a problem, i.e., small interbasin transfers in the upper river basins, for the most part, don't cause very much problem, and the local governments should be free to do that. They still have to get a certificate. He urged support for the amendment on that basis.

Rep. McCombs was recognized and he asked Rep. Hackney if he knew of any situations right now that require that we let water go from one place to another, and Rep. Hackney replied that he knew of no other currently pending situation which causes him to suggest this, but could foresee this happening in the future.

Rep. Mitchell supported Rep. Hackney's amendment and indicated he has a problem with the moratorium and how it might affect his counties in the future.

Rep. Hall asked Rep. Hackney to explain his reason for wanting to take out Section 1 of the bill.

A general discussion was held regarding the amendment with Representatives Baddour, Hightower and Cole commenting on the bill and asking for various explanations, which were explained by Rep. Cochrane, emphasizing the need for the bill while it can be considered in a rational fashion, and really look at the facts. She urged the Committee members not to wait until the state is in a water crisis such as the southwestern states now are, and now is the time to come up with a yardstick.

At this point Rep. Eddins reminded the members they should be looking at the proposed Committee Substitute, 1841, which is being considered.

Co-counsel, George Givens explained that at the last meeting the Committee adopted S947 PCS 1841 for consideration, unfortunately, it didn't make it into the notebooks, but that is the substitute that is before the Committee. Rep. Hackney offered the amendment which is key to the committee substitute that is before the committee.

Rep. Cochrane explained to Rep. Mitchell that in the committee substitute, language was added to specifically point out on the second page that during the moratorium everything can proceed.

At this point, Bill Holman of the N.C. Chapter of the Sierra Club indicated support for the bill and opposed Rep. Hackney's amendment.

Rep. Eddins called for a voice vote on the amendment and the amendment failed with a vote of 7 in favor and 9 opposed.

Rep. Watson moved for a favorable report as to the Committee Substitute and unfavorable to the original bill. The Committee voted 11 in favor of the substitute and 5 unfavorable.

Next bill on the agenda was SB 178 - **An Act to Allow the Secretary of Cultural Resources to Propose Lands to be Acquired with Funds from the Natural Heritage Trust Fund, to Authorize Expenditures from the Fund for Conservation and Protection Planning and Educational Programs for Owners of Nature Preserves under the Nature Preserves Act, and to Authorize the Board of Trustees of the Fund to Enter into Agreements for the Management of Acquired lands with Qualified Nonprofit Organizations.**

Co-counsel, George Givens explained that a Committee Substitute S178-PCS4620 was adopted at a previous meeting. The substitute bill was distributed to committee members. Senator Horton explained the bill.

Since no one opposed the Committee Substitute, Rep. Nichols moved for a favorable report on the substitute bill, unfavorable to original bill. The bill passed unanimously.

Rep. Eddins explained that the next two bills, HB 1203- State-Local Water Quality Plans - Rep. Insko and SB 114 - Inactive Hazardous Sites Recordation - Sen. Horton are being combined into one bill and then get it back into the Senate.

Senator Horton explained the proposed Committee Substitute bill for SB 114. He indicated that an amendment was attached in the Senate to the original bill SB 114.

Rep. Nichols moved for a favorable report on the proposed Committee Substitute for SB 114, unfavorable to original bill. Rep. Hackney asked to be excused from voting on this bill. Sen. Horton agreed that the bill could be temporarily displaced in order to speed up the process.

Rep. Insko came forward to explain her bill - HB 1203 - State-Local Water Quality Plans. She thanked Sen. Horton for allowing her bill be attached to his bill, SB 114. Since the bill did not appear in either the House or Senate version of the budget, and the \$300,000 appropriation could not qualify because of the cross-over deadline. The only relevant section of the bill would be Section 1, Page 1,2 and 3. This section of the bill authorizes the Environmental Management Commission to approve water quality plans that are proposed by coalitions of local governments working with the state governments. The bill will establish a framework for developing and implementing cooperative state and local water resources management and water quality protection plans for river basins and sub-river basins. The bill is a public bill. It will affect every basin in the state. The impetus for the bill came from the upper Neuse River which already has an association. It includes five counties and 14 municipalities or governing bodies, that have already been meeting for sometime. This bill would authorize the EMC to work with them in a state/local partnership to develop plans to protect water basins. The EMC may only approve the plan if it determines that the basin or segment is an appropriate unit. There are some protections in the plan. The plan contains an action strategy for the affected river basin. The coalition of local governments proposing the plan has incorporated a non-profit with a set of by-laws and membership, and that the plan will provide a viable alternative method for attaining substantial compliance with water quality standards. In order for the plan to be brought to the state EMC all of the participating local bodies would have to sign off on it. It is a consensus building process that would involve the local governing body.

Rep. Hackney moved for a favorable report to put on the table so that when the two bills get combined they can be considered.

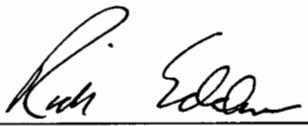
Rep. Eddins indicated that the motion is in order.

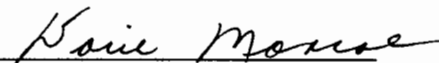
Rep. Nichols indicated that the appropriate motion would be that Section 1 be made an amendment to SB 114, Proposed Committee Substitute.

Rep. Neely moved that Sections 1 , 4, as modified by counsel and 5 as applicable to the provisions of this bill be added as an amendment to SB 114. The motion was unanimously carried.

Co-counsel, George Givens was given permission to write a new Proposed Committee Substitute combining SB 114 and HB 1203 and make any new technical changes necessary.

Rep. Eddins adjourned the meeting at 2:30 PM.


Rep. Rick Eddins, Co-Chair


Dorie Monroe, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

3

SENATE BILL 947

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 7/3/97

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED
3 TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER
4 OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW
5 COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN
6 TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON
7 CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE
8 STUDY.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.22I(g) reads as rewritten:

11 "(g) A certificate shall be granted for a water transfer ~~unless~~ if the applicant
12 establishes and the Commission concludes by a preponderance of the evidence based
13 upon the findings of fact made under subsection (f) of this section ~~that the potential~~
14 ~~detriments of the proposed transfer outweigh the benefits of the transfer. that: (i) the~~
15 benefits of the proposed transfer outweigh the detriments of the proposed transfer,
16 and (ii) the detriments have been or will be mitigated to a reasonable degree. The
17 conditions necessary to ensure that the detriments are and continue to be mitigated to
18 a reasonable degree shall be attached to the certificate in accordance with subsection
19 (h) of this section."

20 Section 2. The Environmental Review Commission shall study issues
21 relating to the transfer of surface waters between river basins in the State. As a part
22 of this study, the Environmental Review Commission shall consider whether, and on

1 what basis, the total volume of water that may be transferred from any river basin
2 should be limited and whether the Environmental Management Commission should
3 be authorized to issue special orders to remedy violations of laws or rules regulating
4 transfers. The Environmental Review Commission shall report its findings,
5 recommendations, and legislative proposals, if any, to the 1998 Regular Session of the
6 General Assembly.

7 Section 3. As used in this section, "transfer" has the same meaning as in
8 G.S. 143-215.22G. There is imposed a moratorium on any new transfer and on any
9 increase in the permitted volume of an existing transfer for which a certificate is
10 required under G.S. 143-215.22I. The Environmental Management Commission shall
11 not issue a certificate for a new transfer or approve an increase in the permitted
12 volume of an existing transfer during the period that the moratorium imposed by this
13 section is in effect. During the moratorium imposed by this section, the
14 Environmental Management Commission may hold public meetings or hearings,
15 gather information, and analyze additional data relevant to any interbasin transfer
16 application submitted to it.

17 The moratorium imposed by this section does not apply to an application
18 to increase the volume of an existing transfer that, on 1 May 1997, is registered under
19 G.S. 143-215.22H and:

20 (1) Was not permitted under G.S. 153A-285, repealed by Section 4 of
21 Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by
22 Section 6 of Chapter 348 of the 1993 Session Laws; and

23 (2) For which a certificate has not been issued under G.S. 143-215.22I.

24 Section 4. This act is effective when it becomes law. Section 3 of this act
25 expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session
26 sine die.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 947

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/29/97

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors:

Cochran

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED
3 TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER
4 OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW
5 COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN
6 TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON
7 CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE
8 STUDY.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 143-215.22I(g) reads as rewritten:

11 "(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission
12 concludes by a preponderance of the evidence based upon the findings of fact made
13 under subsection (f) of this section that the ~~potential detriments of the proposed~~
14 ~~transfer outweigh the~~ benefits of the transfer. proposed transfer outweigh the
15 potential detriments of the transfer and that those detriments have been mitigated to
16 a reasonable degree."

17 Section 2. The Environmental Review Commission shall study issues
18 relating to the transfer of surface waters between river basins in the State. As a part
19 of this study, the Environmental Review Commission shall consider whether, and on
20 what basis, the total volume of water that may be transferred from any river basin
21 should be limited and whether the Environmental Management Commission should
22 be authorized to issue special orders to remedy violations of laws or rules regulating
23 transfers. The Environmental Review Commission shall report its findings,

1 recommendations, and legislative proposals, if any, to the 1998 Regular Session of the
2 General Assembly.

3 Section 3. As used in this section, "transfer" has the same meaning as in
4 G.S. 143-215.22G. There is hereby imposed a moratorium on any new transfer and
5 on any increase in the permitted volume of an existing transfer for which a certificate
6 is required under G.S. 143-215.22I. The Environmental Management Commission
7 shall not issue a certificate for a new transfer or approve an increase in the permitted
8 volume of an existing transfer during the period that the moratorium imposed by this
9 section is in effect. The moratorium imposed by this section does not apply to an
10 application to increase the volume of an existing transfer that, on 1 May 1997, is
11 registered under G.S. 143-215.22H and:

12 (1) Was not permitted under G.S. 153A-285, repealed by Section 4 of
13 Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by
14 Section 6 of Chapter 348 of the 1993 Session Laws; and

15 (2) For which a certificate has not been issued under G.S. 143-215.22I.

16 Section 4. This act is effective when it becomes law. Section 3 of this act
17 expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session
18 sine die.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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Memorandum

May 21, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 947 (Amend Interbasin Transfers)

Section 1 amends G.S. 143-215.22I(g) to modify the burden of proof that must be satisfied to obtain an interbasin transfer certificate. Under current law, a certificate **will be granted** unless the Environmental Management Commission (EMC) concludes by a preponderance of the evidence based on its findings of fact that the potential detriments of the proposed transfer outweigh the benefits of the transfer. Under Senate Bill 947, a certificate **will not be granted** unless the EMC concludes by a preponderance of the evidence based on its findings of fact that the benefits of the proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree.

Section 2 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically study whether, and on what basis, the total volume of water transferred may be limited and whether the Environmental Management Commission (EMC) should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly.

Section 3 imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment, Health, and Natural Resources, but is not a permitted transfer.

Section 4 makes this act effective when it becomes law. The moratorium on new transfers and increases in the volume of existing transfers imposed by Section 3 of this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(ATTACHMENT I)

(Please type or use ballpoint pen)

EDITION No. PCS 1841

H. B. No. _____

DATE _____

S. B. No. 947

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.)

Hackney

1 moves to amend the bill on page 1, line 2 through 4

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4
5 " AN ACT TO DIRECT THE
6 ENVIRONMENTAL REVIEW ";

7
8 on page 1 line 6
9 by deleting the comma;

10
11 and on page 1, lines
12 10 through 19, by
13 deleting those lines

14
15
16
17
18
19

SIGNED Hackney

ADOPTED _____ FAILED _____ TABLED _____



ATTACHMENT II

**North Carolina General Assembly
Legislative Services Office**

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Research Division
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(919) 733-2578

Memorandum

July 2, 1997

TO: House Committee on Environment

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 947 (Amend Interbasin Transfers)

Section 1 amends G.S. 143-215.22I(g) to modify the burden of proof that must be satisfied to obtain an interbasin transfer certificate. Under current law, a certificate will be granted unless the Environmental Management Commission (EMC) concludes by a preponderance of the evidence based on its findings of fact that the potential detriments of the proposed transfer outweigh the benefits of the transfer. Under the Proposed Committee Substitute for Senate Bill 947, a certificate will be granted if the applicant establishes and the EMC concludes by a preponderance of the evidence based upon findings of fact that (i) the benefits of the proposed transfer outweigh the potential detriments of the transfer and (ii) those detriments have been or will be mitigated to a reasonable degree. The conditions necessary to mitigate the detriments will be attached to the transfer certificate.

Section 2 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically study whether, and on what basis, the total volume of water transferred may be limited and whether the Environmental Management Commission (EMC) should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly.

Section 3 imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment, Health, and Natural Resources, but is not a permitted transfer. This section also authorizes the EMC, during the period of the moratorium, to hold public meetings and hearings, gather information, and analyze data relevant to any interbasin transfer application.

Section 4 makes this act effective when it becomes law. The moratorium on new transfers and increases in the volume of existing transfers imposed by Section 3 of this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session.

File

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) Eddins, Hill & Watson for the Committee on ENVIRONMENT.

☒ Committee Substitute for

S.B. 947 A BILL TO BE ENTITLED AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN A CERTIFICATE AUTHORIZING AN INTERBASIN TRANSFER OF SURFACE WATERS, TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATING TO INTERBASIN TRANSFERS, AND TO IMPOSE A TEMPORARY MORATORIUM ON CERTAIN INTERBASIN TRANSFERS DURING THE PENDENCY OF THE STUDY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to ^{House} committee substitute bill (~~#~~), ☐ which changes the title, unfavorable as to original bill (^{Senate} Committee Substitute Bill #), (and recommendation that the committee substitute bill ~~#~~) be re-referred to the Committee on ^{House} ~~Rule~~ ^{Rule}

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

See
How

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 178*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/22/97

Short Title: Amend Natural Heritage Trust Fund.

(Public)

Sponsors:

Referred to:

February 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE SECRETARY OF CULTURAL RESOURCES TO
3 PROPOSE LANDS TO BE ACQUIRED WITH FUNDS FROM THE NATURAL
4 HERITAGE TRUST FUND, TO AUTHORIZE EXPENDITURES FROM THE
5 FUND FOR CONSERVATION AND PROTECTION PLANNING AND
6 EDUCATIONAL PROGRAMS FOR OWNERS OF NATURE PRESERVES
7 UNDER THE NATURE PRESERVES ACT, AND TO AUTHORIZE THE
8 BOARD OF TRUSTEES OF THE FUND TO ENTER INTO AGREEMENTS
9 FOR THE MANAGEMENT OF ACQUIRED LANDS WITH QUALIFIED
10 NONPROFIT ORGANIZATIONS.

11 The General Assembly of North Carolina enacts:

12 Section 1. G.S. 113-77.7(c) reads as rewritten:

13 "(c) When the State acquires land pursuant to this Article, the ~~Chairman of the~~
14 ~~Board of Trustees shall~~ may direct a request to the State Treasurer to set aside an
15 amount from the Fund not to exceed twenty percent (20%) of the appraised value of
16 the land acquired, or the land affected if less than a fee interest was acquired, to be
17 placed in a special stewardship account in the Fund. The special stewardship account
18 shall be a nonlapsing account, and income derived from investment of the account
19 shall be credited to the account. The special stewardship account shall be used for
20 the management of land acquired pursuant to this ~~Article, as directed by the~~
21 ~~Trustees, so long as such land remains in the Trust.~~ Article under the direction of the
22 Trustees."

23 Section 2. G.S. 113-77.9 reads as rewritten:

1 "§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

2 (a) From time to time, but at least once each year, the Secretary, the Chairman of
3 the North Carolina Wildlife Resources Commission, ~~and~~ the Commissioner of
4 ~~Agriculture shall~~ Agriculture, and the Secretary of Cultural Resources may propose
5 to the Trustees lands to be acquired with funds from the Fund. For each tract or
6 interest proposed, the Secretary, the Chairman of the North Carolina Wildlife
7 Resources Commission, ~~and~~ the Commissioner of ~~Agriculture~~ Agriculture, and the
8 Secretary of Cultural Resources shall provide the Trustees with the following
9 information:

- 10 (1) The value of the land for recreation, forestry, fish and wildlife
11 habitat, and wilderness purposes, and its consistency with the plan
12 developed pursuant to the State Parks Act, the State's
13 comprehensive plan for outdoor recreation, parks, natural areas
14 development, and wildlife management goals and ~~objectives~~;
15 objectives.
- 16 (2) Any rare or endangered species on or near the ~~land~~; land.
- 17 (3) Whether the land contains a relatively undisturbed and outstanding
18 example of a native North Carolina ecological community that is
19 now ~~uncommon~~; uncommon.
- 20 (4) Whether the land contains a major river or tributary, watershed,
21 wetland, significant littoral, estuarine, or aquatic site, or important
22 geologic ~~feature~~; feature.
- 23 (5) The extent to which the land represents a type of landscape,
24 natural feature, or natural area that is not currently in the State's
25 inventory of parks and natural ~~areas~~; areas.
- 26 (6) Other sources of funds that may be available to assist in acquiring
27 the ~~land~~; land.
- 28 (7) The State department or division that will be responsible for
29 managing the ~~land~~; land.
- 30 (8) What assurances exist that the land will not be used for purposes
31 other than those for which it is being ~~acquired~~; and acquired.
- 32 (9) Whether the site or structure is of such historical significance as to
33 be essential to the development of a balanced State program of
34 historic properties.

35 (b) The Trustees may authorize expenditures from the Fund to acquire:

- 36 (1) Land that represents the ecological diversity of North Carolina,
37 including natural features such as riverine, montane, coastal, and
38 geologic systems and other natural areas to ensure their
39 preservation and conservation for recreational, scientific,
40 educational, cultural, and aesthetic purposes.
- 41 (2) Land as additions to the system of parks, State trails, aesthetic
42 forests, fish and wildlife management areas, wild and scenic rivers,
43 and natural areas for the beneficial use and enjoyment of the
44 public.

1 (3) Subject to the limitations of subsection ~~(b1)~~; (b2) of this section,
2 land that contributes to the development of a balanced State
3 program of historic properties.

4 ~~(b1) The Trustees may designate managers or managing agencies of the lands so~~
5 ~~acquired to receive grants from the Fund's stewardship account.~~ In authorizing
6 expenditures from the Fund to acquire land pursuant to this Article, the first priority
7 shall be the protection of land with outstanding natural or cultural heritage values.
8 Land with outstanding natural heritage values is land that is identified by the North
9 Carolina Natural Heritage Program as having State or national significance. Land
10 with outstanding cultural heritage values is land that is identified, inventoried, or
11 evaluated by the Department of Cultural Resources. The Trustees shall be guided by
12 any priorities established by the Secretary, the Chairman of the Wildlife Resources
13 Commission, ~~and the Commissioner of Agriculture~~ Agriculture, and the Secretary of
14 Cultural Resources in their proposals made pursuant to subsection ~~(a), above:~~ (a) of
15 this section.

16 ~~(b1) (b2)~~ The Trustees may authorize expenditure of up to twenty-five percent
17 (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the
18 preceding fiscal year to acquire land under subdivision (3) of subsection ~~(b)~~; (b) of
19 this section. No other funds in the Fund may be used for expenditures to acquire
20 land under subdivision (3) of subsection ~~(b)~~; (b) of this section.

21 (c) The Trustees may authorize expenditures from the Fund to pay for the
22 inventory of natural areas ~~by the Secretary's Natural Heritage Program conducted~~
23 ~~pursuant to Chapter 113A, Article 9A, of the General Statutes.~~ under the Nature
24 Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees
25 may also authorize expenditures from the Fund to pay for conservation and
26 protection planning and for informational programs for owners of natural areas that
27 are dedicated as nature preserves under the Nature Preserves Act.

28 (d) The Department of Administration may, pursuant to G.S. 143-341, acquire by
29 purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to
30 this Article. Title to any land acquired pursuant to this Article shall be vested in the
31 State. ~~State agencies~~ A State agency with ~~management responsibilities for lands~~
32 ~~management responsibility for land~~ acquired pursuant to this Article may enter into a
33 ~~management agreements in the form of leases with counties, cities, and towns~~
34 agreement or lease with a county, city, town, or private nonprofit organization
35 qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section
36 501(c)(3) of the Internal Revenue Code to aid in managing the lands, and such lease
37 agreements land. A management agreement or lease shall be executed by the
38 Department of Administration pursuant to G.S. 143-341.

39 (d1) In any county in which real property was purchased pursuant to subsection
40 (d) of this section as additions to the fish and wildlife management areas and where
41 less than twenty-five percent (25%) of the land area is privately owned at the time of
42 purchase, that county and any other local taxing unit shall be annually reimbursed,
43 for a period of 20 years, from funds available to the North Carolina Wildlife
44 Resources Commission in an amount equal to the amount of ad valorem taxes that

1 would have been paid to the taxing unit if the property had remained subject to
2 taxation.

3 (e) The Secretary shall maintain and annually revise a list of acquisitions made
4 pursuant to this Article. The list shall include the acreage of each tract, the county in
5 which the tract is located, the amount paid from the Fund to acquire the tract, and
6 the State department or division responsible for managing the tract. The Secretary
7 shall furnish a copy of the list to each Trustee and to each House of the General
8 Assembly after each revision.

9 (f) No provision of this Article shall be construed to eliminate hunting and fishing,
10 as regulated by the laws of the State of North Carolina, upon properties purchased
11 pursuant to this Article."

12 Section 3. This act is effective when it becomes law.

2
mitchell

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill & Watson** for the Committee on **ENVIRONMENT**.

☒ Committee Substitute for

S.B. 178 A BILL TO BE ENTITLED AN ACT TO ALLOW THE SECRETARY OF CULTURAL RESOURCES TO PROPOSE LANDS TO BE ACQUIRED WITH FUNDS FROM THE NATURAL HERITAGE TRUST FUND, TO AUTHORIZE EXPENDITURES FROM THE FUND FOR CONSERVATION AND PROTECTION PLANNING AND EDUCATIONAL PROGRAMS FOR OWNERS OF NATURE PRESERVES UNDER THE NATURE PRESERVES ACT, AND TO AUTHORIZE THE BOARD OF TRUSTEES OF THE FUND TO ENTER INTO AGREEMENTS FOR THE MANAGEMENT OF ACQUIRED LANDS WITH QUALIFIED NONPROFIT ORGANIZATIONS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill (~~#~~), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 114*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/3/97
Proposed House Committee Substitute S114-PCS4632

Short Title: Local Water Quality/LUST Cleanup.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A FRAMEWORK FOR DEVELOPING AND
3 IMPLEMENTING COOPERATIVE STATE-LOCAL WATER QUALITY
4 PROTECTION PLANS FOR RIVER BASINS AND SEGMENTS OF RIVER
5 BASINS AND TO EXPEDITE THE PERMANENT CLOSURE OF LOW-RISK
6 SITES UNDER THE LEAKING PETROLEUM UNDERGROUND STORAGE
7 TANK CLEANUP ACT OF 1988.

8 The General Assembly of North Carolina enacts:

9 Section 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is
10 amended by adding a new section to read:

11 "**§ 143-214.14. Cooperative State-local coalition water quality protection plans.**

12 **(a) Definitions. -- The following definitions apply in this section:**

- 13 (1) **'Basin' means a river basin as defined in G.S. 143-215.22G or any**
14 **subbasin or segment thereof.**
15 (2) **'Coalition' means a water quality protection plan developed by a**
16 **coalition of local governments for water quality protection of a**
17 **basin.**
18 (3) **'Local government' means a city, county, special district, authority,**
19 **or other political subdivision of the State.**
20 (4) **'Water quality protection' means management of water use,**
21 **quantity, and quality.**

(b) Legislative Findings. -- This section establishes a framework to encourage State-local pollutant reduction strategies for basins under the supervision and coordination of the Commission. The General Assembly finds that:

- (1) Water quality conditions and sources of water contamination may vary from one basin to another.
- (2) Water quality conditions and sources of water contamination may vary within a basin.
- (3) Some local governments have demonstrated greater capacity than others to protect and improve water quality conditions.
- (4) In some areas of the State artificial alteration of watercourses by surface water impoundments or other means may have a significant effect on water quality.
- (5) Imposition of standard basinwide water quality protection requirements and strategies may not equitably address the varying conditions and needs of all areas.
- (6) There is a need to develop distinct approaches to address water quality protection in basins in the State, drawing upon the resources of local governments and the State, under the supervision and coordination of the Commission.

(c) Legislative Goals and Policies. -- It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the Wetlands Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section.

(d) The Commission may, as an alternative method of attaining water quality standards in a basin, approve a coalition plan proposed by a coalition of local governments whose territorial area collectively includes the affected basin in the manner provided by this section. The Commission may approve a coalition plan proposed by a coalition of local governments whose territorial area or water quality protection plan does not include all of an affected basin if the Commission determines that the omission will not materially affect water quality.

(e) A coalition of local governments choosing to propose a coalition plan to the Commission shall do so through a nonprofit corporation the coalition of local governments incorporates with the Secretary of State.

(f) The Commission may approve a coalition plan only if the Commission first determines that:

- 1 (1) The basin under consideration is an appropriate unit for water
2 quality planning.
- 3 (2) The coalition plan meets the requirements of subsection (g) of this
4 section.
- 5 (3) The coalition of local governments has formed a nonprofit
6 corporation pursuant to subsection (e) of this section.
- 7 (4) The coalition plan has been approved by the governing board of
8 each local government that is a member of the coalition of local
9 governments proposing the coalition plan.
- 10 (5) The coalition plan will provide a viable alternative method of
11 attaining substantial compliance with water quality standards in the
12 affected basin.
- 13 (g) A coalition plan shall include all of the following:
- 14 (1) An assessment of water quality and related water quantity
15 management in the affected basin.
- 16 (2) A description of the goals and objectives for protection and
17 improvement of water quality and related water quantity
18 management in the affected basin.
- 19 (3) A workplan that describes proposed water quality protection
20 strategies, including point and nonpoint source programs, for
21 achieving the specified goals and objectives; an implementation
22 strategy including specified tasks, timetables for action,
23 implementation responsibilities of State and local agencies; and
24 sources of funding, where applicable.
- 25 (4) A description of the performance indicators and benchmarks that
26 will be used to measure progress in achieving the specified goals
27 and objectives, and an associated monitoring framework.
- 28 (h) A coalition plan shall cover a three-year period. The coalition plan may
29 provide for the phasing in of specific strategies, tasks, or mechanisms by specified
30 dates within the three-year period. The Commission may enter into a memorandum
31 of understanding with any coalition of local governments that modifies the three-year
32 period. The Commission may approve one or more successive coalition plan periods
33 proposed by a coalition of local governments through its nonprofit corporation. The
34 coalition plan may provide for strategies tailored for use within the region that vary
35 from one subarea or jurisdiction to another.
- 36 (i) If the Commission determines that a jurisdiction participating in a coalition
37 plan is not making good faith progress toward attaining a desired water quality
38 outcome, the Commission may suspend or revoke its approval of participation in the
39 coalition plan by that jurisdiction. If the Commission determines that a coalition plan
40 no longer will provide a viable alternative method of attaining substantial compliance
41 with water quality standards, the Commission may suspend or revoke its approval of
42 the coalition plan.
- 43 (j) The Commission may approve one or more amendments to a coalition plan
44 proposed by a coalition of local governments through its nonprofit corporation with

1 the approval of the governing board of each local government that is a member of
2 the coalition of local governments that proposed the coalition plan.

3 (k) With the approval of the Commission, any coalition of local governments with
4 an approved coalition plan may establish and implement a pollutant trading program
5 for specific pollutants between and among point source dischargers and nonpoint
6 pollution sources.

7 (l) The Commission shall submit an annual progress report on the implementation
8 of this section to the Environmental Review Commission on or before 1 October of
9 each year."

10 Section 2. The Environmental Management Commission shall submit the
11 first report required by G.S. 143-214.14(l), as enacted by Section 1 of this act, on or
12 before 1 October 1998.

13 Section 3. Section 1 of this act constitutes a recent act of the General
14 Assembly within the meaning of G.S. 150B-21.1(a). The Environmental Management
15 Commission may adopt temporary rules to implement Section 1 of this act for one
16 year from the date this act becomes effective.

17 Section 4. Notwithstanding the provisions of G.S. 143-215.84 and G.S.
18 143-215.94E and except as provided in subsection (d) of Section 1 of Chapter 648 of
19 the 1995 Session Laws (1996 Regular Session), no person shall be required to clean
20 up a discharge or release from a leaking petroleum underground storage tank that has
21 been classified as having a Class CDE impact pursuant to subsection (b) of Section 1
22 of Chapter 648 of the 1995 Session Laws (1996 Regular Session).

23 Section 5. The Environmental Management Commission shall adopt the
24 rule required by G.S. 143-215.94V(b) and Section 6 of Chapter 648 of the 1995
25 Session Laws (1996 Regular Session) as a temporary rule no later than 31 July 1997.

26 Section 6. This act is effective when it becomes law. Section 4 of this act
27 expires when the temporary rule required by Section 5 of this act becomes effective
28 as provided in G.S. 150B-21.3(a).



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Memorandum

July 2, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 114 (Expedite LUST Cleanup Closures)

Senate Bill 114 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). As introduced, Senate Bill 114 dealt with the recordation of inactive hazardous substance or waste disposal sites. The Senate Committee on Agriculture, Environment, and Natural Resources added provisions clarifying that cleanup is not required for discharges or releases from leaking petroleum underground storage tanks having a class CDE impact and directing the Environmental Management Commission to adopt a temporary rule to establish a risk-based approach for the cleanup of discharges and releases from petroleum underground storage tanks.

The Proposed Committee Substitute for Senate Bill 114 before the House Committee on Environment removes the inactive hazardous substance or waste disposal site recordation provisions, but leaves the leaking petroleum underground storage tank provisions intact. The inactive hazardous substance or waste disposal site recordation provisions are still contained in House Bill 227, the companion bill to Senate Bill 114. House Bill 227 is currently in conference.

Section 1 clarifies that cleanup is not required for discharges or releases from leaking petroleum underground storage tanks having a class CDE impact.

Section 2 directs the Environmental Management Commission to adopt a temporary rule no later than July 31, 1997 to establish a risk-based approach for the cleanup of discharges and releases from petroleum underground storage tanks.

Section 3 makes this act effective when it becomes law. It also provides that Section 1 of this act expires when the temporary rule required by Section 2 of this act becomes effective.

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill & Watson** for the Committee on **ENVIRONMENT**.

☒ Committee Substitute for

S.B. 114 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT RECORDATION OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE IS NOT REQUIRED IN CERTAIN CASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION AND TO EXPEDITE THE PERMANENT CLOSURE OF LOW-RISK SITES UNDER THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP ACT OF 1988.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

VISITOR REGISTRATION SHEET

ENVIRONMENT

July 2, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Sarah Keider	DEHNR
Nancy Bradley	NCCBO
Leslie Beracqua	NCCBO
Kim Smith	NCCM
Ami Henderson	Itan ton & Williams
David Thompson	Poyner & Spruill
Jim McConick	City of Raleigh
Gary Harris	NC Petroleum Marketers
Doug Hawley	Ditto
Charlotte Tesarck	DEHNR - DWM
R. ROCKES	DEHNR
Tony Young	DEHNR - DWR
Lisa Martin	NC DEHNR - DWQ
PATRICK DAVIS	Triangle J Council of Governments
Jim Holman	CENC / Sierra Club
Jamie Duvall	St. Gov.
Matthew J. Morse	Lt. Gov.
Tom Bean	NC Wildlife Federation
Camie Clark	Office of Gov
Mike Carpenter	NCCBA
Paul Wilson	NCCBA
Al Gore	Washington, DC
Nick Beirick	Apex, NC
Ed Scott	NCCBI
Harlan Burt	Citizen
Kathleen Skinn	The Nature Conservancy
Ann Case	DEHNR
R. Paul Wilkins	NCCBA
J. Michael Carpenter	NCCBA

MINUTES

COMMITTEE ON ENVIRONMENT

JULY 9, 1997

The Committee on Environment met on Wednesday, July 9, 1997 in Room 544-LOB. Chairman Eddins called the meeting to order and introduced the Pages. A silent roll was taken (roll list denotes members present).

Chairman Eddins presented a Proposed Committee Substitute to members for discussion and announced that this meeting was for a presentation with a video for the situation of LPP's and speakers would be recognized later in the meeting to address members.

Mr. Gary McGibbon, representing multi-neighborhood organization in Wake County Community Low Pipe Emergency Task Force, introduced the video and the purpose of their organization. He advised that they had worked over 4,000 hours since hurricane Fran on this issue and talked to at least 400 public officials on this issue. Rep. Hightower asked which community in Wake County and Mr. McGibbon responded he lived in Stonebridge. Rep. Warwick asked the authority of the Task Force. Mr. McGibbon replied that the state said the county needed a single focus organization of which to communicate hurricane Fran damage and LLP damage assesment of Harker Utilities. A group of homeowners decided to form a group with delegates, a Board, a chairperson, and vice chairperson which includes all areas of Wake County that was hit by Fran with LPP. Rep. McCombs asked if the bill sponsor should explain the bill and Chairman Eddins advised that this was a PCS which was adopted at the beginning of the meeting for discussion purposes. Mr. McGibbon introduced the video. He put up a disclaimer and advised that this was not made with any tax dollars. Rep. Hill asked what damage was done to Wake County and not any other county and Mr. McGibbon responded that it was the community low pressure pipe network was damaged in the watershed in Wake County only.

Members then watched the 15 minute video. Mr. McGibbon spoke as the chairperson of the organization and as a taxpayer as they asked for sewer infrastructure relieve funding with this bill acting as a catalyst. He invited members to formally come inside their nightmare. He advised, "that hundreds of families in central North Carolina are still directly in the eye of the storm over 10 months after the worst natural disaster in the history of our state. We believed that once our electrical and water infrastructure had been restored to our communities, we could begin to rebuild our lives, recover our losses and heal. We truly believed we would make it through this one. Then two weeks after hurricane Fran, actually, we found out through reading the newspaper because we had not be notified otherwise, several thousand children, parents, grandparents and neighbors learned of a new emergency within an emergency, the failure of the community sewer

infrastructure network which included over 530 Wake County families and over 750 elementary school students and staffs. Remember this is the only community LPP network that is in a watershed, actually two watersheds. We were certain that sufficient emergency capital existed through our monthly payments in utility funds to rebuild the infrastructure in short order, much like CP&L and Duke Power had been able to do. We had paid a premium for what was sold as a well-proven municipal sewer hybrid, both in the price of our homes sites to fund the infrastructure and a mandatory connection fee of several thousand dollars, and a high standard monthly sewer use fee that was applied for what we had been told, was a large customer base. Now, the last utility and emergency operator in the area has abandoned and has no emergency reserve capital. Also, we learned of the liens on individual or homeowners association property to pay back the state and federal government agencies for pumping home moneys that had been advanced. Our post-Fran abatement expense liens had not been abated as they had for utility and no entity was willing to rule on its legality. The utility, Hargo, still holds us hostage for approximately \$179,000 to one million dollars. Now state and county and FEMA disaster recovery funding applications have stalled, though their wording states, 'Homeowners do not have the resources or the responsibility to pay for infrastructure replacement as the Utilities Commission now controls the systems. In addition, thousands of cases of difficult and expensive to obtain public records have exposed an unbelievable series of unresolved and uninforced notices of violations of permits in the North Carolina administrative code relating to ground water contamination, ground water wall establishment and monitoring and surfacing untreated liquid human waste, in addition to those caused by hurricane Fran. Since as early as March, we have been trying to tell the legislature that the welfare of thousands of citizens is in a state of public health emergency where the solution funding and the aftermath of hurricane Fran is already past due. We now need your support so that homeowner financial exposure is lessened for a problem that is not even our responsibility to fix. We are immediately faced with taxation without representation and a loss of our financial and emotional health, all for less than four one-hundreds of one percent of the original proposed state budget that doesn't even include the first round of 220 million dollars of excess state dollars, or the current round of 115 million dollars that just appeared. We were told by Secretary Howes who is our point person, to keep the legislature involved as clean water management trust fund money, another potential source of funds would be a long time coming, if at all, and now FEMA has stalled in its second appeal ready to enter its next five months cycle. There is no emergency funding source, other than the legislature, which is why we are before you now. Over 4,500 people hours of research, meetings and calls to over 400 public individuals supports these key messages. The Wake County community low pressure pipe network is broken and cannot be rebuilt. Emergency sewer connection is the only solution to permanently eliminate the health hazard and contamination of the water supply. We have documented proof of the states responsibility which includes but is not limited to, original permit errors or sign-offs by EWQ of questionable procedure. Barrett Kayes, a previous utilities and LPP designer and Lexie Harrison, franchise testimony states they are liable for any failure and that it is the states responsibility to fine them if they don't oxide by the rules and regulations permits. DEHNR reports, 'admitting inadequacies in the entire process, UFC grant publications and a LPP bible

proving that this technology was only meant for application for individual home sites or small business mostly at the coast. Number two, our homes are not worth more if connected, if not connected, they must be condemned. Number three, home owners have done their part to reduce project cost by several million dollars in working with state and county officials for clean water trust fund dollars through application will be at least six months to a year away, if approved; and five, we have the consensus support of the Wake County legislative delegation and the Wake County Board of Commissioners and a resolution of support. Six, homeowners have no legal responsibility for the sewer infrastructure and must not be asked to pay for designing construction of emergency lines. Once immediately accessed, it means a 13 thousand or more per household for construction plus LPP fees until connection add up to over \$150 per month for many years for many of the homeowners. This financial strain would bankrupt families on the network, many who are retired or have small children. Seven, and the final point, if lien and annexation paperwork isn't signed or assessments aren't paid, we have been informed that DEHNR and the county have the authority to saw-off the homeowner sewer connection at the street, i.e. forced condemnation. This is why this bill must work. Please give it your full support. Several thousand people are counting on you.

Rep. Mitchell asked Chairman Eddins the purpose of the bill. He further asked if he got a motion for a favorable report today, the funding had been denied by and what is the game plan. Chairman Eddins responded and told about the trip he made to one of the areas and saw the problem which had been addressed in the video. He told about the raw sewage he saw on the ground and he had thought about this situation and as a concerned co-chair of this community he feels the state approved these systems by mistake and shouldn't have, the county would not approved it because it was no good. He had documentation from a Utilities Commission from of the people there today. He would keep this on record. He feels the state is at fault for this and the state should be responsible.

Rep. Mitchell then commented that the Appropriations Committee had voted unamianiously not to make any funding, then his question to the Chair is, what is the plan for this bill if it gets a favorable report. Chairman Eddins advised it would probably go to the Rules Committee. Rep. Mitchell then asked if they were aware of the 1.9 million that the Governor had sent in and agreed to leave the money there. When the FEMA money comes in if action is taken on this bill, and it gets an unfavorable report, is the Chair aware that the Governor cannot dispense those funds? Chairman Eddins replied he was aware of that any member of this committee would go out and see what he saw (just like on the tape) that no one could turn this down. Chairman Eddins said "right is right and wrong is wrong" and something needs to be done.

Rep. Brown asked not to bring a law suit against the state, it is several days late and several dollars short. He further explained that he felt all members sympathized with the situation. He defended the citizens that had been "royally had". He said the Governor should be out looking at this and he has a fund that would take care of this. Chairman Eddins responded that the time frame is a problem and something needs to be done immediately. He mentioned all the documentation that he had seen. Rep. Brown

responded again "that if relieve was expected to come forward, it might come if you had the money right now, you still can't quit pumping until something is done and it's not going to be a hurried up thing, but maybe the quicker the better." Chairman Eddins told him that "he brought up a very good point with the pumping of the Haw, and this was going to be a very expensive process. We are eating up the money that it would take to actually correct the problem on a long term basis.

Rep. Warwick advised that he wanted his comments to be supportive, however he had questions. He was concerned about the debate of this issue in this Committee when he felt like each member of the committee could submit a list of other deployable situations. He quoted examples of visiting the beach since the hurricane and these areas pumping raw sewage, as well as other areas where there is not hurricane damage pumping raw sewage. He is in agreement with the Committee assisting these people but he feels they should be careful in their actions in appearing to be partial to any one of the 100 counties. He offered suggestions of a sub-committee should look very carefully at the Agencies reports. "For example, if one of our own Agencies that we oversee to some great extent, because we provide the money for them to operate, if they have really fouled up and made inaccurate decision, do not stand behind what they should do, then we should call their hand on it and in those cases we should take some action." He then cautioned the committee of the other 99 counties in the state which could bring a "laundry list" and time should be taken in this situation.

Chairman Eddins responded Rep. Warwick that he had a problem in his district, he would advise that he introduce a bill and it would have a full hearing in this Committee or a sub-committee if that is what was necessary or requested. Chairman Eddins assured him he would do everything he could to help.

Rep. Warwick responded that he would do everything he could to assist the Chair and the people in these neighborhoods, however, he wants to be sure it is being done in the proper procedure. Chairman Eddins thanked him and reminded him this would not need appropriations and it would not be voted up or down, but for discussion to see what happens.

Rep. Nichols asked Mr. Givens about this having to go to Appropriations, if given a favorable report. Mr. Givens responded that the rules would require that it go to Appropriations and then Rep. Nichols spoke on the bill. He advised he admired what is being done, but he feels this is giving these people false hope. The budget has been past and the Appropriations Committee has been shut-down and no money produces in either budget. He feels we are trying to make these people feel good but nothing can be done under our rules as they exist. He has no problem with using the Clean Water Trust Fund or an emergency fund that can be used, but he don't want these people leaving here thinking we can put something in our budget this year to address this concern. Nothing can be done unless it can come out of a fund somewhere because of the way the rules are done.

Chairman Eddins then shared that he went to a community meeting and he spoke and made it very clear that something will come out of the Appropriations process but his point was that there are lots "of buckets of money in the state government, a lot of places where 5 million dollars can come from. These people have come back and said, look if we can get 5 million in stead of the original request for 8 million," . Rep. Nichols reminded him that the Clean Water Trust has 50 million dollars and maybe something can be done there. He then thanked Rep. Eddins for telling the people that nothing can be done in the budget process.

Rep. Hightower had questions. He reminded that some members may not want to vote for this bill because of being in violation of the rules, or perhaps some may want to vote against it for other reasons. He then asked if it were the intention of the Chair to have other commitments to tell us that we will not have to vote today on this issue so they would not have to wait around for several hours. Chairman Eddins advised that other people were in line to speak and they were not in violation of the rules and if the Committee is ready to take a vote, they would do that because it does not authorize appropriations and it will be sent to the Rules Committee. He explained that it can't be added to the budget, but other buckets could be used. Rep. Hightower asked if these people had been back to the people who put in their system. Chairman Eddins explained that they had been through that process.

Rep. Hightower then made a motion that this be sent to a sub-committee and Chairman Eddins felt that with all the people there it should receive a full debate and he rather not do that at this point but it would be thought about later down the road. There were still other people who want to speak today.

Rep. McComas spoke and reminded that this issue came up at the Joint Utility Commission and was discussed at length. He asked if someone could confirm that this was a North State Utility Case. Someone advised it was related. Rep. McComas then asked if Mr. Steve Rose, Council for Utilities Commission could address the committee. Mr. Rose was recognized. He explained that this had been looked at three years prior and the Committee tried to get to the bottom of the responsibility and he couldn't say the Committee drew a firm conclusion, but they are sympathetic to the homeowners involved. He further explained that the principle of North State was the developer of this type of sewer system and he managed to get DEHNR to license it, it was the first time it had ever been used in any commercial setting, and the problem seemed to be the question of whether it should have been licensed at all and that was never resolved to the Committee satisfaction. Secondly, the next question had to do with maintenance and the chief reason for failure of the system was the lack of proper maintenance. There has been finger pointing as to who is responsible, but no one pointed the finger at the homeowners. They did not have the maintenance responsibility. They were paying the bills to the utility. The Attorney General has made efforts to recover from North State and Mr. Rose thinks that this has been abandoned because there is nothing there to get. The developers position is that they didn't own the utility, they brought in the utility company to put in the utilities and they had nothing to do with it. He was not sure of the status of this today.

Rep. Yongue indicated that he had similar problem of this nature in his area. He shared that he had done some construction business also for small developments and he had never seen anything like this. He would like to see more about this and would like to be invited out to see more. He advised he thought this was a very deep subject that needs a lot of time to look into. He also recommended that this go to a sub-committee for someone to take time to look at in detail. Chairman Eddins responded that this problem was created years ago and not caused directly by Fran. He offered to take Rep. Yongue to see this area and again explained what he had seen when he visited the area. Rep. Yongue responded that he knew that some developers were there only to get big money. Chairman Eddins said he would like to get to the bottom of it.

Rep. Hill spoke and agreed with other members that he feels the state may be responsible. He shared a problem in New Hanover County with stucco. He explained how the builders were blamed and he didn't know how to solve this problem of these people. He urged that members be allowed to speak on this important issue and he was not aware of it being heard today in committee.

Rep. Cole made comments on the "buckets of money sitting around. He thinks it is more like train loads". He asked staff if our law allows us to pierce a corporation and go after the Board of Directors in the event of a deceptive, misleading trading practice. Mr. Givens advised that in some instances, you can do what is called "piercing the corporate veil, particularly where there has been fraud or that sort of thing". He further explained that some of the problem is that North State has just disappeared and the Attorney General was unsuccessful in that endeavor. He also advised that he couldn't add anymore that Mr. Rose had advised because he didn't know the status either. Rep. Cole made follow-up comments and said that the problem to be resolved is who is responsible but that can be done after the problem has been resolved. He feels that government is all about responding to the needs of the people. He is hopeful that this bill could be passed out and go on to Rules.

Rep. Hackney asked if the Department could be heard from today and what is their position. He asked about the Director of the Division and made comment about the provision that had been made about the above ground and below ground sections. Some of the below ground section was delegated to the county and some was not and there was one set of rules that was applicable to all of it, so every septic tank in the state got approved by someone or it would not be used, just as every low pipe pressure system. He explained that some that had been approved had failed and he would like to hear from some of the people that came today. Chairman Eddins had a document from Dr. Arthur Mugberry, dated 7-24-86, a statement under sworn testimony to the Utilities Commission and he would like to know if he still stands behind these comments. Rep. Hackney advised he was not involved with the Division of the region which includes part of his district and he had dealt with discharging systems, not non-discharging systems. Chairman Eddins asked Mr. McGivens to address this.

Mr. McGivens shared that Rep. Hackney was referring to DEHNR, a division of water quality. He advised that it used to be run by Mr. R. Paul Welms, who Mr. Arthur Mugberry signed documents for without Mr. Welms really seeing them. He did sign for him and others. He explained "what is more current is the situation in the end of this year where Mr. Steven Berkowitz, DEHNR, had done a report showing 271 large scale on site waste water treatment plants on which he had indicated that several were failed. He advised they had done their homework and found out that supposed 30 failed or problematic, only 25 were LPP, 13 of which were in Wake County and devastated by Fran in one shape or form or another. I called the counties, not 100 counties, 6 other counties with problems, and all of these have been handled that are public utility run LPP's. There is a problem in Brunswick County, a very bad utility, a very bad developer, there is a problem in, I believe, Mecklenburg County with an ex Harco System, so it's not North State any more, it's Alexie Harrison, and that should have been connected up years and years ago. I think that there are members of this Committee that probably couldn't be here that recognize that there are systems in other counties, in their constituency, where the county came in, the state came in and helped in one form or another and the homeowner was not asked to pay the 15- 30, the blank check, that we are talking about that is going to be and has already been levied upon us and some other people. I guess I wanted to make the point that we have done our homework, we called the local health departments in those counties and we found that there are only 2 problems that we are aware of not yet verified by Leoa Devlin (not sure of correct spelling of this name), who is also a point-person in our DEHNR, so there are errors in Steven Berkowitz's report at the end of last year and so I just wanted to make that point. Thank you very much."

Chairman Eddins asked Rep. Hackney for a follow-up. Rep. Hackney said he "believed one of the similar problems in Orange County was solved by Orange Water and Sewer Authority running the line there and the homeowners paid the major share of that, did they not?" Mr. McGivins responded, "actually, the homeowners were like us, taxation without representation, so what they did was hired Governor Hunt's law firm, Thyme, Turner and Spruill, spent \$250,000 of their own money and collected \$390,000 from the developers and Sec. Howes, who wrote a check for \$120,000, so that turned into a law suit, took 2 years out of their lives. Talking to the people that were in that particular situation, they cashed out now at about \$1,000 - \$2,000 bucks, somewhere around there and went through probably 3 years of hell for something that they couldn't even build. People had bought lots and could not build on those lots, so that's on the testimony but it is very expensive to get so we haven't even had our attorney go get it." Rep. Hackney asked if there was a solvent party to go after, so where did the \$390,000 come from? Mr. McGivens replied, "they tried to sue North State but North State had no money so \$170,000 came from Husband & Wife Development Team, developer, some from the engineer, a very minimal amount and the rest came from Sec. Howes in and out of court settlement because they could not afford it anymore, they could not afford to sue the state anymore. The state could basically bankrupt them, which they were doing, so there was an out of court settlement and it was very rough on those people, trust me." Rep. Hackney asked "how much did the state put in and for how many houses for that

situation?" Mr. McGivens replied, "33 homes and \$120,000". Chairman Eddins reminded members that these homes were all spread out in Wake County and he feels that is part of the problem because of the cost of the spread out nature of them.

Rep. Brown asked if it is possible that since this system failed that Fran didn't cause all of the problem and is there someone that can look at this and do something to this system to make it function. He understands that there will not be a "quick fix", but perhaps a fix that somebody can understand. Chairman Eddins advised that it has been looked at like a short term fix for right now.

Rep. Mitchell responded to Rep. Brown that "they went into this issue in the NER Committee and the city of Raleigh has agreed to run sewer lines to the developments and tie in at the collection points. The homeowners or someone will have to pay for that. The homeowners if they tie into this will still have to pump the waste to the system. But I want to tell you that the Wake County Commissioners have denied any assistance to these homes, FEMA has turned them down twice. The developments in Cary and Fuquay Varina have already gotten theirs agreed to and they are go on to those 2 cities and they got around \$1,500 grants from the state. Now the developments that are left, the 1.9 million that the Governor has put up there for using for pumping Haw and using for emergency money, he has agreed to leave it there when the FEMA money comes back in to reimburse the state. These homeowners will be getting approximately \$5,000 grants to tie into the city. Their cost is going to be, the figures we were given, will be from \$6,000 to \$10,200 per household. Now, I must tell you that some of those homes up there are well into the half million dollar range. Now, we keep hearing that the state licensed this facility and they are liable, you also need to know that the state licensed insurance companies, investment companies and contractors, when they fail do you also feel like the state should reimburse everyone that lost money? That's the situation."

Chairman Eddins, "Let me respond to a couple of things, and you bring up some good points Rep. Mitchell. One problem is and I'll start with the last point, the bond. These companies only had to have a small bond to be in business and yet this is a millions of dollars in operations here and I think the bond needs to be changed, but that doesn't help the situation right now. That is something that needs to be looked at in the future to protect future homeowners. Also, you mentioned about a \$5,000 grant. Is that through the FEMA that was brought up in your sub-committee?"

Rep. Mitchell, "that is the 1.9 million the Governor has agreed to leave up there and we were told that if we brought this up and for some reason or other the General Assembly turned it down, we fall under the same situation as the new and expanding industry money. Once its heard, if its turned down, the Governor cannot give the money away and I want to bring up that in our committee, one of the biggest problems we have found out is the ownership of the lines that are in the road now in the spray field, really, this committee should not be meeting today because we got the on-going remedy hopefully coming in now. The Department of Environment, Health and Natural Resources involved with it, the Attorney General's Office, and the Utilities Commission, they are all trying to

find out the ownership of these lines. They said it is going to take about 2 weeks before they can get. There is talk that the owner of the lines, HurCo, HarCo, or whatever, may be wanting \$133,000 for their rights to the lines. The committee felt like the Environment, Health and Natural Resources Department ought to get in and fine them and get them out of the way. We feel like if heavy fines were put on them they would gladly abandon it and the City of Raleigh will get some revenue bonds so they can go ahead and run these lines to these developments. They are saying that at the max, we are looking at 12 months time from today or last week to get these people hooked up. Twelve months will be the last or the worst ones. Some of them will be on there much earlier. There is mechanism going right now and I see no reason for having this meeting here today. You are just wasting the committee members time."

Rep. Yongue, "Let me respond a little bit to what Rep. Brown brought up again. You know a noxification system or any kind of system whether it is low pressure of what, is very sophisticated and there are many steps involved in putting these things in place. For example, you know the design of the system its self and its approved by some agency where there is any number of agencies there, depending on the location, then the next stag would be the installation of the system and this is another key phase and there is nothing any better in terms of the type system you're going to get, it certainly relates to the integrity of the contractor putting it in there. Then of course, at this stage usually before drainage lines and so forth are covered up, inspectors come out and usually it is a visual inspection and really they don't have the time or the personnel to get down there to check elevations and make sure its followed the plans of specification as per design. Sometimes these things are covered up and they should not be covered up. Another key important factor of this thing is the maintenance of the systems, especially the noxification systems. They are going to require maintenance over years depending on soil conditions and so forth. There is also important to have what we call repair areas once that soil is saturated and so forth, you got to change these lines and run them to another field so its a big process with several steps involved and so many things that can go wrong during this process that it is hard to pin-point. This is why the left hand blames the right hand so many times in these cases. There is not an easy solution to this, but I'm sure we can solve it our brain power we have up here."

Rep. Hightower, "I think a follow-up on what Dr. Yongue said, we don't know who is responsible. When the state inspected it everything was all right and it didn't have proper maintenance and if that's the case, the state is not responsible. Whoever is suppose to maintain the line is responsible. That's why it is very important, Mr. Chairman, I feel like to have the state to come in and defend themselves or say what is what. When they inspected it was everything up-to-up, it may have been. We just don't know. We haven't had the state to say what they did, what they didn't do and who maintained the system, what happened after that happened. It seems like maybe they have covered it up and pipes were loose or something, not even connected in some cases. We just don't know what the situation was. There is too much here to say the blame is here and only here."

Chairman Eddins asked if there was someone there from the state that could address that.

Mr. Steven Berkowitz approached the microphone. "Mr. name is Steven Berkowitz. I'm an Environment Engineer at the on-site waste water section with the Division of Environment Health. This is a very complicated situation as we have heard about the North State situation, now we're talking about the HarCo situation. They both have similarities to them and they have things that are very different aspects to them. I can try to answer some specific questions you can address to me. Our group now does have responsibly to work with local health departments in Wake County. Wake County has been delegated by the state authority to carry out the sewage program in Wake County so we work in a partnership role with the Wake County Health Department in enforcing the regulations, the sewage regulations, which prior to 1992 this type of system was regulated and initially permitted by the state or same department but through the Division, at that time, the Department of Environmental Management. Now these same types of systems as of July 1992 are regulated by the county health department with assistance and support with our office in the state."

Chairman Eddins asked for questions and called on Rep. Yongue.

Rep. Yongue, "This was not necessarily a question, but I mentioned earlier that I put in all kinds of systems in my life, but I have never been involved with a LPP system. Do you have a typical plan and specification of such a system that you could share with us. I would like to look at it so I can be familiar with what we're looking at and what something is suppose to do and so forth."

Mr. Berkowitz, "Yes, I'd be glad to share that with you and also what the typical situation that these are present in these houses."

Chairman Eddins recognized Rep. Brown to ask a question.

Rep. Brown, "A quick answer, what happened, what failed?"

Mr. Berkowitz, "A lot of things have failed. I can't point to one thing that failed. There's problems with the management, concept that is not, obviously not working in dealing with a situation that is brought about by hurricane Fran."

Rep. Brown, "We have been told sir, that Fran didn't start this mess. And the lady right there at your right hand and several others nodding their head. Let's leave Fran out of it. Now what failed, did the state or whoever was responsible for inspecting and approving the installation, when did this really start to fail? One month after, one year after...how long did it operate without failing?"

Mr. Berkowitz, "These particular systems, the HarCo systems were generally speaking, well installed, maintained and operated to the limits of the design technology. These systems, the North State system we can't make that same statement. There was problems from almost the beginning of those installations with operation maintenance of those

systems. And in some cases, with design of the system. One of the main problems that was faced by these systems is that there was no mechanism available when this magnitude of the problems that occurred after September 5th destroyed 10 of the systems there was no mechanism in place to go out and quickly remedy the situation."

Chairman Eddins, "You mentioned design, and I don't want to put words in your mouth, but, I think you were saying that they operated as good as possible based on the design. Something to that effect, you used the word design. Is that, is that exact within the limits of what this thing is designed for the soil?"

Mr. Berkowitz, "It is a very complicated problem to get a lot of waste water to be absorbed in the piedmont soil in North Carolina. This system was designed initially in part to try to do that, to allow for safe development in areas that in the past have had problems with development. At the time it was developed it was felt at that time, that this would over come the site limitations. We have learned a lot in the 15 years since this technology has been used."

Chairman Eddins, "But was it actually proven technology or designed that it would work in these applications? Yes or no?"

Mr. Berkowitz, "It was the first time..."

Chairman Eddins, "Yes or no?"

Mr. Berkowitz, "It was the first time it was used at this magnitude at this type of application."

Chairman Eddins, "So therefore, it was not a proven design or test, or proven design under these circumstances that it was approved for by the state. That's what you're saying? Yes or no? I'm not trying to put you on the spot."

Mr. Berkowitz, "There hadn't been a long track record with this type of system in that application."

Chairman Eddins, "In other words, there was no track record in this type of application? Is that correct, is that fair to say?"

Mr. Berkowitz, "Yes it is."

Chairman Eddins, "Thank you."

Chairman Eddins recognized Rep. Brown.

Rep. Brown, "There is a lady sitting there that is just itching to go. She's been trying to get in this."

Chairman Eddins asked her to come forward and identify herself.

"My name is Karen Sena and I represent the Saddle Ridge sub-division. There are 26 LPP units out there and our problem started almost 4 years ago. We are one of the North State systems very seasoned in this now. I have spoken to a lot of people and I'm very informed on this subject. And, basically the question is where the problem arose. The problem arose in the design, in the installation and in the maintenance. It arose in the installation because the wrong solenoid valves were installed, they were irrigation valves, not waste water treatment valves. The wrong control panels were put in and in some cases North State put in a control panel, got it approved, and then ripped it out, hocked it off, sold it for 25 or 30 grand, put in a lesser control panel and didn't know how to hook up the whole thing and left the wires hanging. There was no clean water source for testing, so one wonders what kind of testing really went on there. The alarm that was suppose to go off when the system failed was disconnected and there was no operating alarm. The list of details, I can't recall a lot of the technical names, but there were lots and lots of installation problems. The DEM went out there prior to construction and looked over the land. The next time the DEM set foot on that piece of property was after it was installed and checked it over again. They were not involved at all in looking over and managing and making sure that the engineering designs that were in most cases sealed, not in all cases sealed, matched what was physically put in. There was substitutions made there in products to save money and what was installed was not what was supposed to have been installed."

Rep. Hightower, "Mr. Chairman..."

Ms. Sena continued, "just a second, I have 3 things. Then we come to maintenance, now that is North States responsibility and they failed miserably over and over again. I told you about hocking off the control panel, they basically did nothing and let the system dilapidate for in our case, about 3 years. They were only charging us only \$18.00 per month, the other supplying service in Wake County charges \$45.00. One would think the Utilities Commission would step in and say 'hey, why are these folks only paying \$18.00.' The reason North State never applied for a rate increase is because they knew they would have to be evaluated and they knew they wouldn't pass, so they sat back and collected the money and continued to collect the money until it got to hot for them to sit there and then they walked out on us. Which you asked us why we are here today wanting moneys from the state. I have 8 quick reasons why we're here. Number one, because when these LPP systems were first introduced and installed, DEM lacked adequate knowledge of LPP systems, they lacked the head count to devote to LPP systems in design, they had no rules or regulations specific to LPP systems. Above surface systems, yes, but sub-surface, no. And, they made LPP a low priority item and relied on North State and other inside output. They took a hands-off approach to this problem and that's why we have a system like we have today. In fact, they didn't even know the expected life of this system. Number two, we expect the state to fund this because some LPP permits were issued automatically when DEM reviewers failed to

meet their 90 day review date. So if they didn't meet their date, their permit was automatically issued without anybody ever looking at it. The third reason we're here asking for this money is because DEM made only two site visits, one before construction like I talked about and one after and that is why the designs don't match up to what was actually installed. The fourth reason is because the soiled information supplied by North State, it may be HarCo's case too, I don't know, but it went unchallenged by DEM and it is now believed that the soils report for one neighborhood were copied and used for other neighborhoods, as were the designs, as were some of the perk tests being done. Incidentally, if you question any of this information as being misinformation it is all directly from a report put out by DEHNER. Another reason we are coming to you today requesting money and requesting that funds be found is because the Wake County inspection reports revealed system failures time and time again and system short falls, time and time again were not taken seriously enough to be acted upon. Everett Lynn's job could have been made real easy, he could have just made copies of all his inspection reports with all the violations listed. Particularly in the Montisello case, it's disgusting. Every time you drove up Old Creedmore Rd., you had to ride with your windows up the smell was so bad. And the state never followed up on this until North State Utilities decided to abandon. The next reason was because the Utilities Commission allowed an under capitalized and under financed utility to serve the public. Furthermore, the utilities allowed the utility to operate with no resources available to perform LPP maintenance and replacement activities that it knew would be required over the long haul of the system. It knew there would have to be investments made into this system to keep it performing properly. This company had no money, they knew it, and they knew that this company had a track record of going broke because they had gone bankrupt before, so why they ever decided to let a company that had gone bankrupt before in the same business, get into the same business again just to go bankrupt again is beyond me. The next reason we are asking for the money is because North State knew how to permit shop between the county and the state to get what it wanted along with the developers. So what we ended up with was an LPP system installed on a fraction of the amount of land that it should have been installed on. Our system is installed on 2 acres of land and the requirement by law, requires 15 acres of land and we're on 2. And lastly, because HarCo appointed emergency operator after North State abandoned us closed its doors without refunding money and trust for the homeowners, and that again is negligence on the Utilities Commission part. Clearly when examining the facts, we have an LPP sewer emergency because the state failed time, and time and time again in its responsibilities to govern. And my expectation at this point is that the state would step up to their responsibilities and rectify the situation by providing the necessary funds for permanent sewer connections for the 12 sub-divisions involved. It's your responsibility to find the funds and get the job done. Do not drag us the customers, the LPP lot owner, the person that invested and is paying taxes on that piece of property through years of meetings, upon meetings, upon meetings. We expect the funds to be found and the problem to be fixed without being pulled through the mill also. I sincerely hope your take away impression of my talk here is not one of whining, crying homeowner, crying about how unfair life is in order to gain access to state funds. We're all adults here and we all know life's not fair. But this whole scenario is not a question of fairness at all, but it is a clear

situation of the state owning up to its responsibility to govern effectively. And in the case of LPP systems, the state failed in its responsibility to govern and is therefore responsible. And don't confuse this with some ones septic in their own back yard. We all run into problems where we have to unexpectedly to pay for a new air-conditioning system or something else goes wrong in our life and it costs us money, that's just part of living life. These people have paid in monthly, they have paid taxes and they were not able to insure this aspect because it is not theirs. If you have a person with a sewer in their own back yard and Fran blows through, they can call their insurance company and get coverage beyond their deductible. But in our case, we couldn't insure that. Fran blew through these neighborhoods, we have no insurance company to call. The only insurance company we have is the state and we expect the state to cough up the money to fix it. I thank you for your time."

Chairman Eddins asked for questions from the members.

Rep. Hackney questioned Mr. Berkowitz and asked, "Could you give us an estimate, assuming we undertook this obligation other than getting sued and having bad judgment, assuming we voluntarily did it, and not only on just a Wake County basis but a 100 county basis, is that a big obligation or is most of the problem limited to Wake County or what are we looking at there? And I'm assuming that regardless of what was just said, that anybody who had a septic tank permit that should not have been issued because of the soil was not correct under state rules by a county having been delegated that responsibility would be equally, similarly situated, it would seem to me that's true, what are we talking about? "

Mr. Berkowitz responded, "there are a variety of levels, the level as far as LPP, community LPP damage was done primarily by hurricane Fran. This is pretty much where it was done. There is a hand full or less than a hand full of other Fran damaged LPP systems statewide, but this is really a uniquely two-way county. If you start looking at problems that have been covered with even individual homeowners with LPP technology and the state assuming that responsibility, you're talking thousands and thousands of systems that are out there, in, in, statewide serving individual homeowners that some of the same types of problems, some of which have been addressed by improved management of those systems and improved technology that we now know some ways to do things better. If you're going to limit it to the other, maybe sub-set is to look at just problems with utilities and utilities and on-site technology, and again there are some other utilities that I think Mr. McGiven mentioned that have had problems and have some of the same types of scenarios and there again, state-wide I believe there is only I think 50 or 60 total utilities and probably half of them are in Wake County so statewide it is not a large number of the utilities that are on this type of a system that have some of the same types of problems, so this kind of depends on how far you're going to go, this is a very unique situation to have a combination of the community LPP, most of the damage is attributed to Fran that did 95% of the damage we are talking about was due to Fran. There is some other issues."

Rep. Hackney asked to follow-up on this. He said, "it would seem to me that if it was attributable to Fran, I don't dispute what you say, but looks to me like you simply take the pipes that were torn up and replace the pipes and the lines so it would start working again, isn't that correct?"

Mr. Berkowitz responded, "in some of the sub-divisions that can be a short-term fix to get it back to a pre-Fran state. Some of the sub-divisions has had, well, one example of Sheffield. It had 16,000 feet of line. We did an estimate the second week after Fran and you would have to essentially have to replace the entire system because of the way the pipes are inter connected, so in that case it was much more even economical to spend that same money to find a place to pump to. The other problem you have is really getting down to, there is in Wake County right now anyway, and really state-wide, there is no management structure that's really viable to deal with these community types of systems. There is no one that wants to touch this type of system right now, even if it was a viable technology."

Rep. Yongue was recognized and he thanked the lady that spoke earlier for her comments on a system that had gone bad. He made additional comments on this situation. He still contents that this is a very broad problem and time needs to be spent to analyze this problem because it was a problem that was happening across the state and this problem could be used to help straighten out the problems that may be state wide.

Rep. Watson asked to direct a question to Mr. Steven Berkowitz. He had left the room and Rep. Hightower also advised the Chairman that he was needed to help answer more questions. Chairman Eddins agreed.

Rep. Watson continued when he returned to the room and asked Mr. Berkowitz, "did HurCo provide a 100% repair area for all of his systems?" He responded, "no". Rep. Watson continued, "what in your opinion, is this system that has failed here, like the lagoon system that's failed in my hog district down east, is there any relation out of your DEM department that does permit waste treatment systems that are basically damaging soils and everything. Where can we go, if not to you, to find that proper permitting, and I think today has uncovered or answered some of the questions I have had because I represent a district, and this is my second term here, with very serious problems down east and I think we have a dead Neuse River one of our vital resources and when Rep. Eddins sees what he sees up here and I'm down in Duplin, Jones and Onslow Counties and I see sewage running in the ditches, into the streams and all into the rivers and all over the land and our land can't saturate anymore and nitrates are there, is that somebody up here has certainly permitted some systems that don't work and I'm extremely upset and I'm extremely angry and I represent people down east that have been looking for answers for a long time and a lot of farmers have bought into a system and made a tremendous investment into a system that possibly shouldn't have been permitted, you know in certain land areas, and this LPP has certainly gotten my attention in the last 4 or 5 days in seeing what's happening here. I know our industry was looking for a least cost way out to make a profit and evidently some of the builders up here have done the very

same thing, but in your opinion and since you deal with our Division and the people keep calling me as constituents do and asking me as a Representative who is responsible, is your Department basically responsible for the health and well being of every citizen in the state and for permitting these systems in place?"

Mr. Berkowitz responded, "yes, our agency does have that responsibility. Just one comment on your concerns. The development of this technology was in part in response in trying to keep waste water out of the rivers, to use on on-site or non-discharge alternative to being able to have houses in an area and yet not have their waste go into direct discharge into the Neuse River, to handle it on-site. There are trade-offs in any technology and what we thought was a good technology we are finding out there are still good aspects to the technology, but it has problems and there are trade-offs. It's not a simple, this was good and this was bad, there is, you do one thing, we're going to solve this problem by pumping it to a waste water treatment plant, we're going to cause another problem down stream from that, that if we can handle it on-site, and we handle it safely, which I'm not saying we're doing a good job with it, but if we can do it that would seem to be a better technology than just putting into the creek. Another option and now we're looking at waste water reclamation is rather than using all the drinking water for irrigation can we clean up the waste to the level that we can use it for irrigation and not put it directly into the creek."

Rep. Hightower advised the Chairman he had almost changed his mind in listening to the lady and this gentleman. "If what they have said is true, that the Appropriations Committee has already decided what they have decided because it seems like there is a reason to give some relive to these people because if the state is responsible and they did not inspect it correctly, and that is the reason of the mishap, it could be that I just do not understand how a hurricane can completely destroy a system where other systems are not destroyed by this same hurricane if something is not wrong about the system. That's beyond me, it's how did this, and that is something I would like to ask the state man how did hurricane Fran destroy this system when it did not destroy other systems?"

Mr. Berkowitz replied, "the primary thing that hurricane Fran did to this system was destroy the trees that were growing and that were not generally planted in this area, they were growing there before the system was installed, the trees fell down in a way that is somewhat unique to hurricane Fran and the nature of the storm but it did destroy the pipe network that is unique to this type of system. The combination was the absolute worst thing you could have happen. There are other systems but that was the main thing that destroyed these systems."

Rep. Hightower asked, "the lady said that this system should have been put on 15 acres rather than 2 acres, is that true?"

Mr. Berkowitz replied, "I'm not aware of the basis of that calculation she was making. There are things that affect the size of the system both the requirement for the soil for the

initial system and the repair system. There were also zoning issues that she may have been referring to.”

Rep. Hightower, “there were several things she has said that indicate that the state is responsible for not correctly inspecting the site. I’m not going to ask if you that is true or not, or if they did not, but I guess the state does have records as to what was inspected and the results of that inspection, do they not?”

Mr. Berkowitz, “yes they do.”

Rep. Hightower, “well, I guess Mr. Chairman, I don’t know what your procedure is going to be but it seems like if a study commission is going to be set up, it might be well to study those records and see what the state did find when they inspected the site and what they recommended if they did recommend anything else or whatever, of if they said everything was completely O.K. or if they recommended that the people that own the system do something else or whatever, and I think there are still a lot of questions here that are unanswered Mr. Chairman and it is too bad, I don’t know, you may want to, I don’t know how the state can do this except unless there are funds out there that can take care of this particular situation which I think there probably are.”

Chairman Eddins, “Well, Rep. Hightower, to respond I think you are right on target with it. The problem has been there. I think what we have heard today, the state erred in the design of this system to be allowed for this specific use and I think that the sense of urgency is upon us with the sewage running out of the ground as we speak. Another bill that is under way has the situations in it that you mentioned as far as looking at who is at fault, where, who this that and the other, the problem is that this thing has been looked at and studied for many, many years by different people from all levels of government and that is why I think the more I hear, the more I think it’s time we need to do some action on the bill, and again it doesn’t have an Appropriation that the budgets have already been passed in each Chamber, but I think it’s a message that perhaps one of those you mentioned that other areas of money could be used by someone who has the authority to do that and that was the purpose of this meeting, is to bring all evidence forth to show that there is a sense of urgency.”

Rep. Hightower, “yes sir Mr. Chairman, I think it has been shown that there is urgency here, I hate I have another commitment Mr. Chairman and hate to leave, but I do feel that I have somewhat changed my mind as to the way I felt when I first came in here and I still don’t know what we should do, if anything, but something should be done somewhere.”

Rep. Warwick was recognized by Chairman Eddins.

Rep. Warwick asked a follow-up question to Mr. Beckowitz. “In all fairness to a state Agency that probably is overwhelmed with responsibilities and I’m not defending them in any way, are the staff people still in your Agency that were available at the time and did the inspections back there several years ago?”

Mr. Berkowitz, "Again the responsibility has shifted in '92 from the Division, now the Division Water Quality to the Division of Environment Health. To my knowledge, some of the people still are in the Division of Water Quality who were involved back then, some of the people have gone on to the private sector jobs, but there are still some of the individuals in the Department."

Rep. Warwick, "But those records still are in tact and are available? How long does the Agency retain such records?"

Mr. Beckowitz, "There are records available, some of the records the Utilities Commission has also a fairly extensive file on each project, so between the Utilities Commission and the Department, and now Wake County Health Department, there is an extensive record on each project."

Rep. Warwick, "Is there in place a process for appeal for communities like these people represent to go back to review records and get access to that information?"

Mr. Beckowitz, "It is all public record, yes sir."

Rep. Warwick, "Were you involved when the Attorney General's office reviewed this case and are you familiar with any rulings that he may have had?"

Mr. Beckowitz, "I've been involved. I don't feel confident to speak on what specific rulings you may be referring to, what is known as the North State situation and I don't feel I can give a good clear understanding of that."

Rep. Warwick, "Once again in all fairness to our Agency, Mr. Beckowitz, how long in advance were you aware of this meeting this afternoon?"

Mr. Beckowitz, "I believe 10:00 this morning." Rep. Warwick thanked him.

Chairman Eddins recognized Rep. Watson for a question.

Rep. Watson had one more question, "did the original designers, I think, Mr. Barrett McKay and maybe Dennis Osbourne from NC State that designed this LPP system, are they also the designers of the lagoon system? Do you know, have you been that long to know if they were the original ones that would have come up with from NC State both of these designs systems?"

Mr. Beckowitz, "I really don't know if they were involved. Barrett Kays has always been to my knowledge in the private sector as a consultant. Dennis Osborne did work for the university for a long period of time and then he also was a private consultant and an owner of, part owner of the North State Utility Corporation."

Rep. Watson, "My understanding, Mr. Chairman, was that possibly sea grant money was there and these two gentlemen's name was associated with the design and I was just trying to get some basic information if that would have been true. And also, I know you can recognize in these citizens here, how I feel about just one more failed septic system since I have dealt with waste for a good long while. I'm delighted you would allow them to have a voice in your committee today and if you are ready, I would like to move for a favorable report for the proposed committee substitute and then see what we can do and any type of emergency situation with this bill and should it goes to the Rules Chairman's bills, that we will find a way, we have some other bills that are sweeping that there might be some way to tie into this with the Trust Fund to help this situation."

Chairman Eddins, "The motion is in order for the favorable report to the proposed committee substitute, unfavorable as to the original bill. Further debate, Rep. Cole."

Rep. Cole, "Mr. Chairman, that was going to be my motion. I checked with the Rules Chairman sitting right behind me and he's willing to take the bill into his committee."

Chairman Eddins, "Thank you for that information. Rep. Hackney."

Rep. Hackney, "Mr. Chairman, before it goes out it needs to be made equal state-wide, and the way the bill is currently written, I do know that there are other situations and it may be that there are not other situations exactly the same or whatever, but people need to be treated the same state-wide and this bill simply directs the payment to the Wake County sub-divisions, and while I want to help them as much as we should help them, I want the others to be helped as well and so I think that language needs to be removed so that everybody can be treated the same."

Chairman Eddins, "In response, Rep. Hackney, I think if you have a situation you would like to help, we do need leave the bill as it is, and I appreciate and respect you saying that, but I think in this case, this bill has been through a lot, and I think if someone else has situations I will be more than willing to help and to have an open hearing and debate on it and I would prefer to leave it as it is."

Rep. Hackney, "Mr. Chairman, I didn't know about the meeting either, subject to the meeting until mid-day today and I haven't had any opportunity to get any information together. I know a lot about this subject just because I have been around a while. I do not have an amendment ready to put in all the proper people who are similarly situated and there are some, I mean, if, so..."

Chairman Eddins, "It will be going to the Rules Committee and if it comes out you'll have an opportunity to amend it, I'm sure."

Rep. Hackney, "Well that may or may not be the case."

Chairman Eddins recognized Rep. Yongue, "Thank you Mr. Chairman. Rep. Hackney sort of covered some of my concerns. You know as it has been brought out today, this not unique with Wake County. We have the same problems with the counties I represent, Moore, Hoke, Scotland, Roberson, Cumberland and so forth, and it's all the way across the state. I hope that out of this thing, I'm willing to help and support these folks because they are in one heck of a predicament, however, we need not just fund this thing and think it's going to solve the problem state-wide. I hope that we can from this, some committee, I know you mentioned they had various committees throughout, but I think this is a very good committee that really scrutinizes bills and so forth, and maybe would still like to get a sub-committee to come out of here to study the problem state-wide and let's get a handle on it because if we don't we going to have more and more folks from various counties from across the state asking for money to solve problems that need to be solved with the contractors, putting fines on them or whoever developers or whoever may be at fault, designers or what have you. Usually it's a combination of all of these factors that cause these problems. We need to get a handle on it state-wide. That's my only concern. Thank you."

Chairman Eddins, "In response, Rep. Yongue, the other bill has legislation for the different agencies to come forward to the Environment Review Commission. I think it's October 15th, of this year, as the House Chairman of the Environment Review Commission, I can assure you it will receive my utmost attention. I think you can see that I have been pretty sincere in everything I try to do here and I'm just here for the cause to try to help. Any further discussion? Rep. Warwick"

Rep. Warwick, "A brief comment. I'm very glad to hear you say that because I have some very difficult situations in Pender and Onslow county, as I had pointed out earlier, and I will certainly discuss those with you at the appropriate time. I certainly want us to help these folks and I said earlier, these 400 and some families in Wake County as much as we possibly can, however there are a few things that concern me a good bit. I preface that by saying I intend to vote with you on this, but number one, a quickly called meeting, we should have had adequate representation here to hear from the Attorney General's office and at least given us a brief summary of what happened in related cases. Second point that I think has been raised in committee this afternoon, is this in some way does tend to set a little bit of a precedence and I digress and go back to a question asked earlier, about the inspectors, the certificates, and the permits and the approvals that are given by the 100 counties, and every county in this state is involved at some level or another. And before this bill reaches its final destination, wherever that may be, I would certainly hope that the Rules Chairman and the other chairman reviewing this would give that proper consideration. Another point that I think that's been very abling to me is that also a study may come out of this committee at some point and time that may look at similar situations in the other 99 counties and others within Wake County. I would hope that receives some consideration as well."

Rep. Hackney was recognized again. "Well, I don't know what to do, I want to be of some assistance but, Mr. Chairman you brought us a bill here which appropriates money

to Wake County and you are asking us to vote it out directing Wake County to get it ahead of all other counties. I don't think that's right and I just have to say that. I'm not even sure, I guess its constitutional, I don't even know, but if you're not willing to wait for our to put our similar situations in or it you're not willing for the Department to take the money allocated and then assess on an even-handed basis how much each party should get, then I really don't think the bill should go out of this committee until we get that done. This is a serious committee and we should get things done right and of course we haven't even discussed that fact that some of comes from the Clean Water Management Trust Fund which the money is there and is intended for it and no reason we can't it, but we're intending for an entirely different purpose. So, you know, I really don't think its fair to vote this out today until the matter is made uniform so that other legislators that didn't know what was coming today can have their areas included as well. I just don't think that is fair and I don't think, with all due respect, that Rep. Watson ought to make a favorable report and those situations."

Rep. Warwick was recognized again. "Thank you again for a brief follow-up. Again I want to be supportive of this, and I want to support you in this effort, but I do have a parliamentary question for you. Then perhaps one for the Rules Chairman. You did say earlier or someone implied that this should go to Appropriations and Appropriations has already dealt with this and turned it down and said no funding for it. Then I believe you said and I'm not exactly sure who said what, but you later indicated you were going to send this to Rules?"

Chairman Eddins, "First of all, this has not been turned down, in my knowledge, in the form of a bill by any committee, Appropriations or any committee for that matter. If you would like to direct a question to the Rules Chairman you are free to do that." Rep. Warwick, "a friendly questions Mr. Chairman. I refer back to Rep. Mitchells debate, and I wish he were still here, he had questions about the Governor's involvement and the Governor earmarking some money that was being help up for the appropriate time, it is within your power, I assume, to hold this bill in Rules Committee until such time that all these details are worked out so these people from these communities will not in fact lose money and will stand the chance to gain some financial help. Is that correct?"

Rep. Morgan advised he was not a member of the committee but would be willing to respond with the permission of the Chair. Chairman Eddins asked him to feel free to respond.

Rep. Morgan, "that is correct. We can hold a bill until you are ready to take action on it with respect to your earlier part of your question, the bill or any bill that has an appropriation attached to it will ultimately have to be seen by the Appropriations Committee, under our rules. I think Rep. Hackney did make some valid statements on timeliness of the legislators to be able to voice what other concerns they may have for their district and we would certainly take a look at that Rep. Hackney."

Rep. Warwick, "It is also within your power to allow the members an ample opportunity to include the other 99 counties for similar situations, not necessarily identical, but in essence to give this some state-wide visibility?"

Rep. Morgan, "Well committee can consider any subject matter. I think the concern of the chairman was this committee is one of the committees that operates in the House. As you know there are many, but as you know, we may be coming to an end of the session, and committees may begin to shut down and I think the concern of the chairman was not so much to have the Rules Committee handle legislation, gosh knows we've got a sufficient to keep up busy, but that committee probably will be operating down to the wire as a necessity in shutting down this place. I think that was the intention of the Chair and I think Rep. Cole, when we talked."

Chairman Eddins, "In response Rep. Warwick, I think we have all heard here that we are hopefully getting to a close here and there is a concern with the amount of time we do have left as far as meetings."

Rep. Yongue, "One other concern I have is that we are very careful we are not in the business of bailing out developers, contractors, sub-contractors and what have you. With tax payers money covering up the poor design or poor installation whatever the case may be, usually which ends up with a large profit margin for these folks, so this is another concern I have that I think we should explore every avenue and make sure we can't recoup some of this money from private sources and not tax payers expense."

Chairman Eddins agreed and recognized Dr. Gamble.

Rep. Gamble, "Mr. Chairman, in view of sending the bill to Rep. Morgan's committee, is there any need to send it until next week until we could meet again and face this as our own problem. With the back ground that we have on it, we would have a lot more to offer if we held it here and let the Committee here it next week and take action on it."

Chairman Eddins, "I understand what you are saying but I think time is of the essence and that's the concern and other committees have discussed this and talked about it."

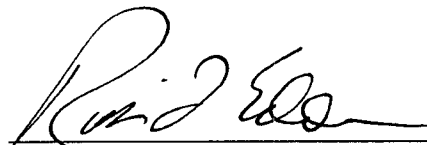
Rep. Warner, "I don't want to belabor this, but I want to address what Rep. Yongue just pointed out. We don't want to get in the habit of bailing anyone out and I don't think we should be bailing anyone out either, but in this case, it is our responsibility because the bureaucracy that we have created here has failed the citizens of the state of North Carolina."

Chairman Eddins, "hearing no further discussion, all those in favor of a favorable report for the proposed committee substitute, unfavorable to the original bill, please say 'aye', those opposed say 'no', the ayes have it and the motion carries. Before we adjourn, what I would like to do, there are other speakers who did not get the opportunity to speak for us

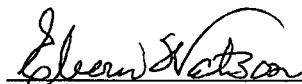
to hear, since the bill will be reported out, I hope you understand why you will not be allowed to speak cause I think most people will be ready to get up and leave.”

Rep. Cole, “Before we adjourn I think it would be appropriate for you to state you will be referring this to the Rules for the record.”

Chairman Eddins, “Rules for the record. Any other comments? The meeting is adjoined.”

A handwritten signature in cursive script, appearing to read "Rep. Eddins", written over a horizontal line.

Rep. Eddins, Chairman

A handwritten signature in cursive script, appearing to read "Ebern Watson", written over a horizontal line.

Ebern Watson, Committee Clerk

**1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Eddins, Hill, Watson** for the Committee on **Environment**.

☐ Committee Substitute for

H.B. 274 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE TAKING OF FISH
IN INTERNAL COASTAL WATERS BY TRAWLING AND THE USE OF CERTAIN
TYPES OF NETS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill (~~#~~); ☒ which changes the title,
unfavorable as to original bill (~~Committee Substitute Bill #~~), (and recommendation
that the committee substitute bill ~~#~~) be re-referred to the Committee on Rules.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.
(PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 274

Short Title: Ban Inland Trawling/Net Fishing.

(Public)

Sponsors: Representatives Mitchell; and Hall.

Referred to: Environment.

February 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE TAKING OF FISH IN INTERNAL COASTAL
3 WATERS BY TRAWLING AND THE USE OF CERTAIN TYPES OF NETS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 20 of Chapter 113 of the General Statutes is amended
6 by adding a new section to read:
7 "§ 113-270. Taking fish by trawling and nets.
8 (a) Offense. -- It is unlawful to take fish, as defined in G.S. 113-129(7), in the
9 internal waters and joint waters of the State by using any of the following: trawl net,
10 dredge, seine, purse seine, long-haul seine, gill net, channel net, float net, butterfly
11 net, pound net, or fyke net.
12 (b) Penalty. -- A violation of this section is a Class I felony.
13 (c) Application. -- This section does not apply to the use of a cast net that is no
14 more than 12 feet in diameter dip net or seines less than 12 feet in length and 3 feet
15 deep for the taking of bait fish. This section does not apply to the taking of fish in
16 waters of the Atlantic Ocean."
17 Section 2. The Department of Environment, Health, and Natural
18 Resources shall develop and implement a "buy back" program to purchase the fully
19 operable nets and dredges from persons who: (i) are licensed by the State to engage
20 in commercial fishing of the inland waters of the State, and (ii) have been engaged in
21 full-time commercial fishing in the State's internal and joint waters during the
22 calendar years of 1994, 1995, and 1996. The Department of Environment, Health,
23 and Natural Resources shall either destroy or render inoperable all gear purchased
24 under the program.



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Memorandum

July 9, 1997

TO: House Committee on Environment

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute (Low Pressure Pipes Emergency Funds) for House Bill 274 (Ban Inland Trawling/Net Fishing)

The Proposed Committee Substitute for House Bill 274 (Ban Inland Trawling/Net Fishing) removes the provisions of House Bill 274 relating to the taking of fish by nets and creates the Low Pressure Pipe Network Replacement Emergency Fund and appropriates five million dollars (\$5,000,000) to the Fund for the 1997-98 fiscal year.

Section 1 establishes the Low Pressure Pipe Network Replacement Emergency Fund (Fund) in the State Treasurer's Office to be administered by the Department of Commerce. Moneys in the Fund will consist of appropriations by the General Assembly from the General Fund and grants from the Clean Water Management Trust Fund. Moneys in the Fund will not revert at the end of any fiscal year.

Moneys from the Fund may be used to finance projects to provide for the interim repair, permanent connection to municipal sewage treatment systems, and buy-out of failing or failed community low pressure pipe systems. Any unit of local government may apply for a grant from the Fund on behalf of its citizens. The Department of Commerce will select applicants to receive grants and will administer the grants. The criteria for issuing a grant from the fund are that the low pressure pipe system has failed or has been declared a public health risk, hazard, or nuisance and that either the infrastructure cannot be rebuilt to satisfy current county health code requirements or it is not cost effective to rebuild or maintain the low pressure pipe system.

The Department of Commerce is authorized to adopt rules to implement the funding program.

Section 2 appropriates from the General Fund to the Low Pressure Pipe Network Replacement Emergency Fund (Fund) the sum of five million dollars (\$5,000,000) for the 1997-98 fiscal year. The Fund will also receive first priority for a grant from the Clean Water Management Trust Fund in an amount equal to the difference between five million dollars (\$5,000,000) and any amount appropriated from the General Fund by this act. The moneys appropriated to the Fund are in addition to the one million nine hundred thousand dollars (\$1,900,000) already advanced by the State.

The Department of Commerce will award grants from the Fund for the 1997-98 fiscal year to Wake County to be allocated for the following areas: Stonebridge VI, Stone Creek, Park Ridge, Hollybrook, Woods of Tiffany, Banbury Woods, River Oaks, Sheffield Manor, Monticello, Manchester, and Saddleridge.

If Federal Emergency Fund Agency moneys become available, those moneys will replace the moneys appropriated or granted to the Fund by this act. Moneys appropriated or granted pursuant to this act will not revert, but will remain available until resolution of the community low pressure pipe interim repair and permanent connection in Wake County is completed. Upon completion, all unexpended moneys appropriated or granted pursuant to this act will revert to the General Fund.

Section 3 makes this act effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 274
Proposed Committee Substitute H274-PCS6299

Short Title: Low Pressure Pipe Emerg. Funds.

(Public)

Sponsors:

Referred to:

February 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE LOW PRESSURE PIPE NETWORK REPLACEMENT
3 EMERGENCY FUND AND TO APPROPRIATE MONEYS TO THE FUND.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 162A of the General Statutes is amended by adding a
6 new Article to read:

7 "ARTICLE 8.
8 "Low Pressure Pipe Network
9 Replacement Emergency Fund.

10 "§ 162A-110. Definitions.

11 (1) Fund. -- Low Pressure Pipe Network Replacement Emergency
12 Fund created pursuant to this Article.

13 (2) Pump and haul. -- Pumping of the liquid waste (effluent) from the
14 common collection tank by a carrier into the carrier's equipment
15 for transportation to a municipal sewer connection point where it
16 is discharged.

17 (3) Infrastructure. -- All effluent transport and delivery piping, pumps,
18 and storage/treatment tanks from the private/public right-of-way
19 interface at the street for each homesite to and including the
20 common collection area utility lot.

21 "§ 162A-111. Fund: established; earnings.

22 (a) Fund Established. -- There is established the Low Pressure Pipe Network
23 Replacement Emergency Fund in the State Treasurer's Office. The Fund shall be

1 administered by the Department of Commerce. Funds in the Low Pressure Pipe
2 Network Replacement Emergency Fund shall be used only in accordance with this
3 Article.

4 (b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the
5 Fund separate and apart from all other moneys, funds, and accounts. Investment
6 earnings credited to the assets of the Fund shall become part of the Fund. Moneys in
7 the Fund shall not revert at the end of any fiscal year. Payments from the Fund shall
8 be made on the warrant of the Department of Commerce.

9 **"§ 162A-112. Fund: purposes.**

10 Moneys from the Fund may be used to finance projects to provide for the interim
11 repair, permanent connection, and system buyout of failing or failed community low
12 pressure pipe systems. Moneys from the Fund may also be used for any of the
13 following purposes associated with the permanent connection of community low
14 pressure pipe systems to municipal sewage treatment systems:

- 15 (1) Interim repair costs to mitigate pump and haul charges until
16 permanent connection can be made.
- 17 (2) Design, engineering, bidding, and construction costs with five
18 percent (5%) contingency.
- 19 (3) Costs of acquisition of easements necessary for permitting the
20 construction.
- 21 (4) Municipal and county impact fees, system buyout fees, and tap-on
22 fees.
- 23 (5) The cost of decommissioning community low pressure pipe field
24 systems.

25 **"§ 162A-113. Fund: grant criteria and eligibility.**

26 (a) Any unit of local government may apply for a grant under this section on
27 behalf of its citizens.

28 (b) The criteria for issuing a grant under this Article are that the low pressure
29 pipe system has failed or has been declared a public health risk, hazard, or nuisance
30 by the appropriate county environmental health agency and that either the
31 infrastructure cannot be fully rebuilt to satisfy current county health code
32 requirements or it is not cost-effective to rebuild or maintain the low pressure pipe
33 system.

34 (c) The Department of Commerce shall select the applicants to receive grants
35 under this Article and shall administer the grants.

36 **"§ 162A-114. Fund: sources of revenue.**

37 The Low Pressure Pipe Network Replacement Emergency Fund shall consist of
38 any moneys appropriated by the General Assembly from the General Fund and any
39 moneys granted to the Fund from the Clean Water Management Trust Fund
40 established under G.S. 113-145.3.

41 **"§ 162A-115. Department of Commerce has rule-making authority.**

42 The Department of Commerce may adopt rules to implement this Article."

43 Section 2. There is appropriated from the General Fund to the Low
44 Pressure Pipe Network Replacement Emergency Fund the sum of five million dollars

1 (\$5,000,000) for the 1997-98 fiscal year. The Low Pressure Pipe Network
2 Replacement Emergency Fund shall have first priority for a grant from the Clean
3 Water Management Trust Fund in an amount equal to the difference between five
4 million dollars (\$5,000,000) and any amount appropriated from the General Fund by
5 this act. The funds appropriated to the Low Pressure Pipe Network Replacement
6 Emergency Fund by this act are in addition to the one million nine hundred
7 thousand dollars (\$1,900,000) already advanced by the State for resolution of the
8 community low pressure pipe interim repair and permanent connection in Wake
9 County. The Department of Commerce shall award grants from the Low Pressure
10 Pipe Network Replacement Emergency Fund for the 1997-98 fiscal year to Wake
11 County to be allocated as grants for the following areas: Stonebridge VI, Stone
12 Creek, Park Ridge, Hollybrook, Woods of Tiffany, Banbury Woods, River Oaks,
13 Sheffield Manor, Monticello, Manchester, and Saddleridge. If Federal Emergency
14 Management Agency moneys should become available for resolution of the
15 community low pressure pipe interim repair and permanent connection in Wake
16 County, those moneys shall replace the moneys appropriated or granted to the Low
17 Pressure Pipe Network Replacement Emergency Fund by this act. Moneys
18 appropriated or granted pursuant to this act shall not revert but shall remain
19 available until resolution of the community low pressure pipe interim repair and
20 permanent connection in Wake County is completed. Upon completion, all
21 unexpended moneys appropriated or granted pursuant to this act shall revert to the
22 General Fund, notwithstanding G.S. 162A-111(b), as enacted by Section 1 of this act.

23 Section 3. This act becomes effective 1 July 1997.

VISITOR REGISTRATION SHEET

House committee Environment

July 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DANIEL L. HOPPING	2305 HOVIS COURT, RALEIGH 27615
Ty Layman	2004 Lovdal Dr. Monticello Sub.
GREG MIREK	6428 PERIOD Way MONTICELLO Sub.
Edward A. Harney, III	WCC LPP ETE Vice Chairman
Christina H. Harney	1705 Waltham Way, Relist 2214 Ridge
STONEBRIDGE KATHY MCGIBBON	10308 GRAFTON RD RALEIGH, NC
MICHAEL A BROWN	1101 CARLOW CT, RALEIGH - STONEBRIDGE SUB
PHILIP MARSHALL	10512 LESLIE DR, RAL - 27615
GREG HODGES	1221 HILLINGDON WAY RAL 27614
STONEBRIDGE JEANNE GOODMAN	10309 GRAFTON RD RALEIGH, NC
JERRY GOODMAN	" " "
SONYA GOODMAN	" " "
Jenay Hardesty	NC-PC
AMY RIPPES	10108 OLD WARDEN RD RAL STONEBRIDGE VT
Joseph John J. LAMBERTUS	1533 PARK RIDGE Way, RALEIGH, N.C. 27614-9036
Sharon M BOWEN	1820 Park Ridge Way Raleigh NC 27614
LIZ KAUHUAHAI	1225 HILLINGDON, PARK RIDGE
C. A. Roberts	1220 Hillingdon Way, Raleigh, NC 27614
Lynn Graves	10429 Leslie Dr. Raleigh, NC 27615
JAMES CARTER	10433 LESLIE DR, RALEIGH 27615
Naomi Markbertone	604 Christ Court Raleigh 27615
Willis Lumpkin	2421 Heartley, Raleigh 27615
Chazala Sadiq	10120 Old Warden Rd, Stonebridge
Will Funderburk	1241 Hillingdon Way Park Ridge
Myra Misset	1245 Hillingdon Way Park Ridge
Bernard Misset	1245 Hillingdon Way Park Ridge
Tom McCloskey	1608 Park Ridge way
Donald Howe	4628 Holly Brook Dr Apex

VISITOR REGISTRATION SHEET

House committee Environment

July 9, 1997

Name of Committee

Date

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<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Nancy Webb	Stone Creek 621 Hawick Rd.
Elizabeth Graham	Stone Creek 10500 Leslie Dr.
Gerry Raynor	Stone Creek 10453 Leslie Dr.
Bonnie Husley	Stone Creek 612 Hawick Rd.
Richard Mueller	Stone Creek 10441 Leslie Drive.
Richard Hurley	Stone Creek 612 Hawick Rd.
Hart Stewart	Stone Bridge VI 1100 Carlow Ct.
DENNIS RAMSEY	DWQ / WQS
Don R. Cothran	PARK RIDGE
John W. Walch	Park Ridge
Will U. Steensen	Park Ridge
David Hope	Park Ridge
Sharon Talley	Park Ridge
Steve Belknap	DEHNR-OSWS
William C. Jeter	DEHNR-OSWS
Gary Harris	NCPMA
Doug Howey	"
Robin Carden	Public Staff NCUC
Tony Wike	"
Scott Meyer	PARK RIDGE DEVELOPMENT
Sarah L. Ditmore	Park Ridge 1200 Wiltshire Ct.
Estherine J. Davis	Electric City of NC
Lynne Reynolds Hamm	Park Ridge Development
Robert Hamm	Park Ridge Subdivision 1521 Park Ridge Way
Andrew Johnson	705 Presnell Ct "Stonecreek" Raleigh NC
Donald A. Johnson	705 PRESNELL CT RALEIGH NC - Stonecreek
Karen Sing	SADDLERIDGE, 6107 Crupper Ct RAL NC
BRIAN SHIELDS	1800 PARK RIDGE WAY, RALEIGH

VISITOR REGISTRATION SHEET

House committee Environment

July 9, 1997

Name of Committee

Date _____

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