1997

SENATE AGRICULTURE/ ENVIRONMENT/ NATURAL RESOURCES COMMITTEE

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

MEMBER	LOCATION	PHONE	SECRETARY
Albertson, Charles W., **Chairman**	525 LOB	3-5705	Julia Birdsong Committee Clerk
Gulley, Wib, **Vice Chairman**	408 LOB	5-3036	Carol Resar
Horton, Hamilton C., Jr., **Vice Chairman**	1406 LB	3-3272	Lorraine Blake
Wellons, Allen H., **Vice Chairman**	1026 LB	3-5850	Frances Drew
Cochrane, Betsy, **Ranking Minority Member**	1127 LB	5-2525	Mary Watson
Clark, R. L.	1118 LB	3-5742	Linda Hines
Cooper, Roy A.	2117 LB	3-5664	Susan Moore
East, Don	521 LOB	3-5655	Nancy Pulley
Foxx, Virginia	1120 LB	3-5743	Jocelyn Jones
Garwood, John A.	1419 LB	5-0706	Martha Jordan
Jenkins, Thomas K.	622 LOB	3-6275	Katy Haynes
Kinnaird, Eleanor	2115 LB	3-5804	Kathie Young
McDaniel, J. Mark, Jr.	522 LOB	3-5620	Rebecca Bajkowski
Miller, Brad	621 LOB	3-9349	Cornelia McMillan
Odom, Fountain	300B LOB	3-5707	Anne Wilson
Page, Dan	1414 LB	3-7659	Steve Crim
Perdue, Beverly M.	629 LOB	3-2055	Anne Canady
Phillips, Jim W., Sr.	628 LOB	3-5870	Gerry Bowles
Weinstein, David F.	2108 LOB	3-5651	Terry Lefort

Committee Counsel

Givens, George	LOB 545	3-2578
Hudson, Jeffrey	LOB 545	3-2578
Riley, Barbara	LOB 545	3-2578
Shuping, Mary	LOB 545	3-2578

Rev. August 20, 1997

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 13-AUG-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 4	HOLMES	YADKINVILLE SEWAGE TREATMENT CONTRAC	R -CH. SL 97-0003	02-25-97	03-04-97
H 16	HALL	NO ANIMAL WASTE SYS. IN FLOODPLAINS	*S -REF TO COM ON AGRICUL&	03-18-97	
H 188=	CULP	ENVIRONMENTAL TECH. CORRECTIONS	*S -REF TO COM ON AGRICUL&	04-22-97	
H 189=	CULP	DRINKING WATER AMENDS	R -CH. SL 97-0030	04-01-97	04-08-97
H 194=	CULP	STATE REVOLVING WATER FUND ACCOUNT	*R -CH. SL 97-0206	05-29-97	06-03-97
H 210=	BROWN	AG DEPT. NAME CHANGE	*R -CH. SL 97-0261	03-03-97	03-18-97
H 211=	CULP	AMEND ENVIRONMENTAL LAWS-2	*H -REF TO COM ON RULES	04-22-97	07-29-97
H 227=	HACKNEY	INACTIVE HAZ. SITES RECORDATION	*S -CONF COM APPOINTED	04-16-97	06-16-97
H 238=	MITCHELL	FACILITATE ANIMAL WASTE RESEARCH	*H -REF TO COM ON RULES	03-18-97	04-15-97
H 239	MITCHELL	ENVIRON. MANAGEMENT MEMBERSHIP	H -PRES. TO GOV. 08-01	04-10-97	07-29-97
H 240=	MITCHELL	REMOVE ODOR CONTROL STUDY MATCH	*S -REF TO COM ON APPROPR	03-03-97	03-25-97
H 251=	CULP	WELL CONTRACTORS CERTIFICATION	*R -CH. SL 97-0358	06-16-97	06-26-97
H 302	HUNTER H	WILDLIFE/RABIES EMERGENCY	*H -PRES. TO GOV. 08-07	05-06-97	07-29-97
H 409=	YONGUE	AGRICULTURAL EMPLOYER APPEALS	R -CH. SL 97-0035	03-24-97	04-03-97
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	05-14-97	06-23-97
H 457	WEATHERLY	AMEND FOREST DEVELOPMENT ACT	*R -CH. SL 97-0352	05-06-97	06-16-97
H 460	CULPEPPER	ABOLISH AQUARIUMS COMMISSION	*R -CH. SL 97-0286	05-06-97	05-19-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	05-06-97	05-29-97
H 515	MORGAN	CLEAN WATER RESPONSIBILITY ACT	*S -CONF COM APPOINTED	05-06-97	06-09-97
H 577	WEATHERLY	FORESTER REGISTRATION	*S -REF TO COM ON AGRICUL&	07-17-97	
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	05-06-97	
H 900	WATSON	NITROGEN LIMIT/CLEAN WATER FUND	*S -REF TO COM ON AGRICUL&	05-06-97	
H 935	BEALL	PROMOTE LLAMA BREEDING	R -CH. SL 97-0084	04-28-97	05-13-97
H 998=	**BROWN**	**SOUTHERN DAIRY COMPACT**	**S -RE-REF COM ON APPROPR**	**06-18-97**	**06-26-97**
H 999	ROGERS	SOIL & WATER COMMISSION/INSPECTIONS	*R -CH. SL 97-0173	05-06-97	05-22-97
H1009=	MORRIS	NOTICE OF HAZARDOUS DISCHARGE	*S -REF TO COM ON AGRICUL&	05-06-97	
H1011=	CAPPS	LOW PRESSURE PIPE EMERG. FUND	*S -PLACED ON CAL FOR 08-19	07-22-97	07-29-97
H1032	ALLRED	AUTHORIZE LANDFILL LINER	*R -CH. SL 97-0374	04-29-97	06-26-97
H1037	ARNOLD	SALE OF CERTAIN EXOTIC MEATS	*S -REF TO COM ON AGRICUL&	05-06-97	
H1059	WRIGHT	CAMA/URBAN WATERFRONT REDEVELOP	*R -CH. SL 97-0337	05-06-97	06-19-97

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

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 13-AUG-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1097	**PRESTON**	**FISHERIES REFORM ACT-2**	***H -PLACED ON CAL FOR 08-13**	**06-11-97**	**07-23-97**
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	05-06-97	
H1121	**MCCOMAS**	**BROWNFIELD PROPERTY REUSE ACT**	***R -CH. SL 97-0357**	**06-19-97**	**07-03-97**
S 110	PERDUE	ESTABLISH ENVIRONMENTAL CABINET	*H -REF TO COM ON RULES	02-13-97	02-26-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*H -CAL PURSUANT RULE 36(A)	02-17-97	03-18-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*H -CAL PURSUANT RULE 36(A)	03-19-97	04-03-97
S 120	KERR	AGRIC COST SHARE FUNDING LIMITS	S -REF TO COM ON AGRICUL&	02-17-97	
S 125=	ODOM	BROWNFIELDS/PROPERTY USE RESTRICT	*S -PRES. TO GOV. 08-06	02-17-97	04-22-97
S 126=	ODOM	SOLID WASTE PERMIT REQUIREMENTS	*R -CH. SL 97-0027	02-17-97	03-11-97
S 138=	ODOM	DRINKING WATER AMENDMENTS	H -REF TO COM ON ENVIRON	02-17-97	03-04-97
S 140=	ODOM	INCREASE ERC MEMBERSHIP	R -CH. SL 97-0031	02-17-97	02-26-97
S 150=	COOPER	INACTIVE HAZARDOUS SITES REPORTS	R -CH. SL 97-0028	02-17-97	03-11-97
S 151=	COOPER	INACTIVE HAZARDOUS SITES INFO	R -CH. SL 97-0053	02-17-97	03-11-97
S 169=	ALBERTSON	ENVIRONMENTAL TECH CORRECTIONS	*H -REF TO COM ON RULES	02-17-97	04-22-97
S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	02-18-97	03-20-97
S 177=	KINNAIRD	CLEAN WATER TRUST FUNDS/LOANS OK	S -REF TO COM ON AGRICUL&	02-18-97	
S 178=	HORTON	AMEND NATURAL HERITAGE TRUST FUND	*R -CH. SL 97-0366	02-18-97	04-22-97
S 182	KINCAID	WILDLIFE COMM. TEMPORARY RULES	*S -PRES. TO GOV. 08-08	02-19-97	04-08-97
S 191=	ALBERTSON	REMOVE ODOR CONTROL STUDY MATCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 192=	ALBERTSON	FACILITATE ANIMAL WASTE RESEARCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 193	**ALBERTSON**	**ON-SITE WASTEWATER SYS.**	***S -RE-REF COM ON APPROPR**	**04-23-97**	**04-28-97**
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	02-19-97	04-28-97
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	07-30-97	
S 195=	ALBERTSON	AG DEPT.NAME CHANGE	S -REF TO COM ON AGRICUL&	02-19-97	
S 221=	HORTON	NITROGEN LIMIT FOR CERTAIN WATERS	S -REF TO COM ON AGRICUL&	02-24-97	
S 259=	ODOM	BACKUP POWER FOR WASTEWATER SYS	S -REF TO COM ON AGRICUL&	02-27-97	
S 261=	ODOM	WELL CONTRACTORS CERTIFICATION	*S -RE-REF COM ON FINANCE	02-27-97	06-03-97
S 266	LEDBETTER	PRODUCTION AND SALE OF RED DEER	*R -CH. SL 97-0142	02-27-97	03-18-97
S 287	**PERDUE**	**MONITOR COASTAL WATER QUALITY**	**S -RE-REF COM ON APPROPR**	**03-03-97**	**03-24-97**
S 477	PERDUE	SEPTIC TANK SYSTEMS BMPS	*S -RE-REF COM ON FINANCE	03-25-97	04-24-97

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1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 13-AUG-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 478	KINNAIRD	SWINE FARM SITING ACT-3	S -REF TO COM ON AGRICUL&	03-25-97	
S 537=	JENKINS	ADDITION TO STATE PARKS SYSTEM	*R -CH. SL 97-0276	03-27-97	04-22-97
S 545=	MILLER B	SALE OF NAT. SCI. MUSEUM OBJECTS	H -RE-REF COM ON APPROP	03-27-97	04-15-97
S 671=	ALBERTSON	WASTEWATER IMPR0VEMENTS PERMITS	*S -RE-REF COM ON RULES &	04-02-97	05-21-97
S 755=	REEVES	NO LOW-LEVEL FACILITY/FLOOD PLAN	S -REF TO COM ON AGRICUL&	04-08-97	
S 845	ODOM	VEHICLE INSPECTION PROGRAM STUDY	*H -REF TO COM ON RULES	04-15-97	04-24-97
S 859=	LEE	PRESCRIBED BURNING IN FORESTS	*H -REF TO COM ON RULES	04-15-97	04-28-97
S 874=	**KERR**	**RESOLUTION OF SEED CLAIMS**	***S -RE-REF COM ON FINANCE**	**04-15-97**	**06-03-97**
S 918=	PHILLIPS	NOTICE OF HAZARDOUS DISCHARGE	*H -RE-REF COM ON RULES	04-17-97	04-28-97
S 947	COCHRANE	AMEND INTERBASIN TRANSFERS	*H -CAL PURSUANT RULE 36(A)	04-17-97	04-29-97
S 954	WEBSTER	EXOTIC ANIMAL REGISTRY	S -REF TO COM ON AGRICUL&	04-17-97	
S 969	KINNAIRD	AIR QUALITY STANDARD/HOG FARMS	S -REF TO COM ON AGRICUL&	04-21-97	
S 977=	**ALBERTSON**	**SOUTHERN DAIRY COMPACT**	**S -REF TO COM ON AGRICUL&**	**04-21-97**	
S 984	ALBERTSON	ENVIROMENTAL POLICY	S -RE-REF COM ON AGRICUL&	08-05-97	
S 985	MARTIN R	ALTERNATE LANDFILL LINER	S -REF TO COM ON AGRICUL&	04-21-97	
S1002	KINNAIRD	STRENGTHEN MINING ACT	S -REF TO COM ON AGRICUL&	04-21-97	
S1018	**ALBERTSON**	**NUTRIENT/PESTICIDE MGT. EDUCATION**	**S -REF TO COM ON AGRICUL&**	**04-21-97**	
S1022	KINNAIRD	ASPHALT EMISSIONS MONITORING	S -RE-REF COM ON RULES &	04-21-97	07-17-97
S1041=	MILLER B	LOW PRESSURE PIPE EMERG. FUND	S -REF TO COM ON AGRICUL&	04-21-97	
S1043	ALBERTSON	COMPREHENSIVE WATER QUALITY MNGT	S -REF TO COM ON AGRICUL&	04-21-97	

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MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

February 18, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, February 18, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were thirteen committee members present. Committee members were asked to introduce themselves, and Senator Albertson introduced staff.

Guest speaker was Billy Ray Hall, Director, N. C. Disaster Recovery Center. He spoke to the committee on the response to Hurricane Fran and also discussed the Disaster Recovery Task Force Report. After his presentation, he answered questions from committee members. Graham Boyd, Governor's Agricultural Advisor, made comments on the hugh impact of Hurricane Fran on the agriculture and forestry industry in North Carolina. Mr. Boyd said that a three to four-year harvest of trees was lost in a twelve-hour period of 100 mph winds. He said the biggest issue of concern was the possibility of wild fire hazards because of an estimated 116,000 tons of debris on the forest floor after the hurricane. If a fire started, it would be difficult to distinguish because fire lanes are clogged with fallen timber.

Information was given on a Super Scooper airplane which is manufactured by Canadair for specific use in fighting forest fires and which has the capability of refilling its tanks from creeks and ponds in a matter of seconds. The cost of three refurbished planes would be $13,800,000 ($510,000 per year operation cost). One new turboprop plane from Canadair would cost $20,000,000. The Governor's budget includes one of these planes.

Committee members asked questions of the speakers as well as Derryl Walden, Deputy Director, Forest Resources, N. C. Department of Environment, Health and Natural Resources; and Bob Slocum of the N. C. Forestry Association.

Copies of information distributed are attached.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, February 18, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

Introduction of Members

Guest Speaker: Billy Ray Hall, Director, N. C. Disaster Recovery Center
(He will speak on response to Hurricane Fran and also discuss the Disaster Recovery Task Force Report)

DEHNR

North Carolina

Department of Environment, Health, and Natural Resources

Release: IMMEDIATE

Contact: LISA SCHELL (919) 733-2162 ext 26
or Mike Thompson (919) 733-2162 ext 245

Date: 9/27/96

Distribution: Statewide

OVER $1 BILLION IN TIMBER DAMAGE CAUSED BY HURRICANE FRAN

RALEIGH – Hurricane Fran damaged or destroyed over $1.2 billion dollars worth of timber in eastern North Carolina, Governor Jim Hunt announced today. That's nearly four times the dollar amount of timber destroyed in the state by Hurricane Hugo seven years ago.

According to a survey by the North Carolina Division of Forest Resources (NCDFR), Fran damaged 8.2 million acres of timberland valued at $1,295,652,000. Pender County was the hardest hit with severe damage to 461,547 acres of timber valued at approximately $89.9 million.

"This amount of damage is particularly startling when you consider that North Carolina ranks first among all southern states in terms of value added to the economy through the manufacturing of wood products," Hunt said. "There is no doubt that Fran will have a dramatic affect on this important portion of our economy."

In addition to affecting the state's forest economy, downed timber resulting from Fran poses another threat to North Carolina – increased risk of forest fire. Downed timber that cannot be salvaged will provide increased amounts of forest fire fuel when it dries in the coming years.

The NCDFR is working with the North Carolina Forestry Association and the North Carolina Cooperative Extension Service on plans to help landowners salvage as much of the downed timber as possible. In addition, all three organizations are involved in a cooperative effort to provide landowners with information and guidelines for harvesting downed or damaged trees on their property. The NCDFR is planning increased fire prevention and suppression efforts in the near future as well.

For more information, contact Lisa Schell at (919) 733-2162 ext. 262 or (919) 851-5540 or Mike Thompson at (919) 733-2162 ext. 245.

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Public Affairs Office
P.O. Box 27687, Raleigh, N. C. 27611
(919) 715-4112 - FAX # (919) 715-3060

Debbie Crane
Director, Office of Public Affairs

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ESTIMATED VOLUME AND VALUE OF TIMBER DESTROYED
IN NORTH CAROLINA BY HURRICANE FRAN, SEPTEMBER 1996

County	Pulpwood Thous. Cords	Sawtimber MBF, Int. Rule	Value $ (0,000)
Pender	1,088.6	596,709	$89,960
Johnston	570.8	488,550	$70,353
Wake	508.2	459,999	$65,941
Sampson	534.6	445,148	$64,253
Nash	892.0	366,231	$57,519
Duplin	510.6	374,001	$54,616
Moore	640.3	335,858	$50,918
Jones	554.1	314,514	$47,214
Onslow	452.8	283,563	$42,086
Robeson	393.8	263,173	$38,787
Granville	340.1	265,261	$38,510
Columbus	425.4	243,903	$36,569
Franklin	428.6	228,437	$34,561
Craven	332.4	229,358	$33,692
Wayne	222.7	232,404	$32,964
Orange	860.6	178,502	$32,421
Chatham	384.5	210,081	$31,685
Harnett	313.8	208,349	$30,728
Lenoir	230.3	192,300	$27,749
Pitt	193.2	188,709	$26,894
Halifax	232.9	176,701	$25,718
Bladen	269.4	169,738	$25,175
Brunswick	381.3	160,589	$25,120
Scotland	151.9	163,461	$23,137
Montgomery	304.9	134,988	$20,955
Warren	228.4	127,022	$19,115
Hoke	140.0	127,520	$18,271
Beaufort	250.7	118,413	$18,209
Cumberland	261.7	113,331	$17,652
Caswell	233.3	110,301	$16,959
Pamlico	127.6	107,195	$15,461
Durham	154.6	104,117	$15,332
Wilson	120.9	98,381	$14,228
Person	209.0	89,293	$13,937
Northampton	140.9	92,855	$13,705
New Hanover	122.0	63,026	$12,571
Randolph	199.5	89,152	$11,971
Rockingham	278.8	84,284	$11,410
Alamance	137.9	74,688	$11,277
Guilford	95.9	61,833	$9,148
Lee	107.7	56,500	$8,566
Stanly	91.8	43,747	$6,718
Anson	85.8	40,506	$6,229
Edgecombe	64.9	39,606	$5,895
Greene	57.0	37,597	$5,549
Carteret	43.5	34,630	$5,018
Richmond	64.2	32,883	$5,001
Vance	64.8	19,660	$3,262
Davidson	18.6	8,059	$1,256
Rowan	8.7	4,881	$734
Union	5.3	2,271	$354
Cabarrus	4.4	1,777	$280
Bertie	0.2	128	$19
TOTALS	14,535.9	8,694,183	$1,295,652

Acreage of Timberland Damaged in North Carolina
By Hurricane Fran
By Percentage Class and County
September 1996

County	Damage Class (% Destroyed)				
	1-25	26-50	51-75	76-100	Total
ALAMANCE	96,127				96,127
ANSON	57,547				57,547
BEAUFORT	168,231				168,231
BERTIE	142				142
BLADEN	298,973	21,444			320,417
BRUNSWICK	362,730				362,730
CABARRUS	3,384				3,384
CARTERET	48,889				48,889
CASWELL	149,614				149,614
CHATHAM	286,548				286,548
COLUMBUS	297,913				297,913
CRAVEN	257,475	14,167			271,642
CUMBERLAND	86,230	32,012	349		118,591
DAVIDSON	13,204				13,204
DUPLIN	154,878	119,716	9,945		284,539
DURHAM	84,364				84,364
EDGECOMBE	47,444	3,240			50,684
FRANKLIN	135,117	36,755	18,120		189,992
GRANVILLE	128,350	33,805	15,411		177,566
GREENE	67,285	18			67,303
GUILFORD	63,008				63,008
HALIFAX	175,680	9,024			184,704
HARNETT	112,768	63,544	11,670		187,982
HOKE	99,188	46,567	3,272		149,027
JOHNSTON	110,431	87,231	40,551		238,213
JONES	99,808	57,029	53,452		210,289
LEE	74,801				74,801
LENOIR	64,840	58,306	2,908		126,054
MONTGOMERY	180,274	18,907			199,181
MOORE	187,951	134,411			322,362
NASH	82,946	82,416	12,454		177,816
NEW HANOVER	14,714	19,359	8,425	7,105	49,603
NORTHAMPTON	122,254				122,254
ONSLOW	249,571	79,677	2,003		331,251
ORANGE	107,732	17,094			124,826
PAMLICO	132,506				132,506
PENDER	231,825	146,060	38,712	44,950	461,547
PERSON	145,103				145,103
PITT	197,203	423			197,626
RANDOLPH	114,409	14,920			129,329
RICHMOND	60,515	1,146			61,661
ROBESON	185,101	24,855	15,088		225,044
ROCKINGHAM	137,023				137,023
ROWAN	5,951				5,951
SAMPSON	164,428	94,585	53,624		312,637
SCOTLAND	77,128	23,625	22,418		123,171
STANLY	81,238				81,238
UNION	4,312				4,312
VANCE	38,023	2,703			40,726
WAKE	111,550	87,259	8,608		207,417
WARREN	141,343				141,343
WAYNE	69,043	55,147	16,024		140,214
WILSON	93,556	5,723			99,279
TOTALS	6,480,668	1,391,168	333,034	52,055	8,256,925

Prepared by the North Carolina Division of Forest Resources
Department of Environment, Health and Natural Resources

TABLE 2
VOLUME AND VALUE OF TIMBER
DESTROYED IN NORTH CAROLINA BY HURRICANE FRAN
BY COUNTY
SEPTEMBER, 1996

County	Pulpwood Volume (Thousands of Cords)	Sawtimber Volume (MBF Int. Rule)	Value (Thousands of Dollars)
Alamance	137.9	74,688	11,277
Anson	85.8	40,506	6,229
Beaufort	250.7	118,413	18,209
Bertie	.2	128	19
Bladen	269.4	169,738	25,175
Brunswick	381.3	160,589	25,120
Cabarrus	4.4	1,777	280
Carteret	43.5	34,630	5,018
Caswell	233.3	110,301	16,959
Chatham	384.5	210,081	31,685
Columbus	425.4	243,903	36,569
Craven	332.4	229,358	33,692
Cumberland	261.7	113,331	17,652
Davidson	18.6	8,059	1,256
Duplin	510.6	374,001	54,616
Durham	154.6	104,117	15,332
Edgecombe	64.9	39,606	5,895
Franklin	428.6	228,437	34,561
Granville	340.1	265,261	38,510
Greene	57.0	37,597	5,549
Guilford	95.9	61,833	9,148
Halifax	232.9	176,701	25,718
Harnett	313.8	208,349	30,728
Hoke	140.0	127,520	18,271
Johnston	570.8	488,550	70,353
Jones	554.1	314,514	47,214
Lee	107.7	56,500	8,566
Lenoir	230.3	192,300	27,749
Montgomery	304.9	134,988	20,955
Moore	640.3	335,858	50,918
Nash	892.0	366,231	57,519
New Hanover	122.0	63,026	12,571
Northampton	140.9	92,855	13,705
Onslow	452.8	283,563	42,086
Orange	860.6	178,502	32,421
Pamlico	127.6	107,195	15,461
Pender	1088.6	596,709	89,960
Person	209.0	89,293	13,937
Pitt	193.2	188,709	26,894
Randolph	199.5	89,152	11,971
Richmond	64.2	32,883	5,001
Robeson	393.8	263,173	38,787

TABLE 2
(continued from previous page)

County	Pulpwood Volume (Thousands of Cords)	Sawtimber Volume (MBF Int. Rule)	Value (Thousands of Dollars)
Rockingham	278.8	84,284	11,410
Rowan	8.7	4,881	734
Sampson	534.6	445,148	64,253
Scotland	151.9	163,461	23,137
Stanly	91.8	43,747	6,718
Union	5.3	2,271	354
Vance	64.8	19,660	3,262
Wake	508.2	459,999	65,941
Warren	228.4	127,022	19,115
Wayne	222.7	232,404	32,964
Wilson	120.9	98,381	14,228
TOTALS	14,539.9	8,694,183	1,295,652

FACT SHEET

TIMBER DAMAGE CAUSED BY HURRICANE FRAN

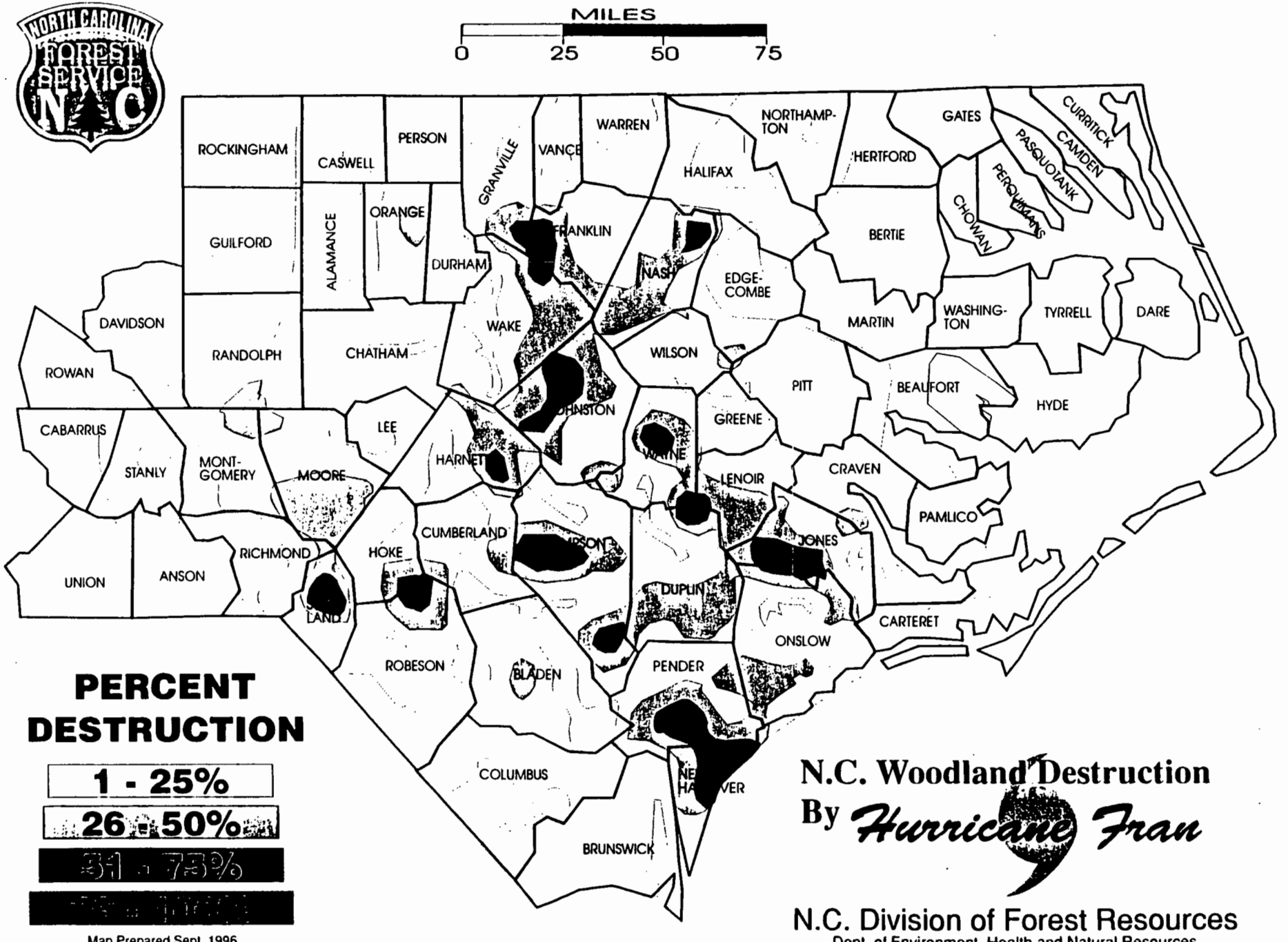
- Total Acreage Damaged: 8,256,925
  - 51 % Pine
  - 49 % Hardwood

- Total Value of Timber Damaged: $1,295,652,000

- Counties with Highest Acreage Damaged:
  - Pender 461,547
  - Brunswick 362,730
  - Moore 322,362

- Counties with Highest Value Losses:
  - Pender $89,960,000
  - Johnston $70,353,000
  - Duplin $54,616,000

Prepared by the North Carolina Division of Forest Resources, Department of Environment, Health and Natural Resources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CHOWAN
BERTIE
GUILFORD
ALAMANCE
ORANGE
DURHAM
FRANKLIN
NASH
EDGE-COMBE
MARTIN
WASHING-TON
TYRRELL
DARE
DAVIDSON
RANDOLPH
CHATHAM
WAKE
WILSON
PITT
BEAUFORT
HYDE
ROWAN
CABARRUS
STANLY
MONT-GOMERY
MOORE
LEE
HARNETT
JOHNSTON
WAYNE
GREENE
LENOIR
CRAVEN
PAMLICO
UNION
ANSON
RICHMOND
HOKE
CUMBERLAND
SAMPSON
DUPLIN
JONES
ONSLOW
CARTERET
ROBESON
BLADEN
PENDER
COLUMBUS
BRUNSWICK
PERCENT DESTRUCTION
1 - 25%
26 - 50%
51 - 75%
76 - 100%
Map Prepared Sept. 1996
by the N.C. Center for
Geographic Information & Analysis
N.C. Woodland Destruction
By Hurricane Fran
N.C. Division of Forest Resources
Dept. of Environment, Health and Natural Resources

AGRICULTURE AND NATURAL RESOURCES

SUBCOMMITTEE

agric

HURRICANE FRAN

AGRICULTURAL DAMAGE EXTIMATES

BY COUNTY

Planning Branch
information & planning Section

September 20,1996

AGRICULTURAL IMPACT ISSUES/ANALYSIS

- Hurricane Fran caused substantial adverse impact to North Carolina agricultural interests; 63 counties were affected.
- Almost 2.2 million acres of land devoted to agricultural uses were affected by storm damage.
- Eleven counties incurring serious agricultural impact were not in the FEMA declaration for Individual Assistance.
- The North Carolina Department of Agriculture has estimated storm-related damage at almost $684 million.

HURRICANE FRAN
FEMA - 1134 - DR (NC)
STATEWIDE AGRICULTURAL IMPACT

agimpac.xls
9/20/96
information& planning

	COUNTY	LAND AREA (ACRES)	1994 HARVESTED CROPLAND (ACRES)	1996 ACRES IMPACTED	IMPACTED ACREAGE AS PERCENT OF CROPLAND	VALUE OF DAMAGES ($)
D	Alamance	278,123	22,200	8,100	36%	$4,102,707
E	Alleghany	150,000	11,800	100	1%	106,497
A	Beaufort	613,349	150,000	98,048	65%	2,588,258
A	Bertie	474,410	87,800	75,862	86%	2,403,648
C	Bladen	568,112	60,000	25,300	42%	2,024,292
C	Brunswick	573,625	15,300	1,140	7%	207,480
C	Carteret	671,849	41,000	28,835	70%	2,110,407
D	Caswell	274,494	18,900	1,633	9%	104,682
B	Chatham	453,692	17,900	7,500	42%	7,698,484
C	Columbus	609,993	105,700	102,100	97%	16,903,502
C	Craven	487,288	56,600	18,600	33%	1,878,136
C	Cumberland	421,190	51,100	55,583	109%	15,136,373
D	Davidson	363,203	31,000	7,700	25%	410,868
D	Davie	170,586	22,100	2,550	12%	93,599
C	Duplin	524,314	129,500	112,800	87%	27,354,701
B	Durham	191,088	5,100	1,151	23%	2,099,296
B	Edgecombe	324,296	109,100	81,610	75%	11,538,928
B	Franklin	316,681	35,200	14,500	41%	5,122,739
	Gates	221,241	44,400	67,832	153%	1,740,061
	Guilford	420,955	29,400	1,942	7%	798,277
	Granville	353,233	26,800	14,200	53%	7,783,153
C	Greene	170,448	70,200	66,445	95%	9,401,336
B	Halifax	467,999	100,800	72,000	71%	7,001,226
B	Harnett	384,757	59,700	45,581	76%	10,625,042
F	Henderson	240,048	20,900		0%	
A	Hertford	231,304	47,400	150	0%	110,651
C	Hoke	251,086	33,400	30,661	92%	4,447,913
A	Hyde	882,002	79,000	47,679	60%	4,469,061
B	Johnston	509,242	117,600	45,969	39%	71,063,482
C	Jones	303,317	47,300	41,277	87%	10,445,852
B	Lee	165,916	11,800	0	0%	0
C	Lenoir	257,254	89,300	72,042	81%	48,086,925
A	Martin	295,963	77,600	71,962	93%	16,666,886
D	Montgomery	320,852	7,000	4,600	66%	1,332,587
D	Moore	451,346	12,900	7,300	57%	4,483,412
B	Nash	347,331	79,200	42,549	54%	18,558,399
C	New Hanover	140,529	500	2,910	582%	967,492
C	Onslow	524,442	35,600	34,767	98%	28,780,176
B	Orange	256,964	20,100	12,000	60%	5,723,986
C	Pamlico	359,431	39,500	24,500	62%	3,362,380
A	Pasquotank	185,077	87,800	14,058	16%	805,430
C	Pender	563,424	33,300	34,681	104%	16,987,482
	Perquimans	210,529	71,000	23,169	33%	1,852,304
	Person	258,580	23,700	9,800	41%	4,664,172

	COUNTY	LAND AREA (ACRES)	1994 HARVESTED CROPLAND (ACRES)	1996 ACRES IMPACTED	IMPACTED ACREAGE AS PERCENT OF COUNTY AREA	VALUE OF DAMAGES ($)
A	Pitt	419,057	124,500	27,895	22%	5,094,117
F	Polk	152,713	4,600		0%	
D	Randolph	505,649	33,300	5,300	16%	2,604,561
D	Richmond	306,890	12,200	1,700	14%	1,571,258
C	Robeson	608,167	204,100	234,730	115%	53,654,937
D	Rockingham	366,036	22,300	10,315	46%	10,515,481
F	Rutherford	361,773	12,900		0%	
C	Sampson	605,844	164,600	128,954	78%	162,823,064
D	Scotland	205,386	30,200	32,444	107%	2,522,221
D	Stokes	291,791	17,900	5,050	28%	1,616,935
A	Tyrell/Dare	1,188,847	73,700	47,671	65%	2,021,094
B	Vance	172,723	14,500	13,000	90%	3,204,029
B	Wake	547,995	38,800	25,462	66%	17,941,227
B	Warren	283,765	16,400	9,017	55%	6,908,086
A	Washington	265,583	88,100	60,957	69%	1,092,744
C	Wayne	356,458	126,500	116,836	92%	21,604,201
E	Wilkes	485,673	21,700	500	2%	51,708
B	Wilson	239,484	84,500	35,198	42%	8,693,820
	STATE TOTAL	23,603,397	3,327,300	2,186,215	66%	$683,961,765

Source: North Carolina Department of Agriculture

Shading indicates counties not declared for Individual Assistance.

NOTE: No agricultural impact data available for Henderson, Polk, and Rutherford Counties.

Harvested cropland (1994 data) is used as an indicator of current agricultural land use. It excludes pasture and farm forestry. Percent impacts exceeding 100% may reflect differences in cultivated land between 1994 and 1996.

11/22/96 16:22 ☎919 790 2954 USDA ASCS NC 001

OPTIONAL FORM 99 (7-90)

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To Graham Boyd From Sam Coley

Dept./Agency Phone # 790-2957

715-3775 Fax # 790-2954

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Farm Service Agency

m Fact Sheet May 1996

USDA United States Department of Agriculture

Emergency Loan Assistance

Background

The Farm Service Agency (FSA) provides Emergency (EM) loans to help cover production and physical losses in counties declared as disaster areas by the President or designated by the Secretary of Agriculture. For physical losses only, the FSA Administrator may authorize EM assistance.

Eligibility

Emergency loans may be made to farmers and ranchers who:

- are established family farm operators;
- are citizens or permanent residents of the United States;
- have the ability, training or experience necessary to repay the loan;
- have suffered a qualifying physical loss, or a production loss of at least 30 percent in any essential farm or ranch enterprise;
- cannot obtain commercial credit;
- can provide collateral to secure an EM loan; and
- have repayment ability.

Loan Uses

Emergency loan funds may be used to:

- restore or replace essential property;
- pay all or part of production costs associated with the disaster year;
- pay essential family living expenses;
- reorganize the farming operation; and
- refinance debts.

Loan Limit

The loan limit is up to 80 percent of actual loss, with a maximum indebtedness under this program of $500,000.

Loan Requirements

FSA loan requirements are different from those of other lenders. Some of the more significant of these conditions are:

- Borrowers must keep acceptable farm records.
- Borrowers must operate in accordance with a farm plan they develop and agree to with FSA.
- Borrowers may be required to participate in a financial management training program, and may be required to obtain crop insurance.

Loan Terms

Loans for crop, livestock, and non-real estate losses are normally repaid from 1 to 7 years depending upon the loan purpose, repayment ability, and collateral available as loan security. In special circumstances, terms of up to 20 years may be authorized. Loans for physical losses to real estate are normally repaid within 30 years. Again, in unusual circumstances, repayment may be made over a maximum of 40 years.

Temporary Assistance

Borrowers are expected to return to conventional credit sources. Emergency loans are a temporary source of credit, and borrowers are reviewed periodically to determine whether they can return or "graduate" to commercial credit.

Interest Rate

The current annual interest rate is 3.75 percent.

Collateral

All emergency loans must be fully collateralized. A first lien is required on all property or products acquired, produced, or refinanced with loan funds. The specific type of collateral required may vary depending upon the loan purpose, repayment ability, and the individual circumstances of the applicant.

Application Deadline

Applications for emergency loans must be received within 8 months of the disaster designation date.

The U. S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at (202) 720-2791.

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C., 20250, or call (202) 720-7327 (voice) or (202) 720-1127 (TDD). USDA is an equal employment opportunity employer.

USDA NATURAL DISASTER ASSISTANCE FACT SHEET

Farm Service Agency

EMERGENCY LOAN ASSISTANCE

Producers may qualify for Emergency loans for production losses to cover a shortfall in income caused by adverse weather. Loan funds can be used to pay creditors, buy feed and pay operating and family living expenses. Interest rate is 3.75 percent and repayment terms, while generally up to 7 years, can extend up to 40 years. The maximum Emergency loan is up to 80 percent of actual loss, with a maximum indebtedness under this program of $500,000.00.

The producer must have suffered at least a 30 percent production loss in at least one crop or livestock enterprise because of the adverse weather conditions that was not compensated by insurance or by other forms of compensation such as disaster payments made by FSA. Loans may be made to cover the value of physical losses such a foundation livestock, supplies, etc., that is not covered by insurance or other kinds of compensation. Emergency loans must be fully collateralized. Producers who apply for these loans must be unable to secure the credit they need from other sources in their area and must be family size farmers.

REGULAR FARM LOAN PROGRAMS

In addition to the Emergency loan program, FSA may offer its regular Operating and Farm Ownership loans programs, as well as its loan guarantee programs, to assist affected producers. FSA loan guarantees may be used to guarantee loans with the producer's present credit sources while they overcome the affects of the adverse weather. Direct loans to buy seed, fertilizer, pay other farm operating expenses, repair or purchase equipment or restructure existing debts may be made, in some cases along with Emergency loans, to meet the producer's financial needs. Long term real estate loans are also available to purchase or improve land, buildings and other real estate purposes and for debt restructuring as needed by eligible producers. Terms for these loans run from 1 to 40 years depending upon loan purpose, security, etc.

EMERGENCY CONSERVATION PROGRAM

The Emergency Conservation Program (ECP) provides emergency funds for sharing with farmers the cost of restoring to productive use farmland seriously damaged by natural disasters.

ECP assistance is available only to help solve new conservation problems caused by natural disasters that impair and endanger the land or materially affect the productive capacity of land. Assistance is based on type and extent of the damage.

Emergency practices to rehabilitate farmland damaged by disasters may include debris removal, providing emergency water for livestock, fence restoration, grading and shaping of farmland, restoring conservation structures, and water conservation measures.

Eligibility for ECP assistance is determined by the County FSA committee on an individual basis.

CATASTROPHIC RISK PROTECTION (CAT) OR NONINSURED CROP DISASTER ASSISTANCE (NAP) PROGRAMS

Catastrophic Crop Insurance (CAT) is designed to provide producers with a financial "safety net" against the rick of major crop loss.

The Noninsured Crop Disaster Assistance Program (NAP) provides crop loss protection for grower of many crops for which Federal Crop Insurance is not available.

Producers are responsible to timely report damage or loss of the crop.

Producers are to obtain consent from a certified Loss Adjuster before destruction of the crop; or to put the crop to another use; or abandon any portion of the crop.

If the producer informs the FSA office that the crop will be taken to harvest, a field inspections not necessary, however, if further damage occurs or a Loss is anticipated prior to harvest, the producer is again to contact the FSA office.

At this time, all inspections must be done by a certified Loss Adjuster. All adjusters in the state will be available. In the event that we enter a critical loss situation, the FSA State Executive Director will request approval for FSA county office full-time, part-time, or temporary personnel who have completed a minimum of 8 hours of classroom training or policy provisions, forms completion and program update to be authorized to make the necessary CAT and NAP field inspection.

Farmers who are interested in further information should contact the county FSA office.

MILES

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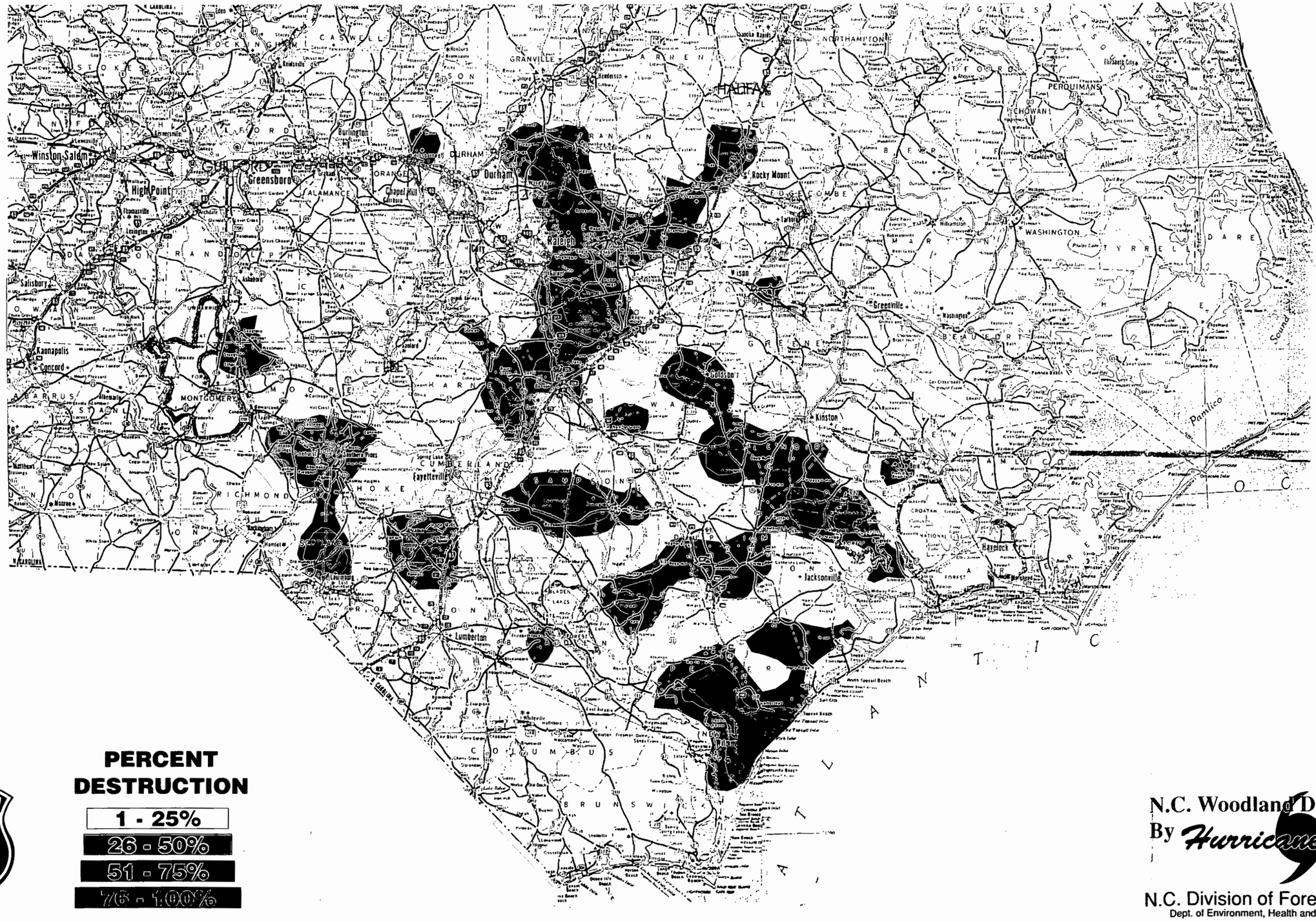


PERCENT DESTRUCTION

1 - 25%
26 - 50%
51 - 75%
76 - 100%

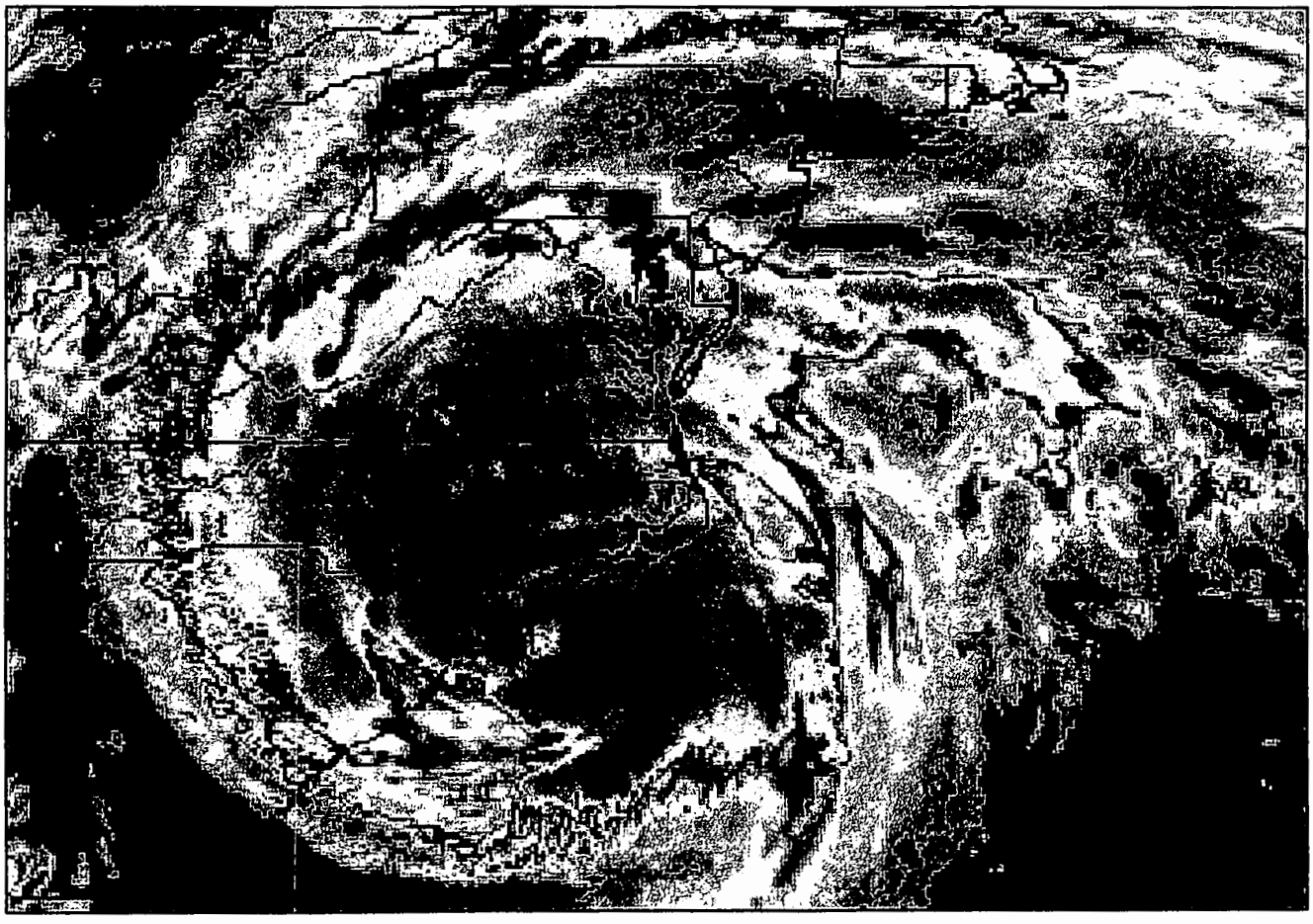
NORTH CAROLINA FOREST SERVICE NC

N.C. Woodland Destruction By Hurricane Fran

N.C. Division of Forest Resources
Dept. of Environment, Health and Natural Resources

North Carolina

Disaster Recovery Task Force



Recommendations for Action

February 14, 1997

OFFICE OF THE LIEUTENANT GOVERNOR
STATE OF NORTH CAROLINA
STATE CAPITOL

DENNIS A. WICKER
LIEUTENANT GOVERNOR

February 14, 1997

The Honorable James B. Hunt, Jr.
The Capitol
One East Edenton Street
Raleigh, North Carolina 27601

Dear Governor Hunt:

The North Carolina Disaster Recovery Task Force is pleased to submit its Recommendations for Action that we believe will improve North Carolina's response to and recovery from future disasters.

The initial response to Hurricane Fran is to be commended. The North Carolina Division of Emergency Management, state agencies and public and private groups all went beyond the call of duty to assit the victims of this disaster.

We commend the Federal Emergency Management Agency (FEMA) for its assistance in all facets of the response efforts.

In our attempt to successfully secure critically needed additional resources and to help North Carolinians repair, re-build and plan for our state's long-term recovery, we respectfully submit this Recommendations for Action Report which we believe will make North Carolina even better and stronger than before.

With warmest regards, we are

Sincerely,

Lt. Governor Dennis Wicker
Chairman

Secretary Richard Moore
Vice-Chairman

Acknowledgments

The Disaster Recovery Task Force would like to thank federal, state, and local governments, private agencies, and the News and Observer for all their assistance in preparing this report.

North Carolina Disaster Recovery Task Force

Honorable Dennis A. Wicker
Chairman
Lieutenant Governor
Raleigh

Secretary Richard H. Moore
Vice Chairman
Department of Crime Control and Public Safety
Raleigh

Honorable James A. Graham
Commissioner of Agriculture
Raleigh

Honorable Harlan Boyles
State Treasurer
Raleigh

Honorable Jim Long
Commissioner of Insurance
Raleigh

Honorable Mike Ward
Superintendent of Public Instruction
Raleigh

Honorable Michael F. Easley
Attorney General
Raleigh

C.D. Spangler, Jr.
President of UNC General Administration
Chapel Hill

Lloyd V. Hackley
President of NC Community College System
Raleigh

Secretary Garland Garrett
Department of Transportation
Raleigh

Secretary David Bruton
Department of Human Resources
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Secretary Jonathan Howes
Dept. of Environment Health & Natural Resources
Raleigh

Secretary Norris Tolson
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Department of Cultural Resources
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Honorable Ella Scarborough
President of NC League of Municipalities
Charlotte

Marvin Dorman
State Budget Officer
Raleigh

Honorable Billy R. King
President of NC Association of County Commissioners
Fayetteville

Jane Patterson
Governor's Senior Policy Advisor
Raleigh

Wayne McDevitt
Governor's Senior Advisor
Raleigh

Billy Ray Hall
Director of NC Disaster Recovery Center
Raleigh

Action Team Chairs

Agriculture & Natural Resources	**Graham Boyd** Director Governor's Advisory Committee on Agriculture, Forestry, and Seafood Office of the Governor
Business Development & Employment	**Walt Plosila** Executive Director NC Alliance for Competitive Technologies
Coastal	**Roger Schecter** Director Division of Coastal Management Department of Environment, Health and Natural Resources
Community Facilities	**Bill McNeil** Director Division of Community Assistance Department of Commerce
Housing	**Robert Kucab, Chair** Executive Director Housing Finance Agency
Human Resources	**Kevin FitzGerald** Director Division of Social Services Department of Human Resources
Public Health & Environment	**Linda Sewall** Director Division of Environment Department of Environment, Health and Natural Resources

North Carolina Disaster Recovery Center

Director	**Billy Ray Hall**
Executive Assistant	**Libby Haggerty**
Policy Analyst	**David Sullivan**
Policy Analyst	**Kathleen Carley**
Director of Communications	**Vickie Wright**
Emergency Management Representative	**Gavin Smith**
Consultant	**Skip Green**
Administrative Assistant	**Stacey Starkey**

INTRODUCTION

North Carolina sustained five presidentially declared disasters within a twelve month period: Hurricane Opal in October 1995, two winter storms in January and February 1996, Hurricane Bertha in July 1996, and Hurricane Fran in September 1996. Ninety-one out of North Carolina's one hundred counties were impacted by one or more of the disasters.

The overall impact of these disasters has caused great financial, social, and economic hardship on North Carolina's citizens, communities and natural resources. Many of the hardest hit communities were already facing hardships before these storms hit.

Recognizing the sheer magnitude of the recovery effort, Governor James B. Hunt, Jr. issued Executive Order 104 on October 10, 1996, establishing the North Carolina Disaster Recovery Task Force. Under the leadership of Lieutenant Governor Dennis Wicker, the Task Force has been charged to facilitate an efficient and effective intergovernmental response to the disasters, maximize federal and state resources, and set forth a comprehensive set of recommendations to ensure North Carolina's recovery.

Section I of this report provides an overview of the five presidentially declared disasters.

Section II of this report highlights the tremendous response to Hurricane Fran by private, local, state and federal agencies.

Section III of this report summarizes the work of the Task Force over the past several months.

Section IV of this report contains the 84 recommendations set forth by the Task Force.

The recommendations are separated into to three categories: *Coordination and Communication*, *Hazard Reduction*, and *Resource Needs.*

Under *Coordination and Communication*, the Task Force recommends actions to improve coordination and communication across multi-jurisdictional boundaries. Under *Hazard Reduction*, the Task Force recommends actions that will make communities and individuals less susceptible to future disasters. And finally, under *Resource Needs*, the Task Force recommends the modification of existing funding sources or the identification of new sources of funding, and the hiring of necessary personnel to prepare, respond and recover from future disasters.

The implementation of the recommendations contained in this report will not only aid the state's recovery, but will also strengthen the state's ability to respond to and recover from future disasters while reducing state's vulnerability to the next storm.

Section V of this report summarizes the current estimate of unmet needs left in the wake of Hurricane Fran.

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- Appendix B Supplemental Funding
- Appendix C Hazard Mitigation Grant Program
- Appendix D Action Team Members

Section I

Natural Disasters In North Carolina

I. NATURAL DISASTERS IN NORTH CAROLINA

In a twelve month period, North Carolina suffered damages from five presidentially declared natural disasters. Hurricane Opal, which hit in October of 1995, was followed by two ice storms in January of 1996. Shortly thereafter, Hurricanes Bertha and Fran struck the coast in July and September, respectively. Of North Carolina's 100 counties, 91 were presidentially declared for disaster assistance.

Hurricane Fran, a category three hurricane, struck the coast on September 5th, causing widespread damages. The coastal area was left particularly vulnerable due to heavy dune erosion following Hurricane Bertha, which followed a similar storm track. In the days prior to Hurricane Fran, inland communities, including those in the western part of the state, had received significant rainfall amounts. As a result, the ground was saturated, and unable to absorb the rains that followed. Flash flooding in the mountains, riverine flooding in the piedmont and down east, and a coastal storm surge of up to twelve feet took a heavy toll on residences, businesses, agriculture, and the public sector. High winds caused heavy timber losses and secondary damages to structures.

Over 40,000 homes were destroyed. Damages to public facilities are currently estimated at over 1 billion dollars. The agriculture industry sustained losses of over 700 million dollars. Estimated forestry losses equal over 1.3 billion dollars. Businesses in North Carolina sustained over $50 million in damages. Nearly 1.8 million citizens lost power during the storm, which was the largest disaster-related power outage in history.

While Hurricane Fran proved to be the most destructive storm to ever strike North Carolina, it could have been much worse. Hurricane Fran, was a minimal category three storm on the Saffir-Simpson Scale, which measures hurricane intensity on a scale of 1 to 5. By comparison, Hurricane Andrew, which struck South Florida in 1992, was a category five storm. North Carolina is especially vulnerable to hurricanes, including those of higher magnitude. Of all major hurricanes, defined as Category Three or higher, North Carolina ranks fourth among all states in terms of the number of times it has been hit.

For North Carolinians, Hurricane Hazel, which struck the coast in 1954, was the previous benchmark from which all storms were measured. Since that time, North Carolina has experienced rapid growth along the coast and in other flood-prone areas. Thus, the State's recovery following Hurricanes Bertha and Fran should be viewed as an important window of opportunity for advocating measures that will help North Carolina better prepare for the next storm.

Section II

Response to Hurricane Fran

II. RESPONSE TO HURRICANE FRAN

With the aid of state, federal and local governments, as well as public and private groups, North Carolina was able to restore power and phone lines, clear roadways, and supply its citizens with food, water, ice, and shelter. Following Hurricane Fran, over 1.8 million customers were left without power. With the assistance of almost 7,000 personnel from surrounding states, utility companies were able to restore 96% of the power within eight days. The North Carolina National Guard and Department of Transportation employees set up a "tent city" at the State Fairgrounds, creating a central personnel distribution point to aid in the response effort. Public and private agencies also responded by organizing networks of volunteers who distributed donated items, cleared debris, and filled other unmet needs throughout the disaster area.

Three days before the storm made landfall, the State Emergency Operations Center was activated under the leadership of Billy Ray Cameron, Director of the Division of Emergency Management, and the State Emergency Response Team Leader. During the response phase, Richard Moore, Secretary of Crime Control and Public Safety, carried out the duties of liaison between the Governor's Office and the State Emergency Response Team.

On September 6, 1996, one day after the storm, Federal Emergency Management Agency (FEMA) Director James L. Witt visited the state, and ordered the deployment of additional FEMA personnel. President Clinton, responding to a request by Governor Hunt, issued a major disaster declaration for the state. This declaration authorized immediate direct federal assistance to affected municipalities. In the following weeks, a total of 58 counties were declared eligible for Hazard Mitigation assistance, 55 counties were designated eligible for Public Assistance, and 54 counties were designated for Individual Assistance. State and Federal agencies reached out to citizens and communities in an effort to identify those in need of assistance.

The number of downed and damaged trees prompted the Governor to enlist the aid of the Corps of Engineers in an effort that was to become known as the "Tree-Off Program". Close to 10,579 applications were submitted for review, with over 4,000 sites approved for tree removal. This unprecedented tree removal program was a beneficial addition to the State's emergency response efforts. The Corps of Engineers, with the aid of private contractors, were also instrumental in assisting with the debris removal efforts. In addition, inmates, made available by Governor Hunt, began assisting Department of Transportation personnel clear the 6,401,354 cubic yards of debris.

FEMA and the Division of Emergency Management's Hazard Mitigation Section, initiated several collaborative efforts to make North Carolinians less susceptible to future disasters. Following Hazard Mitigation Grant Program briefings, Emergency Management staff targeted potential Hazard Mitigation Grant Program projects, and assisted local governments with the application process. FEMA and Emergency

Management's National Flood Insurance Program staff conducted floodplain management workshops, provided technical assistance to those interested in initiating sound floodplain management practice, and encouraged non-participating communities to join the National Flood Insurance Program.

While the State and FEMA worked exceptionally hard to assist all North Carolinians impacted by Hurricane Fran, a storm of this magnitude requires a level of coordination and the mobilization of resources beyond that which is immediately available. As a result, Governor Hunt signed Executive Order 104, establishing the North Carolina Disaster Recovery Task Force, the Disaster Recovery Center, and Action Teams, to maximize all available resources, identify recommendations to help expedite North Carolina's recovery, and to enhance the State's ability to respond and recover from future disasters.

Section III

Overview of Disaster Recovery Task Force

III. OVERVIEW OF THE DISASTER RECOVERY TASK FORCE

Following Hurricane Fran, Governor Hunt commissioned a task force to address the state's long-term recovery process. The scale of Fran's destruction necessitated a coordinated means to assist in this endeavor. The Disaster Recovery Task Force and the Disaster Recovery Center moved quickly to facilitate an effective intergovernmental response to the Hurricane Fran recovery effort. Specific tasks included:

Federal Briefing

On October 31, 1996, The Task Force hosted a Federal Briefing Meeting in Raleigh. The purpose of the meeting was to bring together the federal agencies involved in the disaster response and recovery effort to promote the coordination of the available federal assistance.

Congressional Briefing

A Congressional briefing was held on November 19 in Washington, DC. The North Carolina Congressional delegation and their staff were fully briefed on the work of the Governor's Task Force and the Division of Emergency Management. The delegation gave a general commitment to assist with Fran recovery efforts.

Extension of Filing Deadline for Federal and State Disaster Assistance

Concerned about the low number of applications for federal assistance received from minorities, the elderly, small businesses, non-profits, Native Americans, and rural populations, the Disaster Recovery Center filed a formal request with the Federal Emergency Management Association (FEMA) on November 14 to extend the deadline beyond December 4. FEMA granted the request by extending the deadline to January 4, 1997. Subsequently, the deadline was further extended until February 4, 1997.

Outreach to Individuals and Nonprofits

Once the deadline was extended, the Task Force quickly moved to organize a state-wide outreach effort. In December, public service announcements were released throughout the state to notify individuals and small businesses of the new deadline for submitting applications. In addition, The Task Force identified 31 counties that were heavily impacted by Hurricane Fran, but had an unusually low number of applications submitted for state and federal assistance. Community leaders and agencies in these counties received a letter from Governor Hunt asking them to identify constituents with unmet needs and to encourage these individuals to apply for assistance. Within these 31 counties, 19 counties were targeted for a more extensive outreach effort.

A narrowly defined set of public nonprofits who sustained damages from presidentially-declared disasters are eligible for FEMA Public Assistance programs. By the end of November, fewer than 100 non-profits had applied to FEMA. In December, The Task Force sent out a letter to more than 1,100 non-profits encouraging those that had disaster-related damages and were eligible for FEMA assistance, to send in applications as soon as possible.

Outreach to Local Governments

The Task Force held five regional meetings throughout the state to inform local governments of the wide array of disaster assistance programs available to them and their constituents. In all, 21 state and federal programs were presented. The meetings also provided local officials with the opportunity to discuss their community's recovery needs with relevant agency representatives. (See Appendix A for a more detailed summary of the Task Force's outreach efforts.)

Over the past several months, the Task Force worked to maximize the resources needed to fund the recovery effort. These efforts included:

Supplemental Appropriation

In September 1996, North Carolina's Congressional delegation joined four other states and Puerto Rico in securing $390 million in additional resources. The Task Force monitored the supplemental funds over the past several months. To date, approximately $175 million of the supplemental appropriation has been obligated to North Carolina. (A breakdown of the programs funded under the supplemental appropriation can be found in Appendix B.)

Federal Reimbursement Rate Increased to 90%

The federal government typically reimburses states for 75% of disaster-related expenses. If disaster-related expenses exceed $64.00 per person, the federal reimbursement rate can be increased up to as much as 90%. The Task Force joined Governor Hunt in his request to the Federal Emergency Management Agency to reimburse North Carolina at the 90% rate. In December, the request was granted.

Setting Hazard Mitigation Grant Program Priorities

The Hazard Mitigation Grant Program (HMGP) provides grants to local governments, state agencies, non-profits, and businesses to assist with the cost of projects that help reduce the impact of future disasters. These grants can fund projects such as acquiring properties in a floodplain, elevating

homes, and floodproofing public facilities. The HMGP funds available to North Carolina are expected to be well over $60 million ($80 million with a 25% match from the state). To ensure that these funds are spent in accordance with local needs, the Division of Emergency Management developed draft priorities for presentation to the Task Force. (See Appendix C for a more detailed description of the Hazard Mitigation Grant Program and for a list of the priorities.)

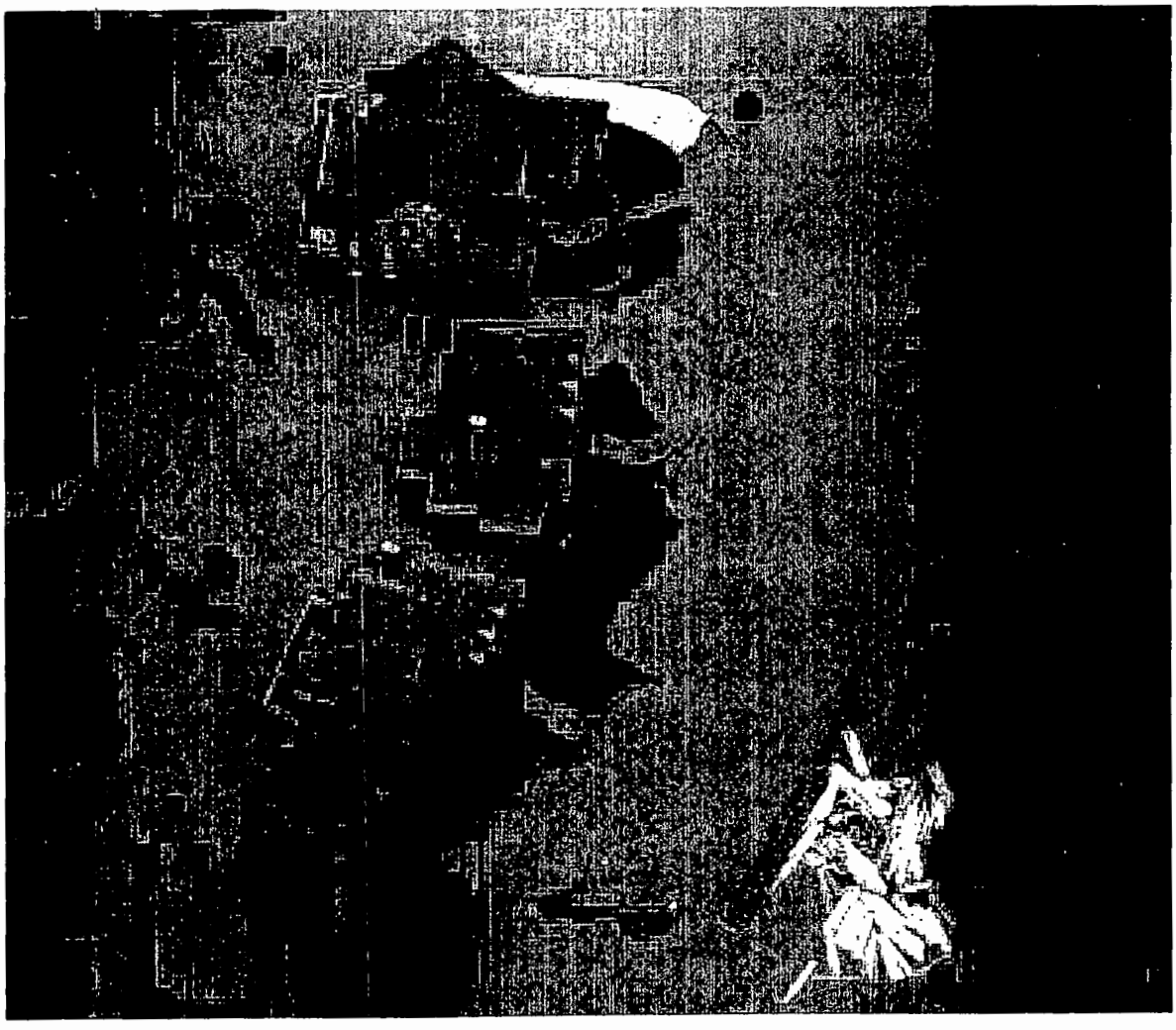
Framing Recommendations

The most far-reaching effort of the Task Force is the setting forth of a comprehensive set of recommendations to ensure North Carolina's recovery from the five presidentially declared disasters. These recommendations can be found in the following section. First, however, it is important to note how these recommendations were developed.

The Disaster Recovery Task Force is comprised of twenty three members selected by the Governor. Seven issue-based Action Teams report directly to the task force (See Appendix D for list of Action Team members). The Action Teams include:

Agriculture and Natural Resources
Business Development and Employment
Coastal
Community Facilities
Housing
Human Resources
Public Health and the Environment

On November 25, 1996, the Action Teams presented their preliminary reports to the Task Force, detailing the overall impact of the disasters on their substantive areas and proposing draft recommendations. The recommendations were further refined, and in January, 1997, the Action Teams presented their recommendations at three public meetings around the state. The final set of recommendations, 84 in total, are presented in the following section.



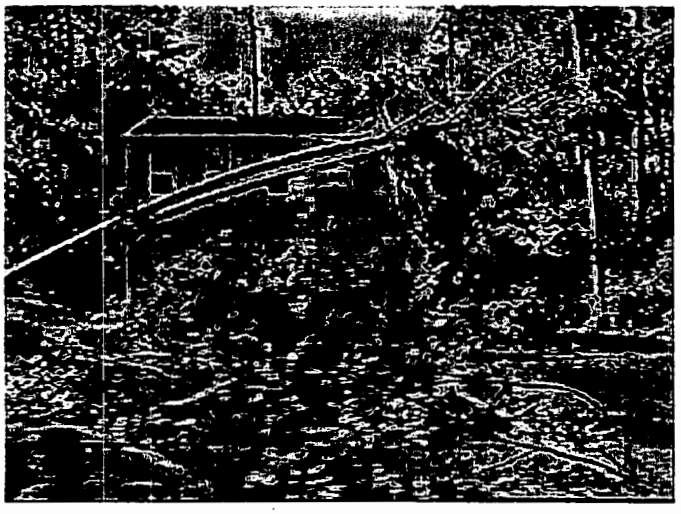
Section IV
Recommendations

IV. RECOMMENDATIONS

The recommendations outlined in this report serve to help North Carolinians recover from an event unprecedented in the state's history. Hurricane Fran necessitated a massive response effort, and will continue to place heavy demands on those responsible for the long-term recovery and redevelopment process for years to come. The following recommendations are meant to improve the existing capacity of individuals, municipalities, the private sector, and state government recover from the widespread impacts caused by Hurricane Fran, while enhancing future response efforts and reducing the impacts of future disasters. The Governor's Task Force has developed 84 recommendations. Upon review, the recommendations can be categorized into three primary headings; Coordination and Communication, Hazard Reduction, and Resource Needs. Subheadings are used to further classify recommendations that fall within each primary heading.

Coordination and Communication

A disaster is a situation in which individuals and organizations are required to respond to events that require more information, personnel, and resources than are immediately available. In the case of Hurricane Fran, the ability to coordinate and communicate across multi-jurisdictional boundaries was hindered by the sheer magnitude of the disaster. The Task Force has identified four specific areas that will improve communication and coordination. They include: Streamlining Policies and Procedures, Outreach, Education and Training, and Data Acquisition and Research.



Streamlining Policies and Procedures

Streamlining policies and procedures involves improving existing processes and policies or developing new measures to more effectively address necessary disaster-related objectives.

ISSUE: Refine Response For Future Disasters Impacting the Coast

Recommendation 1: Design and hold comprehensive response and recovery debriefing meetings following a federally declared disaster in order to improve interagency cooperation, support and effectiveness.

Statement: A comprehensive and well developed series of coastal"debriefing" meetings should be scheduled and coordinated by local, state and federal emergency response agencies. The results should be broadly distributed to agency personnel and local government officials. The meetings should become an integral part of updating and revising response and recovery procedures, policies and plans. Meetings should include discussions on mitigation strategies and opportunities. Joint meetings should also be carried out at the local, county, and regional levels.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of the Division of Coastal Management.

Estimated Cost: Agency administrative costs.

Timing: Spring, 1997.

Expected Impacts: Improvements in disaster response, inter-organizational coordination, recovery procedures, and local mitigation plans along the coast.

ISSUE: Human Resource Agencies Debriefing Sessions

Recommendation 2:

a. **Conduct a Department of Human Resources Debriefing that includes an individual assessment of each agency's division and relevant stakeholders. The findings from the Emergency Response Team debriefing and review should be used to design improved human resources response and recovery plans.**

b. **Review other state emergency response plans and evaluation processes. Incorporate review findings into the Human Resources review design. Implement new and improved procedures within areas of responsibility, or promote legislation or administrative rulemaking where essential to affect new laws or policies or to provide essential state appropriations.**

c. **Evaluate the utility of plans and operating agreements that were in place at the time of the storm, and indicate strengths and weaknesses in the response effort. In addition, develop and disseminate a list of best practices among participating agencies. Conduct an assessment with federal representatives to seek federal approval address for major expenses during emergencies that are not currently covered. Among the most pressing concerns are overtime costs incurred during the operation of the Disaster Food Stamp program, and other excessive state and local administrative costs for emergency operations.**

Statement: The implementation of a series of comprehensive debriefing meetings will enhance interagency cooperation, support, and effectiveness during response and recovery.

Implementation

Responsible Agency: North Carolina Department of Human Resources (lead agency), with the support of public and private human services agencies and the Division of Emergency Management.

Estimated Costs: Agency administrative costs.

Timing: Spring, 1997.

Expected Impact: Improved interagency cooperation and strategic planning for disaster response, recovery and redevelopment efforts.

ISSUE: Passage of the Southern Regional Emergency Management Compact

<u>Recommendation 3</u> : The Southern Regional Emergency Management Compact should be passed by the North Carolina General Assembly.

Statement: The Southern Regional Emergency Compact, enacted by the Southern Governor's Association in 1993, provides inter-state mutual assistance for states impacted by natural or man-made disasters. Under the compact, mutual assistance may include the provision of law enforcement and fire protection services, National Guard personnel, emergency medical and search and rescue teams, and building inspectors. Although the compact has been endorsed by Governor Hunt, the compact has not been ratified by the North Carolina legislature.

Implementation

Responsible Agency: The North Carolina General Assembly.

Estimated Cost: No Additional state appropriations.

Timing: The passage of the mutual aid compact early in the General Session of the Legislature would be ideal in order to allow time to finalize standard operating procedures prior to the upcoming hurricane season.

Expected Impact: An improved capacity to quickly mobilize disaster assistance-related resources from nearby states when necessary.

ISSUE: Statewide Local Mutual Aid Agreement

Recommendation 4: A state-wide agreement outlining consistent procedures and policies regarding the delivery of local mutual aid should be established. Once established, local governments should adopt the agreement.

Statement: Presently there exists no uniform agreement among North Carolina's cities and counties to provide assistance to one another during and after a disaster. Without pre-established policies and procedures that address logistics, deployment, compensation, and liability issues, intra-state cooperation is limited and inefficient.

Implementation

Responsible Agencies: The N.C. League of Municipalities and the N.C. Association of County Commissioners (lead agency), with the support of the Institute of Government, Division of Emergency Management, and Department of Public Instruction.

Estimated Cost: Agency administrative costs.

Timing: By January 1998.

Expected Impact: More effective and efficient mobilization of existing municipal and County resources.

ISSUE: Inconsistent Damage Assessment Methodologies

Recommendation 5: Consistent damage assessment methodologies should be developed which reflect the different criteria used by Division of Emergency Management and Division of Coastal Management in calculating structural damage assessments. This process should be formalized and the software made available to all local building officials prior to the upcoming hurricane season.

Statement: Accurately assessing the degree of damage to structures after a storm is very important to property owners, Division of Emergency Management, FEMA and DCM. Differing guidelines caused some confusion among those local building inspectors involved in making substantial damage determinations. The damage assessment report prepared under FEMA's National Flood Insurance Program guidelines differs from that which is used by Division of Coastal Management. Therefore, one damage assessment method may determine that a building is substantially damaged, whereas another may not. This discrepancy could mean the difference between allowing an individual to repair and/or rebuild, or denying the permit. Division of Emergency Management and Division of Coastal Management are in the process of adopting a uniform damage assessment tool.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of Division of Coastal Management and Federal Emergency Management Agency.

Estimated Costs: Agency administrative costs associated with software testing and development.

Timing: Initiated during the recovery from Hurricane Fran, Spring, 1997.

Expected Impacts: Significant improvements in the coordination, efficiency, and accuracy of damage assessments.

ISSUE: Improved Damage Reporting Process for Public Facilities

Recommendation 6: Organizations whose responsibilities include the management of community facilities (e.g. wastewater treatment plants, utilities, non-profits, dams, etc.) should be provided with special reporting forms for quick reporting of problems.

Statement: As a result of Hurricanes Bertha and Fran, many public facilities were damaged or left without power. Assessing the location of the compromised facilities took an inordinate amount of time. Reducing the length of time required to perform damage assessments would allow for quicker repairs. Towns could fax or send information directly to Raleigh to expedite the recovery process.

Implementation

Responsible Agency: Department of Environment, Health and Natural Resources with the assistance of Division of Emergency Management, and other relevant organizations and state agencies.

Estimated Cost: Agency Administrative Costs.

Timing: January 1, 1998.

Expected Impacts: Improved reporting of damaged public facilities following storms.

ISSUE: Loss of Beach Sand On Barrier Islands During Debris Removal

Recommendation 7: Removal of debris from barrier islands should be done in a manner which leaves sand in place for use on the beaches. Contractual and cost recovery provisions should be developed accordingly.

Statement: Debris removal on barrier islands should be carried out in a manner which removes debris but leaves valuable sand in place. The initial response effort was not sensitive to the significant problems associated with the removal of sand. Primary problems included the way coastal debris removal contracts were worded, and the manner of assessing the additional costs associated with the use of special equipment and sifting procedures. Sand is a limited resource on barrier islands and must remain available for beach pushing and emergency berm establishment immediately after a coastal storm. Sand sources such as stockpiles, suitable navigation channel maintenance sand, and spoil island sand should be set aside to be used for berm creation and beach renourishment when necessary. Provisions should be made and institutionalized so they are in place for the next storm.

Implementation

Responsible Agency: Federal Emergency Management Agency (lead agency), with the support of Division of Coastal Management and Division of Emergency Management.

Estimated Cost: Agency administrative costs.

Timing: Initiated during the recovery from Hurricane Fran, Spring, 1997.

Expected Impacts: Procedural clarification of the coastal debris removal processes and the increased stockpiling of sand for berm construction.

ISSUE: Availability Of Sand For Berm Construction

Recommendation 8: Damage assessments should reflect the limited availability of sand on the oceanfront.

Statement: The funding and design of "5-year emergency berms" needs to be revised based on the limited availability of sand on the oceanfront following a storm and the rules of the Division of Coastal Management (DCM). Improved coordination is required among various agencies to conduct damage assessments which reflect the costs of procuring alternative sand sources and identifying necessary berm locations. Damage assessments were redone to reflect these unique circumstances. In order to avert this problem in the future, the setting aside of suitable sand sources for berm establishment and beach nourishment should be considered a top priority. These actions should be formalized and become institutionalized as standard operating procedure during recovery operations.

Implementation

Responsible Agency: Federal Emergency Management Agency (lead agency),with the support of Division of Coastal Management, and Division of Emergency Management.

Estimated Cost: Agency administrative costs. Long-term cost savings to local governments.

Timing: Initiated during recovery; completed by Spring, 1997.

Expected Impacts: Improved procedures regarding the eligibility of sand sources for berm construction.

ISSUE: Post Disaster Solid Waste Disposal Plan

Recommendation 9: Department of Environment, Health and Natural Resources should create a post disaster debris plan that includes:

- Exploring commercial contracts to sell or dispose of firewood, mulch and chips generated by debris disposal.
- Developing contingency plans.
- Identifying debris staging and disposal sites for both construction and timber debris.
- Devising a plan for the collection of food wastes for proper disposal.

Statement: Large volumes of construction, vegetative (tree), and food debris are generated by natural disasters. After the immediate removal of trees and structural debris impacting roads, power lines, and public safety, debris management becomes a serious long term problem. Improved planning is needed to maximize the beneficial use of the debris and to minimize the adverse impacts on air quality from burning and the reduction of existing landfill capacity associated with burial. Beneficial uses including the use of wood for firewood, mulch, compost, or boiler fuel should be sought. During and immediately following emergency situations, unusually large volumes of spoiled food accumulated from failed freezers and refrigerators. It is important that this waste food be collected and disposed of promptly and properly to avoid creating breeding grounds for insects and rodents.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources (lead agency), with the support of State Purchasing and Contract, and County Commissioners.

Estimated Cost: Estimate not available.

Timing: January 1, 1998.

Expected Impacts: Improved organizational capacity to manage debris removal following a disaster.

ISSUE: Provision of Water Services Following A Disaster

Recommendation 10: A policy should be developed to address the provision of water to areas where sewer service has not been restored.

Statement: In most areas water systems were back in operation quickly. Those areas where water was restored did not always have sewer services due to power outages and system damage. This leads to sewage backups into homes and the discharge of untreated wastes into adjacent waterways.

Implementation

Responsible Agency: Department of Environment, Health and Natural Resources, and Local Health Departments.

Estimated Cost: Agency Administrative Costs.

Timing: Policy development by July 1, 1997.

Expected Impact: Improved water supply services following severe storms.

ISSUE: Analysis of Contaminated Wells

Recommendation 11: Existing laboratories at the Shellfish Sanitation Section's laboratories in Manteo, Wilmington, and Moorehead City should be used to conduct bacteriological analysis of drinking water samples collected by local health departments following storm events. (PH-3d)

Statement: Many privately owned wells were contaminated by flooding and back flows caused by power outages. Water samples necessary to confirm that this contamination had been corrected overwhelmed existing laboratory capacities in some eastern counties.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, and Local Health Departments.

Estimated Costs: Shellfish sanitation laboratory support can be done with existing staff.

Timing: Utilization of the shellfish sanitation laboratories for emergency drinking water testing can begin immediately.

Estimated Impact: Increased capability to test contaminated wells.

ISSUE: Policy Guidance for Disaster Food Stamps Program

<u>Recommendation 12</u>: Debriefing sessions should be conducted with United States Department of Agriculture (USDA) representatives to assess strengths and weaknesses of the Disaster Food Stamps Program and to reach consensus on modifications in policies and procedures designed to improve the future implementation of this program. Incorporate the current state plan for Disaster Food Stamps should be incorporated into a separate procedures and policy manual using the revised USDA handbook as a guide.

Statement: Counties need clearer policy guidance in Disaster Food Stamps application procedures. Counties were overwhelmed by large crowds which caused long waiting periods for applicants. Many county social services departments recruited volunteers in a hurried fashion to meet the demands. Very few counties were able to train volunteers adequately in the administration of the application process.

Implementation

Responsible Agency: The NC Department of Human Resources and Division of Social Services.

Estimated Costs: Agency administrative costs.

Timing: Spring, 1997.

Expected Impact: Improved policies and procedures that will assist in the administration of the Disaster Food Stamps Program during future disasters.

ISSUE: Stand-by Power

<u>Recommendation 13</u>: The Division of Emergency Management and utility companies should work together to prioritize the delivery of stand-by power to those most in need.

Statement: Emergency generators are one of the measures most requested by local governments at public meetings on disaster assistance. Municipalities, in particular, are acutely aware of health and safety issues related to stand-by power for health care facilities, rest homes, emergency shelters, 911 centers, and wastewater and water treatment plants. Additionally, tobacco, one of the state's largest agricultural crops, was significantly impacted when tens of thousands of pounds of the flue-cured tobacco had to be destroyed because of power outages. The Division of Emergency Management does provide generators to local governments during disasters. However, during Hurricane Fran, the requests for stand-by power far exceeded the state's supply.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of utility companies.

Estimated Cost: Agency administrative costs.

Timing: Prior to the arrival of the 1997 hurricane season.

Expected Impact: An improved capacity to provide temporary power to critical facilities during a disaster.

ISSUE: Improve Federal Emergency Conservation Program Inspection Process.

Recommendation 14: Improve the review and inspection process of the Federal Emergency Conservation Program (ECP) to allow for more discretion by the county executive director following natural disasters.

Statement: The Emergency Conservation Program provides financial assistance to farmers as they attempt to restore damaged cropland. The availability of these funds must be timely in order to allow farmers to repair damaged farmland and avoid further loss of productivity. Current procedures require that county offices must perform site inspections on all ECP applications, which dramatically slows the processing of applications. In some cases, it takes approximately six to ten months for payments to be processed after an application has been submitted. Given the limited manpower of the Federal Farm Services Agency (FSA), it is not possible to inspect every field in the wake of a major storm. Regulations should require site inspections of a statistically significant sample of applications in order to prevent fraudulent claims without overwhelming available personnel. Additionally, farmers could be required to submit photographs to verify damages and repairs. Aerial photography could be used to further validate storm-related impacts.

Implementation

Responsible Agencies: Farm Service Agency (lead agency) of the USDA.

Estimated Cost: Administrative costs associated with the review and inspection process.

Timing: Appropriate policy changes should be made by Fall 1997.

Expected Impact: Improved identification of eligible Emergency Conservation Program projects. Improved ability of farmers to restore damaged cropland.

ISSUE: Automate Information Flow in the State Emergency Operations Center

Recommendation 15: The information flow at the State Emergency Operations Center shoudl be computerized.

Statement: During the immediate response to Hurricane Fran, over 3,000 messages were generated in the State Emergency Operations Center (EOC). These messages are the means by which State Emergency Response Team (SERT) leaders communicate resource requests, status updates, situation reports, etc. These messages are handwritten on a four-part emergency operations message form. In addition to the message form, additional copies of each message were produced for distribution to SERT members. The EOC paper consumption for Fran exceeded 30,000 pages. This does not include the messages generated by the area offices. Paper consumption for other activations and exercises is proportional to the size of the event. Reliance on an antiquated "paper environment" is inefficient, inaccurate and costly. Computerizing the EOC information flow entails providing a laptop computer to the SERT Leader, Assistant SERT Leader, Message Officer, Area Liaison, Resource Manager, Mission Assignment Coordinator and each of the common functions personnel.

Implementation

Responsible Agency: Division of Emergency Management.

Estimated Cost: $70,000 for 24 laptops, including networking software, cables and licenses.

Timing: Calendar Year 1997.

Expected Impact: Better information input and dissemination during disaster response.

ISSUE: Assessment of Emergency Management at the Local Level

Recommendation 16: County governments, in concert with local emergency managers, Division of Emergency Management and the Emergency Management Association, should carry out a coordinated assessment of local emergency response capabilities and resources.

Statement: The first response to all disasters, both small-scale and presidentially declared, is at the local level. Thus, the ability of local communities to mobilize resources before and after a disaster is crucial. Local emergency managers are beginning to assess current disaster policies, procedures, and resources and develop recommendations that would enhance disaster response at the local level. Recommendations for improving local emergency response efforts should be made to the Department of Crime Control and Public Safety.

Implementation

Responsible Agencies: County Governments, Division of Emergency Management and the Emergency Management Association should convene a working group to carry out the assessment.

Estimated Cost: Agency administrative costs.

Timing: As soon as possible.

Expected Impacts: Improved disaster response at the local level.

ISSUE: Development of a State Disaster Economic Recovery Planning Program

Recommendation 17: Develop and implement an ongoing State Disaster Economic Recovery Planning Program.

Statement: A comprehensive State Disaster Economic Recovery Program should be developed that identifies economic recovery needs resulting from current and future disasters, designates a lead state agency to implement the economic response to Hurricane Fran and future disasters, lists participating agencies, describes disaster recovery and hazard reduction programs, defines organizational responsibilities, and maintains current funding levels for program resources. It will serve as the "statewide" economic recovery model for local and regional disaster recovery plans to build upon. Local and regional plans should contain a minimum set of economic recovery need criteria to be evaluated. The state's economic recovery program should play a major role in the design of local and regional economic disaster recovery plans.

Implementation

Responsible Agencies: Division of Emergency Management (lead agency), with the support of North Carolina Disaster Recovery Center, North Carolina Department of Administration, North Carolina Department of Commerce and North Carolina Department of Agriculture.

Estimated Cost: $160,000 per year.

Timing: Winter, 1997.

Expected Impacts: Establishment of an ongoing State Disaster Economic Recovery Program that will address both the immediate economic recovery needs resulting from hurricanes Fran and Bertha and future natural disasters.

ISSUE: Establish Procedures for Coordinating Information Among Housing Agencies and Organizations

Recommendation 18: Compile a list of best practices among the private and public sector which resulted in faster and more effective housing reconstruction. Prepare a written outreach plan that immediately uses local housing service providers (e.g., community action agencies) to contact households in need and inform them about available resources.

Statement: To enhance its disaster readiness, the state should begin to explore models for improving the manner in which data is collected and disseminated to those in need of disaster assistance information. The use of existing local housing and social service organization networks should be utilized to improve existing outreach efforts.

Implementation

Responsible Agencies: The Disaster Recovery Center and the Division of Emergency Management should coordinate the compilation and dissemination of best practices. The development of the outreach plan for data gathering should be organized by the Disaster Response Housing Committee.

Estimated Cost: Agency administrative costs.

Timing: To capitalize on the lessons learned during Bertha and Fran and avert similar problems following the next storm, both the best practices material and the action plan should be completed prior to the 1997 hurricane season.

Expected Impacts: The state will be able to use model initiatives, to more effectively prevent future property loss.

ISSUE: Documentation Of Division Of Coastal Management's Response To Disasters

<u>Recommendation 19</u>: Develop and distribute a "procedures and policy" manual clearly outlining contacts, rule interpretations, waivers, and the roles of federal, state and local agencies as they pertain to the recovery process following a disaster.

Statement: For coastal communities, the response after the storm by DCM was regarded with high marks. However, there were noted communication gaps across agencies and between agencies and local governments. Following Hurricane Fran, it proved difficult finding out what decisions had been made and what support was available. DCM's role in working with state and federal agencies was unclear to many local officials. Problems were resolved in an acceptable manner, but only after numerous phone calls were received from various communities seeking the same information. Thus there is a strong need for a "procedures and policy manual" which specifies the permits, fees, and conditions which can be waived or expedited following a disaster.

Implementation

Responsible Agency: Division of Coastal Management (lead agency), with the support of Division of Emergency Management.

Estimated Cost: Agency administrative costs.

Timing: Completed by July 1, 1997.

Expected Impacts: Improved procedures and communication during response and recovery operations.

ISSUE: Formation of Standing Disaster Recovery Working Group

Recommendation 20: The Division of Emergency Management should create a standing Hazard Mitigation and Recovery Working Group.

Statement: Following large-scale disasters such as Hurricanes Bertha and Fran, there exists a need to effectively coordinate across a range of state agencies, local governments, the private sector, and volunteer groups. The creation of a Hazard Mitigation and Recovery Working Group would serve to address this issue. The Working Group should include personnel from designated agencies, local governments, business and industry, and volunteers groups who would be tasked to facilitate information exchange and develop recommendations following a disaster. Prior to the upcoming hurricane season, the Mitigation and Recovery Working Group should be trained in issues such as the linkage between mitigation and redevelopment, and all phases of emergency management, including preparedness, response, mitigation, and recovery. Members should serve as liaisons between Division of Emergency Management, other state agencies, and the state legislature.

Implementation

Responsible Agency: Division of Emergency Management.

Estimated Cost: Administrative costs associated with state agency personnel involvement.

Timing: The Working Group should be created and convened prior to the 1997 hurricane season. The Working Group should be an ongoing entity.

Expected Impacts: Improved coordination as it relates to response and recovery following a presidentially declared disaster. The development of multi-hazard mitigation and recovery recommendations that improve the state's ability to respond to current and future disasters.

ISSUE: Intergovernmental Coordination Post Disaster

Recommendation 21: The Disaster Recovery Center should continue to assist with the implementation of the long-term recovery efforts and the coordination of the three Task Force meetings to be held in 1997.

Statement: Recognizing that the magnitude of the damages caused by five major disasters in 12 months exceeded the capacity of any one agency to manage, the Governor issued Executive Order 104 establishing a Disaster Recovery Task Force and Disaster Recovery Center to assist with coordinating the recovery effort. Some of the responsibilities of the Disaster Recovery Center in the recovery effort include:

- identifying the overall impact on housing, agriculture and natural resources, coastal areas, human resources, businesses and the economy, public health and the environment, and community facilities;
- expediting actions, as directed by the governor;
- facilitating communication between state and federal agencies;
- identifying and aggressively pursuing the resources needed to fund the recovery effort;
- briefing Congressional staff;
- informing local governments of the available disaster assistance programs; and
- organizing an outreach effort to individuals in highly impacted communities

Implementation

Responsible Agency: Lieutenant Governor's office.

Estimated Cost: Agency administrative costs.

Timing: Ongoing.

Expected Impacts: Improved inter-agency coordination and the development of Task Force recommendations.

Outreach

Outreach efforts involve publicizing important information that will help individuals, local governments, business, and state government better prepare, respond and recover from a disaster.

ISSUE: Planning for Special Needs Populations

Recommendation 22:

Planning for special needs population should include:

a. **Developing and outlining plans that would improve the definition and scope of Special Needs Shelters. Delineate responsibilities and authority to operate Special Needs Shelters. Training should include preparing staff to respond to special needs of disaster victims, especially disabled citizens. Establish a voluntary registration process for people with special medical or personal care needs. Transportation assistance should be provided if needed.**

b. **Requesting counties to designate specific facilities for special needs shelters and, if an evacuation is ordered, activate these facilities in conjunction with general public shelters. Provide information about evacuation plans, including the locations of special medical needs shelters.**

c. **Establishing waivers that would allow nursing homes and rest homes to provide shelter support to special needs facilities without violating licensing requirements on the number of beds, feeding requirements, etc.**

d. **Recommending that a separate toll-free number be established for TTY users and that all staff responsible for use of this equipment be adequately trained. Encourage television stations to provide open captions on evacuation routes, shelters, toll-free informational numbers, etc.**

e. **Conducting an assessment of financial requirements for Special Medical Needs Shelters, including the availability of Medicaid, Medicare, or other federal and state funding resources. Seek appropriations as needed to support operations of special needs shelters.**

Statement: There is a need to evaluate and improve guidelines for special needs shelter operations. Specific tasks include the identification of appropriate locations, providing necessary information and transportation assistance to those individuals who may use special needs shelters, and the modification of existing nursing home regulations to better serve individual needs during a disaster.

Implementation

Responsible Agency: NC Department of Human Resources (lead agency), with the support of Division of Social Services, Division of Emergency Management, Department of Public Instruction, and the Department of Insurance. A Special Needs Shelter Task Force, coordinated by the Division of Social Services, should continue to meet and review the special needs planning process.

Estimated Costs: Agency administrative costs.

Timing: Develop recommendations for legislation or rulemaking by Spring, 1997. Initial phases of a training plan for nursing homes, rest homes, etc. should begin July, 1997

Expected Impact: Improved mass care plans, which should include an improved means to identify and better communication with elderly and disabled citizens during future disasters.

ISSUE: Development of an Improved Communication Network Between Disaster Recovery Agencies and Business and Industry

Recommendation 23:

Improving communications should include:

a. **Developing a communication network should be developed to disseminate current and future economic disaster recovery information to business and industry. Immediate efforts including Public Service Announcements, flyers, brochures, and direct contact with firms should be made concerning the Small Business Administration's economic injury loan program (whose deadline is June 6, 1997) and information on disaster unemployment insurance and the disaster dislocated worker program.**

b. **Requiring state agencies to use business and industry participation in planning and mitigation efforts involving or impacting economic development.**

Statement: Business and industry, unlike local governments, non-profit organizations, and public agencies, traditionally do not maintain ongoing communication with multiple governmental agencies. Often the county economic developer is the business or industry's primary contact with a government agency. A defined network should be developed to ensure that business and industry (including small firms) have an opportunity to participate in economic recovery efforts involving the use of available resources as well as the planning and implementation of economic recovery plans and programs.

Implementation

Responsible Agencies: Division of Emergency Management (lead agency), with the support of Disaster Recovery Center, North Carolina Department of Commerce, North Carolina Department of Agriculture, North Carolina Department of Labor, and the Small Business Centers of the North Carolina Community Colleges.

Estimated Cost: Not known at this time.

Timing: Winter, 1997.

Expected Impacts: Establishment of a defined communication network for business and industry to receive current information on disaster economic recovery programs and private sector input into state sponsored disaster economic recovery planning and mitigation efforts. Preparation of Public Service Announcements, flyers, and direct communications to ensure

business and industry is aware of disaster economic recovery programs prior to and following a disaster.

ISSUE: Forest Recovery and Reforestation Efforts:

<u>Recommendation 24</u>: Significant outreach efforts must be made to provide technical assistance to forest owners and communities in order to reestablish damaged forests in an environmentally sound manner.

Statement: After salvaging as much of the downed and damaged timber as possible, reforestation of these areas must become a high priority if the sustainability of our forests are to be maintained. Areas that are not salvageable will need to be reestablished as a productive forest or require a more intensive reforestation effort. Individual landowners also lost significant timber related capital investments during Hurricane Fran. Although some will recoup their investment during the salvage efforts, many others will find their timber to be unsalvageable. Many landowners will find it financially difficult to expend significant resources in a reforestation of renovation effort. Communities and private landowners will need technical and financial assistance to identify trees that should be removed, determine proper tree care and maintenance procedures, and select appropriate tree replacement species. Thus, improved outreach efforts should involve the education and assistance of those involved in commercial and urban forest management. Such efforts will require funds and personnel beyond the current levels of the Division of Forest Resources (this recommendation is included in the Division of Forest Resources' five year plan).

Implementation

Responsible Agencies: NC Division of Forest Resources (lead agency), with the support of the North Carolina Cooperative Extension Service and the Community College System.

Estimated Cost: Administrative costs.

Timing: Reforestation efforts should begin during the Fall of 1997. Therefore, planning must begin prior to that time.

Expected Impacts: Improved and expedited reforestation of commercial forests and the urban landscape.

ISSUE: Provision of Intensive Outreach to Heavily Impacted Communities

Recommendations 25:

Outreach efforts should include:

a. **More focused and intensive outreach efforts are necessary to help local governments and nonprofit organizations identify their needs and design customized funding assistance programs to address those needs.**

b. **The clarification of FEMA's definition of eligible non-profits. Once there is clarification, the State's Hazard Mitigation Plan should be updated to include the identification of eligible private nonprofit organization/ agencies who should be notified of Public Assistance and Hazard Mitigation Programs following a major disaster declaration.**

Statement: Closely coordinated efforts among all federal, state and local parties are necessary for communities to recover from a disaster. Effective coordination improves the likelihood that citizens, non-profits, and local governments can maximize potential benefits from available federal funding sources (i.e., Hazard Mitigation Grant Program, Small Business Administration, Community Development Block Grant). State community outreach efforts should be initially targeted to the most heavily damaged areas. Not every community can be assisted in this intense manner. A careful and defensible method for selecting target counties is essential. Private non-profit organizations and some smaller units of local governments may need extra help to identify damages, and to apply for federal funding. Small local governments and private non-profits typically have limited staff, many of whom are volunteers or work part-time. Although public meetings have been held, participation levels have been low, despite multiple efforts to reach communities and groups who sustained serious damages.

Implementation

Responsible Agencies: Division of Emergency Management and Division of Community Assistance (lead agency), with the support of League of Municipalities and Council of Governments. Department of Human Resources will focus their outreach efforts on the non-profit community.

Estimated Cost: $10,000-15,000 for each targeted community. Total $150,000. Outreach to non-profits will involve additional administrative costs.

Timing: Initiate contacts with communities and technical assistance partners during February 1997. Complete community recovery strategies by May 31, 1997.

Expected Impacts: Once trained and experienced in this technique, state, regional and local staff will have improved capacity for similar efforts in the future.

ISSUE: Post Disaster Briefings

<u>Recommendation 26</u>: "Resources for Recovery" Meetings should be held in impacted areas two to four weeks after disaster events.

Statement: Once the immediate response efforts have been completed, including the provision of adequate shelter for displaced families, the clearing of road debris, and the restoration of utilities to homes and businesses, local governments and nonprofits need to be informed of the wide array of disaster assistance programs available to them and their constituents. Following Hurricane Fran, five "Resources for Recovery" briefing sessions were held around the state two months after the event. The meetings were set up so that federal and state agencies can present their programs to potential applicants and review eligibility requirements, deadlines, and other pertinent information. Attendees should then be given the opportunity to meet one-on-one with these agencies. These briefing sessions would have been far more effective if they were held 2-4 weeks after the event.

Implementation

Responsible Agencies: The Division of Emergency Management and the Disaster Recovery Center would be responsible for setting meeting dates and locations as well as arranging agencies attendees.

Estimated Cost: Agency administrative costs.

Timing: Two to four weeks after a declared disaster. Agencies expected should be identified by Division of Emergency Management and notified prior to the 1997 hurricane season.

Expected Impacts: Improved understanding of the resources available to communities, local governments, non-profits, and the private sector following a presidentially declared disaster.

ISSUE: Protection and Recovery of Local Government Records

Recommendation 27: Provide information to assist local governments protect and recover government records in the event of a natural disaster.

Statement: Local governments need the resources and knowledge to immediately recover and protect their records inventory in the event of a natural disaster. Local governments should have access to the appropriate information that enables them to minimize potential damage before a disaster strikes and respond appropriately following a storm event. The information should be accessible through the Internet and should include descriptions of the various recovery methods and possible vendors who could take immediate corrective action. Local governments should be encouraged to report records damage to the Archives and Records Section of the State Archives, Department of Cultural Resources and to request their guidance when necessary. Additionally, local governments should be encouraged to identify alternative storage locations in the event of anticipated flooding.

Implementation

Responsible Agencies: Archives and Records Section of the State Archives (lead agency), with the support of Department of Cultural Resources, and Division of Emergency Management.

Estimated Cost: Agency administrative costs.

Timing: Information should be available prior to the 1997 hurricane season.

Expected Impact: Reduced archival damages sustained during natural disasters, expedited local government recovery.

Education and Training

Education and training involves providing individuals with the information and skills necessary to more effectively fulfill their roles and responsibilities before, during, and after a disaster.

ISSUE: Community Disaster Education Program

Recommendation 28: Design and implement a statewide community disaster education program that can be implemented effectively at the local level.

Statement: There is a need for an ongoing community disaster education program that regularly provides information to the general public about emergency evacuation procedures, preparation for disasters, and general information about response and recovery resources. A disaster education program would also provide for special modes of communication during times of disaster when the normal means of information access through the media may be interrupted. Media organizations should participate in the design and implementation of the program. State and local public and private human services organizations should develop ways to implement an ongoing community disaster education program. Responsibility for coordinating this plan should involve the position referenced in *Recommendation # on Page #.* Special attention needs to be given to improving communication with Spanish speaking people, with persons considered illiterate, especially the hearing impaired, the homebound, and developmentally disabled persons.

Implementation

Responsible Agency: Division of Social Services (lead agency) with the support of Division of Emergency Management, County Emergency Management offices, Community Colleges, and Department of Public Instruction.

Estimated Costs: Agency administrative costs.

Timing: July 1, 1997.

Expected Impact: Improved communication with the general public about emergency evacuation procedures and resources that can be used to assist in the response and recovery effort.

ISSUE: Public Health Education and Natural Disasters

Recommendation 29: Institute a multi-media disaster communication planning program.

Statement: Keeping the public informed before, during, and after a disaster is a critical element of effective disaster response and recovery. Information about preparedness and recovery from emergencies must be provided to our citizens. Contingency plans for public communication should be developed using a variety of techniques:

- institutionalizing the use of E-mail and Internet before and during disaster recovery operations to establish/re-establish communication links;
- developing a statewide plan for television and radio broadcast of public health information at pre-arranged times following a disaster;
- incorporating public health disaster recovery information into school health and environmental education curriculum;
- disseminating public health information at grocery stores at the beginning of each hurricane season and when a major natural disaster is predicted; and distributing to the public key preparedness tips and public health emergency information via refrigerator magnets, key chains or similar devices.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, with the support of Division of Emergency Management.

Estimated Cost: Agency Administrative Costs.

Timing: January 1, 1998.

Expected Impacts: Improved public awareness and response capabilities among citizens during and after a disaster.

ISSUE: Disaster Response and Recovery Training for Public and Elected Officials

Recommendation 30: The Institute of Government should incorporate disaster preparedness, response, mitigation, and recovery training in its City and County Managers Conferences and in its Elected Officials Seminars.

Statement: Public and elected officials need to be briefed on local, state and federal agency responsibilities during and after disasters, thereby improving inter-governmental coordination and providing realistic expectations following a disaster.

Implementation

Responsible Agency: The Division of Emergency Management should work with the Institute of Government, League of Municipalities, Association of County Commissioners, and State Emergency Management Association.

Estimated Cost: Agency administrative costs.

Timing: As soon as possible.

Expected Impact: Better coordination and understanding of disaster response.

ISSUE: Health Impacts of Living in Flood Damaged Homes

<u>Recommendation 31</u>: Local building inspectors should be trained by local health departments to identify conditions that may cause public health concerns.

Statement: Flooded residences create an ideal setting for the growth of molds and bacteria. Some individuals who continue to live in their homes may face respiratory problems associated with this exposure. The Department of Environment, Health and Natural Resources has recognized that this problem may pose health hazards among the elderly, young children, and those individuals with reduced immune systems.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, with the assistance of Division of Emergency Management and local health departments.

Estimated Cost: Agency administrative costs.

Timing: Immediate.

Expected Impacts: Reduced threats to public health.

ISSUE: Improve Department of Human Resources Emergency Response Training Plan

Recommendation 32: The Department of Human Resources should incorporate changes into training curricula to develop and implement a plan for ongoing training of employees in order to better prepare them to carry out specific disaster response and recovery tasks.

Statement: Each agency with specific emergency response activities will assess current training strategies and develop a plan for ongoing training, exercises, etc. to maintain a well-prepared staff for emergency operations. Tasks will include:

a. Assessing current training strategies and develop a plan for exercises to maintain a well-prepared staff for emergency operations,

b. Providing guidance to local emergency management, Red Cross, social services departments, nursing homes, rest homes, hospitals, aging and other human resource agencies, and organizations, in improving emergency response and shelter plans.

Implementation

Responsible Agency: The NC Department of Human Resources (lead agency), with the support of Division of Emergency Management, American Red Cross, local councils on aging, county social services departments, area mental health programs, local emergency management coordinators, volunteer agencies, disability advocacy groups, nursing homes and rest homes, and Community Colleges.

Estimated Costs: Administrative Costs.

Timing: Develop training plans and begin initial phases by July 1, 1997.

Expected Impact: Staff trained and ready to respond promptly and effectively during disasters.

ISSUE: Enhanced Interagency Communications Among Public Health-Related Emergency Response Service providers

<u>Recommendation 33</u>: Establish an annual emergency response school for state and local public health and environment staff.

Statement: State and local public health and environmental protection staff responded effectively to Hurricane Fran as individual organizations. However, because normal channels of communication were disrupted by damage to infrastructure or shifts in work locations, coordinated actions were delayed or impeded.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources (lead agency), with the support of Division of Emergency Management.

Estimated Cost: Estimates unavailable.

Timing: January 1, 1998.

Expected Impacts: Improved provision of public health services to the public during and after natural disasters and emergencies.

ISSUE: Timber Management and Salvage Efforts

Recommendation 34: Educational and technical assistance efforts must be undertaken to ensure that owners of smaller forests are aware of good management practices following a disaster. Additionally, a comprehensive "hurricane recovery manual" for timber owners should be developed.

Statement: Many damaged trees will not be salvaged. Some are inaccessible to logging equipment, while many small woodlots (1-5 acres) cannot be salvaged because the value of the damaged timber will not offset the logging cost. Salvage efforts must include trees which are leaning as they lose their market value if they are not harvested before they attempt to right themselves. As a tree attempts to right itself, structural changes occur and "reaction wood" develops. Salvage of the leaning trees should occur within a year to avoid the loss of marketability. Downed trees, which have a good portion of their root ball intact, are salvageable for about six months. Landowners require technical advice from professional foresters and technicians to make sound decisions regarding salvageability and future management practices.

Implementation

Responsible Agencies: Division of Forest Resources (lead agency), with the support of the North Carolina Forestry Association, the North Carolina Cooperative Extension Service, and the North Carolina State University College of Forest Resources, Division of Emergency Management, Department of Public Instruction, and the Community College System.

Estimated Cost: Agency administrative costs.

Timing: Immediate.

Expected Impacts: Improved provision of technical assistance regarding the salvageability of damaged timber.

ISSUE: Farmer Preparedness for Natural Disasters

Recommendation 35: A manual to assist farmers in preparing for a natural disaster should be produced.

Statement: Many farmers found that they lack the equipment and knowledge to adequately protect their investments in the event of a natural disaster. Farmers should have access to the appropriate information that enables them to minimize potential damage before a disaster strikes and respond appropriately following a storm event. This information should be accessible through the Internet and should include information on the types of crop insurance available from the federal government and private insurers, including typical insurance coverages. The manual should also address insurance coverage for farm equipment and structures. Finally, the manual should include an inventory showing the resources available to farmers following a natural disaster. The inventory should include information regarding emergency labor resources, housing for labor, and the availability of generators.

Implementation

Responsible Agencies: Cooperative action by the Cooperative Extension Service (lead agency), the North Carolina Department of Agriculture, the Division of Emergency Management, various USDA agencies, private insurance companies, individual farmers and North Carolina Community College System.

Estimated Cost: Administrative costs associated with the creation of a disaster preparedness manual.

Timing: Manual should be distributed prior to the 1997 hurricane season.

Expected Impacts: Better informed farmers, who should be able to utilize the preparedness information when making decisions affected their land, crops, and buildings.

Data Acquisition and Research

Data acquisition and research involves collecting and centralizing information or conducting studies that will provide the background data to help citizens, local and state government officials, and emergency management personnel make sound decisions.

ISSUE: Complete Housing data collection and the damage assessment process

Recommendation 36: Continue to collect all available information on uninsured housing damage from cities, counties, regional organizations and insurance companies in order to improve the strategic use of limited state housing funds.

Statement: A comprehensive assessment of housing damage and its geographic distribution is not yet available. Once the data is collected, the state should focus on linking the damage assessment process to a framework for allocating limited state housing resources and the requesting for additional funding.

Implementation

Responsible Agencies: Division of Emergency Management, Federal Emergency Management Agency.

Estimated Cost: No additional cost.

Timing: First and second quarters 1997.

Expected Impacts: The state will have a better understanding of disaster-related housing problems, the strategies needed to address them, and the cost of repair or replacement.

ISSUE: Geographic Information System

Recommendation 37: Emergency Management should work with the State Planning Office, local governments and other agencies who possess GIS to obtain all available data that is relevant to emergency management and incorporate this data into the system. Conversely, all Emergency Management GIS data that may prove useful to local governments and state agencies should be provided as necessary.

Statement: The North Carolina Division of Emergency Management is proposing to develop a comprehensive Geographic Information System (GIS). This project involves collecting data from local, state, federal and private agencies. The Emergency Management GIS database will serve as a central repository of information to be used by emergency management offices across all phases of the disaster cycle, including preparedness, response, mitigation, and recovery. This information will prove invaluable to Emergency Management officials by guiding the accurate identification of vulnerable properties, assessing risk prior to storm events, providing more timely and accurate information related to real-time local damage assessments, and identifying those localities that could benefit from differing mitigation projects. GIS can also serve as an important outreach tool. Emergency Management's GIS should provide relevant emergency management information to local communities and state agencies. State agencies and local governments, in turn, could exchange information with Division of Emergency Management.

Implementation

Responsible Agency: Emergency Management.

Estimated Cost: Start up cost, $175,000; annual maintenance $140,000.

Timing: As soon as possible.

Expected Impacts: Improving the effectiveness of all phases of emergency management across state agencies and local governments. Improved information sharing across state agencies and local governments.

ISSUE: Critical Facilities Inventory

Recommendation 38: The GIS staff (see previous recommendation) should collect critical facilities data, incorporate the information into the system, and share this information with local governments and relevant state agencies.

Statement: During disasters critical facilities are frequently impacted, as evidenced in Hurricane Fran. Many of these facilities are very important to the response and recovery operations initiated and maintained at the county and municipal level. Critical facilities include law enforcement stations, emergency medical service stations, fire stations, county office buildings, sewage and water treatment plants, hospitals, medical clinics, etc. The ability to use these facilities both during and after a disaster are directly related to how well the facilities were constructed or retrofitted. The location, function and condition of these facilities should be recorded and entered into a geographical information system (GIS) in order to provide local government and Division of Emergency Management officials the necessary information to make sound decisions regarding their use.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of local governments.

Estimated Cost: Agency administrative costs.

Timing: 1997.

Expected Impacts: Should enhance planning at the local and state level, provide easy access to critical facility information during a disaster, and reduce the length of time required to assess damages.

ISSUE: Development of a Quick Response Economic Impact Data Base For Future Disasters

Recommendation 39: Establish an economic data collection system and methodology to assess the economic impacts of a disasters on businesses.

Statement: Local, state and federal agencies can provide numerous types of assistance to business and industry impacted by a disaster. To allow an accurate and quick response to business and industry needs, these agencies must be provided a range of specific data to implement the most effective disaster recovery strategies. The state does not presently have a system in place to gather this information nor does it provide business and industry with a description of what types of data are needed. Based on ongoing disaster recovery efforts, a questionnaire should be developed with input from local, state and federal agencies involved in economic recovery efforts that will provide the data base to implement immediate recovery efforts in response to ongoing and future disaster recovery efforts. Business and industry should be able to send this information to a designated agency, which would, in turn, disseminate the information to appropriate agencies involved in disaster economic recovery programs.

Implementation

Responsible Agencies: Disaster Recovery Center (lead agency), with the support of North Carolina Department of Commerce (Commerce Finance Agency, Division of Travel and Tourism) and North Carolina Department of Agriculture, and Division of Emergency Management.

Estimated Cost: Not known at this time.

Timing: Spring, 1997.

Expected Impacts: The development of an economic impact data gathering tool to be used by state agencies when future disasters occur. Systematic gathering of economic data to assist in long-term recovery efforts.

ISSUE: Targeting Existing Coastal Research Funding

Recommendation 40: Research funding providers should set aside funds to expedite important research which is needed to document storm impacts and identify solutions.

Statement: The impacts of major storms will be impossible to assess unless there are sufficient funds available to study them. Studies involving issues such as water quality, fisheries, and the environmental effects of storms are required to document problems. Provided with this information, individuals can work toward developing feasible solutions. Gearing up to apply for grant funds involves not only the interest of the researcher, but also the availability of funds for the specific research. Funds for storm-related research should be made available on an expedited basis so research can go forward as soon as possible. Existing grant sources such as Water Resources Research Institute, Sea Grant, and others, should set aside a percentage of their grant funds to further research on storm-related topics.

Implementation

Responsible Agency: Department of Environment, Health and Natural Resources (lead agency), with the support of Division of Emergency Management.

Estimated Cost: Administrative costs.

Timing: February, 1997.

Expected Impacts: Expedited research to provide sound scientific data, information, and recommendations for more effective response, recovery and mitigation planning.

ISSUE: Increase Beach Storm Protection/Renourishment Projects at Public Beaches

Recommendation 41: Request expedited federal studies for additional beach storm protection/renourishment projects and identify sources for increased non-federal cost-sharing.

Statement: Barrier island communities which had Army Corps of Engineers beach nourishment projects in place suffered far less damage and loss of structures. Damage assessments will likely show that substantial financial losses were avoided due to the storm surge and erosion protection afforded by renourishment projects. An additional benefit to local governments participating in these projects is that disaster monies are available to fund restoration of these beaches to before-storm conditions. Communities that are not participating in this Corps, state, and locally funded program suffered higher losses and are not eligible for support to restore their beaches. High priority must be given to completing the studies currently underway which may result in new projects for Ocean Isle, Oak Island, and Dare County beaches. Federal studies and authorizations should be pursued to assure that all public beach communities, which are eligible and which desire to participate, have ongoing beach protection and renourishment projects. Increased state and local cost-sharing program will be required. Federal beach protection projects are evaluated and justified for hurricane flood protection, but also provide a wide beach for recreational use. To be eligible for federal projects, local governments must make beaches available for public use. Federal projects, therefore, provide both an incentive to keep beaches public and a good site for public recreation.

Implementation

Responsible Agency: Department of Environment, Health and Natural Resources (lead by Division of Water Resources and supported by Division of Coastal Resources).

Estimated Costs: The Corps of Engineers pays approximately 65% of the cost of beach protection projects. State law allows the state to pay up to 75% of the non-federal cost, leaving the remainder to local governments. The estimated state share is as follows: The maintenance of the existing projects at Carolina Beach costs $1.2 million every three years. The existing project at Wrightsville Beach costs $500,000 every four years. Construction of the Ocean Isle Beach project would cost approximately $3.8 million. Cost estimates for the other Brunswick and Dare County projects are not available.

Timing: Current projects ongoing; new project requests Spring, 1997; state/local cost-sharing through Legislative Study Commission.

Expected Impacts: Increased protection and access to public beaches.

ISSUE: Review of Federal Crop Insurance

Recommendation 42: The USDA should conduct a study of the Federal Crop Insurance Program and recommend changes which will address the concerns of North Carolina's farming community.

Statement: The Federal Crop Insurance Program was designed to provide a minimal level of insurance coverage to all farmers. While the program may work well in some regions of the country, many small farmers in North Carolina have chosen not to participate in the program because of the cost relative to the limited coverage available. Additionally, many farmers perceive the "buy up" coverage to be cost prohibitive. Rates are determined on assigned yields. Where the yields are low, the buy-up coverage rate is $12-$20 per acre. For commodities like corn, this is not a good value. Farmers can prove higher yields and qualify for lower rates, but most simply choose to take full risk. At a minimum, the report should address the following issues:
Scope of services available, review of farmers awareness and understanding of existing services, statistical analysis of coverage purchased by region of the US, statistical analysis of payments made under the program, review of rate formulas, and alternatives for crop disaster coverage.

Implementation

Responsible Agencies: Risk Management Agency, Farm Services Agency with input from various North Carolina farming groups, Department of Insurance, and the North Carolina Department of Agriculture.

Estimated Cost: Unavailable.

Timing: Report and recommendations of USDA should be complete by Summer 1997.

Expected Impact: Improvements in the Federal Crop Insurance Program.

ISSUE: Forest Inventory and Analysis

Recommendation 43: Shorten the timetable for the completion of the seventh North Carolina Forest Survey.

Statement: The sixth forest survey in North Carolina was completed in 1989 and published in 1990. The seventh survey is scheduled to begin in 1998 and will take 2-3 years to complete. Hurricane Fran impacted 44% of the state's commercial forest (8,256,925 acres). The total value of timber destroyed is estimated to be $1,295,652,000. In order to gauge the sustainability of the state's forest resources, the next survey must be expedited. To begin the survey in fiscal year 1997 will require additional funds and personnel beyond current levels in the USDA Forest Service is to complete the survey by the year 2000. Delaying the survey could result in inaccurate data, which would force policy makers to make decisions with poor information.

Implementation

Responsible Agencies: USDA Forest Service and the North Carolina Division of Forest Resources.

Estimated Cost: $2 million.

Timing: Begin survey during Fiscal Year 97.

Expected Impacts: Improved documentation of forest resources, including an accurate assessment of damages sustained during Hurricanes Bertha and Fran.

ISSUE: Forestry Research

<u>Recommendation 44</u>: Support research efforts to study the short- and long-term effects of strong sustained winds from tropical storms and hurricanes on the quality of timber products, economic impacts on rural and urban areas, the quantification of impacts to other natural resources associated with the forest ecosystem, and the development of techniques that would allow for the rapid assessment of the impacts resulting from Hurricanes Bertha and Fran and future storm events.

Statement: Tens of thousands of acres of forests were damaged by the winds of Bertha and Fran. However, insufficient research exists related to the future management and harvest quality of the damaged stands of trees. Proposals have been made to conduct research to evaluate the residual damage to various timber types, develop appropriate management plans, monitor environmental impacts, and more fully quantify damages to forests, wildlife and water quality. Studies should also calculate economic impacts on rural and urban areas, and develop an emergency preparedness plan to assess damages due to current and future storm events. It is extremely important that these efforts be initiated while it is still possible to identify storm-related impacts. Based on recent observations, additional mortality is beginning to occur among apparently "undamaged" and "moderately damaged" trees. It is apparent that the actual impact of storms like Bertha and Fran greatly exceeds the obvious losses, yet no sound data exists that allows us to measure these impacts and quantify the actual loses to the forest landowners of North Carolina.

Implementation

Responsible Agencies: North Carolina State University College of Forest Resources, North Carolina Division of Forest Resources, and other research facilities.

Estimated Cost: $400,000. Funding should be sought from the US Forest Service.

Timing: Research should begin immediately.

Expected Impacts: Improved forestry-related damage assessments.

Hazard Reduction

Hazard Reduction is the process of making communities less susceptible to future disasters. By implementing a variety of hazard reduction or mitigation techniques, as they are referred to in the field of Emergency Management, individuals can lessen the future loss of lives and property associated with a disaster. While floodplain management and the National Flood Insurance Program include a series of mitigation techniques, the recommendations in these subheadings are listed separately due to the specific nature of the NFIP.

Mitigation Techniques

Mitigation techniques are specific measures that are implemented to reduce the degree of long-term risk to human life and property from natural and technological hazards.

ISSUE: Update and Improve Coordination of Coastal Local Disaster Plans

Recommendation 45: Update local Hazard Mitigation plans to include the need for improved cooperation among multiple jurisdictions.

Statement: Local disaster plans need to be updated based on the experiences of communities before, during, and after Hurricanes Bertha and Fran. Due to the extensive nature of the damages, it is clear that a coordinated regional planning response is necessary. At this point, most local hazard mitigation plans fail to look beyond their jurisdictional boundaries. Adjacent communities have much to offer each other in terms of mitigation planning and response, such that each one doesn't have to reinvent the wheel. Furthermore, the duplication of efforts are diminished, and limited resources are more effectively used among affected communities. Additional coordination with Coastal Area Management Act Land Use Plans could be beneficial.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of Division of Coastal Management, Division of Community Affairs, and Council of Governments.

Estimated Cost: Not known at this time. Funding through the Hazard Mitigation Grant Program set aside funds and FEMA non-emergency funding should be targeted to accomplish the desired results.

Timing: Spring, 1997.

Expected Impacts: Improved local disaster plans and inter-jurisdictional cooperation.

ISSUE: Review Effectiveness Of The Coastal Resources Commission's Hazard Mitigation Rules And Ocean Hazard Areas

Recommendation 46: The effectiveness of hazard mitigation rules and designated ocean hazard areas should be carefully evaluated and strengthened if necessary to reduce future property loss and protect property owners and barrier island beaches.

Statement: Coastal hazard areas are designated by the Coastal Resources Commission. For barrier islands, rules and standards are in place to mitigate damage from natural erosion and storm events. Development must meet certain set-backs from the oceanfront and densities may be limited near inlets. Currently these set-backs are based on "average long term erosion" which does not reflect important factors such as recurring seasonal storms, hurricanes, or natural geological processes. The methodologies created to delineate hazard areas were developed 15-20 years ago and should be seriously reevaluated based on recent experience. A comprehensive reassessment of erosion rate calculations, set-back requirements, and accuracy of ocean, flood, and inlet hazard area delineations should be undertaken.

Implementation

Responsible Agency: Coastal Resources Commission (lead agency), with the support of Division of Coastal Management and Division of Emergency Management.

Estimated Cost: No expected additional costs.

Timing: Initiate January, 1997.

Expected Impacts: Improved rules and policies for coastal development and the reduction of storm damages.

ISSUE: Improve Effectiveness Of Local Plans For Hazard Mitigation And Disaster Recovery

Recommendation 47: Local Coastal Area Management Act land use plans should be evaluated and better coordinated with nearby local governments.

Statement: Local land use plans developed for coastal communities, under Coastal Area Management Act, address several important issues related to hazard mitigation, disaster response, and redevelopment. The effectiveness of the local plans in addressing these issues in light of Hurricanes Bertha and Fran should be reviewed. The coordination of plans among adjacent jurisdictions and state agencies is crucial. Programs such as Project Blue Sky that advocates land use standards, strengthening structures to reduce property loss, and consumer education programs, should be integrated into local plans whenever possible.

Implementation

Responsible Agency: Coastal Resources Commission (lead agency), with the support of Division of Coastal Management, Division of Emergency Management, Division of Community Affairs and Council of Governments.

Estimated Cost: Local government and agency administrative costs.

Timing: Initiate February, 1997.

Expected Impact: Improved plans for mitigation and disaster recovery incorporated in Coastal Area Management Act land use plans.

ISSUE: Increase the Effectiveness of Building Code and Land Use Regulations

Recommendation 48:

Improving the effectiveness of building code and land use regulations should include:

a. **Evaluating proposals for windproofing, fireproofing and floodproofing homes (e.g., Project Blue Sky) and consider the incorporation of cost-effective strengthening features in specifications for publicly funded housing programs.**

b. **Promoting other incentives (e.g., casualty insurance premiums and bank mortgage programs) that would increase public acceptance of cost-effective strengthening features.**

c. **Offering technical assistance (through Division of Emergency Management, Division of Community Assistance, Division of Energy, Division of Coastal Management, and the Department of Insurance) to coastal communities in reviewing both building codes and zoning ordinances to determine if future development, including permanently placed recreational vehicles, can be sited and constructed in such a way that reduces a structures susceptibility to hurricane damage.**

d. **Ensuring a broad review of the Building Performance Assessment Team Report by public (e.g., building inspectors) and private sector (e.g., homebuilders) parties in order to improve the decision making process regarding the most appropriate and cost-effective building code changes.**

Statement: The effective use of building codes and land use regulations, as well as the promotion of hazard resistant construction techniques, are essential to preventing future property damages. The state should ensure that it is making the most effective use of these tools in protecting its housing stock. The state and local jurisdictions must consider carefully, however, the relationship between regulatory changes and the cost of housing, especially in light of the state's affordable housing needs. Specific issues that have been discussed and that will require further objective analysis include the performance of manufactured housing and the effectiveness of the state building code. FEMA has deployed a professional Building Performance Assessment Team (BPAT) to determine the effectiveness of existing building requirements in coastal areas. The results of this assessment will provide a valuable tool to local jurisdictions and the state in making future building code and land use policy.

Implementation

Responsible Agencies: The Division of Emergency Management can coordinate technical assistance to local jurisdictions and assist in the evaluation of building techniques in consultation with the Department of Insurance. The Housing Coordination and Policy Council will review the feasibility of incorporating specifications for cost effective strengthening techniques in publicly funded housing programs. Home mortgage lenders and private insurers in the state are responsible for promotion of incentives for using cost effective strengthening techniques. The Division of Community Assistance and the Division of Coastal Management can provide technical assistance on zoning ordinances and subdivision regulations.

Estimated Cost: Agency administrative costs.

Timing: 1997.

Expected Impacts: Local jurisdictions will be able to use building codes and land use regulations more effectively in preventing future property loss.

ISSUE: Reducing the Cost of Disaster Recovery Using Mitigation Techniques

Recommendation 49:

Reducing the cost of recovery includes:

a. **Giving prioritizing to Hazard Mitigation Grant Program projects that represent permanent long-term solutions. The state's high-risk communities should apply for FEMA pre-disaster mitigation funding.**

b. **Providing financial incentives to municipalities to discourage future development in Special Flood Hazard areas, by acquiring, demolishing or relocating homes that face repetitive flood-related losses, and elevating homes in the floodplain above the base flood elevation, or "100 year flood."**

Statement: Effective mitigation efforts are the key to reducing the cost of disaster recovery. FEMA has recently launched a campaign to create "disaster resistant communities" as a means of reducing the rising cost of local and federal disaster assistance. According to a December 26, 1996 FEMA press release, federal disaster expenditures have increased from $3.3. billion to more than $13 billion in the last five years. FEMA hopes to reduce the overall need for disaster assistance. As a result of this disaster-resistant community initiative, FEMA has created a Pre-Disaster Mitigation Fund to assist high-risk communities prevent future disaster damage to buildings and infrastructure.

a. Implementation

Responsible Agency: The Division of Emergency Management and the Disaster Response Housing Committee (lead agencies), with the support of FEMA.

Estimated Cost: Estimate unavailable.

Timing: The Division of Emergency Management should investigate the availability of pre-disaster mitigation funds within the first six months of 1997.

Expected Impacts: There will be additional resources available to local jurisdictions to complete mitigation projects.

b. Implementation

Responsible Agency: Division of Emergency Management. The Division of Community Assistance may provide additional CDBG funds for acquisition and relocation. The North Carolina Housing Finance Agency can provide

supplemental financial assistance to displaced low-and moderate-income home owners who need help buying a new home. The Housing Finance Agency can also provide subordinate mortgage financing for buyers of sound properties that have been relocated as part of a mitigation plan.

Estimated Cost: Funded through the HMGP, CDBG, Home Investment Partnership Program (HOME) and Housing Trust Fund programs.

Timing: 1997 and future program years.

Expected Impacts: Reduce the likelihood of injury or death, decrease damages to residences, reduce the costs associated with police and fire rescues, and decrease the number and amount of National Flood Insurance Program (NFIP) insurance claims.

ISSUE: Reduce Risk to Community Facilities Located in Flood Hazard Areas

Recommendation 50: Water and wastewater facilities located in or adjacent to flood hazard areas should be evaluated for the most appropriate means of reducing risk.

Statement: Repairing water and wastewater facilities in flood hazard areas is a short-term solution to a longer-term problem. Some systems that failed when flooding occurred need to be upgraded. Some systems may need to be relocated if the health and environmental benefits are great enough to warrant the cost. Suitable protective measures should be identified and analyzed to keep the systems operating safely in future storms.

Implementation

Responsible Agencies: Division of Emergency Management (lead agency), with the support of Division of Water Quality and Division of Environmental Health, Public Water Supply Section.

Estimated cost: Estimate unavailable.

Timing: Identification and implementation of protective measures should be done prior to the 1997 hurricane season if possible.

Expected Impacts: Reduced likelihood of flood-related damages to wastewater facilities.

ISSUE: Reduce Damages to Businesses Located in the Floodplain

Recommendation 51: Division of Emergency Management should identify businesses that face severe repetitive flood losses and where possible fund their acquisition, relocation or demolition using Hazard Mitigation Grant Program funds.

Statement: The most effective way to prevent damages to businesses located in the floodplain is to floodproof, acquire, relocate, or elevate these structures.

Implementation

Responsible Agency: Division of Emergency Management may provide Hazard Mitigation Grant Program funds to communities with eligible projects. Division of Community Assistance may provide CDBG funding to eligible applicants.

Estimated Cost: Funded through the HMGP and CDBG programs.

Timing: 1997 and future program years.

Expected Impacts: Decrease the likelihood of future damages to businesses, and reduce NFIP insurance claims.

ISSUE: Improve Culverts, Drainage Ditches and Storm Water Management for Flood Hazard Reduction

Recommendation 52: Identify and stress the need for maintaining or improving existing culvert, drainage ditches and all other storm water management conveyances in populated areas. Identify high priority stormwater and drainage projects that could be funded under the FEMA Public Assistance 406 Program and the Hazard Mitigation Grant Program.

Statement: Flooding throughout the disaster area caused extensive damage to homes, schools, public highways, utilities and other structures. Inundated roadways prevented many emergency response vehicles from accomplishing their duties in a rapid and safe manner. Impassable highways may have also impeded residents' ability to reach emergency shelters. Utilities impacted by flooding included waste water treatment plants, lift stations, and water supply and distribution systems. Many affected waste water treatment plants were temporarily shut down, causing raw sewage to flow through residential areas and eventually into rivers and streams.

Implementation

Responsible Agencies: Division of Emergency Management, Department of Transportation, and FEMA.

Estimated Cost: Not available. Eligible projects may be funded under the Public Assistance 406 Program and the Hazard Mitigation Grant Program.

Timing: Immediate.

Expected Impacts: Improved public health and safety, continuous access to critical facilities during natural disasters, and decreased damage to property and natural resources.

ISSUE: Sand Fencing and Dune Revegetation

Recommendation 53: Existing dune fields should be protected using native vegetation and sand fencing to promote additional dune growth.

Statement: Dunes provide the first line of defense from coastal storms and hurricanes. Dune revegetation and sand fencing is an inexpensive means to assist in the protection of this important system.

Implementation

Responsible Agency: Division of Emergency Management (lead agency), with the support of Division of Coastal Management.

Estimated Costs: Costs unknown at this time. A portion of this effort may be funded under the Hazard Mitigation Grant Program

Timing: January, 1997.

Expected Impacts: Increased dune protection from erosion and seasonal storms.

ISSUE: Retrofitting Water and Sewer Plants

Recommendation 54: Request the Department of Environment, Health and Natural Resources (through the Environmental Management Commission and the State Health Board) to establish a financing mechanism to aid in the retrofitting of community water and sewer systems with stand by power and floodproofing measures.

Statement: Municipalities are acutely aware of health and safety issues related to failed lift stations, pump stations, and wastewater treatment facilities. Problems can arise from excessive water inflow and power outages. Similar, but less publicized, problems result from the loss of power to water system components. While the incorporation of stand by power is a state standard in the design of both water and wastewater systems and is an eligible cost component for some federal and state grant and loan assistance, FEMA policies generally do not classify emergency power supply for utility systems as eligible for assistance. Floodproofing techniques are, however, eligible under the Hazard Mitigation Grant Program. Division of Water Quality and the Division of Environmental Health would propose a course of action for consideration by the rule making boards. The department and/or either of the divisions also may want to consider proposing this issue for consideration by the Clean Water Management Trust Fund in areas of environmental sensitivity.

Implementation

Responsible Agency: Department of Environment, Health and Natural Resources, and Division of Emergency Management.

Estimated Cost: Since the number of systems that would choose to use loan funds for the retrofit cannot be accurately estimated, the two divisions should consider setting aside $500,000, each (a total of $1,000,000) for adding stand by power for power-related elements of water and wastewater systems. Since stand by power already is a design standard for systems, users of the loan pools would be communities that have reconsidered their existing power supply configuration as a result of the disaster and need assistance in the retrofit. Additional consideration must be given to local costs for maintenance of units once installed. Floodproofing techniques may also be funded under the Hazard Mitigation Grant Program.

Timing: Assuming the set asides would not require additional rule-making, the loans could be available during the second round of applications for calendar year 1997. The Environmental Management Commission also may wish to couple a new loan provision with the basin-wide permitting cycle. Funding of HMGP projects should begin in 1997.

Expected Impacts: Floodproofing wastewater facilities will reduce the likelihood of failure during a flood event.

ISSUE: Wastewater Inflow and Infiltration Problems

Recommendation 55: The Department of Environment, Health and Natural Resources should assess the extent of the inflow and infiltration problem in wastewater systems across the state. This assessment should be performed in conjunction with the State Economic Development Board's assessment of the state's water and wastewater needs. (PH-7b)

Statement: Heavy rainfall, which occurred during Hurricanes Bertha and Fran increased the hydraulic loading of wastewater systems through excessive inflow and infiltration. Inflow problems include the flooding of manholes and cross connections between sewer lines and storm drain lines. Infiltration problems include leakage of ground water into the systems through deteriorating sewage pipelines.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, with the assistance of State Economic Development Board.

Estimated Cost: Agency administrative Costs.

Timing: January 1, 1998.

Expected Impacts: Improved data concerning the condition of existing water systems. This information should be used to develop sound measures to address the problem.

ISSUE: State Wide Well Construction Ordinance

Recommendation 56: A statewide well construction ordinance should be adopted, funded and implemented.

Statement: Numerous communities were faced with contaminated private wells. Flood waters carried sewage effluent, agricultural waste, and other pollutants downstream. If not designed properly, well systems are susceptible to contamination from flood waters. Contaminants leach into the underlying soil and groundwater, causing potentially serious health hazards.

Although wells are initially monitored for contamination when they are installed, North Carolina does not require periodic monitoring of private well sites. The State Well Construction Act provides for a well construction code, but only twenty-five counties have adopted ordinances. Proper well design would significantly reduce the risk of contamination. Therefore, the remaining seventy-five counties should be encouraged to adopt a well construction ordinances.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, and local health departments.

Estimated Costs: The estimated cost of a statewide well construction program is $1.6 million per year.

Timing: July, 1998.

Estimated Impacts: Improved well construction resulting in safer drinking water.

ISSUE: Hazard Area Acquisition Program

Recommendation 57: Initiate a Legislative Study Commission to assess the establishment of a hazard area acquisition program.

Statement: While designating areas for federal and state restrictions on subsidizing development in high hazard areas will provide future benefits for loss and damage reduction, existing development in such areas pose numerous problems. When property is damaged or destroyed in these areas, the primary option available to property owners is to rebuild in the same areas. Thus, a never ending and increasingly costly response to losses in known high hazard areas is institutionalized. A more fiscally responsible option for the property owner and the public may be to set up a long-term process designed to acquire properties so that the owner has the option of selling and relocating versus rebuilding in the hazard area. Current acquisition programs are operational in New Jersey, Maryland and Florida. A process has been established at the federal level and a parallel process may be required at the state level. The state should also adopt policies supporting acquisition and relocation options available through federal programs.

Implementation

Responsible Agency: Division of Coastal Management and Division of Emergency Management (lead agency), with the support of the Department of Environment, Health and Natural Resources.

Timing: March, 1997.

Estimated Cost: Not known at this time.

Expected Impacts: Significant and permanent reductions in disaster recovery costs related to the repeated repair of structures in high hazard areas.

ISSUE: Restricting Public Subsidies For Development In Designated Coastal High Hazard Areas

Recommendation 58: Initiate a Legislative Study Commission to assess legislation restricting future state subsidies and support of development in designated high hazard areas on barrier islands.

Statement: Increased public scrutiny and fiscal accountability has been placed on the use of public subsidies which support or encourage development in high hazard areas. Notably, in the federal arena, there are federal requirements that limit or restrict public subsidies in specified areas. On the basis that in such areas the private sector should cover losses, not the taxpayer, significant reductions in damage payments and costs to rebuild in harms way have been realized. No such parallel opportunity exists for state fiscal accountability in subsidizing and encouraging development in particularly hazardous areas. North Carolina should consider restricting or eliminating future state subsidies for development in areas which, at a minimum are federally designated. The state needs to develop its own criteria for determining and designating high hazard areas within which restrictions would apply to state funded subsidies.

Implementation

Responsible Agency: Division of Coastal Management (lead agency), with the support of Department of Environment, Health and Natural Resources, and Division of Emergency Management.

Estimated Cost: Not known at this time.

Timing: March, 1997.

Expected Impacts: Reduction of public expenditures associated with repeated repairs and rebuilding.

ISSUE: Awareness Of Coastal North Carolina's Vulnerability To Natural Disasters

Recommendation 59: Initiate a Legislative Study Commission to assess legislation which requires full disclosure and "hazard notification" to persons acquiring property on barrier islands.

Statement: Barrier islands are dynamic systems, subject to both long-term and rapid changes. In addition to loss of oceanfront shoreline due to seasonal erosion, low lying areas are subject to frequent overwash and storm surges. Areas near inlets are particularly vulnerable as they shift and change over time. Existing owners and potential owners of barrier island property have little knowledge of the risk they are being exposed to in such areas. Full, accurate and easily obtained information should be available to any consumer considering the purchase of property in a high hazard area. The Legislature should study measures which would require the full disclosure of hazards and related property restrictions prior to purchase.

Implementation

Responsible Agency: Division of Coastal Management Request (lead agency), with the support of the Department of Environment, Health and Natural Resources, and Division of Emergency Management.

Estimated Cost: Not known at this time.

Timing: March, 1997.

Expected Impacts: More informed consumers who are considering the purchase of property on barrier islands.

Floodplain Management and the National Flood Insurance Program

Floodplain management is the full range of public and private policies and actions that promote the wise use of floodplains, reduce flood losses, and protect the natural and cultural functions of floodplains.

The National Flood Insurance Program is a federally funded, locally implemented program that is meant to reduce flood-related impacts. Participating communities are required to adopt a Flood Damage Protection Ordinance that provides specific measures that the community must follow. In turn, individuals owning property in those communities are eligible for federally backed flood insurance.

ISSUE: National Flood Insurance Program Enrollment

Recommendation 60: Division of Emergency Management should continue its campaign to encourage more local governments to undertake comprehensive floodplain management and to join the NFIP. The state should engage agencies such as Lead Regional Organizations (LROs) and Division of Community Assistance to provide assistance.

Statement: The National Flood Insurance Program (NFIP) requires local governments to adopt and enforce minimum floodplain management regulations in order to participate in the program. Participation enables individuals in those communities to purchase federally-backed flood insurance. Furthermore, participation enables communities to be eligible for federal assistance following a federally declared disaster. Non-participating communities, for instance, are not eligible to receive Hazard Mitigation Grant Program funding if that proposed project is in a flood hazard area. Prior to Hurricane Fran, 274 out of 529 municipalities and 89 counties participated in the NFIP. It is anticipated that at least a dozen more communities will join the NFIP as a result of emergency management and FEMA's outreach efforts. Emergency Management is responsible for monitoring local governments to ensure compliance with the NFIP. Under current conditions, emergency management staff can conduct a comprehensive floodplain management enforcement visit once every six years. When site visits are conducted, it is rare to find local governments fully compliant with the NFIP.

Implementation

Responsible Agencies: State Division of Emergency Management (lead agency) with the support of Lead Regional Organizations and Division of Community Assistance.

Cost: $236,000 for statewide campaign in 1997.

Timing: Initiate in February 1997.

Expected Impacts: Increased enrollment in the NFIP. Improved floodplain management, including better monitoring and enforcement of wise floodplain management practices. Reduced flood-related property losses.

ISSUE: Training Local Floodplain Administrators

<u>Recommendation 61</u>: Support the North Carolina Association of Floodplain Managers effort to develop a statewide floodplain managers certification program.

Statement: There is little incentive for local officials to be properly trained in floodplain management. Yet, good floodplain management must start locally. The State may use incentives such as reduced insurance premiums and the prioritization of Hazaard Mitigation Grant Program funds for communities with a certified floodplain manager, etc.

Implementation

Responsible Agency: Division of Emergency Management, working in conjunction with the North Carolina association of Floodplain Managers.

Estimate Cost: No estimate available.

Timing: Fiscal Year 1997.

Expected Impacts: Enhanced floodplain management practice among participating communities.

ISSUE: Updated Floodplain And Storm Surge Mapping

Recommendation 62: Review Flood Insurance Rate Maps (FIRMs) and establish a high priority for updating the coastal area FIRMs.

Statement: Predictive tools for response and mitigation purposes provide important information for state and local planning. Maps of floodplains and storm surge areas are particularly important for coastal areas and barrier islands. Analysis of flooding, storm surge, and overwash areas should be initiated which compare mapped designations with post storm conditions. Updated maps should be prepared to more accurately reflect actual hazards. Revised flood maps should be a high priority for all coastal counties and barrier islands.

Implementation

Responsible Agency: Federal Emergency Management Agency (lead agency), with the support of Division of Emergency Management and Division of Coastal Management.

Estimated Cost: Not known at this time.

Timing: Reprioritize existing schedule as soon as possible. Updated map information could be used to plan for the 1997 hurricane season.

Expected Impacts: Improved base information to be used for more effective hazard delineation, mitigation plans, and damage reduction measures.

ISSUE: State Flood Insurance Rate Map Mapping Initiative

Recommendation 63: The State should consider funding mapping initiatives or provide incentives to local governments to undertake mapping efforts.

Statement: Throughout most of North Carolina, Flood Insurance Rate Maps (FIRMs), which illustrate special flood hazard areas, are inaccurate or grossly out of date. FEMA is currently conducting one county restudy a year in North Carolina. Following Hurricanes Bertha and Fran, many communities experienced flooding at greater depths than the existing maps illustrate. Two examples of why current mapping is critical became evident when the Town of Boone and the City of Durham were recently restudied. Flood depths increased by as much as 10 feet. Homes that were constructed in compliance with the mapped flood elevations only 2 years ago may actually experience 10 feet of water in their homes during a 100 year flood event. Although FEMA has assumed the responsibility of providing and updating the flood maps, states and local governments also have a vested interest in ensuring that accurate flood risks are known in order to protect the public health, safety, and welfare of the community. FIRMs can be restudied by private contractors that follow FEMA remapping criteria.

Implementation

Responsible Agency: Division of Emergency Management, with the support of private contractors.

Estimated Cost: Estimate not available.

Timing: Fiscal Year 1997.

Expected Impacts: Increased accuracy of Flood Insurance Rate Maps.

ISSUE: Incorporation of Floodplain Management Regulations Into the State Building Code

Recommendation 64: The Building Code Council should undertake a review of how the state's building codes could be revised to better mitigate losses in special flood hazard areas. The Council should consider incorporating some of the standards found in the National Flood Insurance Program.

Statement: One of the most effective means to reduce future flood-related loss of property is the revision of our state building codes for construction in designated special flood hazard areas, often referred to as the 100 year floodplain. Although North Carolina is widely recognized as a State that maintains a progressive building code, the code is inadequate when addressing construction techniques that can reduce flood-related impacts. Communities who participate in the National Flood Insurance Program are required to adopt and enforce a Flood Damage Prevention Ordinance. However, these participating communities struggle with the interpretation and enforcement of specific NFIP regulations and are often not in compliance. Those communities who do not participate in NFIP are not required by the state to adopt floodplain ordinances. Many non-participating communities are particularly vulnerable to flood hazards. As a result, floodplain management should be addressed in a statewide code that will be consistently enforced throughout North Carolina.

Implementation

Responsible Agencies: North Carolina Department of Insurance, Division of Emergency Management, and FEMA.

Estimated Costs: Agency administrative costs.

Timing: Recommendations should be presented to the Building Code Council this summer to be included in their 1998 revisions.

Expected Impacts: Improved floodplain management among communities who do not participate in the NFIP. Enhanced building codes as they relate to sound floodplain management practice.

ISSUE: Animal Waste in State's Surface Water

Recommendation 65: Need to establish and enforce reasonable freeboard requirements for animal wastewater lagoons.

Statement: Some of the wastes in the state's surface waters came from flooding of animal waste lagoons and overspraying of lagoon wastes on spray fields in advance of the storm in order to prevent overtopping of the lagoons from the anticipated heavy rainfall (lagoon capacity is designed for holding a 25-year storm event). There is a need to adopt measures to prevent raw and inadequately treated wastewater from animal waste management systems from entering the state's surface waters during and after natural disasters. Animal waste lagoons are frequently located in the floodplain. In many communities, Hurricane Fran resulted in 50 and 100 year flood levels. Therefore, Department of Environment, Health Natural Resources, with the support of Division of Emergency Management should establish a freeboard, or elevation requirement, for all lagoon retention walls located in the floodplain of at least two feet above the highest flood of record in that community.

Implementation

Responsible Agencies: Department of Environment, Health and Natural Resources, with the support of USDA Natural Resources Conservation Service, and Division of Emergency Management.

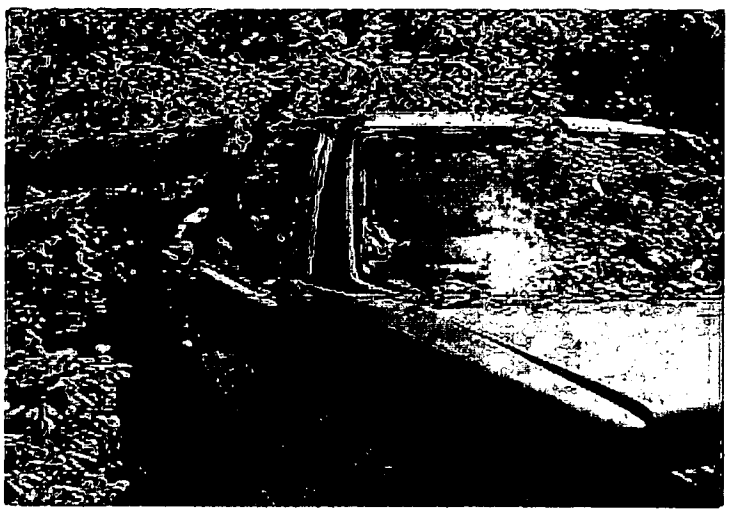
Estimated Cost: Estimate not available

Timing: January 1, 1998.

Expected Impacts: A reduction in pollution of the state's surface waters from inadequately treated animal waste.

Resource Needs

Many of the recommendations found in this report request the development or modification of funding sources that are not currently available under existing federal or state programs. Additional needs include the hiring of permanent staff to improve the ability of state agencies to assist in the recovery effort following Hurricane Fran, prepare for the next major disaster, and carry out the day to day activities associated with the reduction of future disaster-related impacts. Two subheadings have been identified that clarify these resource needs. They include: Modification of Existing Resources, and Identification of New Resources, including personnel.



Modification of Existing Funding Sources

The modification of existing funding sources involves an increase or redisbursement of monetary assistance.

ISSUE: Effective Use of Existing State and Federal Housing Resources

Recommendation 66:

The effective use of housing resources includes:

a. **Establishing Federal and state affordable housing programs should establish set-asides and ranking preferences for housing applications that are proposed in 1997 to respond to identified needs in a disaster-declared county. Additional program flexibility should be encouraged in state and federal housing programs.**

Implementation

Responsible Agency: Disaster Response Housing Committee, the Disaster Recovery Task Force and the Division of Emergency Management.

Estimated Cost: Agency administrative costs.

Timing: 1997 and 1998 program funding cycles.

Expected Impacts: Funding likely to be available to communities when they are ready to implement their recovery and mitigation plans.

b. **Allocating additional funds to the North Carolina Housing Trust Fund to provide a flexible source of financing that is dedicated to providing rental housing development in counties with disaster-related housing shortages. Use the Housing Trust Fund investment to leverage private financing and federal low income housing tax credits.**

Implementation

Responsible Agency: North Carolina Housing Finance Agency.

Estimated Cost: $1,500,000.

Timing: 1997.

Expected Impacts: A disaster recovery set-aside in the Housing Trust Fund will help fill the financing gap and leverage private debt and equity financing.

c. **Encouraging the Board of Directors of the Federal Home Loan Bank (FHLB) of Atlanta and its Advisory Council to incorporate a funding set-aside for disasters in the FHLB's Affordable Housing Program for 1997.**

Implementation:

Responsible Agency: Federal Home Loan Bank.

Estimated Cost: Agency administrative costs.

Timing: 1997 and future program funding cycles.

Expected Impacts: Additional resources will be available for housing production in disaster areas.

d. **Encouraging the Rural Housing Service to adopt disaster response as a state policy preference for the Section 515 Rental Production Program.**

Implementation

Responsible Agency: Disaster Housing committee and NC Disaster Recovery Task Force

Estimated Cost: No additional cost to state

Timing: 1997 and future program years

Expected Impacts: Additional resources will be available for housing production in disaster areas.

e. **Encouraging Department of Housing and Urban Development to provide public housing authorities with more flexibility and streamlined processing for redirecting available rental assistance certificates to households that have been temporarily or permanently dislocated by a natural disaster.**

Implementation

Responsible Agency: Disaster Response Housing Committee and the North Carolina Disaster Recovery Task Force.

Estimated Cost: No additional cost to the state.

Timing: 1997.

Expected Impacts: Additional dislocated households will have rental assistance that will help them obtain affordable temporary and permanent replacement housing.

ISSUE: Damages to Community Facilities Under $1,000

<u>Recommendation 67</u>: Request clear determination from FEMA about eligibility of small damages. If necessary, pursue an amendment to the Stafford Act to include all costs of damages.

Statement: FEMA does not cover repairs to public facilities that are less than $1,000 per building or structure. This eliminates assistance to many small communities where even small losses mean much to local operating budgets.

Implementation

Responsible Agency: Division of Emergency Management

Estimated Cost: No expected costs to state; possible state role in aggregating small damages.

Timing: Immediate

Expected Impacts: This will help small governments, schools and non-profits. Recover from current and future storm-related impacts.

ISSUE: Routing Stream Clearance Projects

Recommendation 68: Identify waterways which are impaired, assess genuine needs, and route all projects that meet Public Assistance guidelines to FEMA for review, and if necessary, request additional money and personnel for the Watershed and Flood Prevention Programs.

Statement: Many drainage ditches, creeks, and streams have been blocked or otherwise impaired by debris from nearby forests. By impairing the drainage system, the potential for rains to cause severe flooding is dramatically increased. The USDA Natural Resources Conservation Service has limited funds and personnel to address this issue through the Watershed and Flood Prevention Program. Because of the limited funds and personnel, the Federal Emergency Management Agency's authority to perform some of the debris removal work should be closely examined. In particular, the Public Assistance division of FEMA should be considered as a funding source when appropriate. First the funding criteria for the two programs must be clarified in order to maximize the use of available Public Assistance resources. This will allow NRCS money to be spent only on projects that meet NRCS guidelines exclusively. The NRCS stream clearing program funds debris clearing on both public and private property, as long as existing conditions pose a threat to life or property. In contrast, FEMA's Public Assistance funding is limited to stream clearing exclusively on public lands, and only if the potential for flooding poses an imminent threat to life, public safety or health.

Implementation

Responsible Agencies: Action by Soil and Water Districts is required to assess and identify needs. The Natural Resources Conservation Service and Emergency Management should expedite requests for debris removal projects and seek additional funding and personnel. The Disaster Recovery Task Force should assist NRCS, Farm Service Agency, FEMA, Emergency Management, and local governments pursue additional federal resources.

Estimated Cost: $15 million (NRCS programs require a 25% state match). Additional agency administrative costs.

Timing: Ongoing for NRCS and Public Assistance funded proposals.

Expected Impacts: Improved ability to reduce flood-related damages. Expediting debris removal from rivers and streams.

ISSUE: Noninsured Crop Disaster Assistance Program (NAP)

Recommendation 69: Increase the Noninsured Crop Disaster Assistance Program threshold from $2 million to $5 million to ensure that this program is available to all farmers who may need financial assistance as a result of disaster related losses.

Statement: Disaster losses for crops that are not covered by crop insurance may be compensated under NAP. Producers whose "qualifying gross income" exceeds $2 million are ineligible for NAP assistance. Many farmers exceed this cap, but have such slim profit margins that crop losses threaten the ability of farmers to remain in business. The formula used to calculate eligibility for NAP should take profitability into consideration. Changes to the program should be retroactive to assist farmers who suffered crop losses caused by a natural disasters during calendar year 1996.

Implementation

Responsible Agency: Farm Service Agency and USDA.

Estimated Cost: Agency administrative costs.

Timing: Implementation by Fall of 1997.

Expected Impacts: Improved disaster assistance coverage to farmers.

ISSUE: Public-serving Facilities owned by Private Nonprofit Organizations

Recommendation 70: State officials should pursue appeals for FEMA funding for private nonprofit facilities that truly serve a public benefit.

Statement: Dams, bridges, roads, water and wastewater utilities belonging to private organizations (including homeowners' associations) are not eligible for FEMA assistance. While immediate solutions must be found and funded for critical problems, such as the eleven private low pressure wastewater systems uprooted by trees in Wake County, or the private dam threatening Tabor City, the issue must be addressed on a higher level for long term results. Mitigation grants should be offered to localities to fashion public-ownership solutions where feasible. Additionally, longer term solutions should entail mitigation funding to reduce future risks, including incentives to address private facilities that jeopardize public health and safety.

Implementation

Responsible Agencies: Division of Environmental Health, On-site Wastewater Section, and Office of Dam Safety, with the assistance of Division of Emergency Management.

Estimated cost: Estimate unavailable.

Timing: As soon as possible.

ISSUE: Landfill Space

<u>Recommendation 71</u>: State officials should take steps to qualify landfill replacement costs and demolition debris handling costs.

Statement: New landfill space is needed to replace space consumed by trees and the demolition of homes, buildings, and other structures. The volume of debris from trees and stumps is already consuming a tremendous amount of space in public landfills. Permitting and building suitable new landfill space will require extensive planning between local governments and the state.

Implementation

Responsible Agencies: Division of Solid Waste Management, with the assistance of Division of Emergency Management.

Estimated cost: Estimate unavailable.

Timing: Clarify eligibility March 1997. Make sure all localities have filed notices of interest for landfill replacement with FEMA. Plan replacement sites with localities during 1997.

Expected Impact: Improved coordination of debris handling and replacement costs.

Identification of New Resources

Identification of new resources is necessary in some instances to develop a new program, implement an existing program that is not currently funded, or create new staffing positions..

ISSUE: Wildfire Hazards

Recommendation 72:

Reducing wildfire hazards include:

a. Obtaining state and federal funds must be obtained for the five-year fire mitigation plan which has been prepared by the Division of Forest Resources.

b. The acquisition and use of large aerial tankers, such as the Canadian CL-215 water scooper.

Statement: Estimates suggest that the hurricanes increased the amount of pine needles, cones, twigs, and wood on the ground from five to sixteen tons per acre in eastern and central North Carolina. In a number of areas in eastern North Carolina, 50% or more of the trees are down. In areas where these trees are not being removed or salvaged, there is a tremendous amount of fuel that is "jackstrawed", which posses an increased hazard to nearby communities. The additional fuel increases the likelihood of uncontrollable wildfires due to increased fire intensity and blocked fire roads. The peak forest fire season runs March through May and the Division of Forest Resources has expressed strong concerns about their ability to fight and contain wild fires. It is important to note that thousands of families live in close proximity to these wildfire hazard areas as many North Carolinians have chosen to locate homes in or near wooded areas.

Implementation

Responsible Agencies: The Division of Forest Resources (lead agency), with the assistance of the Department of Insurance.

Estimated Cost: (State and Federal)Prevention - $478,800, Pre-suppression - $14,473,400, Suppression - $34,169,799.

Timing: Ongoing effort.

Expected Impacts: Reduced damages resulting from spring wildfires.

ISSUE: Forest Recovery and Reforestation Efforts:

Recommendation 73: North Carolina should establish a cost share program to provide financial assistance to landowners who seek to reestablish a forest and agree to follow environmentally sound practices (this recommendation is included in the Division of Forest Resources' five year plan).

Statement: After salvaging as much of the downed and damaged timber as possible, reforestation of these areas must become a high priority if the sustainability of our forests is to be maintained. Areas that are not salvageable will either need to be renovated into a productive forest or require a more intensive effort to adequately reforest them. Communities and private landowners will also need technical and financial assistance to identify trees that should be removed, proper tree care and maintenance, proper tree selection for replacement, etc. Thus, improved outreach efforts should be made to educate and assist in the reforestation and rehabilitation of our commercial and urban forests. Landowners lost significant timber related capital investments during Hurricane Fran. Although some will recoup their investment during the salvage efforts, many others will find their timber to be unsalvageable. These landowners will find it financially difficult to expend significant resources in a reforestation of renovation effort.

Implementation

Responsible Agencies: North Carolina Division of Forest Resources, with the assistance of the North Carolina Cooperative Extension Service and the Community College System.

Estimated Cost: $15 million.

Timing: Reforestation efforts should begin during the Fall of 1997. Therefore, planning must begin prior to that time.

Expected Impacts: Enhanced ability of landowners to cover the cost of reforestation efforts.

ISSUE: Dam Safety and Emergency Preparedness

Recommendation 74:

Improving dam safety and prepardness involves:

a. Increasing the State Dam Safety Program by five personnel to better enable dam inspections and to assist owners with emergency action plans.

b. Creating a low interest revolving loan fund to upgrade existing high hazard category dams to current safety standards.

Statement: Hurricane Fran and Tropical Storm Alberto have dramatically demonstrated that coastal storms can cause severe flooding within the interior of North Carolina where many dams potentially endanger lives and significant property (high hazard category dams). Although warning of such storms is given, less than 10% of the high hazard category dams have emergency action plans. Emergency action plans can save lives. Such plans are required on new dams, and an effort is being made to do the same with existing dams. Current staffing levels does not permit a sufficient dam inspection effort. There are even fewer resources to develop emergency action plans. A need also exists to upgrade older dams to current standards. Many owners are willing to upgrade their dams, but do not have the funding required for extensive repairs.

Implementation

Responsible Agency: Department of Environment, Health, and Natural Resources, Division of Land Resources

Estimated Cost: Personnel - $274,336; Loan Fund - $3,000,000 (one-time appropriation).

Timing: Increased inspections and work on emergency action plans would begin immediately upon hiring and training of personnel. An estimated 30 additional emergency action plans would be prepared per year for the approximately 800 dams needing them. The Loan Fund should be implemented as soon as rules are in place for administering the fund.

Expected Impacts: Safety deficiencies would be identified sooner. Dam owners would be more aware of public safety issues, including the implications of allowing their dam to fall into disrepair. Dam safety repair work would be started sooner at dams eligible for the low interest revolving loan.

ISSUE: Emergency Mosquito and Mosquito-borne Disease Control After Natural Disasters

Recommendation 75:

Reducing mosquitos after natural disasters involves:

a. Increasing state aid for mosquito control from its current level of $617,00 to 2 million dollars, which is approximately the 2/3 match allowed by statute.

b. Funding a one-time expenditure of 2 million dollars to capitalize local programs adequately. Most of this money would be used for ground sprayers, trucks, and computer equipment.

Statement: State and local resources are woefully inadequate to handle emergency mosquito and mosquito-borne disease control after natural disasters, especially those which produce massive flooding during the warm summer months. The state, in partnership with local mosquito control agencies, need to plan and equip for such emergencies.

Implementation:

Responsible Agency: Public Health Pest Management Section of the Division of Environmental Health must take the lead in these efforts, having both the statutory responsibility and expertise to coordinate the activities. The 80 local city, county, and district mosquito control programs in North Carolina should be the primary focus of these plans and funding increases.

Estimated Cost: First year non-recurring costs to capitalize local programs are estimated at 2 million dollars. Yearly costs for adequate state aid for mosquito control are estimated at 2 million dollars. Yearly costs to maintain aerial spray readiness is estimated at $100,000.

Timing: The 1997 General Assembly must act on these recommendations if the plans and equipment are to be in place before the next hurricane season. Equipment could be purchased if funds are provided in the spring or early summer. Aerial spraying contracts can be negotiated if funding is forthcoming in the spring or early summer.

Expected Impacts: Local and state mosquito control programs will be adequately armed to address the next mosquito control emergency.

ISSUE: Lack of Financial Assistance Available Through Existing Agricultural Credit Programs

Recommendation 76:

Improving agricultural assistance involves:

a. Identifying potential sources of state funding to implement an Agricultural Facilities Disaster Fund.

b. Offering U.S. Department of Agriculture loan programs to cover no less than 80 percent of farm production losses (crops and livestock) caused by a disaster with an interest rate that is half of the prime rate.

Statement: Many farmers found the financial assistance programs administered by the federal government to be inaccessible. Neither the Small Business Administration (SBA) nor the US Department of Agriculture (USDA) provides loans for the repair of farm structures damaged or destroyed by natural disasters. Current programs are primarily designed to provide loans to farmers who are not eligible for credit from commercial lenders. Only farmers who cannot obtain loans from other sources are eligible for the low interest loans of existing government programs. Access to low interest loans would help maintain the economic viability of farmers, many of whom already have a substantial debt load, as they recover from a natural disaster.

a. Implementation

Responsible Agencies: Department of Agriculture (lead agency), with the support of NC
Agriculture Finance Agency and the NC Department of Commerce.

Estimated Cost: $2.5 million (expected cost to state -- $625,000).

Timing: Establishment during the 1997 session of the NC General Assembly.

b. Implementation

Responsible Agencies: USDA, Department of Agriculture, N.C. Agriculture Finance Authority and the Division of Emergency Management.

Estimated Cost: Estimate unavailable.

Timing: Appropriate federal regulations should be promulgated by Fall of 1997. Some statutory changes may be required. Legislation should be introduced by Fall of 1997.

Expected Impact: Assist farmers recover from natural disasters.

ISSUE: Financial Assistance "Gaps" Among Some Firms Impacted By Disasters

Recommendation 77:

Reducing existing financial gaps involve:

a. **Seeking additional Congressional U.S. Department of Commerce, Economic Development Administration Title IX Sudden and Severe Dislocation (SSED) appropriations and broadening the use of the SSED funds to include establishing a Revolving Loan Fund. Economic Development Administration can provide a 75% Revolving Loan Fund (RLF) grant. Fifty percent of RLF loans should be targeted to assist small and medium sized businesses.**

b. **Developing and implementing an ongoing Business and Industry Disaster Recovery Revolving Loan Program to address "gaps" identified by firms impacted by Hurricane Fran and disasters.**

Statement: Insurance companies, the U.S. Department of Commerce's Small Business Administration and U.S. Department of Agriculture are major financial sources for firms impacted by a federally declared disaster. Final insurance settlements and/or federal business assistance program regulations will result in some businesses either not being able to operate at pre-disaster levels or having to close. Other businesses may receive SBA or U.S. Department of Agriculture loan assistance, but due to a combination of having to pay off the unexpected loan and/or a downturn in market conditions, business owners may have to cut back or close operations months after the disaster occurred.

Implementation

Responsible Agencies: The Division of Emergency Management will be the applicant and serve as the agency to receive federal RLF grant funds. The actual administration of the RLF program will occur in the North Carolina Department of Commerce and the North Carolina Department of Agriculture. As set forth in the RLF program guidelines, the grant will be placed in separate accounts in the North Carolina Department of Commerce and the North Carolina Department of Agriculture. Each Department will administer its owns RLF business and industry program (e.g., NC Department of Commerce - non-agricultural business and industry, and the NC Department of Agriculture - agricultural businesses).

Timing: Prior to the 1997 hurricane season.

Estimated Cost: It is anticipated that up to $5,000,000 may be required. A 25% State match is required to receive an EDA revolving loan program

grant. Interest earned on RLF loan repayments may be used to cover administration expenses.

Timing: During winter 1997 develop the proposed Title IX SSED-RLF proposal and obtain EDA comments. During spring 1997 seek additional Supplemental EDA Title IX SSED funds. Submit the application when additional supplemental EDA Title IX SSED funds are appropriated and the use of funds is expanded to include the establishment of a RLF.

Expected Impacts: Funds secured to implement and administer a "business and industry economic recovery revolving loan fund program."

ISSUE: Travel and Tourism Industry Funding for Market Surveys and Promotional Advertising to Reduce the Adverse Economic Impacts of a Disaster

Recommendation 78:

Reducing the adverse economic impacts of a disaster involves:

a. **Either statutorily and/or administratively changing the State Emergency Fund, or the Emergency Management Trust Fund so that money can be used for travel and tourism marketing and advertising in response to disasters.**

b. **Identifing and evaluating how other local and state governments finance market studies and targeted advertisements for travel and tourism after a disaster, including the identification of partnerships involved in this effort (local/state governments, public/private, etc.). Select and implement methods to be used within the state. Seek a U.S. Department of Commerce, Economic Development Administration, Technical Assistance Grant to finance 75% of this study.**

c. **Encouraging the Department of Commerce to maintain a "disaster recovery marketing and advertising contingency" within its annual travel and tourism marketing program.**

Statement: Disasters in the past year have had a particularly adverse impact on the travel and tourism industry. Travel and tourism advertising and promotion is one of the few direct marketing functions the State undertakes for a specific industry. It is extremely important that market surveys be quickly undertaken and targeted advertising be initiated following a disaster in order to overcome adverse perceptions that become more difficult to change over time. In the case of Hurricane Fran, the State's Travel and Tourism Division did not have operating funds available to initiate this effort. Statutory and administrative guidelines prohibited the use of the State's Contingency and Emergency Fund.

Implementation

Responsible Agencies: North Carolina Department of Commerce, Division of Travel and Tourism, with the support of Office of State Management and Budget , and the Division of Emergency Management.

Estimated Cost: $18,000 to perform study identifying and evaluating how other areas finance market studies and targeted advertisements in response to disasters. $250,000 estimated cost for a post-Hurricane Fran marketing and advertising effort.

Timing: Use of Emergency Fund and the creation of a "disaster recovery marketing and advertising contingency" can occur within 3 months. Study on how other areas finance market studies and targeted advertisements to begin by Spring 1997 and completed within 6 months. Completion of the State Travel and Tourism Disaster Recovery Marketing and Advertising Program is to begin winter of 1997 and will be completed within 12 months.

Expected Impacts: Rapid economic recovery of the tourism industry following a natural disaster.

ISSUE : Maximize Resources for Recovery and Redevelopment

Recommendation 79: Establish a standing Disaster Response Housing Committee in state government comprised of housing providers (i.e., NCHFA, Division of Community Assistance, Division of Energy, HUD and Rural Housing Service) that can primarily review project funding requirements for housing rebuilding, but may also review referrals of individual assistance requests (e.g., a family that fails to qualify for sufficient financial assistance to re-establish a safe and affordable home).

Statement: The primary resources for disaster recovery are from private insurance, SBA, FEMA and the Red Cross. However, supplementary resources will be needed in some communities and for some individuals. The state should focus on effectively coordinating its resources and obtaining additional funds where there are identified gaps. The proposed Disaster Response Housing Committee would do the following:

- Advise local officials in maximizing the use of federal housing funds (e.g., SBA loans, Hazard Mitigation Grant Program) in disaster rebuilding projects by ensuring that limited funds available to the state are used efficiently and leveraging other funds whenever possible.

- Coordinate the application process for new or reprogrammed federal and state housing funds to be used by local governments, nonprofits and for profits in disaster rebuilding projects (e.g., low income housing tax credits, HOME Program, CDBG, Weatherization Assistance Program, Housing Trust Fund, Rural Housing Service funds).

- Create an interface between federal, state and local housing activities and private resources to assist in leveraging funds for rebuilding projects (e.g., bank CRA Programs, Community Investment Corp. of NC, Manufactured Housing Institute, NC Home Builders Assoc.).

- Review local government requests for temporary housing as a part of their disaster response or hazard mitigation project activity, based on well-documented local need, and make recommendations to appropriate officials for action.

- Encourage the NC Tax Reform Allocation Committee to extend the carryover and project completion deadlines for the sponsors of affordable rental developments that are using the Low Income Housing Tax Credit Program to produce energy efficient housing in disaster-declared counties.

Implementation

Responsible Agency: The Disaster Recovery Task Force should create the new committee as part of the Disaster Recovery Center structure. The committee could also be an expanded working group of the existing state Housing Coordination and Policy Council.

Estimated Cost: No additional cost

Timing: Prior to the allocation of the Hazard Mitigation Grant Program funds.

Expected Impacts: To be effective this standing committee will require staff support from the NC Housing Finance Agency.

ISSUE: Improved Emergency Response Training

Recommendation 80: Provide funding for and employ a coordinator in the Division of Social Services to create and implement an emergency response and recovery training plan, oversee the mass care function of the Disaster Food Stamp Program, and supervise the Individual and Family Grant Program.

Statement: There exists a need to develop a recovery plan that specifically addresses social service objectives. The plan should be incorporated into the ongoing training of employees in order to better prepare them to carry out specific disaster response and recovery tasks.

Implementation

Responsible Agency: The NC Department of Human Resources (lead agency), with the support of the American Red Cross, local councils on aging, county social services departments, area mental health programs, local emergency management coordinators, volunteer agencies, disability advocacy groups, nursing homes, and rest homes.

Estimated Costs: $70,000. Cost estimate includes salary for full time coordinator, benefits, travel, and funds for community disaster education program and other related expenses.

Timing: Prepare funding request for coordinator position and submit to funding agencies by July 1, 1997.

Expected Impact: Staff trained and ready to respond promptly and effectively during disasters.

ISSUE: Improved Coordination of Donations and Volunteers

<u>Recommendation 81</u>: Authorize, fund, and hire a Donations and Volunteers Planner/Coordinator and one support staff position. Authorize operational support and equipment funds to implement the Donations Management Plan as described in the State Emergency Operations Plan, Common Function 14.

Statement: During hurricanes Bertha and Fran, and previous disasters, there has been a documented need for an established system to manage the offer, acceptance, and distribution of unsolicited donations and unaffiliated volunteers. Statewide voluntary agencies and organizations that want to assist after disasters need a central place where they can acquire information about the disaster and coordinate activities. A State Donations and Volunteer Coordinator can assist victims in an organized manner. Staff will develop plans and standard operating procedures to support donations and volunteer management, develop and conduct training with volunteer agencies, ad hoc groups and local government, coordinate training and operational activities of the donations management hotline, coordinate training and operational activities of donation coordination teams, develop agreements with volunteer agencies, facilitate donations operations during disasters and emergencies, and develop exercise activities.

Implementation:

Responsible Agency: Division of Emergency Management

Estimated Costs: Complete estimates unavailable. Position salaries would be approximately $50,000 plus benefits.

Timing: Develop final recommendations for legislation by February 15, 1997. Hire and implement Full Time Donations and Volunteers Management by May 1, 1997.

Expected Impact:. Effective coordination of volunteer labor and donations.

ISSUE: Insufficient Personnel to Implement the Mission of Emergency Management

Recommendation 82: Organizational assessment of Division of Emergency Management.

Statement: Following Hurricane Fran it became evident that the Division of Emergency Management needs additional personnel to more effectively prepare, respond, and recover from natural disasters. However, the exact number and type of permanent staff required necessitates an internal organizational review. This review should involve two primary aims: 1) to help determine the current ability of the Division to prepare, respond, and recover from five presidentially declared disasters that have occurred across North Carolina over the last twelve months as well as future disasters that may strike the State; and 2) recommend specific positions, including job descriptions and expected salary ranges, that will effectively resolve unmet personnel needs. Once the review is completed, the findings should be presented to the Secretary of Crime Control and Public Safety and the State Legislature in order to establish possible funding initiatives.

Implementation:

Responsible Agency: Division of Emergency Management, Department of Crime Control and Public Safety, and the State Legislature.

Timing: Immediate

Cost: Agency administrative costs

Expected Impacts: Ability to quantify personnel needs while assessing areas within the Division that need improvement.

ISSUE: North Carolina Emergency Operations Plan Revision and Implementation Initiative

<u>Recommendation 83</u>: Each "common function primary agency" should create a full-time permanent emergency planning position. Every other agency in State government should designate a staff person with planning experience as that agency's emergency planner.

Statement: The Division of Emergency Management published the North Carolina Emergency Operations Plan (EOP) in April of 1996. The Plan is Based upon assigned common functions across state departments or agencies. Following Hurricanes Bertha and Fran, it became evident that the entire approach to the development and implementation of the State plan should be changed. In the past, this level of planning has been done by Division of Emergency Management planners writing agency specific sections of the plan after consultation with representatives of the various state agencies. After compiling these sections, the plan was submitted to the department or agency heads for their signatures. Some agencies integrated the plan into their overall operation. However, in many cases, the department or agency copy of the plan has not been utilized. Often there is no policy in place to ensure the implementation of the plan nor is there a responsible person to develop agency specific Standard Operating Procedures.

Implementation

Responsible Agencies: Division of Emergency Management, with the support of Common Function Primary agency.

Estimated Cost: Agency administrative cost.

Timing: Prior to the upcoming 1997 hurricane season.

Expected Impacts: Improved coordination across agencies before, during and after a disaster.

ISSUE: Creation of Emergency Management Preparedness Trust Fund

Recommendation 84: The Legislature should establish an Emergency Management Preparedness Trust Fund to be used to fund disaster preparedness, response, and recovery at both the state and local level.

Statement: Given North Carolina's susceptibility to hurricanes, and its rapid growth and development in vulnerable areas, the state must be prepared to address the range of issues and problems associated with storm events at or above the magnitude of Hurricane Fran. Current funding levels limit the effectiveness of the North Carolina Division of Emergency Management to perform their appointed tasks following large-scale disasters. The state of Florida, following Hurricane Andrew, established a Trust Fund to support emergency management. The revenue source for Florida's Trust Fund is a $2 surcharge on homeowner insurance policies and a $4 surcharge on commercial insurance policies. The revenue source for the North Carolina Trust Fund should be determined by the Legislature. Funds from the Trust Fund should supplement, not replace, existing federal, state, and local funds used for emergency management.

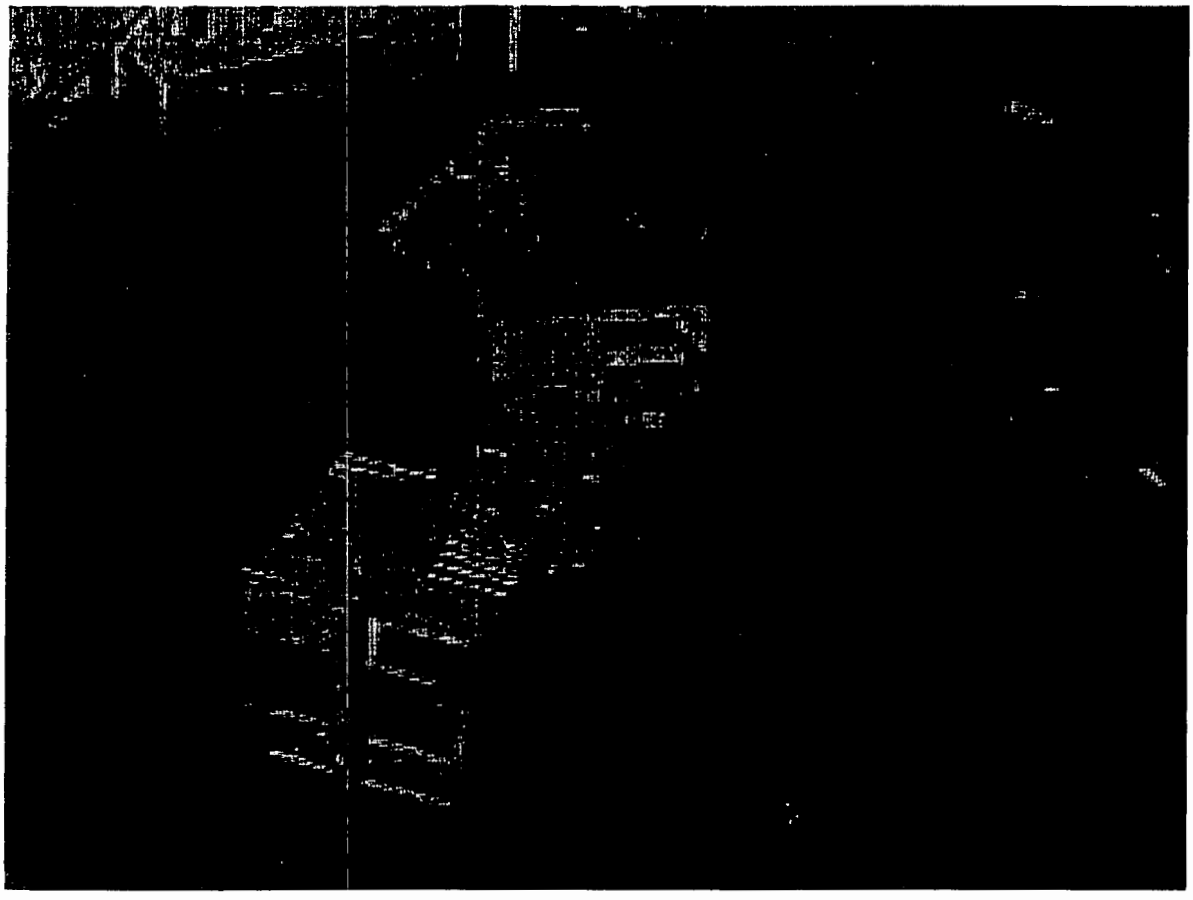
Implementation:

Responsible Agency: State Legislature.

Estimated Cost: No additional appropriation.

Timing: As soon as possible.

Expected Impacts: Establishment of a revenue stream necessary for the state to more effectively manage future disaster preparedness, response, mitigation, and recovery efforts.



Section V
Unmet Needs

V. UNMET NEEDS

Based on projects submitted by local governments in disaster-declared communities, there is a substantial amount of unmet needs left in the wake of Hurricane Fran.

These unmet needs are categorized below according to the federal agency which would be able to partner with the state in providing funding for outstanding disaster recovery and redevelopment projects.

FEDERAL AGENCY	AMOUNT OF UNMET NEED IDENTIFIED	PROJECT ACTIVITIES
Housing and Urban Development	$290,000,000	Housing and Business, Public Facilities, Public Utilities, and Education and Training Projects.
Department of Interior	$ 63,500,000	Forestry and Fire Suppression Projects.
Economic Development Administration	$ 50,200,000	Economic developmen, including Public Works, Technical Assistance, and Revolving Loans for Business and Industry.
U.S. Army Corp of Engineers	$ 16,500,000	Beach Renourishment and Restoration Projects
U.S. Department of Agriculture	$ 10,500,000	Stream/Tributary Maintenance and Mosquito/Disease Control Projects
TOTAL	**$430,700,000**	

By securing the funds identified above, North Carolina could address urgent, unfunded disaster recovery needs in a manner that reduces or eliminates the long-term risk to people and property from future natural disasters. Therefore, the state will seek $430,700,000 of additional Federal support from the U.S. Congress through the Federal Agencies listed above.

VI. CONCLUSION

Since Hurricane Hazel, which struck the coast in 1954, North Carolina has experienced rapid growth. Since that time, much of this growth has occurred along the coast and other flood-prone areas. Three hurricanes in a twelve month period served as a reminder that high numbers of people, property and natural resources are at risk. While Hurricane Fran was an extremely destructive storm, future hurricanes could easily prove to be even more devastating. Therefore, it is incumbent on all of those involved in the recovery process to seize this opportunity to institute measures that will better prepare North Carolina for future storms.

The five disasters necessitated the formation of strong partnerships between state agencies, FEMA, and local governments. This report has focused on policy recommendations that can be used to assist in this endeavor. Through the combined efforts of the state, FEMA, local governments, and the private sector, we can begin to rebuild in a manner that makes North Carolina less susceptible to future natural disasters.

Many of the recommendations involve streamlining policies and procedures, instituting outreach plans, and gathering data. These recommendation require little or no additional state funding. Other recommendations require additional financial resources and personnel. These additional resources, we believe, are a cost-effective means of saving lives, protecting property and preserving the state's natural resources.

Appendices

APPENDIX A
Review of Outreach Efforts

The North Carolina Disaster Recovery Center conducted four major outreach efforts following Hurricane Fran. The Center assisted federal, state and local government officials share information with the general public. These outreach efforts were based on the need to facilitate an efficient and effective response to the disaster.

Resources for Recovery Meetings

The North Carolina Disaster Recovery Center held five Resources for Recovery Meetings in the Fall of 1996. The meetings were conducted to inform local government officials of the resources available from state and federal sources. Local government officials were able to discuss their needs with appropriate agency representatives.

The meetings were held at the following regional locations:

November 15	Isothermal Community College, Rutherford County
November 16	South Granville Community College, Granville County
November 20	Beaufort Community College, Washington County
November 22	University of North Carolina at Pembroke, Robeson County
November 26	University of North Carolina at Wilmington, New Hanover County

Each of the meetings followed the same format. First, Billy Ray Hall, Director of the Disaster Recovery Center, gave a brief introduction. Next, coordinators from state and federal agencies provided an overview of the available resources. Coordinators included David Crisp, North Carolina Division of Emergency Management, Todd Davison, Federal Emergency Management Agency, and John Siler, Public Assistance. Following their remarks, presentations were given by federal and state officials. The agencies involved in this process and programs discussed are listed below.

Federal Resources for Recovery

U.S. Department of Agriculture
U.S. Department of Transportation
Army Corp of Engineers
Small Business Administration
Public Assistance
Human Services
National Flood Insurance Program
Program

State Resources for Recovery

Hazard Mitigation Grant Program
Department of Transportation
Water Supply
Job Training Partnership Fund
Housing
Department of Corrections
Community Development Block Grant

The attendance varied by location. Everyone agreed that the effort to reach out to all affected North Carolinians was successful. The recovery meetings also enhanced state and federal partnerships among those focused on the provision of needed

resources. During this time, both state and federal officials gained a clearer understanding of other agency programs, including how they might fit together to maximize the effectiveness of existing funding sources.

Outreach to Non-profits

On December 9, the Disaster Recovery Center focused on assisting non-profit organizations that sustained damages. Non-profits were identified through a collaborative effort of state, federal and non-profit personnel. Over 450 letters were sent to the 58 declared counties to communicate that help was available by using the 1-800 FEMA number. The Disaster Recovery Center also reminded the non-profits of the new January 4, 1997 filing deadline.

Statewide Outreach

Concerned about the low number of applications received from minorities, the elderly, small businesses, non-profits, Native Americans, and rural populations, Kevin Fitzgerald, Chair of the Human Resources Action Committee, coordinated an outreach campaign called "Neighbors Reaching Out." The campaign was developed to energize law enforcement agencies, churches, elder and mental health services, civic and non-profit groups, tribal leaders, volunteer organizations, cooperative extensions, and public schools to make sure that everyone who was impacted by Fran knew that help was available. Radio and television stations received pre-recorded public service announcements to help inform viewers and listeners of the fast-approaching deadline.

The committee contacted various leaders from 31 counties (listed below) to provide them with the FEMA toll free teleregistration number, the new application deadline information, and to ask for their assistance in contacting individuals who may have been missed. In addition to this effort, on December 12 & 13, various agency directors and advocacy groups received a letter from the Governor asking for their support in reaching their constituents.

To further maximize coverage, 19 of the 31 counties (listed in italics) were targeted for an intensive outreach campaign. The committee issued flyers to local mail carriers, utility meter readers, day care centers, churches, medical facilities, grocery stores and advocacy groups. These groups were used to identify those individuals who may have been missed in the broader campaign efforts.

Counties Targeted for Outreach Initiative

Alamance
Beaufort
Bladen
Brunswick
Carteret
Chatham
Columbus
Craven
Cumberland
Duplin
Durham
Edgecombe
Franklin
Guilford
Harnett
Henderson
Hoke
Hyde
Johnston
Lee
Lenoir
Nash
New Hanover
Onslow
Orange
Pender
Robeson
Sampson
Wake
Wayne
Wilson

Public Review of Action Team Recommendations

The Disaster Recovery Task Force Action Teams submitted their second draft for public review in early January. Fifty-two recommendations were presented at three sites across North Carolina. The public meetings were slated to give the Action Teams an opportunity to receive public input. The meetings were held on January 14 at the Coast Line Convention Center in Wilmington, NC, January 15 at McDowell Technical Community College in Marion, NC, and January 16 at the Archives and History/State Building in Raleigh, NC.

Prior to these meetings, approximately 850 invitations and draft reports were mailed. The invitation list included: congressional delegation, state and local officials, professionals, advocacy groups, community leaders, and federal and state emergency management personnel. Approximately 300 people participated in the comment process. The comments that contained recommendations were submitted to the Action Teams for review.

The Disaster Recovery Center has conducted four outreach efforts since its implementation. Every effort was designed to help North Carolinians respond to the disaster. To date, thousands of North Carolina's citizens have been reached through person to person contact, phone, fax, television, radio, and mail. The Disaster Recovery Center's role as liaison to the community has proven to be essential and valuable. The center will continue to provide efficient and effective outreach efforts and to offer pertinent information concerning the recovery phase.

APPENDIX B
Supplemental Funding

Federal Department	Summary	Supplemental Appropriation	Obligated to N.C. to date
Department of Commerce			
Small Business Administration	Home disaster loans, limit of $200,000 for real estate and $40,000 for personal property. Business Physical Disaster Loans, includes equipment, buildings, and other capital items, limit of $1.5 million or actual loss. Economic Injury Disaster Loans, provides compensation for businesses for lost earnings, limit of $1.5 million or actual injury	$135 million	$92 million in approved loans.
Economic Development Administration	Enhance or improve infrastructure such as water and sewer systems. FEMA funds restoration of damaged water/sewer infrastructure and facilities to their pre-disaster condition. EDA funds enhancements and improvements, system-wide upgrades, expanded capability, relocation out of floodplain, and envtl. code compliance	$25 million	$15 million
Department of Defense			
Army Corps of Engineers	General Operations & Maintenance fund for emergency dredging and debris removal. Open and navigate channels for commerce and other restoration activities. Provides berm (dune) renourishment Flood control and Coastal Emergencies	$19 million	$17 million

Federal Department	Summary	Supplemental Appropriation	Obligated to N.C. to date
Department of Agriculture			
Emergency Conservation Program	Cost sharing assistance to farmers. Funds can be used for debris clearing, fence mending, land shaping and grading, and restoring conservation structures	$25 million	$17.3 million
Natural Resources Conservation Service Watershed and Flood Prevention Operations	Provides disaster assistance to communities to reduce hazards to life and property in watersheds. Funds can be used for opening dangerously restricted channels and waterways, repairing levees, and controlling erosion on slopes	$63 million	$9.3 million (of which, $1.6 million in technical assistance)
National Forest Service	Includes $3.4 million for National Forest System; $5.2 million for reconstruction or construction	$8.6 million	Not available
Department of Transportation			
Repair Roads	Emergency Relief Program funding shifted from the Highway Trust Fund	$82 million	$25 million
Department of Interior			
National Parks Service	Construction	$3 million	Not available
USGS	Surveys, investigation and research to address data collection and documentation costs associated with hurricane and flood damage	$1.1 million	Not available
Fish & Wildlife Service	For construction to address damages from hurricanes Bertha, Fran and Hortense, Midwest floods and droughts, floods in Southwest	$15.9 million	Not available
Bureau of Indian Affairs	$6.6 million for operation of Indian programs and $6 million for construction to repair damage caused by floods and fires	$12.6 million (must be federally recognized tribes)	Not available
Total		**$390.2**	**$175.6**

APPENDIX C
Hazard Mitigation Grant Program

The Hazard Mitigation Grant Program (HMGP) is authorized by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288 as amended). The primary aim of the HMGP is the reduction of future loss of lives and property via the implementation of cost-effective mitigation measures during the recovery phase of a disaster. Federal funding for HMGP is based on 15% of the total dollar amount of federal assistance for the disaster. The HMGP is a 75% federal, 25% non-federal cost share program. The non-federal share may be met by an applicant with cash, in-kind services, or other grants such as the Community Development Block Grant Program. Traditionally, the state has agreed to pay the 25% share. Applicants are encouraged to use additional funding sources to supplement the HMGP, particularly in larger projects that may include components that are not eligible under HMGP.

In order for the State of North Carolina to be eligible for HMGP funds from FEMA, the Division of Emergency Management was required to develop a Hazard Mitigation Plan (409 Plan). This comprehensive, all-hazards, mitigation plan evaluates the hazards in the areas where Federal disaster relief proceeds are provided, and sets forth a plan of action to mitigate those hazards.

The North Carolina Administrative Plan (404 Plan) is the mechanism through which the HMGP is implemented. The 404 Plan also governs how projects are selected for funding. Projects are awarded according to priorities established by the Division of Emergency Management. HMGP priorities are developed in accordance with local needs and FEMA eligibility requirements. Applicant needs were determined using the following sources of information:

- Community site visits following Hurricane Fran;
- Discussions with County Emergency Managers and Emergency Management Area Office Coordinators;
- The use of Geographic Information System (GIS) data;
- Field reports from Disaster Recovery Center teams;
- Damage Survey Reports (DSRs);
- Hazard Mitigation Grant Program (HMGP) Applicant Briefings;
- Governor's Redevelopment Task Force review;
- Municipal and County Officials review;
- North Carolina Council of Government Directors review;
- North Carolina Department Secretaries and Agency Heads review;

- League of Municipalities review;
- Association of County Commissioners review; and
- Local NFIP Administrators review

Proposed HMGP Priorities by Project Type for Hurricane Fran

The North Carolina Division of Emergency Management proposes to focus on four policy issues; an individuals principle place of residence, critical public facilities, business recovery, and storm water drainage improvements. Within each of these broad policy areas exist several possible mitigation techniques or procedures that are listed below. The policy issues and the mitigation measures within each of the four policy areas are listed in rank order. The final category listed as "other" includes additional mitigation measures that may be addressed if the funds are available. The HMGP priorities are listed as follows:

I. Principal Place of Residence

1) Acquisition/relocation or acquisition/demolition of principle place of residence, where feasible, including full-time rental units

2) Elevation of principle place of residence

II. Critical Public Facilities

1) Relocation of public health and safety facilities

2) Flood proofing/retrofitting of critical public facilities

3) Flood proofing/retrofitting waste water treatment facilities

III. Business Recovery

1) Flood proofing and wind proofing of business

2) Relocation of businesses

IV. Storm Water Drainage Improvements

1) Design and implementation of storm water management systems, including culverts, drainage ditches, and detention basins

V. Other Projects

Dune revegetation and sand fencing

Dry flood proofing/retrofitting of principle places of residence

Creation and implementation of local hazard mitigation plans

Generators for critical needs

Development and implementation of zoning and building code ordinances

Education and training of public officials and citizens

Warning systems

Relocation of environmental hazards out of special flood hazard areas

Relocation of wastewater treatment facilities

Erosion and sediment control

APPENDIX D
Disaster Recovery Action Team Committee Members

Agriculture and Natural Resources
Chair, Graham Boyd, Office of the Governor
Action Team Members:
Stan Adams, Division of Forest Resources
Frank Bordeaux, North Carolina Agriculture Finance Agency
Dewey Botts, North Carolina Soil and Water Association
Robert Caldwell, North Carolina State Grange
Sam Coley, North Carolina Farm Service Agency
Dick Gallo, Natural Resources Conservation Service
Jon Ort, North Carolina Cooperative Extension Service
Pender Sharp, Sharp Farms
Tom Slade, North Carolina Department of Agriculture
Bob Slocum, North Carolina Forestry Association
Jerry West West Family Farms
Larry Wooten, North Carolina Farm Bureau Federation

Business Development and Employment
Chair, Walt Plosila, North Carolina Alliance for Competitive Technologies
Action Team Members:
J. Parker Chesson, Employment Security Commission
John Ciannamea, North Carolina Technological Development Authority, Inc.
Paul Cook, Travel and Tourism Division, Department of Commerce
Scott Daugherty, Small Business Technology Development Centers
Stuart Dickinson, Finance Center, Department of Commerce
Mary Fant, Department of Labor
Ray Goodman, Employment Security Commission
Bob Hinshaw, Finance Center, Department of Commerce
Chris Mackey, Cape Fear Coastal Convention & Visitors Bureau
Jim Overton, Self-Help Credit Union
Scott Ralls, Employment and Training Division, Department of Commerce
Rick Webb, North Carolina Partnership for Economic Development

Coastal
Chair, Roger Schecter, Division of Coastal Management
Action Team Members:
David Brower, University of North Carolina Department of City & Regional Planning
Tony Caudle, Town of Wrightsville Beach
Bruce Freeman, Division of Marine Fisheries
Vance Key, Town of Surf City
David Owens, University of North Carolina Institute of Government
Preston Pate, Division of Coastal Management
Eric Peterson, Town of Topsail Beach
Spencer Rogers, UNC-Sea Grant

Community Facilities
Chair, Bill McNeil, North Carolina Division of Community Assistance
Action Team Members:
Ron Aycock, North Carolina Association of County Commission
Steven Berkowitz, North Carolina Division of Environmental Health
Bobby Blowe, North Carolina Division of Water Quality
Kendra Boyle, North Carolina Department of State Treasurer
Tom Cassell, North Carolina Division of Community Assistance
Nan Cheek, Wake County Public Safety
Ed Cochrane-Brown, North Carolina Department of Human Resources
Willard Dean, Jr., USDA - Rural Development
Pat Dixon, U.S. Economic Development Administration
Sid Harrell, North Carolina Public Water Supply
Terry Henderson, North Carolina League of Municipalities
Bob Hinshaw, North Carolina Commerce Finance Center
Mark Hodge, North Carolina Local Government Commission
John Mandeville, North Carolina Department of Human Resources
Jerry Perkins, North Carolina Public Water Supply Section
John Soles, North Carolina Rural Economic Development Center
Sara Stuckey, North Carolina Department of Administration

Paula Thomas, North Carolina League of Municipalities

Housing

Chair, Bob Kucab, Housing Finance Agency

Action Team Members:
Thurman Burnette, Rural Housing, USDA
Tom Ferebee, Community Planning and Development, HUD
Ruth Leggett, Division of Community Assistance
Ed Regan, Association of County Commissioners
Greg Schwitgebel, North Carolina League of Municipalities
Action Team Advisors*:
Cay Cross, Project Blue Sky
Doug Culbreth, Division of Energy
Ken Mitchell, North Carolina Home Builders Association
Steve Zamiara, Manufactured Housing Institute
*Numerous representatives from FEMA and the Division of Emergency Management also participated.

Human Resources

Chair, Kevin FitzGerald, Division of Social Services

Action Team Members:
Les Boney, Community Involvement
Nancy Coston, Craven County Department of Social Services
Bonnie Cramer, Division of Aging
Albert E. Thompson, Jr., Division of Social Services
Jan Elliott, Region III, Division of Social Services
John Link, Orange County Manager
Pete Montague, Triangle Area Chapter of the Red Cross
Wayne Morris,New Hanover County Department of Social Services
Danny Shaw,Onslow County Extension Service
Thelma S. Simmons, Jones County Division of Social Services
Cal Jeffries, Division of Emergency Management
Randy Collins, Division of Services for the Deaf and Hard of Hearing
Greg Richardson, Commission on Indian Affairs
Joseph Steward, Dept. of Crime Control and Public Safety
Andrea Harris, NC Institute of Minority Economic Development
Bonnie Morell, Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Becky Humphrey, NC Methodist Disaster Response

Public Health and Environment

Chair, Linda Sewall, Environment Health

Action Team Members:
Alan Clark, Division of Water Quality
Mike Moser, Division of Epidemiology
Nolan Newton, Public Health Pest Management Section
Todd Powell, City of Lillington
Phil Prete, Division of Waste Management
Will Sullivan, Wayne County Manager

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 2/18/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	N.C. State Grange
Kim Smith	NCLM
Laura Hartsell	MCIC
Ed Regan	N.C. Assoc. of Co. Comm.
PB	NCFB
Andy Elder	NCFB
Michelle Cook	Weyerhaeuser
John Rostic	Hunton & Williams
Bob Slocum	NC Forestry Assoc.
Glenn Brothers	UNC Gen. Admin / NC State - Ag Programs
Peter Daniel	NCDA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 2/18/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	Zeb Alley, PA
JERRY SCHILL	NC Fisheries Association
[signature]	Bore resource / T.I / Port Comm'l
Deryl Walden	EHNR - Div of Forest Resources
Dianne Parrish	EHNR - Forest Resources
Roger Schecter	Div. Coastal Management
Steve Tedder	Div. Water Quality
Dunford G Laughinghouse	NS
K. Rogers	EHNR
Tom Beason	NC Wildlife Federation
Geo. Stephanopolous	ABC, Wash DC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry M Lancaster III	DEHNR
Graham Boyd	Governor's Office
Billy Ray Hall	NC Disaster Center
Fred Taylor	WRAL-TV
Harlan Britt	DEHNR - DWQ

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

February 25, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, February 25, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eighteen committee members present.

The following bills were discussed and copies are attached:

SB 110 - ESTABLISH ENVIRONMENTAL CABINET - Senator Perdue, sponsor, was asked to explain the bill. There was a proposed committee substitute, and Senator Perdue moved for its adoption for discussion purposes. Motion carried. Senator Odom moved that the PCS be given a favorable report, unfavorable as to bill. Motion carried.

SB 140 - INCREASE ERC MEMBERSHIP - Senator Odom, bill sponsor, explained the bill. Senator Gulley moved for a favorable report. Motion carried.

Senate Bill 120 - Agri Cost Sharing Funding Limits, sponsored by Senator Kerr, was taken off the agenda.

There being no further business the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, February 25, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 110	ESTABLISH ENVIRONMENTAL CABINET Senator Perdue
SB 120	AGRI COST SHARE FUNDING LIMITS Senator Kerr
SB 140	INCREASE ERC MEMBERSHIP Senator Odom

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, February 25, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **140** INCREASE ERC MEMBERSHIP
Sequential Referral: NONE
Recommended Referral: NONE

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **110** ESTABLISH ENVIRONMENTAL CABINET
Draft Number: PCS8540
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: HOLD FOR SENATOR ALBERTSON

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 110
Proposed Committee Substitute S110-PCS8540

Short Title: Establish Environmental Cabinet. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ENVIRONMENTAL CABINET WITHIN THE OFFICE OF THE GOVERNOR.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 4C. Governor's Environmental Cabinet.

"**§ 143B-285.30. Environmental Cabinet created.**

(a) Creation. -- The Environmental Cabinet is created. The Environmental Cabinet shall be located administratively within, and shall exercise its powers within existing resources of, the Office of the Governor. However, the Environmental Cabinet shall exercise its statutory powers independently of the Office of the Governor.

(b) Membership; Meetings. -- The Environmental Cabinet shall consist of the Governor, who shall serve as Chair, the Secretary of Environment, Health, and Natural Resources, and the Chairs of each of the following Commissions: The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission. The Environmental Cabinet shall invite representatives of the business community, environmentalists, agriculture, marine fisheries, and others to participate in its deliberations. The Environmental Cabinet shall meet at least quarterly.

(c) Duties. -- The Environmental Cabinet shall be a nonvoting body that develops and recommends action to take a comprehensive view of protecting the environment, including:

(1) Enhancing communication and cooperation among and between the Coastal Resources Commission, the Environnmental Management Commission, the Marine Fisheries Commission, and their respective divisions in the Department.

(2) Informing the three Commissions of rules adopted and other action taken by each Commission to ensure consistency among the Commissions.

(3) Coordinating rule making and other responsibilities to make the Department more efficient with respect to overlapping responsibilities including, but not limited to, water quality, habitat protection, and permit issuance.

(4) Studying the consolidation of commissions.

(5) Establishing a strategy to develop teamwork within the Department to better manage the environment by reducing duplication in agency responsibilities and by simplifying the permitting process.

(6) Studying other issues referred to it by the Governor or the General Assembly.

(d) Staff. -- The Office of the Governor, in coordination with the existing staff of the Department of Environment, Health, and Natural Resources, shall provide staff to the Environmental Cabinet.

(e) Reporting. -- The Environmental Cabinet shall report semiannually beginning September 1 of each year to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture on the duties set forth in this section."

Section 2. This act becomes effective July 1, 1997. The Environmental Cabinet shall make its first report on or before September 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 110

Short Title: Establish Environmental Cabinet. (Public)

Sponsors: Senators Perdue; and Odom.

Referred to: Agriculture/Environment/National Resource.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ENVIRONMENTAL CABINET WITHIN THE OFFICE OF THE GOVERNOR.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 4B. Governor's Environmental Cabinet.

"**§ 143B-285.30. Environmental Cabinet created.**

(a) Creation. -- The Environmental Cabinet is created. The Environmental Cabinet shall be located administratively within, and shall exercise its powers within existing resources of, the Office of the Governor. However, the Environmental Cabinet shall exercise its statutory powers independently of the Office of the Governor.

(b) Membership; Meetings. -- The Environmental Cabinet shall consist of the Governor, who shall serve as Chair, the Secretary of Environment, Health, and Natural Resources, and the Chairs of each of the following Commissions: The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission. The Environmental Cabinet shall invite representatives of the business community, environmentalists, agriculture, marine fisheries, and others to participate in its deliberations. The Environmental Cabinet shall meet at least quarterly.

(c) Duties. -- The Environmental Cabinet shall be a nonvoting body that develops and recommends action to take a comprehensive view of protecting the environment, including:

(1) Enhancing communication and cooperation among and between the Coastal Resources Commission, the Environnmental Management Commission, the Marine Fisheries Commission, and their respective divisions in the Department.

(2) Informing the three Commissions of rules adopted and other action taken by each Commission to ensure consistency among the Commissions.

(3) Coordinating rule making and other responsibilities to make the Department more efficient with respect to overlapping responsibilities including, but not limited to, water quality, habitat protection, and permit issuance.

(4) Studying the consolidation of commissions.

(5) Establishing a strategy to develop teamwork within the Department to better manage the environment by reducing duplication in agency responsibilities and by simplifying the permitting process.

(6) Studying other issues referred to it by the Governor or the General Assembly.

(d) Staff. -- The Office of the Governor, in coordination with the staff of the Department of Environment, Health, and Natural Resources, shall provide staff to the Environmental Cabinet.

(e) Reporting. -- The Environmental Cabinet shall report semiannually to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture on the duties set forth in this section."

Section 2. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 140

Short Title: Increase ERC Membership. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD TWO MEMBERS TO THE ENVIRONMENTAL REVIEW COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-70.42 reads as rewritten:

"**§ 120-70.42. Membership; ~~cochairmen~~ cochairs; vacancies; quorum.**

The Environmental Review Commission shall consist of ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, ~~five~~ six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the ~~Chairman~~ Chair of the Senate Committee on Environment and Natural Resources, and the ~~Chairman~~ Chair of the House of Representatives Committee on the Environment. The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman~~ cochair. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of ~~seven~~ eight members."

Section 2. This act is effective when it becomes law and applies to any appointments for terms beginning on or after that date.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 2/25/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Alicia Gruenebaum	intern
John Cyrus	N.C. State Grange
Vernon James	NC State Grange
Jon Kahley	N.C. Pork Council
John Long	Martin Marietta
Kim Smith	NC League of Municipalities
JERRY SCHILL	NC Fisheries ASSOCIATION
Faith-Renee Foxx-Hutchins	NCSU Fisheries & Wildlife Undergraduate
Jon Carr	Jordan Price Law Firm
Ben Holman	CCNC / Sierra Club

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NC Farm Bureau
Bill Stanhouse	DuPont
Leslie Bebacqua	NCCBI
Laura Hartsell	MCIC
David Simmons	Zebs Alley, RA
A.B Swindell IV	BFI
LINDA RIMER	NCDENR
K. Rogers	DENR
Dewey Botts	"
Charles Fullwood	NC Wildlife
Amy Jo Bain	Smith Anderson

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Williams	Bone Assoc / T.I. v Pork Council
Wilda Denny	NCDA
Maurice Weaver	NCDA
Mike Carpenter	NCNGA

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 4, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 4, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were sixteen committee members present.

The following bills were discussed and copies are attached:

HOUSE BILL 4 - YADKINVILLE SEWAGE TREATMENT CONTRACT - Senator Kincaid explained the bill for Representative Holmes, bill sponsor. Senator McDaniel moved that the bill be given a favorable report. Motion carried.

SENATE BILL 138 - DRINKING WATER AMENDMENTS - Senator Odom, sponsor, explained the bill. Senator Horton moved that it be given a favorable report. Motion carried.

Senate Bill 126 - Solid Waste Permit Requirements had been on agenda; however, Senator Odom, sponsor, requested that bill be displaced until another meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 4, 1997
11:00 a.m.
Room 1124 LB

AGENDA

HB 4	YADKINVILLE SEWAGE TREATMENT CONTRACT. Representative Holmes
SB 126	SOLID WASTE PERMIT REQUIREMENTS Senator Odom
SB 138	DRINKING WATER AMENDMENTS Senator Odom

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT

Senator Albertson, Chairman

Tuesday, March 04, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **4** Yadkinville Sewage Treatment Contract.
Sequential Referral: None
Recommended Referral: None

S.B. **138** Drinking Water Amendments
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 4

Short Title: Yadkinville Sewage Treatment Contract. (Local)

Sponsors: Representatives Holmes; Brown, Rayfield, and Hardy.

Referred to: Local and Regional Government II.

January 30, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE TOWN OF YADKINVILLE FROM CERTAIN STATUTORY REQUIREMENTS IN THE EXPANSION AND IMPROVEMENT OF THE TOWN'S SEWAGE TREATMENT PLANT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 143-128, 143-129, 143-131 and 143-132, the Town of Yadkinville may enter into contracts for the expansion and improvement of the town's sewage treatment plant in the manner and upon the terms and conditions the town considers appropriate.

Section 2. This act is effective when it becomes law but only applies to contracts entered into on or before January 1, 1998.

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 3, 1997

MEMORANDUM

TO: The Senate Committee on Environment, Agriculture and Natural Resources.

FROM: Barbara Riley, Committee Counsel

RE: House Bill 4: Yadkinville Sewage Treatment Contract.

House Bill 4., introduced by Representative Holmes, is a local bill exempting Yadkinville from State bidding and contract requirements for the expansion and improvement of the town's sewage treatment plant.

Specifically, Yadkinville would not be required to meet the requirements for;

(1) Building contracts, ie. preparation of separate specifications for various components of the project, G.S. 143-128;
(2) Competative bidding, G.S. 143-129;
(3) Informal bids, G.S. 143-131; and
(4) Minimum number of bids for public contracts, G.S. 143-132.

The exemption expires January 1, 1998. The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 138

Short Title: Drinking Water/Conform with Fed. Law. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-313(10) reads as rewritten:

"(10) 'Public water system' means a system for the provision to the public of ~~piped water for human consumption~~ water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and

b. Any collection or pretreatment storage facility not under the control of the operator of the system ~~which~~ that is used primarily in connection with the system.

A public water system is either a 'community water system' or a 'noncommunity water system' as follows:

a. 'Community water system' means a public water system ~~which~~ that serves 15 or more service connections or ~~which~~ that regularly serves at least 25 year-round residents.

b. 'Noncommunity water system' means a public water system ~~which~~ that is not a community water system.

A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:

a. The water is used exclusively for purposes other than residential uses. As used in this subdivision, 'residential uses' mean drinking, bathing, cooking, or other similar uses.

b. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.

c. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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

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Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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Raleigh, NC 27603-5925
(919) 733-4910

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Raleigh, NC 27603-5925
(919) 733-6834

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Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

March 4, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Assistant Committee Counsel

SUBJECT: Senate Bill 138 (Drinking Water/Conform with Fed. Law)

Senate Bill 138 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 it effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/4/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W Dick	Hamptonville, NC
John Bowdish	Zeb Alley PA.
Jessica Miles	NC DEHNR Public Water Supply
Nancy Rumbaugh	Bynum & Jarrell
Kim Smith	NCLM
Michelle Cook	Weyerhaeuser
Jon Carr	Jordan Price Wall Gray Jones
David Mott	DEHNR Solid Waste
David Meredith	N.C. State Grange
John Cyrus	N.C. State Grange
R. Paul Wilms	NC MBA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Carpenter	NCMBA
R. Rogers	DENR
RICHARD WHISNANT	DEHNR
[illegible]	CENC/SIERRA CLUB
Laura Hartzell	MCIC
Amy Mumma	Hunton & Williams
John Rustin	H&W
Paul Georgieff	Cuningham + Assocs.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 11, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 11, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were seventeen committee members present.

The following bills were discussed and copies are attached:

SENATE BILL 150 - INACTIVE HAZ. SITES/REPORTS & NOTICE - sponsored by Senator Cooper who explained the bill. Bill Holman of the Sierra Club spoke on the bill. Senator McDaniel moved that the bill be given a favorable report. Motion carried.

SENATE BILL 151 - INACTIVE HAZ. SITES INFO - sponsored by Senator Cooper. George Givens of staff was called on to explain the bill. Senator Odom moved for a favorable report. Motion carried.

SENATE BILL 126 - SOLID WASTE MGT. PERMIT REQUIREMENTS - sponsored by Senator Odom. George Givens of staff was called on to explain the bill which had been turned into a proposed committee substitute. Senator Odom moved that the PCS be adopted for discussion purposes. Motion carried. After discussion, Senator Odom moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

Senate Bill 114 - Inactive Haz. Sites Recordation, sponsored by Senator Horton, had been on the agenda but was carried over to another meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 11, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 114	INACTIVE HAZ. SITES RECORDATION Senator Horton
SB 126	SOLID WASTE MGT. PERMIT REQUIREMENTS Senator Odom
SB 150	INACTIVE HAZ. SITES/REPORTS & NOTICE Senator Cooper
SB 151	INACTIVE HAZ. SITES INFO Senator Cooper

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, March 11, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **150** Inactive Haz. Sites/Reports & Notice
Sequential Referral: None
Recommended Referral: None

S.B. **151** Inactive Haz. Sites Info
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **126** Solid Waste Mgt. Permit Requirements
Draft Number: PCSA572
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment:

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

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.10 reads as rewritten:

"**§ 130A-310.10. Annual reports.**

(a) The Secretary shall present ~~an annual~~ a report on inactive hazardous sites to ~~the General Assembly and~~ the Environmental Review ~~Commission which~~ Commission. The report shall include at ~~least the following:~~ least:

(1) The Inactive Hazardous Waste Sites Priority List;

(2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup Fund;

(3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said plans;

(4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan;

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval;
(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said plans;
(7) A list of sites which pose an imminent hazard;
(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup Fund; and
(9) Any other information requested by the General Assembly or the Environmental Review Commission.

(b) The ~~annual reports~~ report required by this section shall be made by the Secretary on ~~15 February of each year beginning 15 February 1990.~~ or before 1 November of even-numbered years."

Section 2. G.S. 130A-310.4(e) reads as rewritten:

"(e) At least 45 days from the latest date on which notice is provided pursuant to subsection ~~(e)~~ (c)(1) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan."

Section 3. This act is effective when it becomes law. The Secretary of Environment, Health, and Natural Resources shall make the first report under G.S. 130A-310.10, as amended by Section 1 of this act, on or before 1 November 1998.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(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 11, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Assistant 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).

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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.1 reads as rewritten:

"**§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous substance or waste disposal ~~sites.~~ sites; duty of owners, operators, and responsible parties to provide information and access; remedies.**

(a) ~~Within six months of July 1, 1987, the~~ The Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all ~~such~~ inactive hazardous substance or waste disposal sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The ~~inventory shall include~~ Secretary shall maintain records of any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste ~~streams.~~ streams for inventoried sites. The ~~inventory shall indicate~~ records shall include all available information on

the extent of any actual damage or potential danger to public health or to the environment resulting from ~~such~~ the contamination.

(b) ~~Within six months of July 1, 1987, the~~ The Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days ~~thereafter, each~~ of the date on which an owner, operator, or responsible party knows or should know of the existence of an inactive hazardous substance or waste disposal site, the owner, operator, or responsible party shall submit to the Secretary all ~~such~~ site data ~~as~~ that is known or readily available to ~~him.~~ the owner, operator, or responsible party. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, ~~such~~ the data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct ~~such~~ any monitoring, testing, analysis, and reporting ~~as~~ that the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any ~~such~~ order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate any responsible party, the Secretary may take ~~such~~ the action. The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this section.

(f) Upon reasonable notice, the Secretary may require any person to furnish to the Secretary any information, document, or record in that person's possession or under that person's control that relates to:

(1) The identification, nature, and quantity of material that has been or is generated, treated, stored, or disposed of at an inactive hazardous substance or waste disposal site or that is transported to an inactive hazardous substance or waste disposal site.

(2) The nature and extent of a release or threatened release of a hazardous substance or hazardous waste at or from an inactive hazardous substance or waste disposal site.

(3) Information relating to the ability of a person to pay for or to perform a cleanup.

(g) A person who is required to furnish any information, document, or record under subsection (f) of this section shall either allow the Secretary to inspect and copy all information, documents, and records or shall copy and furnish to the Secretary all information, documents, and records at the expense of the person.

(h) To collect information to administer this Part, the Secretary may subpoena the attendance and testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information that the Secretary deems necessary. Witnesses shall be paid the same fees and mileage that are paid to witnesses in proceedings in the General Court of Justice. In the event that a person fails to comply with a subpoena issued under this subsection, the Secretary may seek enforcement of the subpoena in the superior court in any county where the inactive hazardous substance or waste disposal site is located, in the county where the person resides, or in the county where the person has his or her principal place of business.

(i) A person who owns or has control over an inactive hazardous substance or waste disposal site shall grant the Secretary access to the site at reasonable times. If a person fails to grant the Secretary access to the site, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

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Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(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 11, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Assistant Committee Counsel

SUBJECT: Senate Bill 151 (Inactive Haz. Sites Info.)

Senate Bill 151 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC).

Section 1.

Section 1 of this bill 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.

Section 2 of this bill makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 126*
Proposed Committee Substitute S126-PCSA572

Short Title: Solid Waste Mgt. Permit Requirements. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT AN APPLICANT FOR A PERMIT UNDER THE STATUTES GOVERNING SOLID WASTE MANAGEMENT BE FINANCIALLY QUALIFIED AND DEMONSTRATE SUBSTANTIAL COMPLIANCE WITH ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 is amended by recodifying subdivision (1) as subdivision (1a), subdivision (1a) as subdivision (1b), subdivision (1b) as subdivision (1c), subdivision (41a) as subdivision (41b), and by adding three new subdivisions to read:

"(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(21a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(41a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition)."

Section 2. G.S. 130A-294 is amended by adding two new subsections to read:

"(b2) The Department may require an applicant for a permit under this Article to 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 and applies to any application for a permit submitted on or after the date on which this act becomes law, provided that an applicant for the renewal or modification of a permit for an existing facility or for a permit for the expansion of an existing facility who satisfies G.S. 130A-309.06(b) shall not be required to satisfy G.S. 130A-294(b2)(2), as enacted by Section 2 of this act.

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, Kinnaird, and Martin of Pitt.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT AN APPLICANT FOR A PERMIT UNDER THE STATUTES GOVERNING SOLID WASTE MANAGEMENT BE FINANCIALLY QUALIFIED AND DEMONSTRATE SUBSTANTIAL COMPLIANCE WITH ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 is amended by recodifying subdivision (1) as subdivision (1a), subdivision (1a) as subdivision (1b), subdivision (1b) as subdivision (1c), subdivision (41a) as subdivision (41b), and by adding three new subdivisions to read:

"(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'affiliate' as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(21a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(41a) 'Subsidiary' has the same meaning as in 17 Code of Federal 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.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(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 11, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Assistant Committee Counsel

SUBJECT: Senate Bill 126 (Solid Waste Mgt. Permit Requirements)

Senate Bill 126 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC).

Section 1.

Section 1 of this bill amends G.S. 130A-290 by adding definitions for "affiliate", "parent", and "subsidiary". These added definitions are the same as those in federal securities regulations (17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition)).

Section 2.

Section 2 of this bill amends G.S. 130A-294 by adding two new subsections:

Subsection (b2) requires an applicant for a solid waste management permit to demonstrate (1) that the applicant is financially qualified to carry out the permitted activity and (2) that the applicant 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 Department of Environment, Health, and Natural Resources 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 this bill makes this act effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/11/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Holmes	LCNC / Sierra Club
Claire Gillespie	Gov's Office
Mark Mumbacher	Poyner & Spruill
R B Swindell	BFI
Kim Smith	NCLM
Suzanne Williams	Bowe & Assoc -
Jack Butler	N.C. Superfund Sect.
Charlotte Jessee	NC DEHNR (Inactive Hazardous Sites Branch)
Dexter Matthews	NC DEHNR Solid Waste Section
Richard Whisnant	DEHNR
Laura Hartsell	MCIC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/11/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	NC Hospital Assn.
J Craig Quin	PCMH
John Kuster	Hunton & Williams
Jim Blackburn	Association of County Commissioners
Andy Allen	NC Farm Bureau
PG	"

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 18, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 18, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bills were discussed, copies of which are attached:

SENATE BILL 114 - INACTIVE HAZ. SITES RECORDATION - Senator Horton, sponsor, was recognized to explain the bill. He sent forth an amendment (Attachment 1) and moved for its adoption. After discussion of the amendment by the committee, Senator Horton withdrew his amendment. Senator Odom said he thought interested parties should have time to look at this amendment. Arthur Mouberry of the Department of Environment, Health and Natural Resources spoke against the amendment and answered questions from committee members. Senator Clark moved that the bill, without the amendment, be adopted. Motion carried.

HOUSE BILL 210 - AG DEPT. NAME CHANGE - Representative Brown, sponsor, was recognized to explain his bill. Jim Graham, N. C. Commissioner of Agriculture, also explained the bill. Senator Weinstein moved for a favorable report of the bill, motion carried. Bill was sequentially referred to Appropriations.

SENATOR BILL 266 - PRODUCTION AND SALE OF RED DEER - Senator Ledbetter, sponsor, was recognized to explain the bill. He also had a hand-out (Attachment 2). A representative from the N. C. Department of Agriculture spoke in favor of this bill. Senator Gulley moved for a favorable report. Motion carried and it was referred to Finance Committee per recommendation of the committee.

Senate Bill 240 - Remove Odor Control Study Match and Senate Bill 287 - Monitor Coastal Water Quality had been on the agenda but were not discussed at this meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 18, 1997
11:00 a.m.
Room 1124 LB

AGENDA

SB 114	INACTIVE HAZ. SITES RECORDATION Senator Horton
SB 266	PRODUCTION AND SALE OF RED DEER Senator Ledbetter
SB 287	MONITOR COASTAL WATER QUALITY Senator Perdue
HB 210	AG DEPT. NAME CHANGE Representative Brown
HB 240	REMOVE ODOR CONTROL STUDY MATCH Representative Mitchell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, March 18, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **210** AG. DEPT. NAME CHANGE
Sequential Referral: APPROPRIATIONS
Recommended Referral: NONE

S.B. **114** INACTIVE HAZ. SITES RECORDATION
Sequential Referral: NONE
Recommended Referral: NONE

S.B. **266** PRODUCTION AND SALE OF RED DEER
Sequential Referral: NONE
Recommended Referral: FINANCE

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 114*

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors: Senators Horton; Albertson, Cooper, and Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) ~~This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which~~ Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this ~~Part.~~ Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. This act is effective when it becomes law.

ATTACHMENT 1
WITHDRAWN

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 114

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

S114V1-ART-001.01

Date March 18, 1997

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

Senator Horton

moves to amend the bill on page 1, line 5
by rewriting that line to read:

"ENVIRONMENTAL REVIEW COMMISSION, AND TO MAKE A LIMITED ADJUSTMENT TO THE LEAKING UNDERGROUND STORAGE TANK CLEANUP PROGRAM." and

on page 3, line 12
by rewriting that line to read:

"Section 2. Notwithstanding the provisions of G.S. 143-215.84 and G.S. 143-215.94E and except as provided in Subsection (d) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session), no person shall be required to cleanup a discharge or release from a leaking petroleum underground storage tank that has been classified as having a Class CDE impact pursuant to Subsection (b) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session).

Section 3. This act is effective when it becomes law. Section 2 of this act expires when the rules required by G.S. 143-215.94V(b) and Section 5 of Chapter 648 of the 1995 Session Laws (1996 Regular Session) become effective as provided by G.S. 150B-21.3."

SIGNED s/ Senator Horton
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(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 11, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Assistant Committee Counsel

SUBJECT: Senate Bill 114 (Inactive Haz. Sites Recordation)

Senate Bill 114 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC).

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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 210*

Short Title: Ag Dept. Name Change. (Public)

Sponsors: Representatives Brown; and Yongue.

Referred to: Agriculture.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE NAME OF THE NORTH CAROLINA DEPARTMENT OF AGRICULTURE TO THE NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19A-22 reads as rewritten:

"**§ 19A-22. Animal Welfare Section in Animal Health Division of Department of Agriculture created; Director.**

There is hereby created within the Animal Health Division of the North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer Services, a new section thereof, to be known as the Animal Welfare Section of said division.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said section whose duties and authority shall be determined by the Commissioner subject to the approval of the Board of Agriculture and subject to the provisions of this Article.

Section 2. G.S. 19A-23(8) reads as rewritten:

"(8) 'Director' means the Director of the Animal Welfare Section of the Animal Health Division of the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 3. G.S. 62-102(b)(6) reads as rewritten:

"(6) The Department of ~~Agriculture;~~ Agriculture and Consumer Services;".

Section 4. G.S. 66-58(b)(2) reads as rewritten:

"(2) The Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products."

Section 5. G.S. 66-58(b)(13b) reads as rewritten:

"(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department."

Section 6. G.S. 66-58(c)(7) and (8) read as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the ~~State~~ Department of ~~Agriculture;~~ Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.

(8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program."

Section 7. G.S. 81A-9(2) reads as rewritten:

"(2) Authorized Agent. -- An 'authorized agent' is any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner."

Section 8. G.S. 81A-29 reads as rewritten:

"**§ 81A-29. Offenses and penalties.**

Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a Class 2 misdemeanor upon a first conviction. Upon a subsequent conviction thereof, said person shall be guilty of a Class 1 misdemeanor. No person shall:

(1) Use or have in possession for use in commerce any incorrect weight or measure.

(2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.

(3) Hinder or obstruct any weights-and-measures official in the performance of his duties.

(4) Impersonate in any way any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any part of this Chapter.

(5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and

the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.

(6) Manufacture, use or possess a counterfeit seal, tag, mark, certificate, label or decal representing, imitating or copying the same issued by the Commissioner under this Chapter."

Section 9. G.S. 81A-51(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 10. G.S. 81A-71 reads as rewritten:

"**§ 81A-71. Prerequisites for scale technician.** It shall be unlawful for any scale technician to render service as a scale technician until after he or she has compiled with the following requirements:

(1) Obtained from the Department of Agriculture and Consumer Services a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.

(2) to (4) Repealed by Session Laws 1983, c. 111, s. 2, effective July 1, 1983.

(5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.

(6) Obtained from the Department an annual certification of the standards of weight which will be used by the scale technician.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service."

Section 11. G.S. 90-187.10(10) reads as rewritten:

"(10) Any person employed by the North Carolina Department of Agriculture and Consumer Services as a livestock inspector or by the U.S. Department of Agriculture as an animal health technician from performing regular duties assigned to him or her during the course and scope of that person's employment."

Section 12. G.S. 105-130.37(b)(2) reads as rewritten:

"(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of ~~Agriculture,~~ Agriculture and Consumer Services, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop; and".

Section 13. G.S. 105-151.14(b)(2) reads as rewritten:

"(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of ~~Agriculture,~~ Agriculture and Consumer Services, or the average price of the crop in the

nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop; and".

Section 14. G.S. 105-259(b)(14) reads as rewritten:

"(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture and Consumer Services when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes."

Section 15. The Title to Article 1 of Chapter 106 reads as rewritten:

"ARTICLE 1.

Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 16. G.S. 106-2 reads as rewritten:

"§ 106-2. Department of Agriculture and Consumer Services established; Board of Agriculture, membership, terms of office, etc.

The Department of Agriculture and Consumer Services is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession."

Section 17. G.S. 106-17 reads as rewritten:

"§ 106-17. Acquisition of research farm.

The Department of Agriculture and Consumer Services is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than 100 acres in the sandhill section of North Carolina, and in northeastern North Carolina composed of the Counties of Camden, Chowan, Currituck, Gates, Pasquotank and Perquimans, to be developed and used as a 'research farm' for the purposes of work in investigation in agriculture.

Such 'research farm' when acquired and established shall be operated, managed and controlled as other 'research farms' in the State."

Section 18. G.S. 106-18 reads as rewritten:

"§ 106-18. Peanut research farm.

The Department of Agriculture and Consumer Services is hereby authorized and directed to purchase, establish and operate a research farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said research farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut research farm as may be necessary for its proper conduct and in the same way as is now being done for the other research farms in the State. The research farm shall be established, operated and controlled by the Department of Agriculture as the other research farms for the study of other farm crops."

Section 19. G.S. 106-19 reads as rewritten:

"§ 106-19. State Chemist; duties of office.

The Department of Agriculture and Consumer Services shall employ an analyst or State Chemist skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the State Chemist to analyze such fertilizers and products as may be required by this Department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the Department, analyze for citizens of the State such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the Department of benefit to the development of the material interest of the State, when such samples are supplied under rules by the Department, and he shall carry on such other investigations as the Department may direct. He shall make regular reports to the Department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same."

Section 20. G.S. 106-21 reads as rewritten:

"§ 106-21. Timber conditions to be investigated and reported.

The Department of Agriculture and Consumer Services shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same."

Section 21. G.S. 106-21.1 reads as rewritten:

"§ 106-21.1. Feed Advisory Service; fee.

The Department of Agriculture and Consumer Services shall operate a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of ten dollars ($10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars ($75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin."

Section 22. G.S. 106-21.2 reads as rewritten:

"**§ 106-21.2. Food Bank information and referral service.**

The Department of Agriculture and Consumer Services may maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization or a nonprofit corporation."

Section 23. G.S. 106-22.1 reads as rewritten:

"**§ 106-22.1. State farms.** State-owned farmland, including timberland, allocated to the Department of Agriculture and Consumer Services for the State Farm Program, shall be managed by the Department for research, teaching, and demonstration in agriculture, forestry, and aquaculture. Research projects on the State farms shall be approved by the Department. The Department may sell surplus commodities produced on the farms."

Section 24. G.S. 106-22.2 reads as rewritten:

"**§ 106-22.2. Museum of Natural Sciences; Maritime Museum; disposition of objects.**

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Agriculture and Consumer Services may sell or exchange any object from the collections of the Museum of Natural Sciences and the Maritime Museum when it would be in the best interests of the Museums to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museums' collections or exhibits."

Section 25. G.S. 106-24 reads as rewritten:

"**§ 106-24. Collection and publication of information relating to agriculture; cooperation.**

The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part."

Section 26. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received

pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs."

Section 27. G.S. 106-65.23 reads as rewritten:

"**§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.**

There is hereby recreated, within the North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer Services, a Division thereof, to be known as the Structural Pest Control Division of said Department. The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Secretary of Environment, Health, and Natural Resources shall appoint one member of the Committee who shall be an epidemiologist in the Division of Health Services and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of ~~Agriculture,~~ Agriculture and Consumer Services, the Department of Environment, Health, and Natural Resources and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or

otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Four members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

Section 28. G.S. 106-65.24(8a) reads as rewritten:

"(8a) 'Director' means the Director of the Structural Pest Control Division of the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 29. G.S. 106-65.24(9a) reads as rewritten:

"(9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 30. G.S. 106-65.44(4) reads as rewritten:

"(4) The term 'Division of Entomology' means the Division of the Department of Agriculture ~~so named.~~ and Consumer Services."

Section 31. G.S. 106-65.69(3) reads as rewritten:

"(3) Commissioner. -- The Commissioner of ~~the Department of~~ Agriculture of this State or any officer or employee of ~~said~~ the Department of Agriculture and Consumer Services or designated cooperator to whom authority to act in his stead has been or hereafter may be delegated."

Section 32. G.S. 106-121(2) reads as rewritten:

"(2) The term 'Commissioner' means the Commissioner of Agriculture; the term 'Department' means the Department of ~~Agriculture,~~ Agriculture and Consumer Services, and the term 'Board' means the Board of Agriculture."

Section 33. G.S. 106-134(8) reads as rewritten:

"(8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements."

Section 34. G.S. 106-141.1 reads as rewritten:

"**§ 106-141.1. Inspections of donated food.** (a) The Department of Agriculture and Consumer Services is authorized to inspect for compliance with the provisions of Article 12 of Chapter 106 of the North Carolina General Statutes, food items donated for use or distribution by nonprofit organizations or nonprofit corporations, and may establish procedures for the handling of the food items, including reporting procedures concerning the donation of food.

(b) The Department of Agriculture and Consumer Services may apply to Superior Court for injunctive relief restraining the violation of this section.

(c) Nothing in this section shall limit the duties or responsibilities of the Commission for Health Services or the local boards of health."

Section 35. G.S. 106-145.2(5) reads as rewritten:

"(5) Department. -- The Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 36. G.S. 106-185(a) reads as rewritten:

"(a) Scope. -- This Article gives the Department of Agriculture and Consumer Services the authority to investigate marketing conditions for and establish and maintain standard grades, packages, and State brands for farm products. As used in this Article, the term 'farm products' means farm crops, horticultural crops, and animal products."

Section 37. G.S. 106-202.14(a) reads as rewritten:

"(a) The North Carolina Plant Conservation Board is created within the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 38. G.S. 106-202.14(b)(6) reads as rewritten:

"(6) The Department of ~~Agriculture;~~ Agriculture and Consumer Services;".

Section 39. G.S. 106-202.15(12) reads as rewritten:

"(12) To promulgate regulations under which the Department of Agriculture and Consumer Services may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated and grown horticulturally from seeds or by vegetative propagation of cuttings, meristems or other similar materials and that the plants bear the grower's permit number."

Section 40. G.S. 106-202.19(a)(7) reads as rewritten:

"(7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of ~~Agriculture;~~ Agriculture and Consumer Services;".

Section 41. G.S. 106-202.19(b) reads as rewritten:

"(b) The Commissioner or any employee of the Department of Agriculture and Consumer Services designated by the Commissioner to enforce the provisions of this Article, may enter any place within the State at all reasonable times where plant materials are being grown, transported or offered for sale and require the presentation for inspection of all pertinent papers and records relative to the provisions of this Article, after giving notice in writing to the owner or custodian of the premises to be entered. If he refuses to consent to the entry, the Commissioner may apply to any district court judge and the judge may order, without notice, that the owner or custodian of the place permit the Commissioner to enter the place for the purposes herein stated and failure by any person to obey the order may be punished as for contempt."

Section 42. G.S. 106-245.14(12) reads as rewritten:

"(12) 'Lots' means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 43. G.S. 106-245.31(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 44. G.S. 106-251 reads as rewritten:

"§ 106-251. Department of Agriculture and Consumer Services to enforce law; examinations.

It shall be the duty of the Department of Agriculture and Consumer Services to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert

of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article."

Section 45. G.S. 106-266.6(5) reads as rewritten:

"(5) 'Health authorities' includes the Department of Environment, Health, and Natural Resources, the ~~State~~ North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer Services, the Commissioner of Agriculture, and the local health authorities."

Section 46. G.S. 106-268 reads as rewritten:

"**§ 106-268. Definitions; enforcement of Article.**

The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

The term 'adulteration' means:

(1) Failure to meet definitions and standards as established by the Board of Agriculture.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(3) If any substance has been substituted wholly or in part thereof.

(4) If it is adjudged to be unfit for human consumption.

The term 'misbranded' means:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another dairy product or frozen dessert.

(3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of ~~Agriculture,~~ Agriculture and Consumer Services, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department ~~of Agriculture,~~ acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the

above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department ~~of Agriculture~~ has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a 'stop-sale' order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of ~~Agriculture,~~ Agriculture and Consumer Services, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any 'stop-sale' order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture and Consumer Services shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this

Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal."

Section 47. G.S. 106-277.9(7) reads as rewritten:

"(7) To use the name of the Department of Agriculture and Consumer Services or the results of tests and inspections made by the Department for advertising purposes."

Section 48. G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due."

Section 49. G.S. 106-307.1 reads as rewritten:

"**§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.**

The North Carolina Department of Agriculture and Consumer Services is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture."

Section 50. G.S. 106-313 reads as rewritten:

"**§ 106-313. Price of serum to be fixed.**

The Department of Agriculture and Consumer Services shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production."

Section 51. G.S. 106-322.3(10) reads as rewritten:

"(10) Where the owner has failed to submit the reports required by the United States Department of Agriculture and the North Carolina ~~Departments~~ Department of Agriculture and Consumer Services for animals on which indemnity is paid under Article 34."

Section 52. G.S. 106-418.10 reads as rewritten:

"**§ 106-418.10. Prohibited conduct.**

It shall be unlawful for any person to:

(1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture and Consumer Services under the provisions of this Article;

(2) Fail to keep the records required by G.S. 106-418.13."

Section 53. G.S. 106-426 reads as rewritten:

"**§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.**

The North Carolina Department of Agriculture and Consumer Services shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The ~~North Carolina~~ Department ~~of Agriculture~~ may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this Article."

Section 54. G.S. 106-451.7(7) reads as rewritten:

"(7) 'Warehouseman' means a person licensed by North Carolina Department of Agriculture and Consumer Services to engage in the business of storing cotton for hire."

Section 55. G.S. 106-451.9(2) and (3) read as rewritten:

"(2) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more divisions within the Department of ~~Agriculture.~~ Agriculture and Consumer Services.

(3) To delegate to any division head and other officer or employee of the Department of ~~Agriculture~~ Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by rules promulgated pursuant to this Article."

Section 56. G.S. 106-542 reads as rewritten:

"**§ 106-542. Hatcheries, chick dealers and others to obtain license to operate.**

(a) It shall be unlawful for any person, firm or corporation to operate a hatchery within this State without first obtaining a hatchery license from the Department of Agriculture and Consumer Services for a fee of twenty-five dollars ($25.00) per year.

(b) It shall be unlawful for any person, firm or corporation to operate as a hatching egg dealer, chick dealer or jobber within this State without first obtaining a license from the Department of Agriculture and Consumer Services for a fee of ten dollars ($10.00) per year.

(c) The Department of Agriculture and Consumer Services may deny, suspend, revoke or refuse to renew the license of any person, firm or corporation for violation of this Article or any rule or regulation promulgated thereunder."

Section 57. G.S. 106-549.01 reads as rewritten:

"**§ 106-549.01. Civil penalties.**

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation."

Section 58. G.S. 106-549.15(3) reads as rewritten:

"(3) 'Authorized representative' means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 59. G.S. 106-549.29 reads as rewritten:

"**§ 106-549.29. North Carolina Department of Agriculture and Consumer Services responsible for cooperation.**

(a) The North Carolina Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture and Consumer Services is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The North Carolina Department of Agriculture and Consumer Services is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of Section 301 of said act."

Section 60. G.S. 106-549.38 reads as rewritten:

"**§ 106-549.38. Rules and regulations of State Department of ~~Agriculture.~~ Agriculture and Consumer Services.**

All rules and regulations of the ~~North Carolina~~ Department of Agriculture and Consumer Services not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board."

Section 61. G.S. 106-549.51(12) and (13) read as rewritten:

"(12) 'Inspection service' means the official government service within ~~this State~~ the Department of Agriculture and Consumer Services designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.

(13) 'Inspector' means an employee or official of the ~~State~~ Department of Agriculture and Consumer Services authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department ~~of Agriculture~~ and such governmental subdivision."

Section 62. G.S. 106-549.52 reads as rewritten:

"(a) The Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department ~~of Agriculture~~ is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The Department ~~of Agriculture~~ is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act."

Section 63. G.S. 106-549.94 reads as rewritten:

"**§ 106-549.94. Regulation of pen-raised quail by Department of ~~Agriculture;~~ and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected.**

(a) The ~~North Carolina~~ Department of Agriculture and Consumer Services is given exclusive authority to regulate the production and sale of pen-raised quail for food purposes. The Board of Agriculture shall promulgate rules and regulations for

the production and sale of pen-raised quail for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling pen-raised quail for food purposes.

(b) The North Carolina Wildlife Resources Commission shall retain its authority to regulate the possession and transportation of live pen-raised quail."

Section 64. G.S. 106-549.97 reads as rewritten:

"**§ 106-549.97. Regulation of fallow deer by Department of ~~Agriculture;~~ Agriculture and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected.**

(a) The Department of Agriculture and Consumer Services shall regulate the production and sale of fallow deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer for food purposes.

As used in this section, 'fallow deer' (Dama dama spp.) means a small European deer raised commercially for production and sale for food purposes.

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and may adopt rules to prevent the release or escape of fallow deer upon finding that it is necessary to protect live fallow deer or to prevent damage to the native deer population or its habitat."

Section 65. G.S. 106-621(1) reads as rewritten:

"(1) Adulterated grain: Grain which contains any substance, such as, but not limited to, Captan, carbon tetrachloride, Malathion, Parathion, DDT, Dieldrin, Thiram, Endrin, Heptachlor, Maneb, Methoxychlor, 2, 6-dichloro, 4-nitroaniline, pentachloronitrobenzene, hexachlorobenzene, Demeton, Phorate, Carbophenothion, in excess of the tolerance for human or animal consumption established for such substances by the laws of the State or the regulations of the ~~North Carolina~~ Department of ~~Agriculture,~~ Agriculture and Consumer Services or both the State and the Department."

Section 66. G.S. 106-627 reads as rewritten:

"**§ 106-627. Determination of adulteration.**

For purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique, [and] origin of sampled grain and subsequently send or request the law-enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture and Consumer Services for inspection and analysis in order to protect only the chain of evidence.

Upon [a] finding by the Department ~~of Agriculture~~ that said sample is adulterated grain, the Department shall notify the grain dealer of the results and return the sample to the original sender in a sealed package."

Section 67. G.S. 106-635(10) reads as rewritten:

"(10) The term 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 68. G.S. 106-662(b)(6) reads as rewritten:

"(6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of ~~Agriculture,~~ Agriculture and Consumer Services, setting forth the analysis made by the chemist of the Department ~~of Agriculture,~~ of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence."

Section 69. G.S. 106-662(e)(2) reads as rewritten:

"(2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture and Consumer Services in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner."

Section 70. G.S. 106-708(5) reads as rewritten:

"(5) 'Department' means the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 71. G.S. 106-758(5) reads as rewritten:

"(5) 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 72. G.S. 106-760(a) and (b) read as rewritten:

"(a) There is created within the Department of Agriculture and Consumer Services the Aquaculture Advisory Board, to consist of the following persons:

(1) The Commissioner of Agriculture, or his designee;

(2) The Secretary of Commerce, or his designee;

(3) The Secretary of Environment, Health, and Natural Resources, or his designee;

(4) The President of the North Carolina Biotechnology Center, or his designee;

(5) The President of the University of North Carolina, or his designee;

(6) One Senator designated by the President Pro Tempore of the Senate; and

(7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assistance shall be provided by the Department of ~~Agriculture.~~ Agriculture and Consumer Services. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties."

Section 73. G.S. 106-761(a) reads as rewritten:

"(a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department ~~of Agriculture~~ and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency."

Section 74. G.S. 106-761(d) reads as rewritten:

"(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the

conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the ~~North Carolina~~ Department ~~of Agriculture~~ shall be valid for a period of five years."

Section 75. G.S. 106-761(e)(1) reads as rewritten:

"(1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department ~~of Agriculture~~ to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold."

Section 76. G.S. 106-761(g) reads as rewritten:

"(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department ~~of Agriculture~~ and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission."

Section 77. G.S. 106-762(a) reads as rewritten:

"(a) The North Carolina Department of Agriculture and Consumer Services shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State."

Section 78. G.S. 106-783(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 79. G.S. 106-792(3) reads as rewritten:

"(3) Department. -- The North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 80. G.S. 113-129(16) reads as rewritten:

"(16) Wildlife. -- Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity. Nothing in this definition is intended to abrogate the exclusive authority given the Department of Agriculture and Consumer Services to regulate the production and sale of pen-raised quail for food purposes."

Section 81. G.S. 113-273(h) reads as rewritten:

"(h) Game Bird Propagation License. -- No person may propagate game birds in captivity or possess game birds for propagation without first procuring a license under this subsection. The Wildlife Resources Commission may by rule prescribe the activities to be covered by the propagation license, which species of game birds may be propagated, and the manner of keeping and raising the birds, in accordance with the overall objectives of conservation of wildlife resources. Except as limited by this subsection, propagated game birds may be raised and sold for purposes of propagation, stocking, food, or taking in connection with dog training as authorized in G.S. 113-291.1(d). Migratory game bird operations authorized under this subsection must also comply with any applicable provisions of federal law and rules. The Wildlife Resources Commission may impose requirements as to shipping, marking packages, banding, tagging, or wrapping the propagated birds and other restrictions designed to reduce the change of illicit game birds being disposed of under the cover of licensed operations. The Wildlife Resources Commission may make a reasonable charge for any bands, tags, or wrappers furnished propagators. The game bird propagation license is issued by the Wildlife Resources Commission upon payment of a fee of five dollars ($5.00). It authorizes a person or individual to propagate and sell game birds designated in the license, in accordance with the rules of the Wildlife Resources Commission, except:

(1) Wild turkey and ruffed grouse may not be sold for food.

(2) Production and sale of pen-raised quail for food purposes is under the exclusive control of the Department of ~~Agriculture.~~ Agriculture and Consumer Services. The Wildlife Resources Commission, however, may regulate the possession, propagation, and transportation of live pen-raised quail.

Wild turkey acquired or raised under a game bird propagation license shall be confined in a cage or pen approved by the Wildlife Resources Commission and no such wild turkey shall be released for any purpose or allowed to range free. It is a Class 3 misdemeanor to sell wild turkey or ruffed grouse for food purposes, to sell quail other than lawfully acquired pen-raised quail for food purposes, or to release or allow wild turkey to range free."

Section 82. G.S. 113A-164.4(3) reads as rewritten:

"(3) Maintain a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas. The Program shall include classification of natural heritage resources, an inventory of their locations, and a data bank for that information. The Program shall cooperate with the Department of Agriculture and Consumer Services in the selection and nomination of areas that contain habitats for endangered and rare plant species, and shall cooperate with the Wildlife Resources Commission in the selection and nomination of areas that contain habitats for endangered and rare animal species. Information from the natural heritage data bank may be made available to

public agencies and private persons for environmental assessment and land management purposes. Use of the inventory data for any purpose inconsistent with the Natural Heritage Program may not be authorized. The Program shall include other functions as may be assigned for registration, dedication, and protection of natural areas and nature preserves."

Section 83. G.S. 119-26.1 reads as rewritten:

"**§ 119-26.1. Oxygen content standards and reformulated gasoline.**

(a) Rules adopted pursuant to G.S. 143-215.107(a)(9) to regulate the oxygen content of gasoline or to require the use of reformulated gasoline shall be implemented by the Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board. Such rules shall be implemented within any area specified by the Environmental Management Commission when the Commission certifies to the Commissioner of Agriculture that implementation:

(1) Will improve the ambient air quality within the specified county or counties;

(2) Is necessary to achieve attainment or preclude violations of the National Ambient Air Quality Standards; or

(3) Is otherwise necessary to meet federal requirements.

(b) The Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board may adopt rules to implement this section. Rules shall be consistent with the implementation schedule and rules adopted by the Environmental Management Commission.

(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

(d) The Commissioner of Agriculture may delegate his powers and duties under this subsection to the Director of the Standards Division of the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 84. G.S. 119-27.1(b) reads as rewritten:

"(b) The North Carolina Department of Agriculture and Consumer Services shall have the responsibility for the enforcement of this section."

Section 85. G.S. 122D-3(6) reads as rewritten:

"(6) 'Department' means the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 86. G.S. 130A-250(9) reads as rewritten:

"(9) Markets where meat food products or poultry products are prepared and sold and which are under the continuous inspection

by the North Carolina Department of Agriculture and Consumer Services or the United States Department of Agriculture."

Section 87. G.S. 130A-278 reads as rewritten:

"**§ 130A-278. Certain authorities of Department of Agriculture and Consumer Services not replaced.**

This Part shall not repeal or limit the Department of ~~Agriculture's~~ Agriculture and Consumer Services' authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and Consumer Services any other function of the Department of Agriculture and Consumer Services concerning Grade 'A' milk which is not inconsistent with this Article."

Section 88. G.S. 136-18.2 reads as rewritten:

"**§ 136-18.2. Seed planted by Department of Transportation to be approved by Department of Agriculture.**

The Department of Transportation shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the ~~State~~ Department of Agriculture and Consumer Services as provided for in the rules and regulations of the Department of Agriculture and Consumer Services for such seed."

Section 89. G.S. 143-64.5 reads as rewritten:

"**§ 143-64.5. Department of Agriculture and Consumer Services exempted from application of Article.**

Notwithstanding any provisions or limitations of Part 2 of this Article, the North Carolina Department of Agriculture and Consumer Services is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and ~~the North Carolina Department of Agriculture~~ is authorized and empowered to adopt rules in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of Part 2 of this Article shall not apply to the North Carolina Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 90. G.S. 143-436(b)(1) reads as rewritten:

"(1) One member each representing the North Carolina Department of Agriculture and Consumer Services and two members representing the North Carolina Department of Environment, Health, and Natural Resources, one of whom shall be the State Health Director or his designee and one of whom shall represent an environmental protection agency. The persons so selected may be either members of a policy board or departmental officials or employees."

Section 91. G.S. 143-438 reads as rewritten:

"**§ 143-438. Commissioner of Agriculture to administer and enforce Article.**

The Commissioner of Agriculture shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article.

(2) To attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of ~~Agriculture).~~ Agriculture and Consumer Services).

(3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.

(4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

(5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture and Consumer Services who have responsibilities concerning the programs set forth in this Article.

(6) To delegate to any division head or other officer or employee of the Department of Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by the rules, regulations and procedures established pursuant to this Article.

(7) To perform such other duties as the Board may from time to time direct."

Section 92. G.S. 143-468 reads as rewritten:

"**§ 143-468. Disposition of fees and charges.**

(a) Except as provided in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article.

(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of ~~Agriculture.~~ Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

(1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.

(2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.

The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Department of Agriculture and Consumer Services ~~of the State of North Carolina~~ for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction."

Section 108. G.S. 166A-26(a)(6) reads as rewritten:

"(6) The Department of ~~Agriculture;~~ Agriculture and Consumer Services;".

Section 109. The Revisor of Statutes shall change all references in the General Statutes from the Department of Agriculture to the Department of Agriculture and Consumer Services.

Section 110. This act is effective when it becomes law.

(3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.

(4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives."

Section 93. G.S. 143A-11(8) reads as rewritten:

"(8) Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 94. The title to Article 7 of Chapter 143A of the General Statutes reads as rewritten:

"ARTICLE 7.

Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 95. G.S. 143A-56 reads as rewritten:

"**§ 143A-56. Creation.**

There is hereby created a Department of ~~Agriculture.~~ Agriculture and Consumer Services. The head of the Department ~~of Agriculture~~ is the Commissioner of Agriculture."

Section 96. G.S. 143A-58 reads as rewritten:

"**§ 143A-58. Commissioner of Agriculture; transfer of powers and duties to Department.**

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Agriculture are transferred by a Type I transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 97. G.S. 143A-59 reads as rewritten:

"**§ 143A-59. Board of Agriculture; transfer.**

The Board of Agriculture, as contained in Article 1 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 98. G.S. 143A-60 reads as rewritten:

"**§ 143A-60. Structural Pest Control Division; transfer.**

The Structural Pest Control Division of the Department of Agriculture, as contained in Article 4C of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 99. G.S. 143A-61 reads as rewritten:

"**§ 143A-61. The North Carolina Agricultural Hall of Fame; transfer.**

The North Carolina Agricultural Hall of Fame, as contained in Article 50B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 100. G.S. 143A-62 reads as rewritten:

"**§ 143A-62. Gasoline and Oil Inspection Board; transfer.**

The Gasoline and Oil Inspection Board, as contained in Article 3 of Chapter 119 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 101. G.S. 143A-63 reads as rewritten:

"**§ 143A-63. North Carolina Rural Rehabilitation Corporation; transfer.**

The North Carolina Rural Rehabilitation Corporation, and board of directors, as contained in Chapter 137 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 102. G.S. 143A-64 reads as rewritten:

"**§ 143A-64. North Carolina Board of Crop Seed Improvement; transfer.**

The North Carolina Board of Crop Seed Improvement, as contained in Article 30 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 103. G.S. 143A-65 reads as rewritten:

"**§ 143A-65. North Carolina Public Livestock Market Advisory Board; transfer.**

The North Carolina Public Livestock Market Advisory Board, as contained in Article 35 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 104. G.S. 143B-417(1)q. reads as rewritten:

"q. Department of Agriculture and Consumer Services".

Section 105. G.S. 143B-434(c)(2) reads as rewritten:

"(2) The Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 106. G.S. 148-66 reads as rewritten:

"**§ 148-66. Cities and towns and Department of Agriculture and Consumer Services may contract for prison labor.**

The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Department of Agriculture and Consumer Services ~~of the State of North Carolina~~ is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations."

Section 107. G.S. 148-67 reads as rewritten:

"**§ 148-67. Hiring to cities and towns and State Department of ~~Agriculture.~~ Agriculture and Consumer Services.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 266

Short Title: Production and Sale of Red Deer. (Public)

Sponsors: Senators Ledbetter; Allran, Ballantine, Blust, Carpenter, Carrington, Clark; Cochrane, East, Forrester, Foxx, Garwood, Hartsell, Horton, Kincaid, McDaniel, Page, Rucho, Shaw of Guilford, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF RED DEER.

The General Assembly of North Carolina enacts:

Section 1. Article 49 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 49H.

"Production and Sale of Fallow ~~Deer.~~ Deer and Red Deer.

"§ 106-549.97. Regulation of fallow deer and red deer by Department of Agriculture; certain authority of North Carolina Wildlife Resources Commission not affected.

(a) The Department of Agriculture shall regulate the production and sale of fallow deer and red deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer and red deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer or red deer, or both, for food purposes.

~~As used in this section, 'fallow deer' (Dama dama spp.) means a small European deer raised commercially for production and sale for food purposes.~~

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and live red deer and may adopt rules to prevent the release or escape of fallow deer or red deer, or both, upon finding that it is necessary to protect live fallow deer or live red deer, or both or to prevent damage to ~~the~~ either or both of these native deer ~~population~~ populations or ~~its habitat.~~ their habitats.

(c) As used in this Article:

(1) 'Fallow deer' means a small European deer (**Dama dama spp**).

(2) 'Red deer' means a deer native to Europe (**Cervus elephus**).

"**§ 106-549.98. Inspection fees.**

The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of fallow deer as required by Article 49B of Chapter 106 of the General Statutes. The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of red deer as required by Article 49B of Chapter 106 of the General Statutes."

Section 2. G.S. 113-129(1b) reads as rewritten:

"(1b) Big Game. -- Bear, wild boar, wild turkey, and deer, not to include fallow deer or red deer raised for production and sale under G.S. 106-549.97."

Section 3. G.S. 113-129(7c) reads as rewritten:

"(7c) Game Animals. -- Bear, fox, rabbit, squirrel, wild boar, and deer, not to include fallow deer or red deer raised for production and sale under G.S. 106-549.97; bobcat, opossum, and raccoon except when trapped in accordance with provisions relating to fur-bearing animals."

Section 4. G.S. 106-549.15(14) reads as rewritten:

"(14) 'Meat food product' means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~ fallow deer, or red deer, excepting products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and that are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, goats, and bison."

Section 5. G.S. 106-549.15(22) reads as rewritten:

"(22) 'Renderer' means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, red deer, horses, mules, or other equines, except rendering conducted under inspection under this Article."

Section 6. G.S. 106-549.17 reads as rewritten:

"**§ 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.**

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, fallow deer, red deer, bison, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."

Section 7. G.S. 106-549.18 reads as rewritten:

"**§ 106-549.18. Inspection; stamping carcass.**

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof."

Section 8. G.S. 106-549.19 reads as rewritten:

"**§ 106-549.19. Application of Article; place of inspection.**

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article."

Section 9. G.S. 106-549.22 reads as rewritten:

"**§ 106-549.22. Rules and regulations of Board.**

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected and Passed.'"

Section 10. G.S. 106-549.23 reads as rewritten:

"**§ 106-549.23. Prohibited slaughter, sale and transportation.**

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or

(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded."

Section 11. G.S. 106-549.25 reads as rewritten:

"**§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared."

Section 12. G.S. 106-549.26 reads as rewritten:

"**§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.**

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent

whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000)."

Section 13. G.S. 106-549.27(a) reads as rewritten:

"(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, red deer, bison, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, red deer, bison, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture."

Section 14. G.S. 106-549.28 reads as rewritten:

"**§ 106-549.28. Regulation of storage of meat.**

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

Section 15. This act is effective when it becomes law.

ATTACHMENT 2 Ledbetter

AGRICULTURAL ALTERNATIVES

Red Deer Production

Although commercial deer farming is a relatively new business, it generates more than $100 million in annual income for major deer-producing countries, such as New Zealand, Ireland, Great Britain, and Germany. Americans consumed about 1.2 million pounds of commercially produced venison in 1992, and this market has grown 25 to 30 percent annually. Twenty-five percent of this venison is raised domestically, and the balance is imported primarily from New Zealand.

U.S. deer production is growing steadily due to increasing demand for deer products, minimal acreage requirements for production, and adaptability of deer to marginal pastures. More than 200,000 red, fallow, axis, sika, elk, and white-tailed deer are raised in national parks and on game preserves, farms, and ranches. Pennsylvania has about 30 commercial deer operations.

Compared to other livestock enterprises, deer farming has several advantages. Because deer convert pasture efficiently into protein, with proper management they can be raised on marginal land. They also fit well into an existing grazing operation. Another advantage is the high ratio of lean meat produced per pound of live weight. The labor requirements for deer production are minimal, while the profit potential can be much greater than for a comparable beef cow-calf operation.

Almost 25,000 red deer are produced annually on U.S. and Canadian farms. The advantages of raising this breed include the following:

- Red deer have a high fertility rate and a long productive breed life.
- They calve easily and wean their calves early.
- Their calm disposition and compact body size make them easy to handle and transport.
- They tolerate cold winters and hot summers and have low susceptibility to disease.
- They yield high-quality meat, by-products, and velvet antler.

This publication was developed by the Small-scale and Part-time Farming Project at Penn State with support from the U.S. Department of Agriculture-Extension Service.

PENNSTATE

1855

College of Agricultural Sciences ■ Cooperative Extension

Marketing

Before establishing a deer operation, you should research local demand and identify possible markets for your products. Producers can market directly or through a distributor. Individual producers can promote their products through county fairs, mail-order businesses, state and national deer associations, agricultural publications, and media outlets.

Although they are known throughout the world for their velvet production, red deer are raised mainly for venison and breeding stock. Farm-raised venison is a fine-grained, mild, tender meat with a delicate flavor that is distinctly different from wild game venison. It also meets the American Heart Association's guidelines per serving for fat, cholesterol, and calories (Table 1). While venison is sold mostly to gourmet restaurants, the meat also is sold to the general public through specialty shops or mail-order businesses, and at special events such as food fairs.

Table 1. Calories, cholesterol, fat, and protein content of various types of meat (3-ounce cooked portions).

	CALORIES	CHOLESTEROL (MG)	FAT (MG)	PROTEIN (MG)
Venison loin	139	62	5	22
Beef brisket	223	77	13	24
Ground beef	213	84	12	25
Pork shoulder	207	82	13	22
Beef bottom round	189	81	8	27
Lamb loin	183	80	8	25
Veal cutlet	155	112	4	28
Chicken breast	140	72	3	26
Salmon	140	60	5	22

SOURCE: USDA research; venison analysis by The National Food Laboratory, Inc.

Yearlings are slaughtered between 14 and 20 months of age at a weight of about 200 pounds. Two-year-olds are slaughtered at 24 to 30 months of age at a weight of 240 to 300 pounds. The meat is sold as various cuts, in quarters, and as whole carcasses. Some large producers have their own on-site USDA slaughtering facilities. For smaller operations without on-site facilities, USDA has a voluntary inspection program that for a fee offers live inspection on the farm and a postmortem inspection at a USDA-inspected slaughtering facility.

Red deer produce a large amount of good-quality velvet. The velvet antler is removed in early summer, when it has reached about 55 percent full growth and weighs 2 to 10 pounds. Velvet antler is used to produce traditional Asian medicines and tonics. The market for velvet antler often is unstable and currently is dominated by countries producing large amounts of red deer and elk.

Breeder markets are another specialized outlet for red deer producers. Weaners, yearlings, and older breeders can be sold directly to other producers or at auctions. When selling breeding stock, you need to have accurate performance and health records readily available. Many customers are looking for stags (males) with high weight gains and high velvet yields and for hinds (females) with high weight gains and good fertility. A calm temperament also is important as the animals are not completely domesticated.

Deer by-products, including hides, tails, leg sinews, antler buttons, and ivories (eye teeth), all have special markets. Stags can be sold as trophy animals to game and hunting preserves.

Facilities and Equipment

Deer farming requires special facilities, including grazing land, a fresh water supply, and natural shelter for calving, such as trees, shrubs, or fallen branches. Red deer also enjoy having an open water supply for wallowing. The stocking rate for red deer generally is six adults plus nursing calves per acre of pasture. Grazing areas should be fenced with 17 strands of wire at least 75 inches tall. A high-tensile woven deer wire is recommended. To keep calves and predators from getting under fences, add either a strand of barbed wire at ground level or an electrified wire just above ground level. Provide some form of shelter (such as a stand of trees or a three-sided shed) to protect the deer from wind, freezing rain, and the hot summer sun.

You also will need a handling facility with chutes, gates, squeezes, and stalls. A trailer with solid walls and all light sources covered is required for transporting deer. A gutted horse trailer often works well. Before building new facilities or purchasing handling equipment, you should visit other operations to determine what you will need.

Breeding

Red deer hinds are able to reproduce at approximately 16 months of age. Hinds weighing at least 175 pounds have the best chance for a successful pregnancy. Stags reach reproductive maturity at 24 to 30 months of age, and their productivity starts to decline at about 8 years of age. Although a stag's breeding rate depends on his age, one stag typically breeds 40 hinds.

Two types of breeding programs can be used. With single-sire mating, one stag is grouped with a number of hinds. This method is used to improve genetic characteristics and keep more accurate breeding records. When using single-sire mating, you should change stags after two estrus cycles (estrus cycles are 18 days apart) to ensure pregnancy. With multisire mating, several stags are grouped with a number of hinds. This method requires fewer paddocks, but it increases stag aggression and puts younger stags at a

disadvantage. Also, with this breeding program, it is impossible to keep records on individual stag performance.

Red deer normally have single births. The breeding season lasts from early September until December, and calving begins in early May. You should plan for the majority of calves to be born in May and June.

Nutrition

The red deer diet consists mainly of pasture, trees, and brush. Grasses should be varieties that withstand close cropping and constant trampling by hooves. Rotational grazing systems can reduce parasite levels and help utilize pasture to its fullest potential. Hay, grain, silage, haylage, vitamins, and minerals are fed during the winter months (November to April) to maintain nutritional requirements. Deer also require supplemental feed when using wooded acreage or when pasture regrowth is slow during hot, dry weather. Hinds need a good-quality feed during lactation to maximize calf growth rates. Because of severe weight loss during the breeding season, stags should receive good-quality feed prior to rutting to maintain prime breeding condition.

Animals raised for venison require grain supplements for increased weight gain and conditioning before slaughter. Mineral-fortified salt blocks also should be available in pastures year-round. Routine soil and blood tests should be conducted to determine what mineral supplements will meet the deer's needs. Clean, fresh water should be available year-round, and heated systems should be provided to ensure fresh water under freezing conditions.

Health Program

It is beneficial to you as a breeder and to the industry to maintain strict health practices. A good health program is essential. Deer are susceptible to many of the diseases found in cattle, and the same vaccinations and dewormers are used. You should always be aware of changes in state and federal health regulations. Pennsylvania regulations require deer to test negative for brucellosis and tuberculosis before they are moved from one farm to another. Deer brought into Pennsylvania must test negative for brucellosis, tuberculosis, and bluetongue within six days prior to importation, according to recommended USDA protocol. The herd should receive yearly health tests and vaccinations and should be weighed. Deer also should be dewormed periodically throughout the year.

In September, breeding groups should be formed, and calves should be weaned and ear tagged. In early summer, prior to breeding, stags should have their antlers removed to help prevent injuries to deer and humans. Although red deer are calmer than many other breeds, stress is still a concern. Frightening or exciting deer can lead to injuries.

Sample Budgets

The two sample budgets in this publication provide examples of the annual costs and returns for two different red deer production and marketing programs. Both budgets are based on a herd of 60 breeding-age hinds and 2 stags. The first budget assumes that 23 young hinds are sold as breeders and 5 are kept for replacement and expansion. The second budget assumes that 23 of the hinds are sold for slaughter at 175 pounds live weight and 5 are kept for replacement and expansion. Both budgets assume that 5 of the stags are sold as breeding stock and that 23 are sold for slaughter at 225 pounds live weight. These sample budgets should help ensure that all costs and receipts are included in your calculations. Costs are often difficult to estimate in budget preparation because they are numerous and variable. Therefore, you should think of these budgets as an approximation and then make appropriate adjustments using the "Your Estimate" column to reflect your specific resource situation. More information on the use of livestock budgets can be found in *Agricultural Alternatives: Enterprise Budget Analysis.*

Prepared by Melissa Morrow, extension assistant in agricultural economics; George L. Greaser, senior research associate in agricultural economics; Jayson K. Harper, assistant professor of agricultural economics; and John Behrmann, technical adviser on deer production. Illustration by Rosemarie Greaser.

Initial resource requirements

- Land: 25 acres
- Total labor: 550 hours per year
- Capital
  - Livestock (per head)
    - $2,000 x 60 breeding-age hinds = $120,000
    - $3,000 x 2 stags = $6,000
  - Existing buildings, equipment, and fencing: $22,000
- Total capital: $148,000

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/18/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
L. Rogers	EHNR
David Simmons	Zeb Alley, PA
Lucinda Pullen	Attorney
R. Paul Wilms	NCHBA
TANJA VUJIĆ	NC ENVIRONMENTAL DEFENSE FUND
George Gilbert	Div. Env. Health
Charlotte Jessee	EHNR
SHARON SMITH	BFI
Jonathan Breeden	Attorney
LAURA HARTSELL	MCIC
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Walter Denny	NCDA
Michelle Cook	Weyerhaeuser
Peter Daniel	NCDA
John Cyrus	NC State Grange
Dwight "Buster" Dellinger	N.C. G.W.A.
Nancy Bradley	NCCBS
George Everett	MCIC
JERRY SCHILL	NC Fisheries Association New Bern
RA	NCFB
Greg Bright	Wake County Env. Health

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Speed	Louisburg

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 20, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, March 20, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were 18 committee members present.

Senator Albertson announced that Sherri Evans-Stanton, one of the committee's environmental attorneys, would be leaving the General Assembly to become Assistant Secretary for Natural Resources in the Department of Environment, Health and Natural Resources; and that Mary Shuping, an Administrative Assistant in the Research Division, had been temporarily assigned to assist committee environmental attorneys for the balance of the session.

In addition, Senator Albertson announced that SB 114 - INACTIVE HAZ. SITES RECORDATION, which we had given a favorable report on March 18 and reported out of committee, had been re-referred to our committee for further study and that he was appointing a subcommittee composed of himself, Senator Odom and Senator Horton. A copy of this bill is attached.

Senator Wellons requested a moment of silence in memory of Mrs. Ruby Dunn of Smithfield who had been killed in an automobile accident the day before while on her way home from an agriculture meeting in Raleigh. She is the wife of Mr. Paul Ed Dunn, and the Dunns have been very active in farming activities for many, many years. After the moment of silence, the committee requested that the chairman send a letter of sympathy to Mr. Dunn.

The following bills were discussed, and copies are attached to these minutes:

HOUSE BILL 240 - REMOVE ODOR CONTROL STUDY MATCH was explained by Representative Mitchell, sponsor. Senator Odom sent forth an amendment. Bill Holman of the Sierra Club said the bill was okay with them. Senator Odom moved that the bill be given a favorable report, as amended, and motion carried, and said that he would handle the bill on the Senate floor. The bill was sequentially referred to Appropriations.

SENATE BILL 172 - NO SAFETY COURSE/DISABLED HUNTERS - Senator Albertson, sponsor, requested that Senator Gulley, Vice Chairman, handle chairmanship of the committee so that he might explain the bill. Senator Odom moved that the bill be given a favorable report. Motion carried.

After explaining his bill, Senator Albertson resumed chairmanship of the committee.

Senate Bill 182 - Wildlife Rules Become Effective, sponsored by Senator Kincaid, was withdrawn from the calendar.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, March 20, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 172	NO SAFETY COURSE/DISABLED HUNTERS Senator Albertson
SB 182	WILDLIFE RULES BECOME EFFECTIVE Senator Kincaid
HB 240	REMOVE ODOR CONTROL STUDY MATCH Representative Mitchell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, March 20, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **172** NO SAFETY COURSE/DISABLED HUNTERS
Sequential Referral: NONE
Recommended Referral: NONE

TOTAL REPORTED: 1

Committee Clerk Comment: NONE

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, March 25, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **240** REMOVE ODOR CONTROL STUDY MATCH

Draft Number:	PCS7140
Sequential Referral:	APPROPRIATIONS
Recommended Referral:	NONE
Long Title Amended:	NO

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 114*

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors: Senators Horton; Albertson, Cooper, and Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) ~~This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which~~ Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this ~~Part.~~ Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 240*

Short Title: Remove Odor Control Study Match. (Public)

Sponsors: Representatives Mitchell; Weatherly and Nichols.

Referred to: Agriculture, if favorable, Appropriations.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE MATCHING FUNDS REQUIREMENT FOR THE FUNDS APPROPRIATED IN 1996 TO CONDUCT AN ODOR CONTROL TECHNOLOGY STUDY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 27.3 of Chapter 18 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"Sec. 27.3. Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of six hundred thousand dollars ($600,000) for the 1996-97 fiscal year shall be transferred to the Board of Governors of The University of North Carolina for the North Carolina Agricultural Research Service at North Carolina State University to conduct research into economically feasible odor control technologies and to provide detailed economic analysis of odor management ~~alternatives; provided these funds are matched with an equal sum from private sources.~~ alternatives. No later than January 1, 1997, the Board of Governors shall report to the Environmental Review Commission and the Fiscal Research Division on progress under the research, including any findings and recommendations at that time."

Section 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 240 DATE 3/20/97

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) Odom
Sen.)

moves to amend the bill on page 1, line 16

by rewriting that line to read

"~~Sources~~, alternatives. No later than January 1, 1997, and every six months thereafter until the study is complete, the Board of Governors shall"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 17, 1997

MEMORANDUM

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: House Bill 240: Remove Odor Control Study Match.

House Bill 240, introduced by Representative Mitchell, amends Section 27.3 of Chapter 18 of the 1996 Session Laws transferring funds from DEHNR to the North Carolina Agricultural Research Service to conduct research into odor control technologies. As originally enacted, the appropriation of $600,000 in Section 27.3 required matching funds from private sources. House Bill 240 removes the requirement that matching funds be obtained for the funding to be available for the study.

The act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 172
Corrected Copy 2/19/97

Short Title: No Safety Course/Disabled Hunters. (Public)

Sponsors: Senators Albertson; Carpenter, Carrington, Cooper, Dannelly, Foxx, Kincaid, Martin of Pitt, Martin of Guilford, Shaw of Guilford, Warren, and Wellons.

Referred to: Agriculture/Environment/Natural Resources.

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF HUNTING LICENSES FOR CERTAIN DISABLED HUNTERS WHO HAVE NOT COMPLIED WITH THE HUNTING SAFETY COURSE REQUIREMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) ~~On~~ Except as provided in subsection (a1) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under G.S. 113-270.2(c)(12) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The person is accompanied by an adult of at least 21 years of age who is licensed to hunt; and

(2) The adult hunter maintains a proximity to the disabled hunter which enables the adult to take immediate control of the hunting device at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Nothing in this section shall be construed to prohibit the sale of lifetime licenses as provided in G.S. 113-270.2(c)(1a). Pending satisfactory completion of the hunter safety course, persons who possess such licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, 'accompanied' is defined as being able to take immediate control of the hunting device."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/20/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Donnie Roberts	Lexington Dispatch 30 E. First Ave Lexington, NC 27292
Jill Doss	The Dispatch 30 E. First Ave. Lexington, N.C 27292
Tom Bean	NC Wildlife Federation PO Bx 10626 Raleigh NC 27605
Ken Eudy	Capitol Strategies 115 E W. Morgan St Raleigh NC 27601
J. Holman	CCNC / Sierra Club
Andy Ellen NC Farm Bureau	NC Farm Bureau, P.O. Box 27766 Raleigh, NC 27611
Peter Daniel	NCDA
Laura Hartsell	MCIC 200 N. West Street Raleigh, NC 27603
David Simmons	Zeb Alley, PA
Ed Bowen	Roger Bowen
John Long	Martin Marcella

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Bordeaux	NCAFA

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 25 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 25, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eleven committee members present.

Senator Albertson said that today's meeting would be devoted to hearing the most up-to-date report on what was being done by N. C. State University on animal waste.

The first speaker was Dr. Johnny C. Wynne, Director, N. C. Agricultural Research Service, North Carolina State University, College of Agriculture and Life Sciences. He was followed by Dr. Mike Williams, Director, Animal and Poultry Waste Management Center, North Carolina State University, College of Agriculture and Life Sciences. Next the committee heard from Dr. Greg Jennings, Associate Professor, Biological and Agricultural Engineering, North Carolina State University, College of Agriculture and Life Sciences. The speakers had several hand-outs which have been attached to these minutes. Their presentations were followed by questions from the committee members.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 25, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SPEAKERS:

. Dr. Johnny C. Wynne, Director
N. C. Agricultural Research Service
North Carolina State University
College of Agriculture and Life Sciences

. Dr. Mike Williams, Director
Animal and Poultry Waste Management Center
North Carolina State University
College of Agriculture and Life Sciences

. Dr. Greg Jennings, Associate Professor
Biological and Agricultural Engineering
North Carolina State University
College of Agriculture and Life Sciences

1994 - 1996 REPORT

ANIMAL AND POULTRY WASTE MANAGEMENT CONSORTIUM

NORTH CAROLINA STATE UNIVERSITY

COLLEGE OF AGRICULTURE & LIFE SCIENCES

Box 7608
Raleigh, NC 27695-7608

Local Water Quality Programs

For more information about local water quality programs, please contact the North Carolina Cooperative Extension Service center in your county:

Alamance County	(910) 570-6740
Alexander County	(704) 632-4451
Alleghany County	(910) 372-5597
Anson County	(704) 694-2415
Ashe County	(910) 246-1880
Avery County	(704) 733-8270
Beaufort County	(919) 946-0111
Bertie County	(919) 794-5317
Bladen County	(910) 862-4591
Brunswick County	(910) 253-4425
Buncombe County	(704) 255-5522
Burke County	(704) 439-4460
Cabarrus County	(704) 792-0430
Caldwell County	(704) 757-1290
Camden County	(919) 338-0171
Carteret County	(919) 728-8421
Caswell County	(910) 694-4158
Catawba County	(704) 465-8240
Chatham County	(919) 542-8202
Cherokee County	(704) 837-2210
Cherokee Reservation	(704) 497-3521
Chowan County	(919) 482-8431
Clay County	(704) 389-6305
Cleveland County	(704) 482-4365
Columbus County	(910) 640-6605
Craven County	(919) 633-1477
Cumberland County	(910) 484-7156
Currituck County	(919) 232-2261
Dare County	(919) 473-1101
Davidson County	(704) 242-2090
Davie County	(704) 634-6297
Duplin County	(910) 296-2143
Durham County	(919) 560-0525
Edgecombe County	(919) 641-7815
Forsyth County	(910) 767-8213
Franklin County	(919) 496-3344
Gaston County	(704) 922-0301
Gates County	(919) 357-1400
Graham County	(704) 479-7979
Granville County	(919) 603-1350
Greene County	(919) 747-5831
Guilford County	(910) 375-5876
Halifax County	(919) 583-5161
Harnett County	(910) 893-7530
Haywood County	(704) 456-3575
Henderson County	(704) 697-4891
Hertford County	(919) 358-7822
Hoke County	(910) 875-3461
Hyde County	(919) 926-3201
Iredell County	(704) 873-0507
Jackson County	(704) 586-4009
Johnston County	(919) 989-5380
Jones County	(919) 448-9621
Lee County	(919) 775-5624
Lenoir County	(919) 527-2191
Lincoln County	(704) 736-8452
Macon County	(704) 524-6421
Madison County	(704) 649-2411
Martin County	(919) 792-1621
McDowell County	(704) 652-7121
Mecklenburg County	(704) 336-2561
Mitchell County	(704) 688-4811
Montgomery County	(910) 576-6011
Moore County	(910) 947-3188
Nash County	(919) 459-9810
New Hanover County	(910) 452-6393
Northampton County	(919) 534-2711
Onslow County	(910) 455-5873
Orange County	(919) 732-9361
Pamlico County	(919) 745-4121
Pasquotank County	(919) 338-3954
Pender County	(910) 259-1235
Perquimans County	(919) 426-5428
Person County	(910) 599-1195
Pitt County	(919) 757-2803
Polk County	(704) 894-8218
Randolph County	(919) 318-6000
Richmond County	(910) 997-8255
Robeson County	(910) 671-3276
Rockingham County	(910) 342-8230
Rowan County	(704) 633-0571
Rutherford County	(704) 287-6010
Sampson County	(910) 592-7161
Scotland County	(910) 277-2422
Stanly County	(704) 983-3987
Stokes County	(910) 593-8179
Surry County	(910) 401-8025
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Wake County	(919) 250-1100
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Wilson County	(919) 237-0111
Yadkin County	(910) 679-2061
Yancey County	(704) 682-6187

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Working To Improve Water Quality

Water Quality Education and Research in the College of Agriculture & Life Sciences

North Carolina State University
North Carolina Cooperative Extension Service
North Carolina Agricultural Research Service

Every community strives to maintain a steady supply of clean, safe water. Whether used for drinking, cooking or recreation, water is a resource essential to everyone.

The College of Agriculture and Life Sciences at North Carolina State University is dedicated to providing the research-based information that helps communities ensure safe water supplies. CALS water quality research and educational efforts span the state's geography as well as its demographics, with programs in areas ranging from mountain streams to marine estuaries, from the self-employed farmer to the state's largest industry.

CALS research, teaching and extension efforts cover the broad range of water quality concerns and challenges. From helping one town develop an effective, efficient waste management system to helping landowners protect entire watersheds, N.C. State will remain a leader in protecting our waters.

For more information about the university's work in water quality, please contact:

North Carolina Cooperative Extension Service
Campus Box 7602
North Carolina State University
Raleigh, NC 27695-7602
(919)515-2811

North Carolina Agricultural Research Service
Campus Box 7643
North Carolina State University
Raleigh, NC 27695-7643
(919)515-2718

Office of Academic Programs
College of Agriculture and Life Sciences
Campus Box 7642
North Carolina State University
Raleigh, NC 27695-7642
(919)515-2614

For more information via the World Wide Web, please see http://www.bae.ncsu.edu/bae/programs/extension/wqg/resources/

For more information by e-mail, please send questions to calswq@ncsu.edu

WATER QUALITY FACULTY *(by expertise)*

For individual phone numbers, please call University Information, (919) 515-2011.

Animal Waste Management:
Jim Barker, Biological and Agricultural Engineering
Tom Carter, Poultry Science
John Classen, Biological and Agricultural Engineering
James Green, Crop Science
Frank Humenik, Biological and Agricultural Engineering
Phil Westerman, Biological and Agricultural Engineering
Mike Williams, Animal Science

Communications:
Judith Gale, Biological and Agricultural Engineering
Jill Steffey, Agricultural Communications

Drinking Water Quality:
Greg Jennings, Biological and Agricultural Engineering
Richard McLaughlin, Soil Science
Dorothy Miner, Biological and Agricultural Engineering
Damian Shea, Toxicology
M. Cassandra Wiggins, Family and Consumer Sciences

Economics, Policy, and Sociology:
Leon Danielson, Agricultural and Resource Economics
Tom Hoban, Sociology and Anthropology
Michele Marra, Agricultural and Resource Economics
Ron Wimberly, Sociology and Anthropology

Fisheries and Aquaculture:
Jim Easley, Agricultural and Resource Economics
Tom Losordo, Zoology
Jim Rice, Zoology

Forestry:
Jim Gregory, Forestry
Rick Hamilton, Forestry

Ground Water Quality:
Rod Huffman, Biological and Agricultural Engineering
Richard McLaughlin, Soil Science

Municipal and Industrial Waste:
Wilma Hammett, Family and Consumer Sciences
Bob Rubin, Biological and Agricultural Engineering
Rhonda Sherman, Biological and Agricultural Engineering

Nutrient Management:
David Crouse, Soil Science
Deanna Osmond, Biological and Agricultural Engineering

Septic Systems:
Wilma Hammett, Family and Consumer Sciences
Mike Hoover, Soil Science
Bob Rubin, Biological and Agricultural Engineering

Pesticide Management:
Stratford Kay, Crop Science
Ross Leidy, Toxicology
Michael Linker, Crop Science
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Richard McLaughlin, Soil Science
Michael Stringham, Entomology

Soil Management:
Steve Hodges, Soil Science
Joe Kleiss, Soil Science
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Surface Water Quality:
Joann Burkholder, Botany
Wendell Gilliam, Soil Science
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Greg Jennings, Biological and Agricultural Engineering
John Parsons, Biological and Agricultural Engineering

Urban Water Quality:
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Greg Jennings, Biological and Agricultural Engineering
Richard McLaughlin, Soil Science
Arthur Bruneau, Crop Science

Watershed Management:
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Will Harman, Biological and Agricultural Engineering
Greg Jennings, Biological and Agricultural Engineering
Kris Matson, Biological and Agricultural Engineering

Wetlands:
Steve Broome, Soil Science
Robert Evans, Biological and Agricultural Engineering
Jim Gregory, Forestry
Frank Humenik, Biological and Agricultural Engineering
Michael Vepraskas, Soil Science

Youth Education:
Ed Maxa, 4-H and Youth Development
Dorothy Miner, Biological and Agricultural Engineering

Waste Management for the Food-Animal Industries

Food-animal production in the United States results in more than $80 billion per year in farm-gate sales. In North Carolina, the poultry, swine, beef, dairy, and aquaculture industries provide more than 60 percent of farm revenues, making them an extremely important part of the state's economy. Along with the benefits they provide, however, the food-animal industries also produce huge amounts of by-products such as manure, litter, mortalities, hatchery and processing plant offal, and waste water from the millions of animals raised annually. Major challenges face these industries in dealing with such large amounts of by products. The NCSU Animal and Poultry Waste Management Center is working with these industries and others to provide technology and management practices for effectively addressing these challenges.

For more information about the Animal and Poultry Waste Management Center, please contact

Dr. C. M. (Mike) Williams, Director
NCSU Campus Box 7608
Raleigh, NC 27695-7608
(919) 515-5386

The Animal and Poultry Waste Management Center

North Carolina State University

The Animal and Poultry Waste Management Center

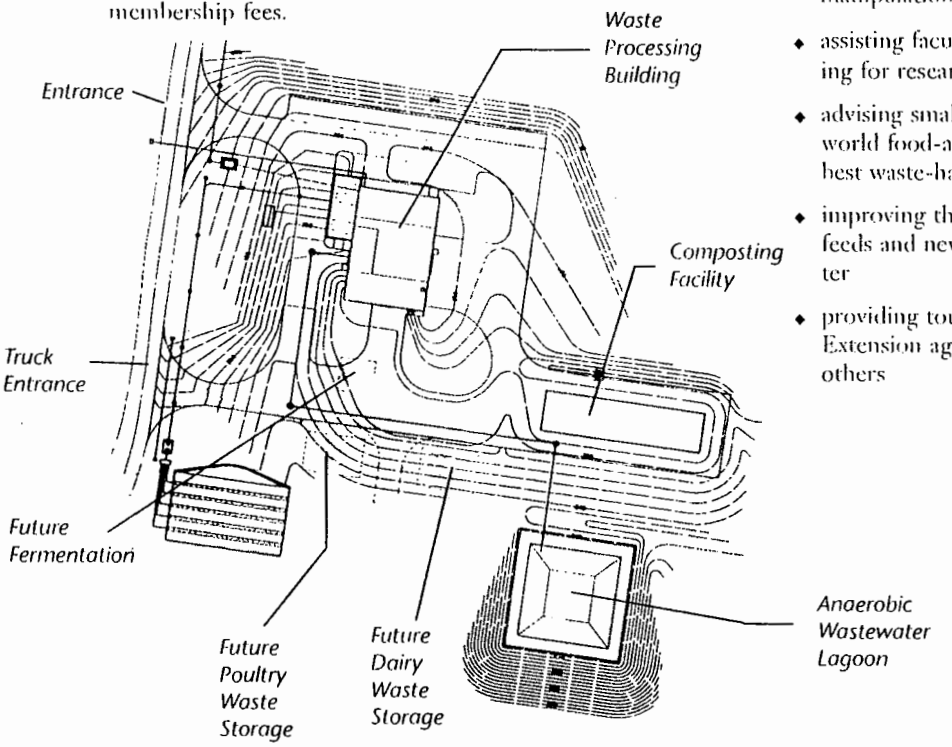
NCSU's Animal and Poultry Waste Management Center provides facilities for developing, testing, and demonstrating novel methods for managing and converting wastes into useful, valuable products and for reducing the amount of nutrients entering the waste stream. The Center's primary waste processing unit is located in Raleigh, at NCSU's Lake Wheeler Road Field Laboratory, and houses extruders, a fluidized bed dryer, pellet mills, and other waste processing equipment. The adjacent animal research units at this site provide facilities to test new practices and technologies under commercial-scale conditions.

Currently, numerous Center-sponsored projects are underway and involve more than 30 faculty from 10 departments in NCSU's College of Agriculture and Life Sciences. Projects already in progress have generated considerable interest from industry and commodity groups. Some examples of on-going research include:

- evaluating several technologies for reducing odor compounds from swine houses and lagoons
- using an immobilized enzyme (keratinase) system for producing amino acids and peptides from feathers and other proteinaceous wastes
- surveying freshwater marshes to determine which wetland plant species absorb the most nitrogen and phosphorus
- creating an on-farm system for fermenting poultry and swine mortalities with discarded sweet potatoes to increase their value as feedstuffs for poultry and aquaculture species
- developing a genetically engineered microbial species that can utilize nitrogen compounds contained in manures

The Partnership Approach

Creative solutions to the challenges facing the food-animal industry demand the input from experts in a wide range of disciplines. The organizational structure of The Animal and Poultry Waste Management Center allows NCSU to offer two levels of formal membership: full members commit $20,000 per year for an initial commitment of three years; associate members such as commodity groups, universities, and government agencies pay $5,000 per year, also with an initial commitment of three years. Currently, numerous industry groups, commodity organizations and other universities are center members. All member organizations are represented on the Board of Directors and participate in the Center's direction, policy, and research. Full members retain certain rights to intellectual property developed as a result of research sponsored by membership fees.



Shared Vision

The Center and its partners hope to encourage new and existing food-animal businesses to minimize their environmental impact by recycling their byproducts. Among the Center's specific goals are:

- operating state-of-the-art facilities and equipment for carrying out research and extension activities on the management and use of food-animal wastes
- developing economical and environmentally sound technologies for converting wastes to useful products
- reducing nutrients in the waste stream of food-animals through the use of genetics and dietary manipulation of traditional feedstuffs
- assisting faculty and other partners in competing for research funding
- advising small-business owners and national and world food-animal producing industries of the best waste-handling alternatives for their needs
- improving the nutritional value of traditional feeds and new foodstuffs developed by the Center
- providing tours, workshops, and training for Extension agents, agricultural agencies, and others

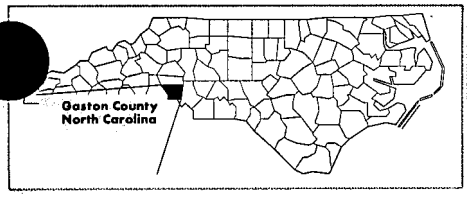
Long Creek Watershed

EPA 319 National Nonpoint Source Monitoring Project

The Long Creek Watershed Project

"Protecting Water Quality in Gaston County, North Carolina"

An outdoor laboratory best describes the Long Creek Watershed. Over the course of a decade, scientists, farmers, local leaders and others will use this outdoor laboratory to study the effect of best management practices in reducing nonpoint source pollution. The Long Creek Watershed project in Gaston County, North Carolina, was initiated in 1992 as an EPA 319 Nonpoint Source Monitoring Program project and will continue through 2001. There are only 14 other similar projects nationwide. Because nonpoint source pollution comes from land surfaces such as croplands, farm feedlots, streets, roofs, parking lots and lawns during precipitation events, we all can play a role in reducing pollution and its effects. Land management practices aimed at preventing or treating nonpoint source pollution are called BMPs or best management practices. These BMPs can be non-structural such as vegetative buffers along stream corridors or structural such as a stormwater detention pond. Whether it's a farmer planting a vegetative buffer along a stream or a homeowner properly disposing of household pesticides, these practices implemented by entire watershed communities over a period of time should reduce pollution and improve our environment.

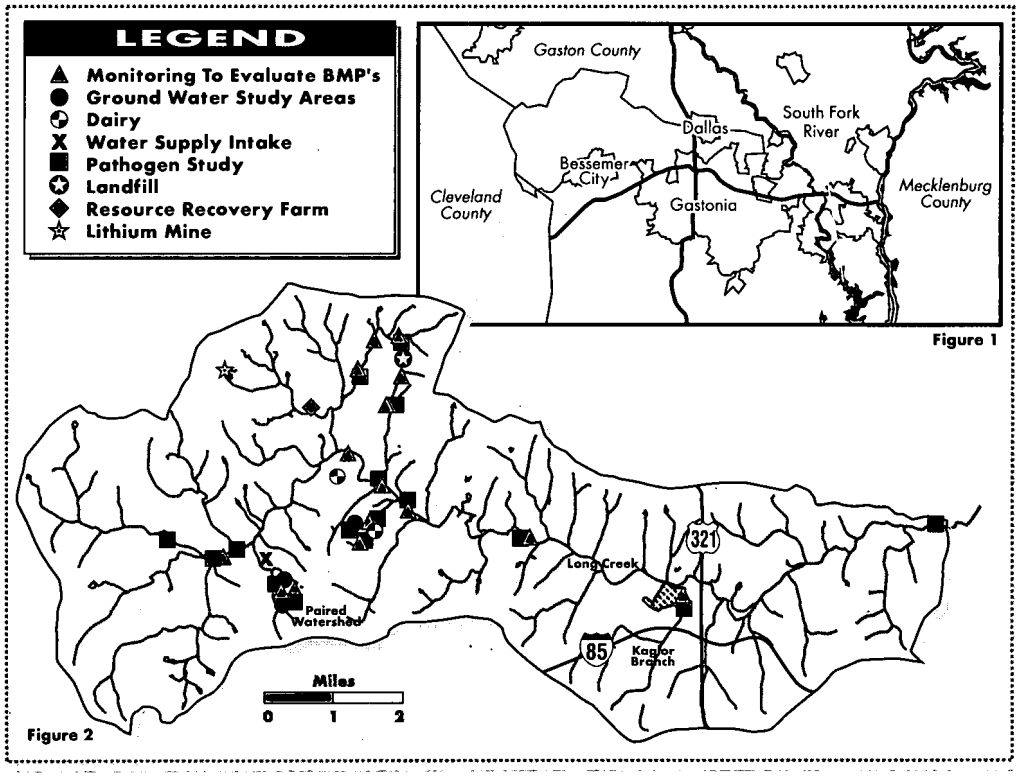


Background

Long Creek is located in West Central Gaston County. The stream originates at the Gaston/Cleveland County line along the Kings Mountain ridgeline. About 28,500 acres of mixed piedmont land use drain into the stream making up it's watershed. The stream flows east through the towns of Bessemer City, Dallas, and Gastonia before emptying into the South Fork River in Ranlo *(Figure 1)*.

Long Creek was selected for this project because of documented water quality problems resulting from nonpoint source pollution. Sixteen agencies and organizations *(back page)* have joined forces to improve water quality in Long Creek. Water quality is degraded by sediment, bacteria, metals, and nutrients. Potential pollution sources include agriculture (livestock, dairy, and crop production), urban runoff, mining, forestry, septic system outflow, streambank erosion, and point source dischargers. Below Highway 321, Long Creek is impaired by point and nonpoint sources of pollution. Since the project is focusing on nonpoint source pollution, monitoring stations are concentrated upstream of Highway 321 *(Figure 2)*.

Long Creek serves as the drinking water supply for Bessemer City, a municipality of approximately 5,000 people. Sediment from eroding croplands and streambanks is the major cause of water quality degradation upstream of the water supply intake. At the beginning of the project, sediment from the intake pool was dredged quarterly. Downstream of the intake, land use becomes increasingly urbanized as Long Creek receives runoff from Bessemer City, Dallas, and Gastonia. Agriculture is also prevalent with a 400-head dairy farm and two smaller dairies.



Project Objectives

Objective 1:

The primary objective of the EPA 319 Long Creek Watershed Project is to quantify how nonpoint source pollution control measures, or BMPs, impact water quality. Over 10 years these measures or practices will be implemented on:

- *A dairy farm to evaluate waste management and riparian protection practices to reduce pathogens, sediment, and nutrients;*
- *Cropland to evaluate nutrient and erosion management practices to decrease sediment and nutrients;*
- *Land upstream of a water supply intake to evaluate erosion and sediment control measures;*
- *A biosolids management facility to evaluate municipal biosolids handling and application practices to prevent nutrient and pathogen runoff; and*
- *An urban watershed to evaluate stormwater and streambank protection measures designed to reduce sediment, nutrients, and metals.*

Objective 2:

A secondary objective is to study and determine pathogen levels as Long Creek flows from the rural undeveloped headwater area and downstream through the increasingly urbanized areas to the confluence of the South Fork River.

Objective 3:

The objective of a complementary study funded by the Ground Water Section of the NC Division of Water Quality is to characterize ground water recharge and discharge relationships in the Piedmont Province of North Carolina. They have selected the Pasour Mountain Resource Recovery Farm as their study area.

Monitoring Design

Monitoring stations are shown on figure 2 *(cover).* Table 1 *(next page)* provides an overview of the Long Creek Watershed sampling design.

Objective 1 is evaluated through the following three water quality monitoring designs:

1. *Single downstream station at the water supply intake, sub-watershed outlet on Long Creek, and Kaglor Branch.*
2. *Upstream/downstream monitoring on Long Creek, Kiser Branch, and the Pasour Mountain Resource Recovery Farm.*
3. *Paired watersheds on cropland.*

A single downstream monitoring station, such as the one at the water supply intake, measures the cumulative impacts for the entire watershed. Statistically, this is the weakest monitoring design for evaluating the effectiveness of BMPs. Upstream/downstream monitoring means that samples will be taken upstream of the land area where BMPs will be installed and downstream of the BMP treatment area. The goal is to statistically prove that by installing BMPs, water quality at the downstream site becomes similar to water quality at the upstream site. A paired watershed design is statistically the strongest tool for evaluating BMPs. A paired watershed design compares water quality in two watersheds of similar size, slope, land use, and soil type. Land management in one watershed remains consistent throughout the life of the project. This is the "control" watershed. The other watershed receives the BMPs and is called the treatment watershed. The control watershed is used to account for natural fluctuations in water quality due to seasonal changes in precipita crop stage, and soil conditions.

Herein lies the challenge of evaluating the effectiveness of BMPs. Water quality is naturally variable due to land use changes and weather fluctuations. In addition, there is often a reservoir of pollutants that must be flushed out before the effect of the BMP is evident. Proving that water quality improved because of the implementation of BMPs requires many years of monitoring comprising three stages: background or pre-BMP, BMP implementation, and post-BMP. Background monitoring usually lasts for at least two years without any major changes in land use. The installation of BMPs may take several years to complete since some BMPs can only be implemented during certain times of the year. Post BMP monitoring lasts 4 to 6 years, possibly longer depending on the BMP.

Objective 2 is evaluated by including pathogen monitoring at the following EPA 319 sites listed in Objective 1: Water Supply Intake, Kaglor Branch, Kiser Branch, Pasour Mountain, and cropland. In addition, path samples are taken at a background site ne the headwaters, the outlet of Long Creek, and above and below Long Creek on the South Fork River.

Objective 3 is evaluated by installing a series of wells at the Pasour Mountain Resource Recovery Farm. Monitoring wells are used to record temporal water table fluctuations. Transects are placed in the upper portion of the watershed and at the watershed outlet so that hydraulic conductivity and other aquifer characteristics can be computed.

▲ *Long Creek technician checks water samples after a storm event.*

Monitoring Design *Table 1*

or vities	Primary Variables	Covariates	Sampling Frequency	Biological Study Frequency	Duration
Water Supply Watershed	Sediment Bacteria Other Pathogens	Discharge	Weekly grab (Dec. - May) Monthly grab	Annually	2 yr. pre-BMP 6 yrs BMP
Above and Below all Dairy Farms	Sediment Nutrients Bacteria	Discharge	Weekly grab (Dec. - May) Monthly grab	Annually below dairies	2 yrs pre-BMP 4 yrs BMP 2 yrs post-BMP
Dairy Farm	Sediment Nutrients Bacteria Other Pathogens	Discharge Rainfall Water Table	Weekly grab Storm Event	Annually	2 yrs pre-BMP 4 yrs BMP 2 yrs post-BMP
Cropland	Sediment Nutrients Other Pathogens	Discharge Rainfall Water Table	Storm Event		2 yrs pre-BMP 6 yrs BMP
Sub-Watershed Outlet	Sediment Nutrients Bacteria	Discharge	Weekly (Dec. - May) Monthly	Annually	2 yrs pre-BMP 6 yrs BMP
Pasour Mtn. Resource Recovery Farm	Sediment Nutrients Bacteria Other Pathogens Metals [1]	Discharge Water Table	Bi-weekly Monthly Metals Storm Events		Ongoing
Kaglor Branch	Sediment Nutrients Bacteria Other Pathogens Metals [2]	Rainfall	Bi-Weekly Storm Event	Annually	1 yr pre BMP 1 yr post-BMP
hogen	Bacteria Other Pathogens	Rainfall	Monthly		5 years

[1] Legend

Sediment
Total Suspended Solids
Total Solids

Nutrients
Total Phosphorus
Nitrate + Nitrite
Total Kjeldahl Nitrogen

Bacteria
Fecal Coliform
Fecal Streptococci

Other Pathogens
Escherichia Coli
Clostridium Perfringens
F+ Coliphages
Giardia
Cryptosporidium

Metals [1]
Arsenic
Chromium
Mercury
Nickel
Zinc
Cadmium
Lead
Molybdenum
Selenium

Metals [2]
Arsenic
Cadmium
Lead
Nickel
Zinc
Barium
Chromium
Mercury
Selenium

▲ *Students use volunteer monitoring methods to assess water quality in Long Creek.*

Education and Community Outreach

Since we all contribute in some way to nonpoint source pollution problems, a strong education and community outreach program was implemented as part of the. Educational programs include the following:

▲ *Weekly samples taken at Kiser Branch.*

A workshop and tour takes place annually to update funding agencies, local officials, community leaders, scientists, engineers, environmental educators and citizens. In addition, specific technical workshops are occasionally held to teach bio-engineering techniques for BMP implementation, monitoring designs for BMP evaluation, data analyses and water quality education programming.

A Stream Watch team was organized to expand monitoring in other watersheds within the county. Stream monitoring is conducted by volunteers on a monthly basis. This program is coordinated and primarily funded by QNRC.

An "Applications in Hydrology" curriculum was developed for junior and senior high school science classes. The purpose is to integrate math, specifically algebra, and science to provide students with hands-on experiences in watershed science.

One-on-one visits with watershed landowners provide technical assistance with BMP implementation.

Water quality programs tailored to elementary, junior high, and high schools actively involve students in learning how to care for the environment.

Project presentations, research papers, fact sheets, newsletters and a display are used for a wide variety of media events, conferences and meetings.

BMP Design *Table 2*

Sites	BMP Description	Implementation Timeline
Water Supply Watershed	• Convert 13 acres of cropland above the water supply intake to a natural riparian area	1991- Present
	• Exclude livestock from streams	Spring 1995 - Fall 2001
	• Reduce erosion rates on cropland	Spring 1995 - Fall 2001
	• Implement nutrient management on cooperating farms	
Dairy Farm	• Provide adequate waste storage and handling capabilities	1993- Present
	• Provide cows with alternative watering supply	Winter 1995-96
	• Exclude cows from the stream	Winter 1995-96
	• Re-grade and vegetate streambanks and riparian zone	Winter 1995 - Fall 1996 (Phase 1) Winter 1999-2000 (Phase 2)
	• Implement nutrient and pasture management strategies	Spring 1996 - Spring 1997
Cropland	• Implement nutrient and waste management strategies on treatment watershed	Spring 1997 or 1998
	• Change cropping strategy to strip cropping, no-till, or contour farming on treatment watershed	Spring 1997 or 1998
	• Maintain current nutrient management and cropping strategy on control watershed	Ongoing through Fall 2001
Pasour Mountain Resource Recovery Farm	• Implement contour and strip farming methods	Spring 1996
	• Implement nutrient and waste management strategies	Spring 1996
	• Maintain grass waterways	Spring 1996
	• Establish riparian areas	Fall 1996 - Winter 1996-97
Kaglor Branch	• Install an in-stream urban stormwater wetland	Winter 1996 - Spring 1997
	• Re-introduce meanders, pools and riffles	Winter 1996 - Spring 1997
	• Re-grade and vegetate streambanks	Summer 1996 - Spring 1997

BMP Plan and Implementation Timeline

A summary of the BMP plan and implementation timeline for each study area is provided in *(Table 2)*. The BMP plans include a comprehensive approach to prevent or treat nonpoint source pollution. Where possible, BMPs are selected to return impaired streams and riparian areas to naturally functioning systems. BMPs are implemented on a voluntary basis and are cost shared up to 75% with NC Agricultural Cost Share funds and EPA 319 (h) grant funds.

For more information, contact

N.C. Cooperative Extension Service
Gaston County Center
PO Box 476 • Dallas, NC 28034-0476
Phone: (704) 922-0303 • Fax (704) 922-341

▲ *"Streambank erosion along Kiser Branch was a major problem at the onset of the project before any best management practices were implemented."*

▲ *"This same site two years later looks quite different. The steep bonk has been grodea back to a 2:1 slope and planted with fescue and hardwoods."*

Cooperators:

- City of Bessemer City
- City of Gastonia
- Duke Power Company
- Gaston County Board of Commissioners
- Gaston Soil and Water Conservation District
- Kiser Dairy
- Mecklenburg Environmental Protection Dept.
- NC Cooperative Extension Service
- NC Division of Water Quality
- NC Division of Soil and Water Conservation
- NC Forest Service
- Quality of Natural Resources Commission
- USDA Consolidated Farm Services
- USDA Natural Resources Conservation Service
- US Environmental Protection Agency
- US Geological Survey

September 1996

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 3/25/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dr. C. M. (Mike) Williams	NCSU Animal & Poultry Waste Management Center Box 7608 Raleigh NC
Dr. Greg Jennings	NCSU Bio/Ag Engineering Box 7625 Raleigh, NC 27695
John Cyrus	N.C. State Grange
Jim Wilder	NC Cooperative Ext. Svc.
Paul S. Drew	N.C. Agribusiness
F. Carlyle League	Cooperative Council of NC
David Meredith	NC State Grange
Patty Berry	CCNC
Andy Ellen	NC Farm Bureau
Ann Case	DEHNR
Ben Holman	CCNC / Sierra Club
Amanda Davis	Sierra Club

VISITOR REGISTRATION SHEET

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Name of Committee (DATE)

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NAME	FIRM OR AGENCY AND ADDRESS
R. Rogers	DENR
Tom Benn	NC Wildlife Federation
Butch Gunnells	NC SDA
Marsh Smith	Rabid Hog Producers For Porcine Justice

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 1, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 1 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were sixteen committee members present.

Senator Albertson called the meeting to order and announced that we would review the impact of Senate Bill 1217 which was the Blue Ribbon Study Commission bill on Animal Waste and which was ratified in 1996. He called on Barbara Riley of staff to give a "run-through" of the bill for the benefit of committee members who might not be familiar with what was contained in the bill.

Dr. Jim Barker, Professor, Biological & Agricultural Engineering Department, North Carolina State University, was next introduced to speak on the bill. Dr. Barker served on the Blue Ribbon Study Commission on Animal Waste. In his comments, Dr. Barker touched on what had been done in areas of training , permitting, in-depth nutrient management, odor control, monitoring of lagoons, etc. He said there was now a dry nutrient management plan for poultry producers. He distributed several hand-outs which are attached to these minutes. After his presentation, he answered questions from the committee members. Also answering questions from committee members was Steve Tedder of the Division of Water Quality of the Department of Environment, Health and Natural Resources.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 1, 1997
Room 1124 - LB
11:00 a.m.

AGENDA

SPEAKER:

Dr. Jim Barker, Professor
Biological & Agricultural Engineering Department
N. C. State University

REVIEW IMPACT OF SB 1217 WHICH WAS THE BLUE RIBBON STUDY COMMISSION ANIMAL WASTE BILL

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION
RATIFIED BILL

CHAPTER 626
SENATE BILL 1217

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE BLUE RIBBON STUDY COMMISSION ON AGRICULTURAL WASTE.

The General Assembly of North Carolina enacts:

PART I. PERMITS/OPERATIONS REVIEWS/INSPECTIONS/FEES FOR ANIMAL WASTE MANAGEMENT SYSTEMS FOR ANIMAL OPERATIONS

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Animal Waste Management Systems.

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water Conservation. Permitting, inspection, and enforcement will be vested in the Division of Environmental Management.

"**§ 143-215.10B. Definitions.**

As used in this Part:

(1) 'Animal operation' means 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. Public livestock markets or sales regulated under Articles 35 and 35A of Chapter 106 of the General Statutes shall not be considered animal operations for purposes of this Part.

(2) 'Animal waste' means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) 'Animal waste management system' means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) 'Division' means the Division of Environmental Management of the Department.

(5) 'Feedlot' means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

(6) 'Technical specialist' means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans.

"**§ 143-215.10C. Applications and permits.**

(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining a permit under this Part. The Commission shall develop a system of general permits for animal operations based on species, number of animals, and other relevant factors.

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) Animal waste management plans shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic

testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be the rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any operator of an animal operation with a dry litter animal waste management system involving 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

"§ 143-215.10D. Operations review.

(a) The Division, in cooperation with the Division of Soil and Water Conservation, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the Department, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation.

"**§ 143-215.10E. Violations requiring immediate notification.**

(a) Any employee of a State agency or unit of local government lawfully on the premises and engaged in activities relating to the animal operation who observes any of the following violations shall immediately notify the owner or operator of the animal operation and the Division:

(1) Any direct discharge of animal waste into the waters of the State.

(2) Any deterioration or leak in a lagoon system that poses an immediate threat to the environment.

(3) Failure to maintain adequate storage capacity in a lagoon that poses an immediate threat to public health or the environment.

(4) Overspraying animal waste either in excess of the limits set out in the animal waste management plan or where runoff enters waters of the State.

(5) Any discharge that bypasses a lagoon system.

(b) Any employee of a federal agency lawfully on the premises and engaged in activities relating to the animal operation who observes any of the above violations is encouraged to immediately notify the Division.

"**§ 143-215.10F. Inspections.**

The Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

"**§ 143-215.10G. Fees for animal waste management systems.**

The Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred dollars ($100.00).

(3) For a system with a design capacity of 800,000 pounds or more state live weight, two hundred dollars ($200.00)."

Sec. 2. G.S. 143-215.1(a) reads as rewritten:

"(a) Activities for Which Permits Required. -- No person shall do any of the following things or carry out any of the following activities ~~until or~~ unless ~~such~~ that person ~~shall have applied for and shall have~~ has received a permit from the Commission ~~a permit therefor and shall have~~ and has complied with ~~such conditions, if any, as are prescribed by such~~ all conditions set forth in the permit:

(1) Make any outlets into the waters of the ~~State;~~ State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the ~~State;~~ State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the ~~State;~~ State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent ~~which~~ that would result in any violation of the effluent standards or limitations established for any point source or ~~which~~ that would adversely affect the condition of the receiving waters to the extent of violating any ~~of the standards applicable to such water;~~ applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way ~~which~~ that would exceed the effluent standards or limitations established for any point source or ~~which~~ that would adversely affect the condition of the receiving waters in relation to any ~~of the standards applicable to such waters;~~ applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this ~~Article;~~ Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in ~~such facility;~~ that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such ~~facilities;~~ facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant ~~thereto;~~ thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or ~~animals;~~ animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 ~~which~~ that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) ~~In connection with the above, no such~~ No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency ~~which~~ that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that ~~such~~ any outlet for the disposal of waste ~~is~~ is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) ~~In any case where the Commission denies a permit, it~~ If the Commission denies an application for a permit, the Commission shall state in writing the reason for ~~such~~ the denial and shall also state the Commission's estimate of the changes in

the applicant's proposed activities or plans ~~which will~~ that would be required in order that the applicant may obtain a permit."

PART II. SPECIAL ORDERS OF CONSENT/PENALTIES

Sec. 3. G.S. 143-215.2(a) reads as rewritten:

"(a) Issuance. -- The Commission ~~is hereby empowered,~~ may, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, ~~to issue (and~~ issue, and from time to time ~~to modify or revoke)~~ modify or revoke, a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. ~~Such an~~ The order or instrument may direct ~~such~~ the person to take, or refrain from taking ~~such~~ an action, or to achieve ~~such results,~~ a result, within a period of time specified by ~~such~~ the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate ~~such~~ the pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and ~~such~~ the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing. ~~Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry.~~"

Sec. 4. G.S. 143-215(e) reads as rewritten:

"(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Secretary shall have the authority to assess fines and penalties not to exceed ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection."

PART III. CERTIFICATION/TRAINING OF ANIMAL WASTE MANAGEMENT SYSTEM OPERATORS

Sec. 5. G.S. 143B-301(a) reads as rewritten:

"(a) The Water Pollution Control System Operators Certification Commission shall consist of 11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. ~~nine~~ Nine members shall be appointed by the Secretary of Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as water pollution control facility operators, water pollution control system superintendents or directors, water and sewer superintendents or directors, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;

(6) One member who is employed by the Department of Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the Commission;

(7) One member who is employed by a commercial water pollution control system operating firm; and

(8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality."

Sec. 6. (a) The title of Article 3 of Chapter 90A reads as rewritten:

"ARTICLE 3.

Certification of Water Pollution Control System ~~Operators.~~

Operators and Animal Waste Management System Operators.

Part 1. Certification of Water Pollution Control System Operators."

(b) Article 3 of Chapter 90A of the General Statutes, as amended by subsection (a) of this section, is amended by adding a new Part to read:

"Part 2. Certification of Animal Waste Management System Operators.

"§ 90A-47. Purpose.

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products, and to require the examination of animal waste management system operators and certification of their competency to operate or supervise the operation of those systems.

"§ 90A-47.1. Definitions.

(a) As used in this Part:

(1) 'Animal waste' means liquid residuals resulting from an animal operation that are collected, treated, stored, or applied to the land through an animal waste management system.

(2) 'Application' means laying, spreading on, irrigating, or injecting animal waste onto land.

(3) 'Commission' means the Water Pollution Control System Operators Certification Commission.

(4) 'Owner' means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.

(5) 'Operator in charge' means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for the operation of the system.

(b) The definitions set out in G.S. 143-215.10B, other than the definition of 'animal waste', apply to this Part.

"§ 90A-47.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of an animal operation having an animal waste management system shall allow the system to be operated by a person who does not hold a valid certificate as an operator in charge of an animal waste management system issued by the Commission. No person shall perform the duties of an operator in charge of an animal waste management system without being certified under the provisions of this Part. Other persons may assist in the operation of an

animal waste management system so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of an animal operation may contract with a certified animal waste management system operator in charge to provide for the operation of the animal waste management system at that animal operation. The Commission may adopt rules requiring that any certified animal waste management system operator in charge who contracts with one or more owners or other persons in control of an animal operation file an annual report with the Commission as to the operation of each system at which the services of the operator in charge are provided.

"**§ 90A-47.3. Qualifications for certification; training; examination.**

(a) The Commission shall develop and administer a certification program for animal waste management system operators in charge that provides for receipt of applications, training and examination of applicants, and investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Environmental Management of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate.

"**§ 90A-47.4. Fees; certificate renewals.**

(a) An applicant for certification under this Part shall pay a fee of ten dollars ($10.00) for the examination and the certificate.

(b) The certificate shall be renewed annually upon payment of a renewal fee of ten dollars ($10.00). A certificate holder who fails to renew the certificate and pay the renewal fee within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

"**§ 90A-47.5. Suspension; revocation of certificate.**

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

(1) Engages in fraud or deceit in obtaining certification.

(2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.

(3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

"**§ 90A-47.6. Rules.**

The Commission shall adopt rules to implement the provisions of this Part."

PART IV. SWINE FARM SITING ACT/REQUIREMENTS/NOTICE

Sec. 7. (a) Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"**§ 106-800. Title.**

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

"**§ 106-801. Purpose.**

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for ~~larger~~ swine farms can assist in the development of pork ~~production to contribute~~ production, which contributes to the economic development of the ~~State while minimizing any~~ State, by lessening the interference with the use and enjoyment of adjoining property.

"**§ 106-802. Definitions.**

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

(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 without discharge to surface waters of the State except in the event of a storm more severe than the 25-year, 24-hour storm.~~ materials.

~~(2) 'New swine farm' means any swine farm whose operations were sited on or after October 1, 1995. Renovation and reconstruction of existing farms does not constitute a 'new swine farm'.~~

(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) ~~'Siting' or 'site~~ '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 ~~Natural Resources Conservation Service~~ 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 and either of which report provides the basis for certification by the Division of Environmental Management pursuant to the rules appearing in the North Carolina Administrative Code governing waste not discharged to surface waters.~~ Commission.

(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. ~~Requirements~~ Siting requirements for ~~siting~~ swine ~~houses and lagoons.~~ 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 at least 1,500 feet from any occupied residence; at least 2,500 feet from any school, hospital, or church; and at least ~~100~~ 500 feet from any property boundary. 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 feet from any ~~residential property boundary~~ boundary of property on which an occupied residence is located and from any perennial stream or river, other than an irrigation ditch or canal.

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

"**§ 106-804. Enforcement.**

(a) Any person owning property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against

a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

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

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person owns:

(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.
(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.
(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.
(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.
(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.

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

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

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

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, attempt to notify all adjoining property owners and all property owners who own property located across a public road, street, or highway from the swine farm of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.
(2) The type of swine farm and the design capacity of the animal waste management system.
(3) The name and address of the technical specialist preparing the waste management plan.
(4) The address of the local Soil and Water Conservation District office.
(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Environmental Management, Department of Environment, Health, and Natural Resources."

(b) Subsection (a) of this section does not repeal any rule that does not conflict with the amendments to Article 67 of Chapter 106 of the General Statutes made by subsection (a) of this section.

Sec. 8. Section 2 of Chapter 420 of the 1995 Session Laws reads as rewritten:

"Sec. 2. ~~This act becomes effective October 1, 1995, and applies to any new swine farm for which a site evaluation is conducted on or after that date.~~ This act applies to the construction or enlargement, on or after October 1, 1995, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. This act does not apply under each of the following circumstances:

(1) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995.

(2) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995, or as that system is set forth in an animal waste management plan approved before October 1, 1995.

(3) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population."

PART V. AGRICULTURAL COST SHARE PROGRAM

Sec. 9. G.S. 143-215.74(b)(5) reads as rewritten:

"(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste ~~managements~~ management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality."

Sec. 10. G.S. 143-215.74(b)(6) reads as rewritten:

"(6) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost (which may include in-kind support) with a maximum of ~~fifteen thousand dollars ($15,000) per year~~ seventy-five thousand dollars ($75,000) per year to each applicant."

PART VI. REPORTS/DEVELOPMENT OF COMPREHENSIVE PLAN/STUDIES

Sec. 11. (a) The Division of Soil and Water Conservation of the Department of Environment, Health, and Natural Resources, the Cooperative Extension Service of North Carolina State University, and the North Carolina

Department of Agriculture shall prepare a coordinated and comprehensive plan that includes use of existing resources at the local level for nonpoint source pollution prevention and control. The plan shall include mechanisms to be utilized that enhance communication, and provide information, technical assistance, and environmental education. The plan shall also include the following:

(1) Designate the Division of Soil and Water Conservation of the Department of Environment, Health, and Natural Resources as the lead agency with a defined line of authority for agricultural activities affected by the nonpoint source pollution prevention/control plan.

(2) Identify the needs of agricultural crop and livestock operations and the services provided by the various groups.

(3) Develop a strategic plan for interaction and communication with farmers and livestock operations concerning implementation of agricultural best management practices including nutrient management plans and site-specific nutrient reduction efforts.

(b) The Commissioner of Agriculture, the Secretary of Environment, Health, and Natural Resources, and the Director of the Cooperative Extension Service shall report their comprehensive plan to the Senate Select Committee on River Water Quality and Fish Kills and the Environmental Review Commission by September 30, 1996.

Sec. 12. The Environmental Review Commission shall evaluate the animal waste permitting, inspection, and enforcement program established under Section 1 of this act including, whether to transfer responsibility for permitting, compliance inspections, and enforcement to the Division of Soil and Water Conservation. The Commission may report its findings and recommendations to the General Assembly on or before the first day of the 1997 Regular Session and shall report its findings and recommendations on or before the first day of the 1998 Regular Session.

Sec. 13. Part 9A of Article 21 of Chapter 143 of the General Statutes is repealed effective January 1, 1997. A person certified under Part 9A of Article 21 of Chapter 143 of the General Statutes shall be certified as an animal waste management system operator by the Water Pollution Control System Operators Certification Commission without additional preexamination training, examination, or payment of an initial certification fee. A person certified under Part 9A of Article 21 of Chapter 143 of the General Statutes shall complete approved additional training and pay the annual renewal fee in order to maintain certification.

Sec. 14. (a) All operators of animal waste management systems, as defined in G.S. 143-215.10B, as enacted by Section 1 of this act, shall register with their local Soil and Water Conservation District office and initiate the process to obtain an approved animal waste management plan pursuant to 15A N.C.A.C. 2H.0217. Operators who initiate the process of obtaining an approved animal waste management plan before 1 September 1996 shall receive priority for inclusion in the Nonpoint Source Pollution Control Program pursuant to G.S. 143-215.74, et seq., including priority for technical assistance and State funding.

(b) The Environmental Management Commission may enter into a special agreement with an operator who registers by 1 September 1996 under subsection (a) of this section and who makes a good faith effort to obtain an approved animal waste management plan by 31 December 1997. The special agreement shall set forth a schedule for the operator to follow to obtain an approved animal waste management plan by a date certain and shall provide that the Environmental Management Commission shall not issue a notice of violation for

failure to have an approved animal waste management plan so long as the operator complies with the special agreement.

(c) The Environmental Management Commission shall strictly enforce the penalties available against those operators who fail to comply with subsection (a) of this section or otherwise fail to make a good faith effort to obtain an approved animal waste management plan by 31 December 1997.

(d) The board of each Soil and Water Conservation District shall develop a strategy to assist operators of animal waste management systems in its district to obtain approved animal waste management plans by 31 December 1997.

Sec. 15. The Environmental Management Commission shall develop a definition for the term "chronic rainfall". The Commission shall review the meaning of "no discharge of pollutants" as used in the definition of "animal waste management system" in its animal waste management rules to determine whether this phrase constitutes a no discharge requirement and whether this phrase creates a performance standard or a technology standard. The Commission shall clarify the meaning of "no discharge" such that the no discharge requirement for animal waste management systems is economically practical and technologically achieveable. The Commission shall complete the requirements of this section by 1 October 1996.

Sec. 16. No later than September 1, 1996, the Soil and Water Conservation Commission shall specify odor control best management practices, insect control best management practices, and best management practices for riparian buffers or equivalent controls consistent with the provisions of G.S. 143-215.10C(e)(1), (2), and (4), as enacted by Section 1 of this act.

Sec. 17. No later than October 1, 1996, the Environmental Management Commission and the Soil and Water Conservation Commission, with technical assistance from the Cooperative Extension Service, shall establish the record-keeping requirements under G.S. 143-215.1C(e)(8), as enacted by Section 2 of this act. The Natural Resources Conservation Service is encouraged to cooperate fully with establishing these requirements.

Sec. 18. (a) An interagency group is created to:

(1) Address questions from technical specialists and provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules.

(2) Publish its decisions on these questions on a regular and recurring basis.

(3) Provide uniform strategies for operators of intensive livestock operations to meet the December 31, 1997, deadline to obtain an approved animal waste management plan.

(4) Develop, no later than August 1, 1996, a standard for the use of riparian buffers or equivalent controls as best management practices, particularly along perennial streams; decide whether a uniform State standard, a uniform basinwide standard, or a site-specific standard best protects water quality; and submit the standard that the group decides upon to the Soil and Water Conservation Commission for adoption in developing best management practices for riparian buffers and equivalent controls under Section 6 of this act.

(b) The interagency group shall consist of two representatives from each of the following State agencies: the Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources; the Division of Environmental Management, Department of Environment, Health, and Natural Resources; the Department of Agriculture; and the Cooperative Extension Service. The General Assembly encourages the Natural Resources Conservation Service,

United States Department of Agriculture, to provide two representatives from its agency to participate fully as members of the interagency group. The interagency group shall remain in existence until such time after December 31, 1997, that the Secretary of Environment, Health, and Natural Resources determines the interagency group is no longer needed to resolve issues related to certifying animal waste management plans.

PART VII. EFFECTIVE DATES/MISCELLANEOUS PROVISIONS

Sec. 19. (a) G.S. 143-215.10A, as enacted by Section 1 of this act, is effective upon ratification.

(b) G.S. 143-215.10B, as enacted by Section 1 of this act, is effective upon ratification.

(c)(1) G.S. 143-215.10C, as enacted by Section 1 of this act, becomes effective January 1, 1997. In order to ensure an orderly and cost-effective phase-in of the permit program, the Department of Environment, Health, and Natural Resources shall issue permits for animal operations over a five-year period. The Department shall issue permits for approximately twenty percent (20%) of the animal waste management facilities that are in operation on January 1, 1997, during each of the five calendar years beginning January 1, 1997, and shall give priority to those animal waste management systems serving the largest animal operations. An animal waste management system that is deemed permitted by rule on January 1, 1997, under 15A N.C.A.C. 2H.0217 may continue to operate on a deemed permitted basis as provided in subsection (b) of this section.

(2) In accordance with its phase-in schedule, the Department shall notify each owner or operator of an animal waste management system that is deemed permitted of the date by which an application for a permit for that animal waste management system shall be submitted by certified mail. An owner or operator of an animal waste management system who fails to submit an application for a permit by the date specified by the Department shall not operate the animal waste management system after that date. An animal waste management system that is authorized to continue operation under this section and for which a timely application for a permit is submitted may continue to operate on a deemed permitted basis until the Department either issues a permit or notifies the owner or operator that the application for a permit is denied. An animal waste management system that is deemed permitted shall be subject to the annual operational review and annual inspection requirements as though it were permitted.

(3) The Department shall act on an application for a permit for a new facility or for the expansion of an existing facility within 90 days after the Department receives the application.

(4) Notwithstanding G.S. 143-215.10C (a) through (d), a dry litter animal waste management system involving 30,000 or more birds shall continue to operate on a deemed permitted basis by rule under 15A N.C.A.C. 2H.0217 and shall comply with the animal waste management plan testing and record-keeping requirements by January 1, 1998.

(d) G.S. 143-215.10D, as enacted by Section 1 of this act, becomes effective September 1, 1996.

(e) G.S. 143-215.10E, as enacted by Section 1 of this act, is effective upon ratification.

(f) G.S. 143-215.10F, as enacted by Section 1 of this act, becomes effective January 1, 1997.

(g) G.S. 143-215.10G, as enacted by Section 1 of this act, becomes effective January 1, 1997.

Sec. 20. Section 2 of this act becomes effective January 1, 1997.

Sec. 21. Sections 3 and 4 of this act are effective upon ratification and apply to violations that occur on or after that date.

Sec. 22. Section 5 of this act becomes effective October 1, 1996. In order to maintain staggered terms on the Water Pollution Control System Operator Certification Commission, of the two new members added to the Commission by Section 5 of this act, the initial term of one appointee shall expire on 30 June 1998 and the initial term of the other appointee shall expire on 30 June 1999.

Sec. 23. Section 6 of this act is effective upon ratification, except that G.S 90A-47.2(a), as enacted by subsection (b) of Section 6 of this act, becomes effective January 1, 1997.

Sec. 24. Sections 7 and 8 of this act are effective upon ratification, except that the change from 100 to 500 feet made in G.S. 106-803(a) by Section 7 of this act does not apply to a swine farm for which a site evaluation was conducted prior to October 1, 1996.

Sec. 25. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission, the Soil and Water Conservation Commission, and the Water Pollution Control System Operators Certification Commission, may adopt temporary rules to implement this act.

Sec. 26. Sections 9 through 26 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

DENNIS A. WICKER

Dennis A. Wicker
President of the Senate

HAROLD J. BRUBAKER

Harold J. Brubaker
Speaker of the House of Representatives

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 1, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Staff Attorney
George F. Givens, Staff Attorney
Jeff Hudson, Staff Attorney

SUBJECT: Chapter 626 of the 1996 Session Laws (Senate Bill 1217): Animal Waste Recommendations

Chapter 626 of the 1996 Session Laws establishes a permitting system for specified animal operations, requires annual operation reviews, and requires the development of a coordinated and comprehensive plan that includes how existing resources at the local level can be utilized for nonpoint source pollution prevention and control. A detailed summary follows.

PART I. PERMITS/OPERATIONS REVIEWS/INSPECTIONS/FEES FO ANIMAL WASTE MANAGEMENT SYSTEMS FOR ANIMAL OPERATIONS

Section 1 of Ch. 626 (pp. 1-5) adds a new Part 1A entitled, "Animal Waste Management Systems" to Article 21 (Water and Air Resources) of Chapter 143 of the General Statutes.

G.S. 143-215.10A. Legislative findings and intent. (p. 1) - This section recognizes the significant economic and other benefits that animal operations provide and that good animal waste management practices are important for the protection of water quality in our state. This section vests operations review responsibility with the Division of Soil and Water, while vesting responsibility for permitting, inspection, and enforcement in the Division of Environmental Management.

G.S. 143-215.10B. Definitions. (p. 2) – This section defines an "animal operation" to mean 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. This section also defines "animal waste", "animal waste management system", Division", "Feedlot" and "Technical specialist". It exempts public livestock markets or sales regulated by the Department of Agriculture from the definition and permit requirements of 'animal operations'.

- Subsection (a) of G.S. 143-215.10C directs the Environmental Management Commission to develop a system of general permits for animal operations based on species, number of animals, and other relevant factors.

- Subsection (c) of G.S. 143-215.10C directs the Commission to act quickly on a permit application and provides that if the Commission fails to act on an application within 90 days and the applicant submits all required information, the application is approved.

- Subsection (f) requires any operator of an animal operation with a dry litter animal waste management system involving 30,000 or more birds to develop an animal waste management plan that complies with the testing and record-keeping requirements of the animal waste management plan and to retain records on-site for three years by January 1, 1998

G.S. 143-215.10D. Operations review (p. 4)) and **G.S. 143-215.10F. Inspections**. (p. 5) - Senate Bill 1217 requires that animal operations have an operations review at least annually as part of its animal waste management plan and an inspection by the Division of Environmental Management at least annually.

G.S. 143-215.10E. Violations requiring immediate notification. (pp. 4-5) - Subsection (a) of G.S. 143-215.10E requires that any employee of a State agency or unit of local government (and encourages federal employees) lawfully on the premises and engaged in activities related to the animal operation who observes the following violations must immediately notify the owner or operator of the animal operation and the Division of Environmental Management:

1. Any direct discharge of animal waste into the waters of the State;
2. Any deterioration or leak in a lagoon system that poses an immediate threat to the environment;
3. Failure to maintain adequate storage capacity in a lagoon that poses an immediate threat to public health or the environment.
4. Over-spraying animal waste either in excess of the limits set out in the animal waste management plan or where runoff enters waters of the State; or
5. Any discharge that bypasses a lagoon system.

G.S. 143-215.10G. Fees for animal waste management system. (p. 5) - This section establishes fees based on steady state live weight (ranging from $50.00 to $200.00).

PART II. SPECIAL ORDERS OF CONSENT/PENALTIES

PART III. CERTIFICATION/TRAINING OF ANIMAL WASTE MANAGEMENT SYSTEM OPERATORS

Section 6 (8-10) amends Article 3 of Chapter 90A of the General Statutes by adding a Part 2 to include certification of animal waste management system operators. This section requires all animal operations defined in G.S. 143-215.10B to complete certification of operators in charge of animal waste management systems. Subsection (a) of G.S. 90A-47.2 allows other persons to assist in the operation of an animal waste management system so long as they are directly supervised by an operator in charge who is certified under this Part.

- Training will consist of ten hours of initial classroom instruction and six hours of additional instruction during each subsequent three-year period.

G.S. 90A-47.4. Fees; certificate renewals - Applicants for certification pay $10.00 for the examination and certificate and $10.00 for annual renewal of the certificate.

PART IV. SWINE FARM SITING ACT/REQUIREMENTS/NOTICE

Section 7 (pp. 10-13) amends the Swine Farm Siting Act. Subsection (a) of G.S. 106-803 increases the siting requirement from 100 to 500 feet from any property boundary. This section also requires written notice of swine farms to adjacent property owners.

Section 8 modifies the Swine Farm Siting Act effective October 1, 1995 to clarify that it does not apply to construction or enlargement in specified circumstances.

PART V. AGRICULTURAL COST SHARE PROGRAM

Section 9 modifies the Agriculture Cost Share Program to allow funds to be used for closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices. Funds are to be allocated for practices in river basins with the greatest impact in improving water quality.

Section 10 increases the maximum amount of funds under the Agriculture Cost Share Program available to each applicant from $15,000 per year to $75,000 per year to each applicant.

PART VI. REPORTS/DEVELOPMENT OF COMPREHENSIVE PLAN/STUDIES

Section 11 directs the Division of Soil and Water Conservation of the Department, the Cooperative Extension Service of NC State University, and the Department of Agriculture to prepare a coordinated and comprehensive plan that includes how existing resources at the local level can be utilized for nonpoint source pollution. This section requires that these agencies report on their comprehensive plan to the Senate Select Committee on River Water Quality and Fish Kills and the Environmental Review Commission by September 30, 1996.

Section 12 directs the Environmental Review Commission to evaluate the animal waste permitting, inspection, and enforcement program established under Section 1 of this act including, whether to transfer responsibility for permitting, compliance, inspections, and enforcement to the Division of Soil and Water Conservation. The Commission may report to the 1997 Regular Session and shall report to the 1998 Regular Session.

Section 13 provides that persons certified as animal waste management system operators under Part 9A of Article 21 of Chapter 143 shall only be required to complete approved additional training and pay the annual renewal fee in order to maintain certification.

Section 14 requires that animal waste management system operators register with local Soil and Water Conservation District and obtain an approved animal waste management plan and allows the Environmental Management Commission to enter into a special agreement with an operator.

Section 15 requires the EMC to develop a definition of "chronic rainfall". It also requires the EMC to review the meaning of "no discharge of pollutants"

Section 16 requires that the Soil and Water Conservation Commission specify best management practices for odor control, insect control, and riparian buffers consistent with the provisions of G.S. 143-215.10C(e)(1), (2), and (4), as enacted in Section 1, no later than September 1, 1997.

Section 17 requires the EMC and the Soil and Water Conservation Commission, with assistance from the Cooperative Extension Service, to establish the record-keeping requirements under G.S. 143-215.1C(e)(8), as enacted in Section 2, no later than October 1, 1996.

Section 18 creates an interagency group to address questions from technical specialists, assist operators in obtaining approved plans by the December 31, 1997 deadline, and develop best management practice standards for riparian buffers.

PART VII. EFFECTIVE DATES/MISCELLANEOUS PROVISIONS

Section 19 provides ratification dates of various provisions as follows:

Permits under G.S. 143-215.10C will be phased-in over a five-year period effective January 1, 1997. The Department will issue permits for approximately 20% of the animal waste management facilities that are in operation on January 1, 1997 during each of the five calendar years beginning January 1, 1997, and shall give priority to those animal waste management systems serving the largest animal operations. An animal waste management system that is deemed permitted by rule on January 1, 1997 may continue to operate on a deemed permitted basis. The Department must notify those deemed permitted of the date by which an application for a permit must be submitted. Those deemed permitted are still subject to the annual operational review and annual inspection requirements as though permitted. The Department must act on an application within 90 days of receipt. Notwithstanding G.S. 143-215.10C (a) through (d), a dry litter animal waste management system involving 30,000 or more birds will continue to operate on a deemed permitted basis by rule under 15A N.C.A.C. 2H.0217 and will comply with the animal waste management plan testing and record-keeping requirements by January 1, 1998.

(d) G.S. 143-215.10D, as enacted by Section 1, is effective September 1, 1996.

(e) G.S. 143-215.10E, as enacted by Section 1, is effective upon ratification.

(f) G.S. 143-215.10F, as enacted by Section 1, is effective January 1, 1997.

(g) G.S. 143-215.10G, as enacted by Section 1, is effective January 1, 1997.

Section 20. Section 2 of this act becomes effective January 1, 1997.

Section 21. Sections 3 and 4 are effective upon ratification and apply to violations that occur on or after that date.

Section 22. Section 5 is effective October 1, 1996. Section 22 also explains membership terms for the Water Pollution System Operator Certification Commission.

Section 23. Section 6 is effective upon ratification, except that G.S. 90A-47.2(a), as enacted by section 6(b), becomes effective January 1, 1997.

Section 24. Sections 7 and 8 are effective upon ratification, except that the change from 100 feet to 500 feet made in G.S. 106-803(a) by Section 7 does not apply to swine farms for which a site evaluation was conducted prior to October 1, 1996.

Section 25 states that this act is a recent act of the General Assembly within the meaning of G.S. 150B-21.1 and that the EMC, the Soil and Water Conservation Commission, and the Water Pollution Control System Operators Certification Commission may adopt temporary rules to implement this act.

Section 26. Sections 9 through 26 are effective upon ratification.

Agricultural Systems for Environmental Quality

Duplin, Sampson and Wayne Counties, North Carolina
Florence County, South Carolina

Background

Water quality is a major concern in the southeastern coastal plain of the United States. The region supports a strong, diversified crop and livestock agriculture. It also contains important streams, estuaries and environmentally sensitive wetlands. These factors stress the need to develop and evaluate more effective practices in order to protect water quality on a watershed and regional basis.

The United States Department of Agriculture (USDA), in cooperation with various federal, state and local agencies, is addressing the issue of pollution from land run-off, or non-point source (NPS) pollution, by supporting water quality projects which evaluate and demonstrate management strategies and practices that protect water quality. One such effort, the Agricultural Systems for Environmental Quality (ASEQ), grew out of earlier projects in the Midwest, and has been expanded to a total of 10 projects in 14 locations. Two of these locations include sites in Duplin County, North Carolina and Florence County, South Carolina. The focus of this ASEQ effort is to evaluate and demonstrate improved management of agricultural chemicals and animal wastes and the use of enhanced riparian and wetland systems as buffers to protect or improve water quality.

Project funding has been provided by the Cooperative States Research, Education and Extension Service (CSREES). The following agencies have provided leadership for the ASEQ effort in North Carolina: Cooperative Extension Service in the College of Agriculture and Life Sciences at North Carolina State University; USDA Agricultural Research Service—Soil, Water and Plant Research Center in Florence, South Carolina; and USDA Natural Resources Conservation Service. Other agencies involved in the effort include the United States Geological Survey, which has cost-shared the installation and maintenance of automated sampling and stream gaging stations; and the North Carolina Department of Environment, Health, and Natural Resources' Division of Water Quality, which conducts biological sampling to support project water quality evaluations.

The ASEQ project is being conducted by a team that has successfully planned and implemented a USDA Water Quality Demonstration Project in the Herrings Marsh Run Watershed in Duplin County, the highest swine-producing county in the country. This area is typical of land utilized for crop and livestock production in the southeastern United States, where rapid growth is occurring in the swine, poultry, cotton and truck-crop industries. Water quality improvements have already been measured in the Water Quality Demonstration Project area as a result of best management practice (BMP) implementation. The ASEQ project offers the additional opportunity to develop, implement and evaluate innovative BMPs, as well as to refine those currently in existence.

Major water quality objectives of the ASEQ Project are to:

- Evaluate the capacity of riparian and in-stream wetland systems to protect water quality.
- Increase functionality and adoption of site-specific farming as a best management practice (BMP) to improve production cost-effectiveness and protect water quality.
- Enhance the efficiency of a constructed wetland treatment system to remove nitrogen and phosphorus from swine wastewater and, thus, minimize the amount of land required for terminal treatment.
- Develop and utilize technologies resulting from the project through associated workshops, and the expansion of WATERSHEDSS, a watershed management decision support system.

Riparian and Instream Wetland Systems

The capability of riparian and wetland landscape features to remove, transform and assimilate nutrients and herbicides will be evaluated. Specifically, a rehabilitated wooded riparian zone will be assessed to measure its impact on an

adjacent overloaded swine wastewater spray field. Instream wetlands will be assessed for their capacity to remove nitrogen and herbicides. The collected data will be incorporated into databases for use with predictive models and decision support systems.

Precision/Site-Specific Farming

The ASEQ project will complement and expand current precision or site specific farming activities directed at more efficient production, energy savings and reduced chemical use by emphasizing and documenting water quality benefits. For example, site-specific nitrogen management has the potential to greatly reduce excessive fertilizer application, and thus to reduce nitrogen contamination of ground and surface water. Unrealistically high fertilization rates for unjustified crop yields are a factor affecting the total nitrogen loading of the ecosystem. Site-specific farming will result in fertilizer application rates that match variable crop yields throughout a field, resulting in both economic and environmental benefits.

Constructed Wetland Treatment Systems

Constructed wetland treatment systems for swine waste, which were funded through an Environmental Protection Agency (EPA) grant (Evaluation of Alternative Constructed Wetland Systems for Swine Wastewater Treatment), will continue to be evaluated to determine their potential for maximum nitrogen and phosphorus reduction. Results from model field units and laboratory tests evaluating overland flow, media filtration, aerated/un-aerated lagoons and enhanced nitrification/clarification techniques will be used to develop the most effective constructed wetland treatment system. The overall goal is to evaluate and demonstrate a treatment system that will result in maximum nitrogen and phosphorus removal, the least land required for total swine wastewater treatment and overall water quality protection.

A Decision Support System

WATERSHEDSS, a decision support system (DSS) that is currently receiving national recognition, has been developed through an EPA grant (Understanding the Role of Agricultural Landscape Feature, Function and Position in Achieving Environmental Endpoints). The purpose of the DSS is to help watershed managers determine appropriate management and/or BMP systems and their placement on the landscape for particular water quality problems. Effectiveness data collected from the riparian and wetland system studies will be included in a BMP database that is part of WATERSHEDSS.

The goal for the North Carolina ASEQ project is to contribute to the development and demonstration of innovative strategies that enable farmers and public officials to reduce or prevent NPS water pollution on a watershed basis. In the process of achieving this goal, the cooperation, networking and resource sharing that have developed among agencies, area residents and participants involved in the ASEQ project is noteworthy. Already, the project has been able to utilize existing capabilities and cooperative working relationships to obtain water quality data for an expanded work scope and time period. The further expectation is that, over a longer period of time, the capability to more accurately assess water quality changes and cause-and-effect relationships will be realized and the capability of models to serve as evaluation tools for other watersheds in the southeastern United States will be assessed.

Funding is being provided by
the Cooperative States Research, Education and Extension Service
under project number 95-34214-2392.
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North Carolina USDA Water Quality Demonstration Project
Herrings Marsh Run, Duplin County

The North Carolina USDA Water Quality Demonstration Project is achieving its goals of accelerated and voluntary adoption of best management practices (BMPs) and improved water quality. This Demonstration Project is within the boundaries of the North Carolina Hydrologic Unit Area Project.

BMP implementation has been facilitated by the lead USDA agencies (North Carolina Cooperative Extension Service, Natural Resources Conservation Service and Farm Service Agency) in conjunction with local agencies and agribusinesses. Still very important in achieving the results being documented are the residents and agricultural producers in the watershed who have become a part of the residential well testing, BMP implementation, on-farm demonstration and surface and ground water monitoring components of the project.

Water quality improvements have been documented since the project's initiation by the cooperative efforts of the United States Geological Survey to install and maintain stream monitoring stations; Agricultural Research Service for water quality sampling and analyses; and the North Carolina Department of Environment, Health and Natural Resources - Division of Environmental Management for in-stream biological sampling.

Water quality is of high concern in the project area because of increasing agricultural production and the area's proximity to the state's environmentally sensitive coastal region.
The Northeast Cape Fear River, which receives flow from the project area, becomes part of the Bald Head Island, Cape Fear coastal waters which are prime fishing and recreational areas.

The 5,000-acre Herrings Marsh Run watershed in southeastern North Carolina encompasses a broad mix of rural land uses which includes 120 farms and about 200 residences. Corn and soybeans are the principal field crops, but area producers grow at least 10 other crops of significance. Livestock operations include about 24,600 hogs, 48,000 turkeys, 130,000 broilers and 110,000 pullets. Swine enterprises have doubled since 1990, and a continued increase in production is expected.

Project BMPs

- soil conservation practices
- integrated pest management
- nutrient management
- poultry mortality composting
- animal waste management
- enhanced in-stream wetland
- residential well sampling
- restored riparian area

Accomplishments

Nutrient management

- Nutrient management plans have been developed for 85 percent of the cropland in the watershed; 70 percent of those plans are being followed, according to farmers.
- Six new waste treatment lagoons have been constructed.
- Producers are receiving technical assistance for managing approximately 18,000 tons of animal waste.

Mortality composting

- In the Demonstration Project area, two poultry mortality composting facilities have been constructed.
- Statewide, permits have been issued for more than 500 mortality composters since the project began.

Soil conservation

- Seventy percent of the cropland is being managed under individual conservation plans.
- Conservation cropping systems are used on 1,900 acres of cropland.
- Cover crops are planted on 1,100 acres of cropland.
- Three acres of grassed waterways and 39,000 feet of field borders have been installed.

Pest management

- Fifty pest management plans covering 629 acres of land have been implemented.

Residential well sampling

- Annual well testing for nitrate and selected pesticides has been conducted since 1990 as an educational tool and to indicate trends.
- Two new, deeper and properly constructed residential wells have replaced wells for which the lifetime health limits for one herbicide were exceeded.
- More frequent detection of elevated levels of nitrates and pesticides in residential wells, as opposed to properly constructed and maintained monitoring wells, indicates that improper well construction and use contribute to the risk of contamination.

Ground water analyses

- More than 100 monitoring wells, ranging from 10 to 30 feet in depth, have been placed throughout the watershed.
- Only five farms had wells with nitrate concentrations above 10 mg/l. Data indicate that current pesticide BMPs used by local producers are successful in maintaining ground water quality.
- There are localized areas of nitrate nitrogen levels that exceed the 10 mg/l level, but the nitrate nitrogen levels in such areas have decreased since the project's inception.

Water quality benefits

- Throughout the project period, continued reduction in the total nitrogen concentration has been recorded at the outlet of the Demonstration Project watershed (see **Figure 1**).
- This continued reduction of nitrogen and slightly decreasing total phosphorus concentrations of less than 1 mg/l at the watershed outlet indicate the water quality benefits of BMP implementation and landscape modifications. Those changes include an enhanced in-stream wetland and riparian area restoration.
- Reduction in ground water nitrate concentrations resulting from the implementation of improved practices for irrigation of swine wastewater has been confirmed by sampling and a predictive model that gives results that closely match actual testing data. This model predicts further reductions in nitrate at least through 1998 with continued use and maintenance of BMPs.
- Biological monitoring shows streams in the study watershed have gone from fair to good/fair in a rating system that ranges from poor to good.

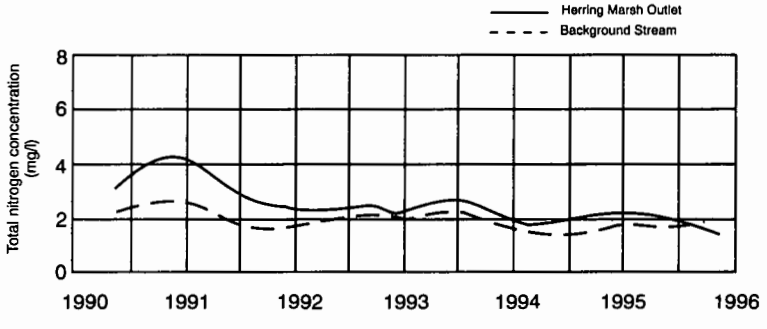

Figure 1. Semi-annual mean total nitrogen concentrations at the outlet of Herrings Marsh Run compared to a background stream.

The results of this project provide an excellent basis for information and education programs to facilitate the implementation of demonstrated BMPs on a widespread basis. These BMPs have documented conservation and water quality benefits. Use of these BMPs for critical areas on a total watershed basis can result in improved areawide water quality.

USDA
Water Quality
Demonstration Project Area
Duplin County, N.C.

Funding has been provided by
the U.S. Department of Agriculture under special project numbers
94-EWQD-1-9522 and 94-EHUA-1-0093.

USDA
HYDROLOGIC
UNIT PROJECT
GOSHEN SWAMP

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North Carolina USDA Hydrologic Unit Area Project

Goshen Swamp Watershed
Duplin, Sampson and Wayne Counties

The 1990 Presidential Initiative on Water Quality intensified efforts to improve the quality of our nation's water resources. In support of this initiative, the USDA has worked to achieve the accelerated, voluntary and widespread adoption of best management practices (BMPs) through 16 Demonstration Projects and 74 Hydrologic Unit Area (HUA) Projects nationwide.

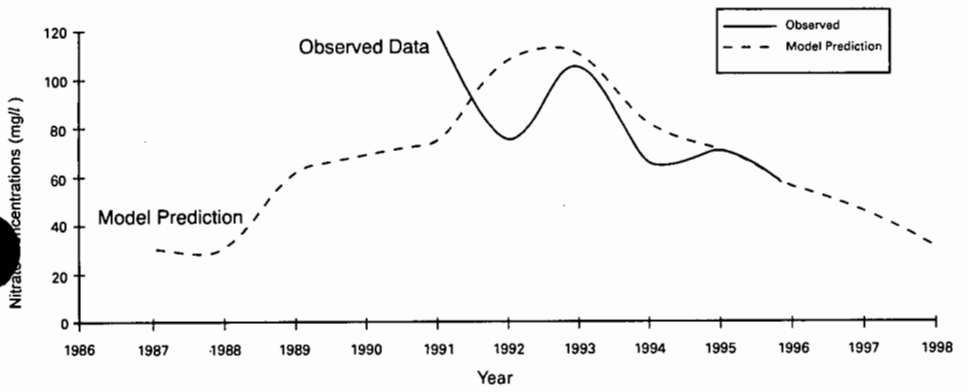
The Goshen Swamp Watershed, in the southern coastal plain of North Carolina, was selected in 1990 as a site for one of the first 37 HUA projects. In addition, one of the 16 USDA Water Quality Demonstration Projects lies within the Goshen Swamp Watershed. This proximity has facilitated beneficial interactions between the two projects.

The goal of improved water quality through accelerated, voluntary and widespread adoption of BMPs is being achieved. The cooperation and sustained support of area residents and producers involved in the implementation of BMPs have contributed greatly to the project's success.

The HUA project has been conducted by the following USDA agencies at their various state and county levels: Cooperative Extension Service in the College of Agriculture and Life Sciences at North Carolina State University, Natural Resources Conservation Service, and Farm Service Agency. Local support for the project has also been provided by the Soil and Water Conservation districts of Duplin, Sampson and Wayne counties.

HUA Project Area

The Goshen Swamp Watershed measures roughly 22 miles long by eight miles wide, and covers over 130,000 acres in Duplin, Sampson and Wayne Counties. The topography of the project area ranges from flat to strongly sloping. About 40 percent of the area is classified as prime land for agricultural production. The waters from Goshen Swamp flow into the Northeast Cape Fear River, which merges with the Cape Fear River near Wilmington, and continues eastward to the Cape Fear and Bald Head Island region. This is a prime fishing and recreational area.



Nitrate reduction in Field Monitoring Wells as a result of BMP Implementation

Water Quality Benefits

Water quality is of critical concern in the Goshen Swamp Watershed due to increasing agricultural production, and the area's proximity to the state's coastal waters. Swine production enterprises have doubled in the region since 1990, and a continued increase in production is expected. Thus, a major objective of the HUA project is to recommend and implement swine waste management practices that reduce nitrogen contamination of surface and ground water. As shown in the following graph comparing monitoring and computer model results, nitrate concentrations decreased as a result of BMP implementation during the project period. It is significant that monitoring results agree with model predictions. These predictions indicate that with continued use and maintenance of the recommended BMPs, additional reductions of nitrate concentrations can be expected.

The following BMPs were implemented on an older swine farm built prior to current standards :

- spray fields designated to receive swine waste were enlarged;
- permanent ground covers were planted/maintained to recover nutrients;
- trees were planted in a 20-foot buffer between spray fields and area streams;
- the nutrient-loading rate was adjusted to match uptake requirements of plants.

Area-wide Impacts and Findings

The implementation of recommended BMPs is reducing the amount of nitrate concentrations reaching both ground and surface water–nitrate is a naturally occurring form of nitrogen that is of primary concern because it moves easily in soil and water systems, and can cause animal and human health problems.

There are local areas with nitrate concentrations that exceed accepted levels of 10 ppm, but the concentrations in such areas have decreased since the inception of the HUA project.

Higher than acceptable levels of nitrate concentrations, which were found in residential wells, appear to be due to old shallow wells, poor construction of the wells, and inadequate well-head protection.

Detection of pesticides and herbicides are few and, properly used, they do not appear to pose a threat to either surface or ground water in this watershed.

Based on the documented conservation and water quality benefits associated with the HUA project, further expansion of the implemented BMPs is advised in order to sustain these improvements on a long-term basis. The results of the project provide an excellent foundation for information and education programs to facilitate the continued and expanded adoption of project recommendations.

Accomplishments

In support of the HUA project, a total of 560 land- and/or waste management plans have been installed/established on 28,136 acres of cropland in the watershed to reduce sediment, pesticide and nutrient delivery to local streams. They include the following:

- 85 animal waste storage/ treatment systems, including three poultry mortality compost facilities, have been installed on farms throughout the watershed.
- 107 animal waste utilization plans have been developed to use more than 280,000 tons of animal manure on 1,680 acres of cropland.
- Erosion control practices, such as the planting of cover crops, field borders, grassed waterways, cross-slope farming, and conservation tillage, have been installed on 11,700 acres of cropland.
- Nutrient management plans have been developed for over 20,000 acres of crop land.
- Pest management plans, including scouting to assess the need for pesticide application, reduced rates of pesticide application, and the use of chemicals that are less persistent in the environment, have been developed for 133 producers on 1,700 acres of cropland.

Producers and residents throughout the state have an increased awareness of water quality issues and ways to improve water quality through the extension of the results and benefits of this HUA project.

USDA
Water Quality
Demonstration Project Area
Duplin County, N.C.

Funding has been provided by
the U.S. Department of Agriculture under special project numbers
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VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/1/97

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David Simmons	Zeb Alley, PA
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Jim Barker	NCSU, BAE, Raleigh
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VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

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NAME	FIRM OR AGENCY AND ADDRESS
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John Cyrus	N.C. State Grange
Curt Williams	Office of the Governor
Donna Moffitt	EHNR, Div. of Soil and Water Conservation
Dan Whittle	EHNR
Ann Case	EHNR
Alice Tedder	EHNR/WQ
Diane Cherry	EHNR
R Rogers	EHNR
Peter Daniel	NCDOT
E A Bowra	R W Bowra agent.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Bose + Assoc / NPC
[signature]	Farmers for Fairness
George Everett	MCIC
Harlan Britt	DMQ
R. Paul Wilms	NCHBA
Mike Carpenter	NCCHBA

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 3, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 3 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were seventeen committee members present.

The following bills were discussed and copies are attached to these minutes:

HOUSE BILL 409 - AGRICULTURAL EMPLOYER APPEALS/AB - Representative Yongue, sponsor, explained the bill. Senator Jenkins moved for a favorable report. Motion carried.

SENATE BILL 114 - INACTIVE HAZ. SITES RECORDATION - This bill had previously been reported out of committee, but had been re-referred to committee and put in a subcommittee. Senator Horton, sponsor, was recognized to explain the bill. He said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. Senator McDaniel moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 259 - BACKUP POWER FOR WASTEWATER SYSTEMS - Chairman Albertson said that no vote would be taken on this bill today. Senator Odom, sponsor, was recognized to explain the bill. Preston Howard of DEHNR said there were approximately 9,000 wastewater treatment plants in the state. Also making comments on the bill were Bill Holman of the Sierra Club, Kim Smith of the League of Municipalities and George Everett representing the chemical industry.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, April 3, 1997
11:00 a.m.
Room 1124

AGENDA

SB 114	INACTIVE HAZ. SITES RECORDATION Senator Horton
HB 409	AGRICULTURAL EMPLOYER APPEALS/AB Representative Yongue
SB 259	BACKUP POWER FOR WASTEWATER SYSTEMS Senator Odom

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, April 03, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **409** AGRICULTURAL EMPLOYER APPEALS/AB
Sequential Referral: NONE
Recommended Referral: NONE

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **114** INACTIVE HAZ. SITES RECORDATION
Draft Number: PCS2660
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 409

Short Title: Agricultural Employer Appeals/AB. (Public)

Sponsors: Representatives Yongue; Bonner, Brown, and Culp.

Referred to: Agriculture.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT CLARIFYING WHERE APPEALS FROM AGRICULTURAL EMPLOYERS WILL BE HEARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-227 reads as rewritten:

"**§ 95-227. Enforcement.**

For the purpose of enforcing the standards provided by this Article, the provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall apply under this Article in a similar manner as they apply to places of employment under OSHANC; however, ~~G.S. 95-129(4), 95-130(2) and (6), and 95-137(b)(4)~~ G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to migrant housing. For the purposes of this Article, the term:

(1) 'Employer' in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed to mean an operator;

(2) 'Employee' shall be construed to mean a migrant; and

(3) 'Director' shall mean the agent designated by the Commissioner to assist in the administration of this Article.

The Commissioner may establish a new division to enforce this Article."

Section 2. G.S. 150B-1(e) reads as rewritten:

"(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
(2) Repealed by Session Laws 1993, c. 501, s. 29.
(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.
(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
(6) The Department of Revenue.
(7) The Department of Correction.
(8) The Department of Transportation, except as provided in G.S. 136-29.
(9) The Occupational Safety and Health Review ~~Board in all actions that do not involve agricultural employers.~~ Board.
(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
(11) Hearings that are provided by the Department of Human Resources regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
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Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 2, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: House Bill 409: Agriculture Employer Appeals/AB

House Bill 409, introduced by Representative Yongue, shifts appeals from citations under the Migrant Housing Act from the Office of Administrative Hearings to the Health and Safety Board.

When the Migrant Housing Act, Article 19 of Chapter 95 of the General Statutes, was first enacted in 1989, the act established that appeals from citations issued by the North Carolina Department of Labor would be to the Office of Administrative Hearings. According to the Department, agriculture interests asked back in 1993 to have appeals shifted to the Board. Although legislation was passed during the 1993 Session, it apparently did not make the necessary changes to transfer jurisdiction of the appeals.

Section 1 of the bill deletes from G.S. 95-227 a reference to G.S. 95-137(b)(4) which removed appeals from citations under the Migrant Housing Act from the Health and Safety Board.

Section 2 of the bill amends G.S. 150B-1(e) which lists those agencies exempt from the contested case provisions of the Administrative Procedures Act. The amendment deletes the exception within OSHA appeals for agricultural employers.

The act is effective when it becomes law.

HB 409

OSHA Agricultural Appeal Changes

H

Background:

In 1993 at the request of the N. C. Farm Bureau, the Occupational Safety and Health Division secured an amendment to the Occupational Safety and Health Act to provide that agricultural employer appeals would be heard by the Occupational Safety and Health Review Board instead of the Office of Administrative Hearings. Agricultural employers sought this change because they preferred the less formal procedures of the Review Board since many are small employers who are not represented by counsel. The Division supported the change because it would consolidate all appeals to the Review Board thus creating a single system of enforcement resulting in greater consistency. This change was enacted in 1993 and agricultural appeals have been heard by the Review Board since the effective date of the change.

Why this bill is needed:

Two minor references to the difference in OSH agricultural appeals in the OSH Act and the Administrative Procedures Act need to be deleted. These are technical conforming amendments to fully implement the 1993 changes.

Prepared by Angela S. Waldorf
NC Department of Labor
319 Chapanoke Rd.
Raleigh, NC 27603

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 114*
Proposed Committee Substitute S114-PCS2660

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors:

Referred to:

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) ~~This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which~~ Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this ~~Part.~~ Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with

the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. Notwithstanding the provisions of G.S. 143-215.84 and G.S. 143-215.94E and except as provided in subsection (d) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session), no person shall be required to clean up a discharge or release from a leaking petroleum underground storage tank that has been classified as having a Class CDE impact pursuant to subsection (b) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session).

Section 3. The Environmental Management Commission shall adopt the rule required by G.S. 143-215.94V(b) and Section 6 of Chapter 648 of the 1995 Session Laws (1996 Regular Session) as a temporary rule no later than 30 June 1997.

Section 4. This act is effective when it becomes law. Section 2 of this act expires when the temporary rule required by Section 3 of this act becomes effective as provided in G.S. 150B-21.3(a).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 114*

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors: Senators Horton; Albertson, Cooper, and Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) ~~This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which~~ Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this ~~Part.~~ Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

April 3, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 114 (Inactive Haz. Sites Recordation)

Senate Bill 114 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 Senate Bill 114 on March 18, 1997. Senate Bill 114 was re-referred to the Senate Committee on Agriculture, Environment, and Natural Resources on March 19, 1997. The proposed committee substitute for Senate Bill 114 differs from the version given a favorable report by the Senate Committee on Agriculture, Environment, and Natural Resources with the addition of Sections 2 and 3.

Section 1 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:

(1) a dangerous concentration of hazardous substance or waste will remain after the voluntary remedial action is implemented, or

(2) the 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 also adds a subsection (h) to G.S. 130A-310.8 that authorizes the Secretary to waive recordation for any residential property contaminated due to migration of a hazardous substance or waste through groundwater flow if disclosure of the contamination is required by the Residential Real Property Disclosure Act (Chapter 47E of the General Statutes). An owner whose recordation requirement is waived and who fails to disclose the contamination, as required by the Residential Real Property Disclosure Act, is subject to the penalties of G.S. 130A-22 (Administrative penalties), G.S. 130A-25 (Misdemeanor), and the Residential Real Property Disclosure Act.

Section 2 clarifies that cleanup is not required for discharges or releases from leaking petroleum underground storage tanks having a class CDE impact.

Section 3 directs the Environmental Management Commission to adopt a temporary rule no later than June 30, 1997 to establish a risk-based approach for the cleanup of discharges and releases from petroleum underground storage tanks.

Section 4 makes this act effective when it becomes law. It also provides that Section 2 of this act expires when the temporary rule required by Section 3 of this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 259

Short Title: Backup Power for Wastewater Systems. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ALL WASTEWATER SYSTEMS THAT MUST BE PERMITTED TO DISCHARGE WASTE TO HAVE AN ON-SITE GENERATOR, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1(b) is amended by adding a new subdivision to read:

"(5) The Commission shall, as a condition of a permit, require wastewater systems, for which a permit for facilities discharging to the waters of the State is required, to have on-site a generator that is operated by a source of power other than electricity."

Section 2. G.S. 143-215.1 is amended by adding a new subsection to read:

"(h) Any wastewater system for which a permit for facilities discharging to the waters of the State is required shall not be operated unless a generator that is operated by a source of power other than electricity is maintained on-site."

Section 3. By October 1, 1997, the Environmental Management Commission shall develop a schedule of dates after October 1, 1997, but not to extend beyond January 1, 2003, by which existing wastewater systems with discharge permits must comply with G.S. 143-215.1(b)(5) and G.S. 143-215.1(h), as enacted in Sections 1 and 2 of this act.

Section 4. This act becomes effective October 1, 1997, and applies to those new wastewater systems and expansions of wastewater systems for which a

discharge permit is required and for which a site evaluation is conducted on or after that date and applies to all other wastewater systems in accordance with the schedule developed under Section 3 of this act.

North Carolina General Assembly
Legislative Services Office

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

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Raleigh, NC 27603-5925
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Suite 400, LOB
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Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 3, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping,
Administrative Assistant

Re: **SB 259 - Backup Power for Wastewater Systems**

Senate Bill 259 was recommended to the 1997 General Assembly by the Environmental Review Commission. The bill requires all wastewater systems that must be permitted to have an on-site generator.

Section 1. Amend §143-215.1, Control of sources of water pollution; permits required. Section 1 amends §143-215.1(b) by adding a new subdivision (5) which directs the Environmental Management Commission (EMC) to require that wastewater systems which must have a permit to discharge must also have, as a condition of permit, an on-site generator that is operated by a source of power other than electricity.

Section 2. Amend §143-215.1. Section 2 amends §143-215.1 by adding a new subsection (h) which prohibits wastewater facilities that are required to have discharge permits from operating unless they have an on-site generator that is operated by a source of power other than electricity.

Section 3. Directs the EMC to develop by October 1, 1997 a schedule of dates between October 1, 1997 and January 1, 2003 by which existing wastewater systems with discharge permits must comply with Sections 1 and 2 of this act.

Section 4. Effective Dates. This act is effective October 1, 1997 and applies to new wastewater systems and expansions of wastewater systems for which a discharge permit is required and for which a site evaluation is conducted on or after that date. The act applies to all other wastewater systems in accordance with the schedule developed pursuant to Section 3 of this act.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/3/96

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Smith	NCLM
Patty Berry	CCNC
[illegible] Holman	CCNC / Sierra Club
TANJA VUJIĆ	NC ENVIRONMENTAL DEFENSE FUND
R. Paul Wilms	NCMBA
Cam Cowan	BPM HL
Amy Hinderer	Hunton & Williams
CLIFFORD LEE	Du Pont
George Everett	MCIC
Bill Stanhouse	Du Pont
R. ROGERS	DEHNR

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlotte Jasnoch	NC DEHNR
Ed Regan	N.C.A.C.C.
Andy Ellen	NC Farm Bureau
Peter Daniel	NCDA
David Simmons	Zeb Alley, PA
Ann Case	DEHNR
Natalie Haskins	Charlotte Chamber
John McAlister	Duke Power
Mike Carpenter	NCHBA
Gene Upchurch	CP&L
Geo. Stephanopolis	ABC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	DENR
Curt Williams	Office of Dir.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 8, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 8 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were twelve committee members present.

The following bills were discussed and copies of the bills, as well as any hand-outs, are attached to these minutes:

SENATE BILL 182 - WILDLIFE RULES BECOME EFFECTIVE - Senator Kincaid, sponsor, said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. Senator Wellons sent forth a technical amendment and moved for its adoption. Motion carried. Dick Hamilton of the N. C. Wildlife Commission, spoke in favor of the bill. Senator McDaniel moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

HOUSE BILL 189 - DRINKING WATER AMENDS - Representative Culp, sponsor, was recognized to explain the bill. Linda Sewall of DEHNR spoke in favor of the bill. Senator McDaniel moved that bill be given a favorable report. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 8, 1997
11:00 a.m.
Room 1124 LB

AGENDA

SB 182	WILDLIFE RULES BECOME EFFECTIVE Senator Kincaid
HB 189	DRINKING WATER AMENDS Representative Culp

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, April 08, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **189** DRINKING WATER AMENDS
Sequential Referral: NONE
Recommended Referral: NONE

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **182** WILDLIFE RULES BECOME EFFECTIVE
Draft Number: PCS8629
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 182
Proposed Committee Substitute S182-PCS8629

Short Title: Wildlife Rules Become Effective. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERMANENT RULES ADOPTED BY THE WILDLIFE RESOURCES COMMISSION TO BECOME EFFECTIVE UPON APPROVAL BY THE RULES REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.3 is amended by adding a new subsection to read:

"(c1) Wildlife Commission Exception. -- The North Carolina Wildlife Resources Commission may make effective permanent rules regarding boating safety and hunting and fishing activities that have been approved by the Rules Review Commission and have not become effective under subsection (b) of this section. Under this exception, a rule becomes effective on the first day of the month after the Rules Review Commission approves it. When the Codifier of Rules enters in the North Carolina Administrative Code a rule falling within the exception provided for in this subsection, the entry must reflect that fact.

A rule that is made effective under the provisions of this subsection remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the rule becomes effective. A rule that is made effective under this subsection and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by the provisions of this subsection is not specifically disapproved by a bill ratified by the General Assembly within the time set by this

subsection, the Codifier of Rules must note this in the North Carolina Administrative Code."

Section 2. This act is effective when it becomes law and applies to rules for which the Wildlife Resources Commission publishes notice of rule making on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 182

Short Title: Wildlife Rules Become Effective. (Public)

Sponsors: Senators Kincaid; and Albertson.

Referred to: Agriculture/Environment/Natural Resources.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PERMANENT RULES ADOPTED BY THE WILDLIFE RESOURCES COMMISSION TO BECOME EFFECTIVE UPON APPROVAL BY THE RULES REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.3 is amended by adding a new subsection to read:

"(c1) Wildlife Commission Exception. -- The North Carolina Wildlife Resources Commission may make effective permanent rules regarding boating safety and hunting and fishing activities that have been approved by the Rules Review Commission and have not become effective under subsection (b) of this section. Under this exception, a rule becomes effective on the date the Rules Review Commission approves it. When the Codifier of Rules enters in the North Carolina Administrative Code a rule falling within the exception provided for in this subsection, the entry must reflect that fact.

A rule that is made effective under the provisions of this subsection remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the rule becomes effective. A rule that is made effective under this subsection and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by the provisions of this subsection is not specifically disapproved by a bill ratified by the General Assembly within the time set by this

subsection, the Codifier of Rules must note this in the North Carolina Administrative Code."

Section 2. This act is effective when it becomes law, and applies to rules for which the Wildlife Resources Commission publishes notice of rule making on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 20, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 182: Wildlife Rules Become Effective

Senate Bill 182, introduced by Senator Kincaid, makes an exception to G.S. 150B-21.3(b), providing for the effective date of permanent rules, that would allow the Wildlife Resources Commission to make permanent rules on boating safety and hunting and fishing activities effective as of the date of approval by the Rules Review Commission.

A rule made effective according to this exception would remain in effect unless it is specifically disapproved by the General Assembly in a bill ratified before adjournment in the Session that begins at least 25 days after the effective date of the rule. A rule that is disapproved in this manner is repealed as of the date specified in the bill.

The Codifier of Rules must note in the N.C. Administrative Code rules that are made effective pursuant to this exception. The bill is effective when it becomes law and applies to rules for which the Wildlife Resources Commission publishes notice of rulemaking on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-313(10) reads as rewritten:

"(10) 'Public water system' means a system for the provision to the public of ~~piped water for human consumption~~ water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and

b. Any collection or pretreatment storage facility not under the control of the operator of the system ~~which~~ that is used primarily in connection with the system.

A public water system is either a 'community water system' or a 'noncommunity water system' as follows:

a. 'Community water system' means a public water system ~~which~~ that serves 15 or more service connections or ~~which~~ that regularly serves at least 25 year-round residents.

b. 'Noncommunity water system' means a public water system ~~which~~ that is not a community water system.

A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:

a. The water is used exclusively for purposes other than residential uses. As used in this subdivision, 'residential uses' mean drinking, bathing, cooking, or other similar uses.

b. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.

c. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

ie W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
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Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
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(919) 733-4910

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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

April 8, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/8/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wilder Penny	NCDA
Peter DANIEL	"
Patty Berry	CCNC
Jessica Miles	DEHNR / DEH
Linda Sewald	DEH
David Meredith	N C State Grange
John Cyrus	N.C. State Grange
R. Paul Wilms	NCMSA
Mike Cowart	NCMSA
RB Hamilton	Wildlife
CF Fullwood	"

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TANJA VUJIĆ	NC ENVTAL DEFENSE FUND
Ann Case	DEHNR
Ed Bowen	R W Borne
June Brotherton	UNC General Admin. / NC State Ag Program
Bob Slocum	NC FORESTRY ASSOC.
Bobby Bryan	Rules Review
Molly Masich	OAH
ANNA TEFFT	OSBM
Dorothy Mahon	League of Women Voters
Winifred Berry	" / CH-Carrboro

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gwen Griswell	LWV - Chapel Hill / Carrboro
Nancy Salmon	LWV - Chapel Hill / Carrboro
Lucia Damulski	LWV - Chapel Hill / Carrboro
Barbara B. Rogers	League Women Voters Chapel Hill Carrboro
Nancy Johnson	League of Women Voters

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 15, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 15 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eleven committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HOUSE BILL 238 - FACILITATE ANIMAL WASTE MGT. RESEARCH - Representative Mitchell, sponsor, was recognized to explain the bill. There was a proposed committee substitute and Senator Weinstein moved for its adoption for discussion purposes. Motion carried. June Brotherton of the Chancellor's Office at North Carolina State University said they were happy with the new proposed committee substitute. Harlan Britt, Deputy Director, Division of Water Quality, spoke in support of the PCS also. Senator McDaniel moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 545 - SALE OF NAT. SCI. MUSEUM OBJECTS/AB - Senator Miller, sponsor, was recognized to explain the bill. Senator Weinstein moved for a favorable report. Motion carried.

The other bills on the agenda for this meeting were not discussed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 15, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 125	INACTIVE HAZ. SITES/PROPERTY USE RESTRICT. Senator Odom
SB 169	ENV. TECH. CORRECTION Senator Albertson
SB 194	AMEND ENV. LAWS Senator Albertson
SB 537	ADDITION TO STATE PARKS SYSTEM Senator Jenkins
SB 545	SALE OF NAT. SCI. MUSEUM OBJECTS/AB Senator Miller
HB 238	FACILITATE ANIMAL WASTE MGT. RESEARCH Representative Mitchell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, April 15, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **545** SALE OF NAT. SCI. MUSEUM OBJECTS/AB
Sequential Referral: NONE
Recommended Referral: NONE

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**238** FACILITATE ANIMAL WASTE MGT. RESEARCH
Draft Number: PCS7229
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 238*
Committee Substitute Favorable 3/11/97
Proposed Committee Substitute H238-PCS7229

Short Title: Facilitate Animal Waste Mgt. Research. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE OWNERS AND OPERATORS OF ANIMAL WASTE MANAGEMENT SYSTEMS TO PARTICIPATE IN CERTAIN RESEARCH STUDIES DIRECTED BY THE GENERAL ASSEMBLY BY LIMITING ENFORCEMENT ACTIONS FOR UNINTENTIONAL AND NONNEGLIGENT VIOLATIONS OF WATER QUALITY STANDARDS THAT ARE IDENTIFIED IN THE COURSE OF THOSE RESEARCH STUDIES AND TO CLARIFY THE REPORTING DATES FOR THOSE RESEARCH STUDIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Department of Environment, Health, and Natural Resources shall not take any enforcement action against any person for any unintentional and nonnegligent violation of a water quality standard or statute or rule for the protection of water quality that is identified in the course and during the period of any of the research studies directed by Sections 27.3 (odor control technology), 27.7 (groundwater impacts of lagoons), 27.9 (atmospheric deposition of nitrogen in the Neuse Estuary), 27.32(b) (sources of nitrogen through isotope markers and other topics), and 27.35 (alternative animal waste technologies) of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session). This section shall not be construed to limit an enforcement action for any negligent or intentional act or for any violation that poses an immediate threat to public health or the environment. This section shall not be construed to relieve any person from any duty otherwise

imposed by law to take remedial or corrective action to correct the violation. The Department shall allow a reasonable time for the owner or operator to complete any necessary remedial or corrective action as provided in Section 2 of this act.

Section 2. The Principal Investigator or Researcher for each of the research studies listed in Section 1 of this act shall furnish the Department of Environment, Health, and Natural Resources with a list of all sites and facilities that are associated with the study on the basis of voluntary cooperation in the study by the owners or operators of the site or facility. The list shall include the name, address, and telephone number of the owner or operator of each site or facility and shall be updated as necessary to maintain current information. If the Department finds that there is a violation of a water quality standard or statute or rule for the protection of water quality at any site or facility that is associated with any of the research studies listed in Section 1 of this act, the Department shall notify the owner or operator of the site or facility of the violation. The Department shall allow a reasonable time for the owner or operator to complete any necessary remedial or corrective action. In determining what constitutes a reasonable time in which to correct the violation, the Department shall consider the nature and extent of the violation, the cost and complexity of actions necessary to correct the violation, and the threat to public health and the environment resulting from the violation.

Section 3. An employee of a State agency or unit of local government who is on the premises of a site or facility that is associated with a research study listed in Section 1 of this act only in connection with the study is not "engaged in activities relating to the animal operation" under G.S. 143-215.10E.

Section 4. The Primary Investigator or Researcher for each of the research studies listed in Section 1 of this act shall report to the Environmental Review Commission on the progress of the research study and on any preliminary results of the research study on 1 January and 1 July of each year, beginning 1 July 1997, until the research study is concluded. The Primary Investigator shall make a final report, including final results and any recommendations, to the Environmental Review Commission at the conclusion of the research study.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 238*
Committee Substitute Favorable 3/11/97

Short Title: Facilitate Animal Waste Mgt. Research. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE OWNERS AND OPERATORS OF ANIMAL WASTE MANAGEMENT SYSTEMS TO PARTICIPATE IN CERTAIN RESEARCH STUDIES DIRECTED BY THE GENERAL ASSEMBLY BY LIMITING ENFORCEMENT ACTIONS FOR UNINTENTIONAL AND NONNEGLIGENT VIOLATIONS OF WATER QUALITY STANDARDS THAT ARE IDENTIFIED IN THE COURSE OF THOSE RESEARCH STUDIES AND TO CLARIFY THE REPORTING DATES FOR THOSE RESEARCH STUDIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Department of Environment, Health, and Natural Resources shall not take any enforcement action against any person for any unintentional and nonnegligent violation of water quality standards that are identified in the course of any of the research studies directed by Sections 27.3 (odor control technology), 27.7 (groundwater impacts of lagoons), 27.9 (atmospheric deposition of nitrogen in the Neuse Estuary), 27.32(b) (sources of nitrogen through isotope markers and other topics), and 27.35 (alternative animal waste technologies) of Chapter 18 of the 1995 Session Laws (Second Extra Session). This section shall not be construed to limit an enforcement action for any negligent or intentional act or for any violation that poses an immediate threat to public health or the environment. This section shall not be construed to relieve any person from any duty otherwise imposed by law to take remedial or corrective action to correct the violation.

Section 2. Notwithstanding the provisions of G.S. 143-215.10E(a), an employee of a State agency or unit of local government who identifies an unintentional or nonnegligent violation listed in subdivisions (1) through (4) of G.S. 143-215.10E(a) that is identified in the course of any of the research studies listed in Section 1 of this act shall not report the violation to the Division of Water Quality of the Department of Environment, Health, and Natural Resources unless the violation poses an immediate threat to public health or the environment.

Section 3. The Primary Investigator or Researcher for each of the research studies listed in Section 1 of this act shall report to the Environmental Review Commission on the progress of the research study and on any preliminary results of the research study on 1 January and 1 July of each year, beginning 1 July 1997, until the research study is concluded. The Primary Investigator shall make a final report, including final results and any recommendations, to the Environmental Review Commission at the conclusion of the research study.

Section 4. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

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Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 2, 1997

MEMORANDUM

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: House Bill 238 (Committee Substitute Favorable 3/11/97): Facilitate Animal Waste Mgt. Research

House Bill 238, introduced by Representative Mitchell, would restrict the Department of Environment, Health, and Natural Resources' enforcement actions where unintentional and nonnegligent violations are found during during research studies that were mandated by the General Assembly last summer. Chapter 18 of the 1995 Session Laws (Second Extra Session). These studies include:

1. Odor control technology;
2. Groundwater impacts of lagoons;
3. Atmospheric deposit of nitrogen in the Neuse Estuary;
4. Sources of nitrogen through isotope markers; and
5. Alternative animal waste management technologies.

Enforcement actions for negligence, intentional violations, and violations posing an immediate threat to public health or the environment are not limited.

Section 2 of the bill limits the provisions of G.S. 142-215.10E(a) requiring State employees to report to the Division of Environmental Management certain violations observed while on a farm. Specifically, this section provides that a State employee would not be required to report unintentional or nonnegligent situations that did not pose an immediate threat to the environment involving:

1. Any direct discharge of waste into the waters of the State;
2. Any deterioration or leak in a lagoon system;
3. Failure to maintain adequate storage capacity; and
4. Overspraying animal waste.

Section 3 of the bill requires the primary investigator on each study to file reports with the Environmental Review Commission.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina
Cooperative Extension Service
NORTH CAROLINA STATE UNIVERSITY
COLLEGE OF AGRICULTURE & LIFE SCIENCES

Department of Biological and Agricultural Engineering • Box 7625 • Raleigh, NC 27695-7625 • Tel: (919) 515-2675 • FAX: (919) 515-6772
Internet : jim_barker@ncsu.edu • Caroline : jbarker@wolf.ces.ncsu.edu • Voice Mail : (919) 515-6793

March 12, 1997

The Honorable Frank Mitchell
North Carolina General Assembly
Room 638 - LOB
Raleigh, NC 27601-1096

Dear Representative Mitchell :

I respectfully submit the following thoughts in support of your efforts to clarify the responsibilities of state and local personnel employed by educational or research institutions regarding the mandatory reporting of water quality violations on livestock farms, a provision of Senate Bill 1217 enacted in 1996. These clarifications are crucial to the conduct of on-farm research in pursuit of new knowledge to help refine current recommendations and develop better technology for protecting our natural resources. Similarly, to continue the excellent track record of extension educational and outreach efforts to assist farmers in developing and operating environmentally sound waste management plans and adopting new technology, it is essential to maintain the distinction between voluntary education and mandatory regulation.

It would be ideal if all of our agricultural and environmental research could be conducted on state owned and managed research stations and field laboratories. We are, however, limited to a finite number of such farms which cannot alone provide the statewide variety of facilities, practices, soils, geologic and climatic conditions necessary to develop regional or site-specific recommendations. We have depended on individual farmers and private landowners to allow use of their farms for the gathering of new knowledge to develop site specific plans. Research has been conducted on these farms with a degree of confidentiality and understanding that if problems are found, the researchers would work with the landowner to remediate such problems. Information obtained during the remediation phase is also valuable. If environmental problems discovered during the research project are extensive, every effort including consulting with other agencies has been and will continue to be taken to immediately protect public health and safety.

The mandatory reporting provision of SB 1217 states that any employee of a State agency or unit of local government lawfully on the premises and engaged in activities

Employment and program opportunities are offered to all people regardless of race, color, national origin, sex, age or handicap.
North Carolina State University, North Carolina A&T State University, U.S. Department of Agriculture, and local governments cooperating.

relating to the animal operation who observes any of five listed violations must immediately notify the owner or operator of the animal operation and the Division of Water Quality. This provision has already had a chilling effect on the willingness of farmers and landowners to cooperate with University researchers in projects designed to gain new knowledge for better protection of the environment. An example has been the difficulty in finding cooperators to allow their farm as a site for the funded study of atmospheric gas emissions from swine farms. Prior to the passage of SB 1217, there had always been a number of cooperators for such research.

The Cooperative Extension Service has provided educational programs to farmers and the general public and individual landowner assistance strictly on a voluntary basis. To maintain credibility and the confidence of landowners, any assessment, information, or assistance provided to individuals has been done in confidence. An educator's only reason for being on a farm is through the landowner's invitation to assess the operation, assist in developing a complete waste management plan, make recommendations to improve the farm plan, or to teach through a demonstration or field day, all in the spirit of better protecting the environment and natural resources.

Today, the educator has one of two options when they receive a request for assistance. They can proceed to do a thorough farm assessment necessary for waste management plan development. If they spot a water quality violation during this assessment, they now have to immediately report it to DWQ. The DWQ Director has the discretion of whether or not to impose additional requirements or penalties on this landowner. Regardless, this landowner has now been exposed to unwanted public scrutiny after the landowner had taken the initiative to get assistance for developing a better plan. The educator's second option is to try to develop the waste management plan in an office without going out and walking the farm to assess the operation. This would not provide the kind of quality assistance which the landowner deserves nor which the Extension Service is known for.

I strongly support the efforts of you and your fellow legislators to clarify the mandatory reporting provision of SB 1217 and restore the full ability of researchers and educators to help farmers, landowners and citizens through education and technical assistance. I, personally, support aggressive attempts to identify the "bad actors" and bring them into compliance. It is those few who make it difficult for the overwhelming majority who are trying to be good stewards of the environment. However, when I, as an educator, identify and report a violator, I can never again be viewed as someone whose only mission is to help people put knowledge to work. This, I believe, is critical to the credibility and effectiveness of research and educational institutions to develop and deliver new information and technology to users.

Sincerely,

James C. Barker

James C. Barker, Ph.D., P.E.
Professor and Extension Specialist
Biological and Agricultural Engineering

cc: The Honorable John W. Brown
Dr. Jon Ort
Dr. Johnny Wynne
Dr. Mark Fleming
Dr. David B. Beasley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 545*

Short Title: Sale of Nat. Sci. Museum Objects/AB. (Public)

Sponsors: Senator Miller.

Referred to: Agriculture/Environment/Natural Resources.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE A TECHNICAL CHANGE REGARDING THE DISPOSITION OF OBJECTS FROM THE COLLECTIONS OF THE MUSEUM OF NATURAL SCIENCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-22.2 reads as rewritten:

"**§ 106-22.2. ~~Museum of Natural Sciences;~~ Maritime Museum; disposition of objects.**

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Agriculture may sell or exchange any object from the collections of the ~~Museum of Natural Sciences and the~~ Maritime Museum when it would be in the best interests of the Museums to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be ~~deposited in~~ credited by the State ~~treasury~~ Treasurer to ~~the credit of~~ a special fund to be used for the improvement of the Museums' collections or exhibits."

Section 2. Part 29 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-344.22. Museum of Natural Sciences; disposition of objects.**

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Environment, Health, and Natural Resources may sell or exchange any object from the collections of the North Carolina State Museum of Natural Sciences when it would be in the best interests of the Museum to do so. Sales or exchanges shall be

conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be credited by the State Treasurer to a special fund to be used for the improvement of the Museum's collections or exhibits."

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 14, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 545: Sale of Natural Science Museum Objects/AB

Senate Bill 545, introduced by Senator Miller, makes a technical change to the General Statutes and allows the Department of Environment, Health, and Natural Resources, instead of the Department of Agriculture, to sell or exchange objects in its collections in accordance with generally accepted practices for museums.

The Museum of Natural Sciences was transferred from the Department of Agriculture to DEHNR effective August 1993. The amendments to the General Statutes in Senate Bill 545 are simply conforming changes with that transfer.

The act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/15/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
F. Carlyle Teague	POBox 10426, Ral. 27605 Cooperative Council of NC
John Cyrus	N.C. State Grange
Verna James	NC State Grange
David Meredith	NC State Grange
[illegible]	NC Pest Council
Carol Allen	NC Agribusiness.
TANJA VUJIĆ	NC ENVIRONMENTAL DEFENSE FUND
Molly Diggins	NC Sierra Club
Twila Nelson	MFC
Lucius PULLEN	ATTORNEY
R. Paul Wilms	NCMBA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Smith	NC League of Municipalities
Ed Bowen	R M Bowen
Stuart Dixon	N.C. Natural Gas Corp
Laura Hartsell	MCIC
Amy Henderson	Hunton & Williams

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 22, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 22 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were discussed. Copies of the bills as well as any hand-outs are attached to these minutes.

SENATE BILL 537 - ADDITION TO STATE PARK SYSTEM - Senator Jenkins, sponsor, said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion passed. Bill Holman of the Sierra Club and Dr. Phil McKnelly of the Division of Parks and Recreation, DEHNR, made comments on the bill. Senator Jenkins made the motion that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 169 - ENV. TECH. CORRECTIONS - Senator Albertson, sponsor, requested Senator Horton, Vice Chairman, chair the committee while this bill was being explained. There was a proposed committee substitute and Senator Albertson moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the PCS. Senator Weinstein moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 194 - AMEND ENV. LAWS - Senator Horton, Vice Chairman, continued chairmanship of the committee so that Senator Albertson, sponsor, could explain the bill. There was a proposed committee substitute and Senator Albertson moved for its adoption for discussion purposes. Motion carried. Senator McDaniel sent forth an amendment to be included in the PCS and moved for its adoption. Motion carried. Senator Albertson moved that the proposed committee substitute (with amendment included) be given a favorable report, unfavorable as to original bill. Motion carried. **(NOTE: This bill was not reported out of committee at the request of the Attorney General's office.)** Senator Albertson then resumed chairmanship of the committee.

SENATE BILL 178 - AMEND NATURAL HERITAGE TRUST FUND - Senator Horton, sponsor, said there was a proposed committee substitute, and Senator McDaniel moved for its adoption for discussion purposes. Motion passed. Senator Horton explained the PCS. Charles Rowe, Director of Conservation Trust for North

Carolina, spoke in favor of the bill. Senator McDaniel moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 125 - INACTIVE HAZ. SITES/PROPERTY USE RESTRICT. - Senator Odom, sponsor, said there was a proposed committee substitute. Senator McDaniel moved for adoption of the PCS for discussion purposes. Motion carried. George Givens of staff explained the proposed committee substitute. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 22, 1997
11:00 a.m.
Room 1124 LB

AGENDA

SB 125	INACTIVE HAZ. SITES/PROPERTY USE RESTRICT. Senator Odom
SB 169	ENV. TECH. CORRECTIONS Senator Albertson
SB 178	AMEND NATURAL HERITAGE TRUST FUND Senator Horton
SB 194	AMEND ENV. LAWS Senator Albertson
SB 477	SEPTIC TANK SYSTEMS BMPs Senator Perdue
SB 537	ADDITION TO STATE PARKS SYSTEM Senator Jenkins

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, April 22, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **125** Inactive Haz. Sites/Property Use Restrict.
Draft Number: PCS2695
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **169** Env. Tech. Corrections.
Draft Number: PCS1753
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **178** Amend Natural Heritage Trust Fund
Draft Number: PCS1782
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **537** Addition to State Parks System.
Draft Number: PCS7766
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 537*
Proposed Committee Substitute S537-PCS7766

Short Title: Addition to State Parks System. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION TO THE STATE PARKS SYSTEM OF CERTAIN LANDS LOCATED IN TRANSYLVANIA COUNTY ADJACENT TO JOCASSEE LAKE.

Whereas, Section 5 of Article XIV of the Constitution of North Carolina states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources and that these resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, lands currently owned by Duke Power Company in Transylvania County adjacent to Jocassee Lake contain examples of outstanding scenic beauty, harbor many rare species and natural communities that are unique and irreplaceable, and have been found to possess geological, biological, scenic, and recreational resources of statewide or even nationwide significance; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The General Assembly authorizes the Department of Environment, Health, and Natural Resources to add lands currently owned by Duke Power Company in Transylvania County adjacent to Jocassee Lake to the State Parks

System, as provided in G.S. 113-44.14(b). In determining which particular lands to be added to the State Parks System, the Secretary of Environment, Health, and Natural Resources shall consult with the Board of Commissioners of Transylvania County. As a part of this consultation, the Department of Environment, Health, and Natural Resources shall work in cooperation with the Board of Commissioners to identify land having the most significance as land traditionally available for multiple uses, including hunting. Land that has significance as having been traditionally available for multiple uses, including hunting, shall not be included in lands authorized to be added to the State Parks System by this act if the Secretary of Environment, Health, and Natural Resources determines that a viable State Park with manageable boundaries can be established without the inclusion of that land.

Section 2. This act becomes effective 1 July 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 537*

Short Title: Addition to State Parks System. (Public)

Sponsors: Senator Jenkins.

Referred to: Agriculture/Environment/Natural Resources.

March 27, 1997

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The General Assembly of North Carolina enacts:

Section 1. The General Assembly authorizes the Department of Environment, Health, and Natural Resources to add lands currently owned by Duke Power Company in Transylvania County adjacent to Jocassee Lake to the State Parks System, as provided in G.S. 113-44.14(b).

Section 2. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
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Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
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Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 14, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 537: Addition to State Parks System

Senate Bill 537, introduced by Senator Jenkins, authorizes the Department of Environment, Health, and Natural Resources to add a tract of land in Transylvania County to the State Parks System. G.S. 113-44.14(b) requires that additions to the State Parks System be authorized by act of the General Assembly. That section also requires that such additions to the system be accompanied by appropriations for land acquisition, development, and operations.

The act becomes effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

LEGEND

	PROPERTY FOR SALE TO SCDNR	31,830 ACRES ±
	PROPERTY FOR SALE TO NCDEHNR	9,640 ACRES ±
	PROPERTY FOR SALE TO USFS	5,560 ACRES ±
	INHOLDING (PRIVATELY OWNED LAND LOCATED WITHIN C.R.I. / D.P.C. OWNED PROPERTY)	
	RETAINED BY DUKE POWER COMPANY	
	ACQUIRED BY S.C.D.N.R.	1,000 ACRES

(NOTE: ACREAGES AND BOUNDARIES ARE APPROXIMATED)

FOR INFORMATION PURPOSES ONLY

REVISIONS	
REVISED DATE	REMARKS

DUKE POWER COMPANY/
CRESCENT RESOURCES, INC.

JOCASSEE GORGES LAND SALES SOUTH CAROLINA

AS OF APRIL 04, 1997

GRAPHIC SCALE

8000 0 4000 8000 16000 32000

(IN FEET)

1 inch = 8000ft.

FILE SAVED: G:\GDR\JOCASSEE\JOCSCNCF.DWG

CHARLOTTE OBSERVER, April 14, 1997

Gorgeous gorges

Keep the bills for a state park moving

On a fine day in Transylvania County, you can imagine why 10,000 acres would make a lovely state park.

It is the land of the liverworts, rare plants, oak forests, granite domes, songbirds and black bears, a haven for hikers and hunters.

Not to knock the hunters, who share a love of the outdoors and tradition, but they are standing in the way of the state park. Sadly, their voices are rising above the thousands in North Carolina who might prefer the Jocassee Gorges land be preserved as parkland.

Transylvania County commissioners approved a resolution last week urging the state to consider other options for protecting the land. State parks, after all, don't allow hunting.

One option might be to have the U.S. Forest Service acquire and manage the land. But, assuming a reluctant Congress would contribute millions of dollars for the purchase before a 1999 deadline, that would only begin the process. There would still have to be decisions about how to manage the land.

The shortest and best route to preservation would be the state park option. Rep. Bill Ives, R-Brevard, and Sen. Tommy Jenkins, D-Macon, have introduced bills that authorize the state to negotiate with Duke Power to buy the land. A funding request — for $5 million — could be considered by legislators next year. The other $10 million needed for the purchase could be raised through private efforts and the Natural Heritage Trust Fund.

State parks make up only four-tenths of one percent of the land in North Carolina. And the state always lags in what it spend on state parks. The Jocassee Gorges land presents an opportunity to correct that imbalance. The state shouldn't miss this chance to preserve what The Nature Conservancy calls "a biological wonder." Lawmakers should ensure that the Jocassee Gorges State Park becomes a reality.

JOCASSEE GORGES PROJECT SURVEY
EXECUTIVE SUMMARY

Methodology

Independent Opinion Research & Communications, Inc. (IOR&C) performed telephone interviews with 403 randomly selected voters of Jackson and Transylvania Counties in Western North Carolina from February 20 - 25, 1997. The subject of the survey was placing the section of the Blue Ridge Mountains known as the Jocassee Gorges in public ownership.

Summary of Results

Over half the people surveyed (53%) were personally familiar with the area of the Jocassee Gorges, with the majority of those having been there for recreational purposes. When asked if they would support or oppose public acquisition of the land, over 80% of the 403 surveyed said that they either strongly supported or supported the idea. Only 7% said that they opposed public acquisition, and 12% said they were not sure. Reasons mentioned for their support were that they liked the wild, scenic beauty of the area, the fishing and the hunting, and the white water falls. Many were aware of Duke Power's plan to sell the land, and wanted it to be acquired for public use and enjoyment.

Specific findings

A set of questions gave those interviewed various statements that have been made about this prospective public land. Respondents were asked if these statements made them more likely or less likely to support the project, or if the statements made no difference in their support or opposition. The results show that support for the project is quite high.

People supported placing the Jocassee Gorges area in public ownership for a variety of reasons, including protecting habitat for wildlife and opening up the area for a variety of recreational uses.

When read the statement that "Placing the Jocassee Gorges in conservation ownership will protect habitat for black bears and rare plants," 81% said that the statement made them more likely to support the project, 5% said that it made them less likely to support it, 11% said that it made no difference to their support or opposition, and the rest were not sure. Eighty-one percent (81%) said the statement that a new state park in the Jocassee Gorges would provide many new recreational opportunities in the area made them more likely to support the project, 7% said that it made them less likely to support it, 8% said that it made no difference, and 4% were not sure.

Residents support the multi-use approach to the project. The statement that no hunting would be allowed in the state park made 73% more likely to support the park, and 12% were less likely to support it. Twelve percent (12%) said that the statement made no difference in their level of support.

Similarly, when told that "If part of this tract were added to Forest Service Lands, that land would be open for hunting, fishing, hiking and camping," 71% said that it would make them more likely to support the project, and 17% said that it would make them less likely to support it. Eight percent (8%) said that it made no difference, and 4% were not sure.

Independent Opinion Research & Communications, Inc.
108 N. Kerr Ave. C-3
Wilmington, NC 28405

Hiking, Camping, Hunting and Fishing Statistics

The following statistics were derived from three separate questions. Sixty-nine percent (69%) of the respondents say that they go hiking and camping. 49% of the respondents say that they fish, while hunters comprise 22% of the sample.

Agree or Disagree Questions

Reasons for the strong support for the project can be found in this section of the survey. When asked to agree or disagree with a series of statements, respondents demonstrated their commitment to protecting our natural heritage for future generations and protecting natural habitat.

When given the statement "The natural areas in the Jocassee Gorges are part of our heritage and we owe it to our children and grandchildren to protect them," 92% agreed with the statement, 6% disagreed, and 3% were not sure.

"Protecting the Gorges will save habitat for animals like black bear and ensure the high quality of the trout streams in the area" was agreed with by 93% of the respondents, disagreed with by 4%, and drew a not sure response from 3%.

Conclusions

The Jocassee Gorges project is an overwhelmingly popular project with all segments of the population. Even those who do not hunt, fish, hike or camp are very supportive of the proposed state park and wilderness area.

BOARD OF COMMISSIONERS:
Robert H. Masengill, Chairman
William S. Wallace, Vice Chairman
Mike Hawkins
Horace Jarrett
Trudi Walend
704/884-3107

Transylvania County

COUNTY MANAGER
Arthur C. Wilson, Jr.
704/884-3100
FAX 704/884-3119

28 East Main Street
Brevard, NC 28712

April 4, 1997

SB 537

Senator Robert Carpenter
180 Georgia Road
Franklin, NC 28734

Dear Senator Bob:

On behalf of the Board of County Commissioners, I wish to extend sincere appreciation for your interest in Transylvania County and your efforts to preserve the Duke Power property. We thank you for making the time to attend the public hearing concerning the acquisition of the property.

The Board of Commissioners met in special session this morning, 9:00 a.m., for the purpose of discussing the issue and unanimously voted to make the following statement:

> We, as Transylvania County Commissioners, strongly support public acquisition and preservation of the 10,000 acres of Crescent Lands in Transylvania County proposed for sale by Duke Power Company.
>
> Based upon comments received during our public hearing and since we feel this land must be managed to allow multiple use which includes hunting, we urge your support on this position.
>
> Surely in a cooperative setting where the various interests are represented, a multiple use solution can be agreed upon. This we feel is a must for the people of Transylvania County.

If you wish to discuss the commissioners' comments, please give me a call.

Sincerely,

Bob Masengill

R. H. Masengill, Chairman Jr.
Board of County Commissioners

sj
cc: Members, Board of Commissioners
file

"An Equal Opportunity Employer"

MEMORANDUM

To: Bob Masengill, Chm.
Commissioners

DATE: April 7, 1997

SUBJECT: RESPONSE TO REP. IVES - RE: DUKE PROPERTY

I have read your memo to the board regarding your conversation with Bill Ives re: the purchase of Duke lands in Transylvania County.

Commissioners, our document may not be the most polished one I have ever viewed before, but it's a great statement in that it does say all the important things that need to have been said. Very simply, it says three things to me:

1. Paragraph 1 states that we (the board) "....strongly support public acquisition and preservation of the 10,000 acres of Crescent Lands in Transylvania County proposed for sale by Duke Power Company". This is a very important statement and clearly states we want to preserve the lands in public ownership if possible. If, to the contrary, Duke prefers to sell to a private entity, then we have no say and we are not players.

2. Paragraph 2 also clearly states that we have listened to the people and heard them say in a loud and clear voice that Multiple Use Management (along with hunting) is very important to them. (I totally agree with them).

3. Paragraph 3 clearly states a third very important criteria which Bill and others don't seem to want to accept as written, yet accepted by the board. This paragraph says very succinctly to me the Federal Government (US Forest Service) as well as the State (Parks and Recreation) must/should or whatever the appropriate word, get their heads together in a cooperative manner and decide how best these lands can be parceled and ultimately managed consistent with our statement.

The signals I am hearing from Bill (Ives) is very simple to understand:

a. If we can be coerced into deleting "the offensive words" (per sierra club rep.) which I assumed to be "Multiple Use Management and hunting", and perhaps also make other changes they may be seeking, then the state

has clear sailing in designating subject lands as a state park. These changes, if implemented, **would favor** the state being able to designate these lands as a state park and effectively eliminate the US Forest Service from the playing field.

b. On the other hand, if we remove the term "Multiple Use Management" (which will include hunting), then we have slammed the door in Rep. Charles Taylor's face and eliminated he (as a possible source of federal funding) and the US Forest Service as one of the possible land managers. More importantly, we have abandoned our publics who have made no secret about how they want the land managed.

Sen. Bob Carpenter is my state senator and it is within his district these lands are situated. I have found him to be a very reasonable man and it is my understanding, that he feels Multiple Use Management with provisions for hunting are essential considerations in whatever scenario is finally agreed to. I must hasten to say that Sen. Bob would be the one to speak to his position, however.

The next step is to find a protocol for bringing the federal and state agencies together consistent with our statement and the specific requirements of each of the agencies involved. Once some sort of agreement is reached, then certainly Duke, Rep. Taylor, Sen. Carpenter, and Rep. Ives should be briefed so any changes needed can be made and final instructions can be issued.

Finally, let me say that if there was a glaring error in our statement, of course, I, along with each of the other commissioners would want to correct it. However, seeing no such error in our statement, I am very comfortable with it. My position is very clear, **No changes are needed**.

For more than two years these negotiations continued in the absence of public participation with the objective of placing these lands in a state park. Finally, at the eleventh hour our publics were allowed to speak and they did it well!

Sincerely,

/S/ Horace Jarrett
HORACE JARRETT

April 9, 1997

Dear Elected Official:

Consistent with numerous signatures on letters, petitions, and personal appeals to locally elected officials, I request your support in defeating the authorization of a state park of approximately 10,000 acres owned by Duke Power Company in Transylvania County.

I urge your strong support of the Official Position Statement adopted unanimously by the Board of County Commissioners on April 4, 1997. The statement is as follows:

"We, as Transylvania County Commissioners, strongly support public acquisition and preservation of the 10,000 acres of Crescent Lands in Transylvania County proposed for sale by Duke Power Company."

"Based upon comments received during our public hearing and since, we feel this land must be managed to allow multiple use, which includes hunting. We urge your support on this position."

"Surely in a cooperative setting where the various interests are represented, a multiple use solution can be agreed upon. This we feel is a must for the people of Tranyslvania County."

Once again, it is the position of those signing letters and petitions as well as making special appeals to local officials that we ask your support. We support the commissioners position statement and any efforts to purchase the lands, but prefer they be managed consistent with Multiple Use Management, which would provide for hunting and be open and accessible to all.

Thanking you in advance for your support, we are, The Auger Hole Heritage Coalition.

Sincerely,

The Auger Hole Heritage Coalition

Helen Carpenter (Sen. Carpenter)

From: Horace Jarrett[SMTP:HJarrett@CITCOM.NET]
Sent: Monday, April 14, 1997 3:30 PM
To: Sen. Robert Carpenter
Subject: Thank You!

Sen. Bob:

Thank you for the information and list of NC State Parks.

Any late breaking news/responses on Rep. Ives re-introduction and amendment of his bill? We appreciate any efforts you may take to stop it in one or both chambers. Please keep me posted as appropriate.

Heard from Congressman Charles Taylor this morning. He, like you and I, makes his position very clear. Only problem, as I understand it, he is awaiting movement on Ives bill to stop before he will pursue further involvement by the US Forest Service and efforts to secure funding.

Once again, thanks for the info. Please keep me posted. Perhaps E-Mail would be a convenient way to keep me advised of the latest developments.

--
Horace Jarrett
PO Box 161
Rosman, NC 28772
hjarrett@citcom.net

Sierra Club

Regional Groups

Blue Ridge
Boone

Broad River
Shelby

Cape Fear
Wilmington

Capital
Raleigh

Central Piedmont
Charlotte

Cypress
Greenville

Foothills
Winston-Salem

[illegible]River
[illegible]ington

Headwaters
Durham

Horace Kephart
Fayetteville

Medoc
Rocky Mount

Orange-Chatham
Chapel Hill

Piedmont Plateau
Greensboro

Pinnacle
Hendersonville

Pisgah
Brevard

South Mountains
Morganton

[illegible]CA
[illegible]le

To: Members, Senate Agriculture and Environment Committee
From: Molly Diggins
State Director, NC Sierra Club
Date: 4/15/97
Re.: SB 537

The 14,000 members of the North Carolina Chapter of the Sierra Club strongly support efforts to acquire and protect the land around Lake Jocassee. Our members believe that these lands represent a once-in-a-lifetime opportunity to protect one of the the most spectacular and botanically rich areas in the eastern United States. It is our opinion that acquisition of these lands will have substantial environmental and economic (tourism) benefits to the state.

NORTH CAROLINA WILDLIFE FEDERATION

Affiliated with the National Wildlife Federation

P.O. Box 10626
RALEIGH, NORTH CAROLINA 27605-0626
(919) 833-1923
FAX (919) 829-1192

RESOLUTION

Acquisition of Blue Ridge Escarpment Lands

WHEREAS, North Carolina has been presented with an unprecedented opportunity to purchase 15,000 acres of property surrounding Lake Jocassee; and

WHEREAS, the property in question includes large areas of unbroken forested land, as well as contiguous areas of other valuable habitat; and

WHEREAS, this property contains the most abundant black bear population in the southern Appalachians, as well as good populations of deer, wild turkey, and other species; and

WHEREAS, this property contains trout streams that support naturally reproducing populations of brook, brown and rainbow trout; and

WHEREAS, this property contains a great number of endangered and threatened species on a tract in private ownership and is nationally significant refuge of biodiversity; and

WHEREAS, the property also a multitude of opportunities for a variety of outdoor recreational activities including a 40 mile stretch of the Foothills Trail; and

WHEREAS, the property includes areas of great scenic beauty; and

WHEREAS, the property is adjacent to an 35,000 acre area of similar ecological value that the state of South Carolina has committed to acquiring, and will become a magnet for ecotourism efforts; and

WHEREAS, if the property cannot be purchased and placed in public ownership within a period of 3 years, it will be sold to those able to pay the highest prices for it; and

WHEREAS, in order for purchasers to obtain a return on their investment, development of the property is inevitable;

NOW, THEREFORE BE IT RESOLVED, that the North Carolina Wildlife Federation in convention assembled at Research Triangle Park, NC on February 15, 1997 strongly supports the efforts of the coalition of public agencies, private organizations, and foundations to purchase this property and ensure its continued protection.

Signed: JC Ash Date: 15Feb1997

Executive Director

Date: April 14, 1997

To: Sen. Robert C. Carpenter

From: Horace Jarrett

Dear Senator Bob:

I have just completed reading the Monday, April 14, 1997 edition of the Transylvania Times. Today's edition contained an article on page 3A, by our distinguished Rep. Bill Ives, "Report From Raleigh" which is worthy of your reading. Please make it available to other Representatives and Senators of the state. I think it is very appropriate for them to see the gall and intimidation expressed in Rep. Ives weekly column as he related comments by Gov. Jim Hunt, our distinguished governor of the state. It is obvious the Governor is blatantly insensitive to the people of this county. Even if Gov. Hunt could be so cold and irresponsible in making such reckless statements, Rep. Ives should have kept the comments to himself rather than try to insult the decent and hardworking people of this community. To say the least, Governor Hunt and Rep. Ives owe the people of Transylvania County and this community an apology.

Sen. Bob, the only way I can get the remarks to you is to type them into my computer and send them by fax. I will begin typing part way through the article since a large part of the article relates to a different subject. The part I wanted to share with you and your colleagues is as follows:

Report From Raleigh

Jocasee Bill Should Be Heard This Week

(Beginning of article relates to different issues - The following quote begins approximately half way through the article)

"Now to switch to another subject, the Jocassee Gorges Park. I appreciated the Governor taking time out of his schedule to meet with me on just a few hours notice. As you can imagine, many people in this state and nation want to get his attention, and like all of us, his time is limited."

"Some help in getting to see him is surely due to former Transylvania County resident Jan Bryant. She is now his main scheduler for the Capitol office and

we have known each other for many years. We had a chance to speak and talk about our grandchildren briefly before I went in to the Governor's office."

"As you read in the paper, Governor Hunt and Bill Grigg, CEO of Duke Power Co. flew over the area on Monday the 7th of April. This flight was the clincher in convincing the Governor that the state should own this land. If I had not called to see him, I think he would have had someone call on me to get things moving. "

"He was aware of the problem of trying to get around the idea of a state park that can not, under present rules, allow hunting and the County Commissioners' statement that they favored multiple use of the land. He reminded me that North Carolina does not allow counties to tell the state what it can and cannot do. They are, after all, not sovereign entities but creatures of the state. If the state so chose, it can abolish Transylvania County and divide it's lands among the counties from which it was derived some 136 years ago. Don't worry, something like that has never happened."

"The Governor and his executive branch along with the General Assembly try to work with the counties so it was his suggestion that we say in the bill that the Department of Environment, Health and Natural Resources will consult with the county commissioners as they purchase and allocate the 10,000 acres of land."

"With a little bit of luck, the bill should be heard in committee this week."
(End of Article)

Well, you can see the insensitivity and lack of respect on the part of Rep. Ives and the Governor towards Transylvania County. It is indeed, disappointing to say the least. One thing is for sure. I'll bet we survive and the governor will not at the end of the day, dissolve our Transylvania County!!!

Sen. Bob, I thought you would find these comments most interesting and that you might want to share this article with the governor and the committee that is scheduled to hear this bill.

Respectfully,
Horace Jarrett

State park debate stirs

Officials considering hunters

By Phil Alexander
BREVARD BUREAU

BREVARD – Three days after a public hearing on creating the Gorges State Park in Transylvania County drew an outcry from hunters wanting to keep the land open to them, county commissioners unanimously passed a resolution in a special meeting Friday urging the state to consider other options for protecting the nearly 10,000 acres.

State Rep. Bill Ives, R-Brevard, said he will continue pushing his bill through the state House of Representatives authorizing the state Division of Parks and Recreation to negotiate with Duke Power Co., which plans to sell off a total of about 12,000 acres in Transylvania County by 1999.

Hunters complained at the hearing Tuesday that because state parks do not allow firearms, turning the land – including the Auger Hole, a popular outdoor recreation area at the end of Frozen Creek Road west of Rosman – into a state park would shut them out.

The text of the resolution was combined from drafts offered by Commissioner Trudi Walend and board Chairman Bob Masengill.

It states commissioners "strongly support public acquisition and preservation," but adds, "we feel this land must be managed to allow multiple use which includes hunting.... Surely in a cooperative setting where the various interests are represented, a multiple use solution can be agreed upon."

Ives said he and Sen. Tommy Jenkins, D-Macon – who is sponsoring a similar bill in the state Senate – have until May 1 to get the proposal passed through one house or the other. "There is no time right now to ask the state to start looking into and reviewing its policies," he said.

PHIL ALEXANDER/CITIZEN-TIMES

JOCASSEE GORGE – The picturesque Jocassee Gorge is at the center of a debate on whether to make it a state park or to preserve the land another way.

He said the General Assembly could come back next year and transfer at least part of the property to another agency that would reopen the area for hunting.

But in a March 28 interview, Ives expressed doubts that such a transfer could ever occur and said he did not want to mislead hunters into false hopes. "Once it becomes a state park, it's going to stay a state park," he said at that time.

Jeff Chandler and Steve Chapman are concerned that any promise to reopen game lands would be a broken one.

Longtime hunters and friends, Chandler and Chapman want the state to consider all the options of preserving the land, including adding the property to the Nantahala National Forest.

Chapman said following the meeting the Lake Jocassee watershed should be preserved "first and foremost," but he added, "it's obvious that all the options haven't been researched thoroughly, only one very narrow option that is very exclusionary is the one being pursued."

Sen. Bob Carpenter, R-Macon, has not signed on to support the bill because of the hunting issue, but said he expects Jenkins' bill to be amended when it reaches the full Senate.

"I would like to be involved in the preparation of any amendments, because I think I know how these people feel," said Carpenter, who said his family traces seven generations in Western North Carolina. "I want to be sure that these people are treated fairly."

For natives who have hunted the land for generations, the issue goes deeper than losing a hunting place. The DuPont State Forest, created in southern Transylvania and eastern Henderson counties Jan. 1, will open up new game lands, but it won't be the same as the Auger Hole, Chapman and Chandler say.

For example, Chapman said, his and Chandler's families get together every Thanksgiving weekend for camping and hunting in what the state has known as Toxaway Game Lands. "This is kind of like our mountain homecoming," he said.

NORTH CAROLINA STATE PARKS SYSTEM DECEMBER 1996		
UNIT	**CURRENT ACRES**	**COUNTY**
Baldhead Island	1,249	Brunswick
Bay Tree Lake	2,027	Bladen
Boone's Cave	110	Davidson
Bushy Lake	2,572	Cumberland
Carolina Beach	420	New Hanover
Chowan Swamp	6,066	Gates
Cliffs of the Neuse	751	Wayne
Crowders Mountain	2,857	Gaston
Dismal Swamp	14,344	Camden
Duke Power	1,458	Iredell
Eno River	2,622	Durham & Orange
Falls Lake	5,034	Durham & Wake
Fort Fisher	287	New Hanover
Fort Macon	389	Carteret
Goose Creek	1,596	Beaufort
Hammocks Beach	925	Onslow
Hanging Rock	6,457	Stokes
Hemlock Bluffs	92	Wake
Jockey's Ridge	419	Dare
Jones Lake	2,208	Bladen
Jordan Lake	3,916	Chatham
Kerr Lake	3,000	Vance &
Lake James	586	Burke & McDowell
Lake Waccamaw	10,670	Columbus
Lumber River	2,363	Columbus & Robeson
Masonboro Island	106	New Hanover
Medoc Mountain	2,287	Halifax
Merchants Millpond	3,023	Gates
Mitchell Mill	93	Wake
Morrow Mountain	4,693	Stanly
Mount Jefferson	489	Ashe
Mount Mitchell	1,677	Yancey
New River	1,488	Alleghany & Ashe
Oconeechee Mountain	0	Orange
Pettigrew	17,743	Tyrrell & Washington
Pilot Mountain	3,703	Surry & Yadkin
Raven Rock	3,549	Harnett
Run Hill	121	Dare
Singletary Lake	1,221	Bladen
South Mountains	9,482	Burke
Stone Mountain	13,450	Alleghany & Wilkes
Theodore Roosevelt	265	Carteret
Waynesborough	142	Wayne
Weymouth Woods	806	Moore
White Lake	1,068	Bladen
William B. Umstead	5,382	Wake
TOTAL	**143,206**	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 169*
Proposed Committee Substitute S169-PCS1753

Short Title: Env. Tech. Corrections. (Public)

Sponsors:

Referred to:

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-802(4) reads as rewritten:

"(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~~".

Section 2. G.S. 143-215.74(b)(3) reads as rewritten:

"(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation ~~Commission and the~~ Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds."

Section 3. G.S. 143B-282(a) reads as rewritten:

"(a) There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:

a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water ~~pollution;~~ pollution.

b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been ~~established;~~ established.

c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. ~~143-215.108(b)(5);~~ 143-215.108(b)(5).

d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. ~~143-215.3;~~ 143-215.3.

e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. ~~143-215.3;~~ 143-215.3.

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. ~~143-215.111;~~ 143-215.111.

g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.

h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.

i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. ~~143-215.3;~~ 143-215.3.

j. To render advice and assistance to local government regarding floodways pursuant to G.S. ~~143-215.56;~~ 143-215.56.

k. To declare and delineate and modify capacity use areas pursuant to G.S. ~~143-215.13;~~ 143-215.13.

l. To grant permits for water use within capacity use areas pursuant to G.S. ~~143-215.15;~~ 143-215.15.

m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. ~~143-215.19;~~ 143-215.19.

n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. ~~143-215.29;~~ 143-215.29.

o. To halt dam construction pursuant to G.S. ~~143-215.29;~~ 143-215.29.

p. To grant final approval of dam construction work pursuant to G.S. ~~143-215.30;~~ 143-215.30.

q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. ~~143-215.31;~~ 143-215.31.

r. To direct the inspection of dams pursuant to G.S. ~~143-215.32;~~ 143-215.32.

s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. ~~143-215.107;~~ 143-215.107. ~~and~~

t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter ~~143;~~ 143. ~~[and]~~

u. To administer the State's authority under 33 ~~USC~~ U.S.C. § 1341 of the federal Clean Water Act."

Section 4. Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 17. No later than October 1, 1996, the Environmental Management Commission and the Soil and Water Conservation Commission, with technical assistance from the Cooperative Extension Service, shall establish the record-keeping requirements under G.S. ~~143-215.1C(e)(8),~~ 143-215.10C(e)(8), as enacted by Section 2 of this act. The Natural Resources Conservation Service is encouraged to cooperate fully with establishing these requirements."

Section 5. Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 169*

Short Title: Env. Tech. Corrections. (Public)

Sponsors: Senator Albertson.

Referred to: Agriculture/Environment/Natural Resource.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282(a) reads as rewritten:

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c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. ~~143-215.108(b)(5);~~ 143-215.108(b)(5).

d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. ~~143-215.3;~~ 143-215.3.

e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. ~~143-215.3;~~ 143-215.3.

f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. ~~143-215.111;~~ 143-215.111.

g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. ~~143-215.112;~~ 143-215.112.

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i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. ~~143-215.3;~~ 143-215.3.

j. To render advice and assistance to local government regarding floodways pursuant to G.S. ~~143-215.56;~~ 143-215.56.

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l. To grant permits for water use within capacity use areas pursuant to G.S. ~~143-215.15;~~ 143-215.15.

m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. ~~143-215.19;~~ 143-215.19.

n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. ~~143-215.29;~~ 143-215.29.

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r. To direct the inspection of dams pursuant to G.S. ~~143-215.32;~~ 143-215.32.

s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. ~~143-215.107;~~ 143-215.107. ~~and~~

t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter ~~143;~~ 143. ~~[and]~~

u. To administer the State's authority under 33 USC § 1341 of the federal Clean Water Act."

Section 2. Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 17. No later than October 1, 1996, the Environmental Management Commission and the Soil and Water Conservation Commission, with technical assistance from the Cooperative Extension Service, shall establish the record-keeping requirements under G.S. ~~143-215.1C(e)(8),~~ 143-215.10C(e)(8), as enacted by Section 2 of this act. The Natural Resources Conservation Service is encouraged to cooperate fully with establishing these requirements."

Section 3. Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 4. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 15, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment and Natural Resources

From: Mary Beach Shuping

Re: **Proposed Committee Substitute for Senate Bill 169 - 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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 194*
Proposed Committee Substitute S194-PCS6648

Short Title: Amend Env. Laws. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; AND (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit

plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct

a hearing shall report the hearing with its evidence and record to the Commission."

Section 6. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 7. G.S. 143B-291 reads as rewritten:

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

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.

(3) One member who is a representative of the mining industry.

(4) One member who is a representative of the mining industry.

(5) One member who is a representative of nongovernmental conservation interests.

(6) One member who is a representative of nongovernmental conservation interests.

(7) One member who is a representative of nongovernmental conservation interests.

(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The~~

~~remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

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

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 8. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 9. G.S. 143B-313.2 reads as rewritten:

"§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the~~

~~House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The

term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 10. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 9 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full

two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 194*

Short Title: Amend Env. Laws. (Public)

Sponsors: Senators Albertson; Dannelly, Hoyle, Jordan, Odom, Perdue, Rand, and Warren.

Referred to: Agriculture/Environment/Natural Resources.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Renewal of certificates.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to

any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Commission shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of

the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 6. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 17, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping

Re: **Proposed Committee Substitute - Senate Bill 194 - Amend Environmental Laws**

Senate 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 178*
Proposed Committee Substitute S178-PCS1782

Short Title: Amend Natural Heritage Trust Fund. (Public)

Sponsors:

Referred to:

February 18, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-77.7(c) reads as rewritten:

"(c) When the State acquires land pursuant to this Article, the ~~Chairman of the Board of~~ Trustees ~~shall~~ may direct a request to the State Treasurer to set aside an amount from the Fund not to exceed twenty percent (20%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired, to be placed in a special stewardship account in the Fund. The special stewardship account shall be a nonlapsing account, and income derived from investment of the account shall be credited to the account. The special stewardship account shall be used for the management of land acquired pursuant to this ~~Article, as directed by the Trustees, so long as such land remains in the Trust.~~ Article under the direction of the 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, and natural areas for the beneficial use and enjoyment of the public.

(3) Subject to the limitations of subsection ~~(b1),~~ (b2) of this section, land that contributes to the development of a balanced State program of historic properties.

(b1) ~~The Trustees may designate managers or managing agencies of the lands so acquired to receive grants from the Fund's stewardship account.~~ In authorizing expenditures from the Fund to acquire land pursuant to this Article, the first priority shall be the protection of land with outstanding natural or cultural heritage values. Land with outstanding natural heritage values is land that is identified by the North Carolina Natural Heritage Program as having State or national significance. Land with outstanding cultural heritage values is land that is identified, inventoried, or evaluated by the Department of Cultural Resources. The Trustees shall be guided by any priorities established by the Secretary, the Chairman of the Wildlife Resources Commission, ~~and~~ the Commissioner of ~~Agriculture~~ Agriculture, and the Secretary of Cultural Resources in their proposals made pursuant to subsection ~~(a), above.~~ (a) of this section.

~~(b1)~~ (b2) The Trustees may authorize expenditure of up to twenty-five percent (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the preceding fiscal year to acquire land under subdivision (3) of subsection ~~(b).~~ (b) of this section. No other funds in the Fund may be used for expenditures to acquire land under subdivision (3) of subsection ~~(b).~~ (b) of this section.

(c) The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas ~~by the Secretary's Natural Heritage Program conducted pursuant to Chapter 113A, Article 9A, of the General Statutes.~~ under the Nature Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees may also authorize expenditures from the Fund to pay for conservation and protection planning and for informational programs for owners of natural areas that are dedicated as nature preserves under the Nature Preserves Act.

(d) The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. ~~State agencies~~ A State agency with ~~management responsibilities for lands~~ management responsibility for land acquired pursuant to this Article may enter into a management ~~agreements in the form of leases with counties, cities, and towns~~ agreement or lease with a county, city, town, or private nonprofit organization qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the ~~lands, and such lease agreements~~ land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341.

(d1) In any county in which real property was purchased pursuant to subsection (d) of this section as additions to the fish and wildlife management areas and where less than twenty-five percent (25%) of the land area is privately owned at the time of purchase, that county and any other local taxing unit shall be annually reimbursed, for a period of 20 years, from funds available to the North Carolina Wildlife Resources Commission in an amount equal to the amount of ad valorem taxes that

would have been paid to the taxing unit if the property had remained subject to taxation.

(e) The Secretary shall maintain and annually revise a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee and to each House of the General Assembly after each revision.

(f) No provision of this Article shall be construed to eliminate hunting and fishing, as regulated by the laws of the State of North Carolina, upon properties purchased pursuant to this Article."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 178*

Short Title: Amend Natural Heritage Trust Fund. (Public)

Sponsors: Senators Horton; Hoyle, Jenkins, Kinnaird, Lee, Phillips, Rand, Reeves, and Shaw of Guilford.

Referred to: Agriculture/Environment/Natural Resources.

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND EXTEND THE PROTECTION OF THE STATE'S NATURAL LANDS BY EXTENDING THE AUTHORIZED EXPENDITURES FROM THE NATURAL HERITAGE TRUST FUND AND BY ALLOWING QUALIFIED PRIVATE NONPROFIT LAND TRUST ORGANIZATIONS TO HOLD TITLE TO ACQUIRED LANDS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-77.9(c) reads as rewritten:

"(c) The Trustees may authorize expenditures from the Fund to pay for the ~~inventory~~ inventory, the conservation and protection planning, or the identification and education of owners of natural areas by the Secretary's Natural Heritage Program conducted pursuant to Chapter 113A, Article 9A, of the General Statutes."

Section 2. G.S. 113-77.9(d) reads as rewritten:

"(d) The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the ~~State.~~ State or in private nonprofit land trust organizations qualified pursuant to G.S. 105-151.12 and G.S. 105-130.34 and certified under section 501(c)(3) of the Internal Revenue Code. State agencies with management responsibilities for lands acquired pursuant to this Article may enter into management agreements in the form of leases with counties, cities, ~~and towns~~ towns, or these qualified private nonprofit land trust

organizations to aid in managing the lands, and such lease agreements shall be executed by the Department of Administration pursuant to G.S. 143-341."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 125*
Proposed Committee Substitute S125-PCS2695

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

restriction shall be enforced by any owner, operator, or other party responsible for the inactive hazardous substance or waste disposal site. 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:

"(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to ~~him~~ the owner to do so, shall submit to the Department a survey plat of areas designated by the Department ~~which~~ that has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. Where an inactive hazardous substance or waste disposal 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 with respect to permanently surveyed ~~benchmarks; and~~ benchmarks.

(2) The type, location, and quantity of hazardous substances disposed of 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.

~~Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.~~"

Section 3. G.S. 130A-310.8(b) reads as rewritten:

"(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.~~ located within 30 days of date on which the owner receives approval of the Notice from the Department."

Section 4. G.S. 130A-310.9(b) reads as rewritten:

"(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party ~~which~~ that provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary

remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

Section 5. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, 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: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. 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 6. 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 with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of hazardous substances disposed of 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 30 days of 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 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 shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry."

Section 7. G.S. 143-215.88B is amended by adding a new subsection to read:.

"(h) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or rules adopted under this Article; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules adopted under this Article is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000)."

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 125*

Short Title: Inactive Haz. Sites/Property Use Restrict. (Public)

Sponsors: Senators Odom; Albertson, Cooper, Horton, Kinnaird, and Martin of Pitt.

Referred to: Agriculture/Environment/Natural Resources.

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:

"(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. 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 with respect to permanently surveyed ~~benchmarks; and~~ benchmarks.

(2) The type, location, and quantity of hazardous substances disposed of 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. Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded."

Section 3. G.S. 130A-310.8(b) reads as rewritten:

"(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.~~ located within 30 days of the owner's receipt of the Department's approval of the Notice."

Section 4. G.S. 130A-310.9(b) reads as rewritten:

"(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party which provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

Section 5. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

April 15, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 125(Inactive Hazardous Sites/Property Use Restrictions)

Senate Bill 125 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). Senate Bill 125, 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 Senate Bill 125, 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 Senate Bill 125

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.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/22/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bryer	FWB
Paul E Dean	N.C. Agri business —
Peter Darrick	NCDA
Lucius Fuller	Attorney
Laura Hartsell	MCIC
George Everett	MCIC
Julian Philpott	NCFB
Dan Whittle	EHNR
Ted McConnelly	EHNR - DPR
William C Jeter	DEHNR - DEH
Jack Butler	DEHNR - OSWM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlotte Jesnech	DEHNR - DWM
Richard Whisnant	DEHNR
R. Rogers	DEHNR
John Cyrus	N.C. State Grange
Molly Diggins	NC Chapter, Sierra Club
Michelle North	Southern Environmental Law Center
Susan Giles	DEHNR - NHP
Dina Rutherford	DEHNR - DPR
Charles Roe	Conservation Trust for NC
Margaret Jordan	DEHNR - Div of Pks & Rec
Steve Vedder	DEHNR / Dwq

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/22/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Havey	NCPMA
TANJA VUJIĆ	NC ENVIRONMENTAL DEFENSE FUND
Twila Nelson	MFC
Kim Smith	NCLM

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 24, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 24, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

SENATE BILL 947 - AMEND INTERBASIN TRANSFERS - Senator Cochrane, sponsor, was recognized to explain the bill. Senator Odom suggested that this bill be looked at by the Environmental Review Commission. After much discussion, Chairman Albertson said the bill would be displaced until a later time. No action was taken on the bill at this meeting.

SENATE BILL 859 - PRESCRIBED BURNING IN FORESTS - Senator Lee, sponsor, was recognized to explain the bill. Bob Slocum, Executive Vice President, North Carolina Forestry Association, spoke in favor of the bill and answered questions from committee members. After discussion, it was decided to displace the bill until a later time so that questions on the bill could be answered.

SENATE BILL 477 - SEPTIC TANK SYSTEMS BMP'S - Senator Perdue, sponsor, said that there was a proposed committee substitute on the bill. Senator Odom moved that the PCS be adopted for discussion purposes. Motion carried. After discussion, Senator Odom moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried. Bill was sequentially referred to Finance.

SENATE BILL 845 - STUDY NEED TO EXPAND I & M PROGRAM - Senator Odom, sponsor, said there was proposed committee substitute and moved that the PCS be adopted for discussion purposes. Motion carried. After discussion, Senator Gulley moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

Senate Bill 193 - Fund Evaluation of Septic Tank Problems and Senate Bill 194 - Amend Env. Laws had been on the agenda but were not discussed at this meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, April 24, 1997
11:00 a.m.
Room 1124

AGENDA

SB 194	AMEND ENV. LAWS Senator Albertson
SB 193	FUND EVALUATION OF SEPTIC TANK PROBLEMS Senator Albertson
SB 477	SEPTIC TANK SYSTEMS BMPs Senator Perdue
SB 859	PRESCRIBED BURNING IN FORESTS Senator Lee
SB 845	STUDY NEED TO EXPAND I & M PROGRAM Senator Odom
SB 947	AMEND INTERBASIN TRANSFERS Senator Cochrane

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT

Senator Albertson, Chairman

Thursday, April 24, 1997

SENATOR ALBERTSON,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **477** Septic Tank Systems BMPs.

Draft Number:	PCS1788
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

S.B. **845** Study Need to Expand I & M Program

Draft Number:	PCS2734
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 947

Short Title: Amend Interbasin Transfers. (Public)

Sponsors: Senators Cochrane; Clark, Conder, East, Foxx, Horton, Jordan, Kincaid, Rand, Soles, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN AN INTERBASIN TRANSFER PERMIT, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ISSUE SPECIAL ORDERS FOR INTERBASIN TRANSFER VIOLATIONS, AND TO LIMIT THE TOTAL AMOUNT OF WATER THAT MAY BE TRANSFERRED OUT OF ANY RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that the ~~potential detriments of the proposed transfer outweigh the~~ benefits of the ~~transfer.~~ proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7

shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment, Health, and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment, Health, and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment, Health, and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment, Health, and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment, Health, and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The amount of water transferred out of any river basin as a result of the aggregate of interbasin transfers in that basin shall not exceed two percent (2%) of the seven-day 10-year low flow of the river.

(l) The Commission may issue, modify, or revoke, a special order, or other appropriate instrument, to any person whom it finds in violation of this section. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the violation. The Commission may enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for the violation, subject to the provisions of G.S. 143-215.2(a1) and (b) regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

Any person who complies with the terms of, or as a result of the conditions specified in, a permit issued pursuant to this section, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to this section, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the regulation of interbasin transfers, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when the special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The action taken results in the elimination or alleviation of the detriment caused by the violation to the extent required by the permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) The person complies with the terms and conditions of the permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 859: Prescribed Burning

Senate Bill 859, introduced by Senator Lee, adds a new article to Chapter 113 of the General Statutes that sets forth conditions for conducting a prescribed burn and limits the liability for nuisance and smoke damage for persons conducting a prescribed burn according to the statutory guidelines.

A "prescribed burn" is a planned and controlled application of fire to naturally occurring vegetative fuels under safe conditions and following appropriate measures to confine the fire to a predetermined area.

New G.S. 113-60.42 provides that a prescribed burning conducted pursuant to the statutory guidelines is in the public interest. As such, it does not constitute a public or private nuisance and a landowner or his agent conducting a prescribed burn in accordance with the statute is not liable for damages or injury resulting from smoke. The limitation on liability does not apply, however, where the nuisance or damage results from negligent or improper conduct of the prescribed burn.

G.S. 113-60.43 sets forth the guidelines for a prescribed burn. Subsection (a) requires that a prescription for a prescribed burn, prepared by a certified prescribed burner, be filed with the Division of Forest Resources before the burn. A certified prescribed burner is an individual who has successfully completed a certification program approved by the Division of Forest Resources. G.S. 113-60.41(1). The prescription shall include:

1. The landowner's name and address.
2. A description of the area to be burned.
3. A map of the area.
4. An estimate of the fuel tonnage in the area.

5. A list of acceptable weather conditions for the burn.
6. The certified burner responsible for the burn.
7. A summary of the methods used to start, control, and extinguish the burn.

The prescribed burning must be conducted by the certified prescribed burner who shall be present on site and in charge throughout the burn. In addition, the landowner or his agent must obtain an open burning permit from the Division of Forest Resources. The prescribed burn must be conducted in accordance with the terms of the open burning permit, all State air pollution control statutes, local open burning ordinances, the voluntary smoke management guidelines set by the Division of Forest Resources, and any rules the Division adopts to implement this Article. In any event, the terms of this article are not applicable when the Secretary of DEHNR has prohibited open burning.

The act is effective when it becomes law.

The Nature Conservancy®
NORTH CAROLINA CHAPTER

4011 University Drive
Suite 201
Durham, North Carolina
27707

TEL 919 403-8558
FAX 919 403-0379

International Headquarters
Arlington, Virginia
TEL 703 841-5300

N.C. PRESCRIBED BURNING ACT

What is the Prescribed Burning Act?

This act seeks to establish safety guidelines for prescribed burns on public and private land. The responsible use of fire reduces the buildup of natural fuel loads, enhances habitats for plant and animal populations, and improves forest resources. Under the prescribed burning act, landowners will be required to file a plan before conducting a burn. Educating the public about this practice and adopting statewide requirements governing its use will allow prescribed burning to become a more commonly used forest management practice. The Nature Conservancy, the N.C. Division of Forest Resources, the N.C. Forestry Association, the N.C. Division of Parks and Recreation, the N.C. Wildlife Resources Commission, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the U.S. Department of Defense, and others support this legislation.

What is a prescribed burn?

Prescribed burning is a land management technique used under specific conditions as outlined in a fire management plan. Prescribed burns are planned, set, and extinguished by professionally trained staff following specific guidelines for wind, temperature, humidity, and soil moisture. Its use reduces fuel loads and restores and maintains many North Carolina natural communities that need fire to survive. It is intended to imitate naturally occurring lightning fires that are frequently suppressed by human intervention. The natural areas of the southeastern United States evolved with frequent fires, as more rfrequent lightning strikes occur in this region than in any other part of North America. Fire has been an important part of North Carolina's landscape for thousands of years, and many plants and animals have come to rely on it for their survival, including the longleaf pine, the state tree.

What are the benefits of prescribed burning?

Prescribed burning is beneficial for both wildlife and human populations. Burning can significantly reduce the danger of catastrophic, uncontrolled wildfires by removing most of the fuels that might be ignited by an unintended spark during a drought. Less smoke is emitted during a prescribed burn than during a wildfire, since prescribed burns are small and controlled. Reducing the threat of wildfires makes it easier to manage provate property for timber and woldlife. Burning creates a more productive forest, with healthier trees and plants, and more forage for wildlife. Sites can be prepared for seeding and planting and competing vegetation and disease can be controlled more easily.

Why do these agencies use fire?

Prescribed burns reduce competition and hazards to forest management. They also enhance the habitat that many endangered species and game species need to survive. Quail and deer benefit from the vigorous growth that occurs after a burn. Sixty-six rare plant species are only found in fire-maintained longleaf pine forests. When fire is excluded from these communities, hardwoods such as oak, gallberry, red bay and sweetbay will quickly grow up and shade out the herbaceous plants, reducing the overall plant diversity. Frequent burning is essential for longleaf pine to thrive. The federally endangered red-cockaded woodpecker builds cavities in old-growth longleaf pines. With the understory kept more open through prescribed burns, the woodpeckers' nests are safer from predators and there is less competition from other woodpeckers that prefer shrubby habitats. Prescribed burns are performed in this habitat only after extensive scientific research indicates how, when, and where a burn may be usefully applied and safely carried out.

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What training is available for timber companies, conservation organizations, and private landowners conducting prescribed burns?

The North Carolina Forest Service provides training in how to conduct a prescribe burn and contracts to conduct these burns. Much of the N.C. Forest Service's work consists of controlling wild fires. Through education of private landowners on the benefits of prescribed burns, this agency hopes to reduce the chance of large wild fires occurring and encourage better forest management practices. The prescribed burning courses set strict standards for weather conditions and equipment in order to conduct a burn.

Are many plants killed by fire?

A prescribed burn will kill many plants that are not adapted to fire. Fire-tolerant areas contain many plants with extensive root systems. Since most of the heat from a fire is carried upward, little damage occurs to roots that are well-protected by soil. The above-ground portions of plants that are not consumed by fire may be killed by the heat or remain unscathed in patchy burns or relatively cool ground-fires. In either case, a fire quickly converts leaf and branch litter and other undecayed organic matter which a burn into ash. Nutrients in the ash are absorbed by plant roots and fertilize the vigorous new growth that usually follows a fire. As a result, an area that is repeatedly burned will eventually become dominated by fire-tolerant vegetation.

How quickly will plants recover?

During a growing season burn, regrowth usually occurs a few days after the burn. With the removal of the thatch of litter that insulates the ground, the blackened soil surface will absorb heat and warm up more rapidly than unburned areas nearby. Within days, many plants begin to send out new growth. By early summer the vegetation is often taller and more lush than it would have been without burning due to the extra fertilization. Fire stimulates flowering and fruiting of many species of grasses, sedges, and herbs. These seeds and fruits provide important food for many species of wildlife including Bachman's sparrow, black bear, fox squirrel, and bobwhite quail.

What happens to animals in a fire?

Birds and larger animals (such as rabbits and deer) can easily outdistance the flames and find cover in adjacent unburned areas. Smaller animals like mice, voles, and shrews seek shelter in underground burrows, where they can avoid the heat. Controlled burns are timed to avoid periods when young animals are likely to be vulnerable. The healthy, lush vegetation that grows after a fire often attracts more animals to browse. Since the understory is kept more open with the use of fire, red-cockaded woodpeckers' cavity nests are kept more secure from snakes and gray squirrels.

What other benefits are there from prescribed burning?

In addition to reversing the succession of woody plants, the overall diversity of plants and animals can be increased through burning. Unlike mowing, which has a uniform impact throughout an area, the variability within a burn can generate diverse conditions under which many species can thrive and reproduce. Wildlife habitat and forage are improved by burning as nutrients are cycled back into the soil. Burning also reduces diseases that may occur in trees. Longleaf pines are susceptible to fungal diseases and cone beetles that can be significantly reduced through controlled burns.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 859

Short Title: Prescribed Burning in Forests. (Public)

Sponsors: Senator Lee.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the

perpetuation, restoration, and management of many plant and animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burn in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and

Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/24/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Shepherd	EHNR - Forest Resources
Dianne Farrell	EHNR - "
Paul E Rees	N.C. Agribusiness
R Paul Wilms	NCMBA
Ruth Sappie	NCDOT
Tom Beon	NC Wildlife Federation
Glenn Dunn	Poyner & Spruill 783-2842 Raleigh
Linda Sewell	DEHNR, DEH
Doug Lassiter	N.C. Septic Tank Assoc.
Laura Hartsell	MCIC
Bob Slocum	NC Forestry Association

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/24/97

Name of Committee — (DATE)

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James E. Lee	IP
Heather Laird	OSA
Sid Harrell	Public Water Supply Section DEH - DEHNR
Peter Daniel	NCFB
David Ferrell	Hafer, McNamara, Caldwell, McElroy, & Cutler, PA
Andy Ellen	NC Farm Bureau
Patty Berry	CCNC
TANJA VUJIĆ	NCEDF
Ben Holman	CCNC/SELC/TNC
ANNA TEFFT	OSBM
Russell Hageman	EHNR, Division of Air Quality

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

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Alan Klimek	DENR - DAQ
DONNIE REDMOND	DAQ
Dan Boone	PEMC / CEC
MARC BERNSTEIN	AGO
Ed Bowser	R W Bowne
Cindy Finan	NC AWWA/WEA
Michelle Cook	Weyerhaeuser
John Long	Martin Marietta
Natalie Hoskins	Charlotte Chamber of Commerce
Jerry Arnowood	N.C. DMV

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AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.
Tony Young	NC Div of Water Resources
Tom Fransen	Div of Water Resources

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 477
Proposed Committee Substitute S477-PCS1788

Short Title: Septic Tank Systems BMPs. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO DEVELOP GUIDELINES FOR BEST MANAGEMENT PRACTICES FOR THE INSTALLATION, REPAIR, REPLACEMENT, AND MAINTENANCE OF SEPTIC SYSTEMS AND TO PROVIDE TAX CREDITS FOR IMPLEMENTING BEST MANAGEMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-345. Best Management Practices for Septic Tank Systems.**

(a) The Department shall develop guidelines for Best Management Practices for Septic Tank Systems. These guidelines shall apply to both the installation of new septic tank systems and the replacement or improvement of existing septic tank systems. These guidelines shall include standards for devices and practices relating to septic tank installation, operation, maintenance, and repair. These guidelines shall be supplemental to any rules governing the installation, operation, maintenance, or repair of septic tank systems adopted by the Commission.

(b) Devices or practices include, but are not limited to:

(1) Filters or other devices designed to improve the efficiency of septic tank systems.

(2) Risers or other devices designed to facilitate pumping.

(3) Electronic warning devices that signal when the solid or liquid waste in the system has reached a level such that the septic tank needs to be pumped.

(4) Alternative and innovative systems for improved wastewater treatment and disposal.

(5) Any other approved technology or practice that demonstrates improved efficiency for septic systems.

(c) Any person who voluntarily implements Best Management Practices for Septic Tank Systems in the installation, replacement, or improvement of a septic tank system shall be eligible to receive a tax credit for qualifying expenditures as provided in G.S. 105-151.27 or G.S. 105-130.43. Qualifying expenditures include installation, materials, and equipment costs necessary to install, replace, or improve a septic tank system in accordance with Best Management Practices for Septic Tank Systems. No tax credit shall be allowed unless the person implements all guidelines of Best Management Practices for Septic Tank Systems that apply to the particular installation, replacement, or improvement.

(d) This section shall not be construed to limit the authority of the Commission to adopt rules governing the installation, operation, maintenance, or repair of septic tank systems."

Section 2. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.27. Credit for implementation of Best Management Practices for Septic Tank Systems.**

A taxpayer who makes qualifying expenditures to implement Best Management Practices for Septic Tank Systems as provided in G.S. 130A-345 is allowed as a credit against the tax imposed by this Division an amount equal to fifty percent (50%) of the installation, materials, and equipment costs paid during the taxable year. This credit may not exceed two thousand dollars ($2,000). The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. To secure the credit allowed by this section, the taxpayer must own or control the site on which the septic tank system is installed, replaced, or improved in accordance with Best Management Practices for Septic Tank Systems at the time the septic tank system is installed, replaced, or improved."

Section 3. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.43. Credit for implementation of Best Management Practices for Septic Tank Systems.**

A taxpayer who makes qualifying expenditures to implement Best Management Practices for Septic Tank Systems as provided in G.S. 130A-345 is allowed as a credit against the tax imposed by this Division an amount equal to fifty percent (50%) of the installation, materials, and equipment costs paid during the taxable year. This credit may not exceed two thousand dollars ($2,000). The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. To secure the credit allowed by this section, the taxpayer must own or control the site on which the septic tank system is installed, replaced, or

improved in accordance with Best Management Practices for Septic Tank Systems at the time the septic tank system is installed, replaced, or improved."

Section 4. Section 1 of this act is effective when it becomes law. Sections 2 and 3 of this act are effective for taxable years beginning on or after 1 January of the year following the year in which the Department of Environment, Health, and Natural Resources certifies to the Department of Revenue that guidelines for Best Management Practices for Septic Tank Systems have been developed, but in no event prior to 1 January 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 477

Short Title: Septic Tank Systems BMPs. (Public)

Sponsors: Senator Perdue.

Referred to: Agriculture/Environment/Natural Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO DEVELOP GUIDELINES FOR BEST MANAGEMENT PRACTICES FOR THE INSTALLATION, REPAIR, REPLACEMENT, AND MAINTENANCE OF SEPTIC SYSTEMS AND TO PROVIDE TAX CREDITS FOR IMPLEMENTING BEST MANAGEMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 130A is amended by adding a new section to read:

"**§ 130A-345. Best Management Practices for Septic Tank Systems.**

(a) The Department shall develop guidelines for Best Management Practices for Septic Tank Systems Related to Water Quality. The guidelines shall include practices or devices concerning: (i) installing septic tank systems for new home construction, or (ii) replacing or retrofitting septic systems at existing homes.

(b) The devices or practices shall include, but not be limited to:

(1) Filters or other devices designed to improve the efficiency of septic tank systems.

(2) Risers or other devices designed to facilitate pumping.

(3) Electronic warning devices that signal when the solid or liquid waste in the system has reached a level that the septic tank needs to be pumped.

(4) Alternative and innovative systems for improved wastewater treatment and disposal.

(5) Any other approved technology that demonstrates improved efficiency for septic systems.

(c) Any person who voluntarily implements Best Management Practices for Septic Tank Systems shall be eligible to receive a tax credit under G.S. 105-151.27 or G.S. 105-130.43."

Section 2. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.27. Credit for implementation of Best Management Practices for Septic Tank Systems.**

A taxpayer who makes qualifying expenditures to implement Best Management Practices for Septic Tank Systems under G.S. 130A-345 is allowed as a credit against the tax imposed by this Division an amount equal to fifty percent (50%) of the installation, materials, and equipment costs paid during the taxable year. This credit may not exceed two thousand dollars ($2,000). The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the Best Management Practices are installed."

Section 3. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.43. Credit for implementation of Best Management Practices for Septic Tank Systems.**

A taxpayer who makes qualifying expenditures to implement Best Management Practices for Septic Tank Systems under G.S. 130A-345 is allowed as a credit against the tax imposed by this Division an amount equal to fifty percent (50%) of the installation, materials, and equipment costs paid during the taxable year. This credit may not exceed two thousand dollars ($2,000). The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the Best Management Practices are installed."

Section 4. Section 1 of this act is effective when it becomes law. Sections 2 and 3 of this act are effective for taxable years beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 845
Proposed Committee Substitute S845-PCS2734

Short Title: Study I & M Program. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION AND THE DIVISION OF AIR QUALITY OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, WITH THE ASSISTANCE AND COOPERATION OF THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF TRANSPORTATION, TO STUDY THE COSTS AND BENEFITS OF EXPANDING THE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM FOR MOTOR VEHICLES, TO IMPROVE COMPLIANCE WITH THE CURRENT EMISSIONS INSPECTION AND MAINTENANCE PROGRAM, AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY WHETHER THE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM SHOULD BE TRANSFERRED FROM THE DIVISION OF MOTOR VEHICLES TO THE DIVISION OF AIR QUALITY.

The General Assembly of North Carolina enacts:

Section 1. The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, shall study whether the emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes should be expanded to include all metropolitan counties. The study shall evaluate the costs and benefits of expanding the program, including the benefits resulting from a reduction in the

likelihood that those counties will not meet the national ambient air quality standards for ozone and carbon monoxide in the future, thereby incurring the restrictions on industries, power plants, vehicles, and other activities that apply to nonattainment counties. Beginning 1 January 1998, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the matters to be evaluated pursuant to this section to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b).

Section 2. The Environmental Management Commission, the Division of Air Quality of the Department of Environment, Health, and Natural Resources, and the Division of Motor Vehicles of the Department of Transportation shall take appropriate steps to ensure that the current emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes is effectively implemented and enforced. Beginning 1 October 1997, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the implementation and enforcement of the emissions inspection and maintenance program to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b). The Division of Motor Vehicles shall report on its progress in meeting the requirements of this section to the Environmental Review Commission on a quarterly basis beginning 1 October 1997.

Section 3. The Environmental Review Commission shall study the administration of the emissions inspection and maintenance program for motor vehicles under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes and whether that program should be transferred from the Division of Motor Vehicles of the Department of Transportation to the Environmental Management Commission and the Division of Air Quality in the Department of Environment, Health, and Natural Resources. The Environmental Review Commission shall report its findings, recommendations, and legislative proposals, if any, to the 1998 Regular Session of the General Assembly.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 845

Short Title: Study Need to Expand I & M Program. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION AND THE DIVISION OF AIR QUALITY OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO JOINTLY STUDY THE COSTS AND BENEFITS OF EXPANDING THE INSPECTION AND MAINTENANCE PROGRAM FOR MOTOR VEHICLES AND TO ENSURE COMPLIANCE WITH THE CURRENT INSPECTION AND MAINTENANCE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources shall jointly evaluate the costs and benefits of expanding the inspection and maintenance program for motor vehicles under Article 3A of Chapter 20 of the General Statutes to all metropolitan counties in order to reduce the likelihood in the future of those counties not maintaining the national ambient air quality standards for ozone and carbon monoxide, thereby encountering restrictions on industries, power plants, vehicles, and other activities in nonattainment counties. Beginning January 1, 1998, the Environmental Management Commission shall provide reports on the findings, recommendations, and any legislative proposals to the Environmental Review Commission as part of its quarterly report to that Commission.

Section 2. The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources jointly shall take appropriate steps to ensure that the current inspection and maintenance program for motor vehicles under Article 3A of Chapter 20 of the

General Statutes is effectively implemented and enforced. The Environmental Management Commission shall report its findings and recommendations under this section in the same manner and according to the same report schedule set forth under Section 1 of this act.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 193

Short Title: Fund Evaluation of Septic Tank Problems. (Public)

Sponsors: Senators Albertson; Dannelly, Hoyle, Jordan, Odom, Perdue, Rand, and Warren.

Referred to: Appropriations.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO EVALUATE SEPTIC TANKS IN THE NEUSE RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars ($150,000) for the 1997-98 fiscal year to be used to evaluate septic tanks in the Neuse River Basin including: (i) the number of septic tanks; (ii) the condition of the tanks; (iii) potential groundwater contamination from malfunctioning septic tank systems; (iv) impact of hurricane damage and flooding on septic tank systems; (v) the cost to repair or replace septic tanks; and (vi) viable alternatives to septic tanks.

Section 2. The Department shall report its findings on septic tanks to the Environmental Review Commission on or before December 1, 1997. The Environmental Review Commission shall report on its findings and recommendations to the General Assembly on the first day of the 1997 (1998 Regular Session) Legislative Session.

Section 3. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 194*

Short Title: Amend Env. Laws. (Public)

Sponsors: Senators Albertson; Dannelly, Hoyle, Jordan, Odom, Perdue, Rand, and Warren.

Referred to: Agriculture/Environment/Natural Resources.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Renewal of certificates.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to

any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Commission shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of

the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 6. This act is effective when it becomes law.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 28, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Monday, April 28, 1997, at 4:00 p.m., in Room 1142 of the Legislative Building. Senator Albertson, chairman, presided and there were ten committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

SENATE BILL 918 - NOTICE OF HAZARDOUS DISCHARGE - Senator Phillips, sponsor, said there was proposed committee substitute for this bill and moved that the PCS be adopted for discussion purposes. Motion carried. After discussion, Senator Weinstein moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 859 - PRESCRIBED BURNING IN FORESTS - Senator Lee, sponsor, was recognized to explain the bill. Senator Odom sent forth an amendment and moved for its adoption. Motion carried. After discussion, Senator Odom moved that the bill be given a favorable report, as amended. Motion carried.

SENATE BILL 193 - FUND EVALUATION OF SEPTIC TANK PROBLEMS - Senator Albertson, sponsor, called on Senator Horton, Vice Chairman, to chair the committee so that Senator Albertson could explain his bill. He said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. After discussion, Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion passed and it was sequentially referred to Appropriations.

SENATE BILL 194 - AMEND ENV. LAWS - (**NOTE:** at the committee meeting on April 22, a proposed committee substitute for this bill had been given a favorable report, but the Attorney General's office had requested that the bill not be reported out of committee so that some problems could be worked out.) Senator Albertson, sponsor, said that there was a "new" proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. Senator Horton continued to chair the committee. Senator Odom moved that the vote taken on this bill at the meeting on April 22 be reconsidered. Motion carried. Allen Jernigan of the Attorney General's office answered questions from the committee as did Al Klimek of the Division of Water Quality of DEHNR. Senator Odom moved that this proposed

committee substitute be given a favorable report, unfavorable as to previous proposed committee substitute (which was given a favorable report on April 22). Motion passed.

Senator Albertson resumed chairmanship of the committee.

SENATE BILL 947 - AMEND INTERBASIN TRANSFERS - Senator Cochrane, sponsor, said that this bill would be sent to the Environmental Review Commission and that a "temporary" moratorium would be placed on the bill.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Monday, April 28, 1997
4:00 p.m.
Room 1142 LB

AGENDA

SB 193	FUND EVALUATION OF SEPTIC TANK PROBLEMS Senator Albertson
SB 194	AMEND ENV. LAWS Senator Albertson
SB 859	PRESCRIBED BURNING IN FORESTS Senator Lee
SB 918	NOTICE OF HAZARDOUS DISCHARGE Senator Phillips
SB 947	AMEND INTERBASIN TRANSFERS Senator Cochrane

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, April 28, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

S.B. **859** PRESCRIBED BURNING IN FORESTS
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **193** FUND EVALUATION OF SEPTIC TANK PROBLEMS
Draft Number: PCS8681
Sequential Referral: Appropriations
Recommended Referral: None
Long Title Amended: Yes

S.B. **194** AMEND ENV. LAWS
Draft Number: PCS4590
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **918** NOTICE OF HAZARDOUS DISCHARGE
Draft Number: PCS2738
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 918
Proposed Committee Substitute S918-PCS2738

Short Title: Notice of Hazardous Discharge. (Public)

Sponsors:

Referred to:

April 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.85 reads as rewritten:

"**§ 143-215.85. Required notice.**

(a) Every person owning or having control over a reportable quantity of oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board;

provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) Any person who owns or has control over oil or other hazardous substance that is discharged and who is not required to notify the Department of the discharge under subsection (a) of this section shall comply with the removal and restoration provisions of G.S. 143-215.84.

(c) As used in subsection (a) of this section, 'reportable quantity' means:

(1) Any amount of oil discharged into the waters of the State;

(2) Five gallons or more of oil discharged in any manner that makes it reasonably likely for any amount of the oil to reach the waters of the State; or

(3) Any amount of a hazardous substance discharged in a quantity equal to or greater than the reportable quantity, as defined in federal regulations adopted pursuant to 33 U.S.C. § 1321(b)(2)(A), including Part 302 of 40 Code of Federal Regulations (1 July 1996 Edition), and in comparable rules adopted by the Commission."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 918

Short Title: Notice of Hazardous Discharge. (Public)

Sponsors: Senators Phillips; Ballance, Blust, Dalton, Foxx, Garwood, Gulley, Hartsell, Horton, Hoyle, Jenkins, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Miller, Rand, Rucho, Shaw of Cumberland, Warren, Weinstein, and Wellons.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.85 reads as rewritten:

"**§ 143-215.85. Required notice.**

(a) Every person owning or having control over ~~oil or other substances discharged in any circumstances~~

(1) Any amount of oil discharged into the waters of the State;

(2) Discharged oil in the amount of five gallons or more that is reasonably likely to reach the waters of the State; or

(3) Any hazardous substance discharged in an amount greater than the reportable quantity, as defined in 33 U.S.C. § 1321(b)(2)(A);

other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or

employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

(b) Any person who owns or has control over oil or other hazardous substance that is discharged and who is not required under subsection (a) of this section to notify the Department of the discharge shall comply with the removal and restoration provisions of G.S. 143-215.84."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 28, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping

Re: **Proposed Committee Substitute for SB 918 - Notice of Hazardous Discharge**

Senate Bill 918 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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 859

Short Title: Prescribed Burning in Forests. (Public)

Sponsors: Senator Lee.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the

perpetuation, restoration, and management of many plant and animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burn in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

"§ 113-60.43. Prescribed burning.

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and

Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 859

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

S859-ARF-01

Date 4/28 ,1997

Comm. Sub. []
Amends Title []

Senator Odom

moves to amend the bill on page 3, between lines 23 and 24, by adding a new subdivision to read:

"(9) Provision for reasonable notice of the prescribed burn to be provided to ~~adjacent~~ nearby homes and businesses to avoid adverse effects on health and property."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 859: Prescribed Burning

Senate Bill 859, introduced by Senator Lee, adds a new article to Chapter 113 of the General Statutes that sets forth conditions for conducting a prescribed burn and limits the liability for nuisance and smoke damage for persons conducting a prescribed burn according to the statutory guidelines.

A "prescribed burn" is a planned and controlled application of fire to naturally occurring vegetative fuels under safe conditions and following appropriate measures to confine the fire to a predetermined area.

New G.S. 113-60.42 provides that a prescribed burning conducted pursuant to the statutory guidelines is in the public interest. As such, it does not constitute a public or private nuisance and a landowner or his agent conducting a prescribed burn in accordance with the statute is not liable for damages or injury resulting from smoke. The limitation on liability does not apply, however, where the nuisance or damage results from negligent or improper conduct of the prescribed burn.

G.S. 113-60.43 sets forth the guidelines for a prescribed burn. Subsection (a) requires that a prescription for a prescribed burn, prepared by a certified prescribed burner, be filed with the Division of Forest Resources before the burn. A certified prescribed burner is an individual who has successfully completed a certification program approved by the Division of Forest Resources. G.S. 113-60.41(1). The prescription shall include:

1. The landowner's name and address.
2. A description of the area to be burned.
3. A map of the area.
4. An estimate of the fuel tonnage in the area.

5. A list of acceptable weather conditions for the burn.
6. The certified burner responsible for the burn.
7. A summary of the methods used to start, control, and extinguish the burn.

The prescribed burning must be conducted by the certified prescribed burner who shall be present on site and in charge throughout the burn. In addition, the landowner or his agent must obtain an open burning permit from the Division of Forest Resources. The prescribed burn must be conducted in accordance with the terms of the open burning permit, all State air pollution control statutes, local open burning ordinances, the voluntary smoke management guidelines set by the Division of Forest Resources, and any rules the Division adopts to implement this Article. In any event, the terms of this article are not applicable when the Secretary of DEHNR has prohibited open burning.

The act is effective when it becomes law.

The Nature Conservancy®
NORTH CAROLINA CHAPTER

4011 University Drive
Suite 201
Durham, North Carolina
27707

TEL 919 403-8558
FAX 919 403-0379

International Headquarters
Arlington, Virginia
TEL 703 841-5300

N.C. PRESCRIBED BURNING ACT

What is the Prescribed Burning Act?

This act seeks to establish safety guidelines for prescribed burns on public and private land. The responsible use of fire reduces the buildup of natural fuel loads, enhances habitats for plant and animal populations, and improves forest resources. Under the prescribed burning act, landowners will be required to file a plan before conducting a burn. Educating the public about this practice and adopting statewide requirements governing its use will allow prescribed burning to become a more commonly used forest management practice. The Nature Conservancy, the N.C. Division of Forest Resources, the N.C. Forestry Association, the N.C. Division of Parks and Recreation, the N.C. Wildlife Resources Commission, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the U.S. Department of Defense, and others support this legislation.

What is a prescribed burn?

Prescribed burning is a land management technique used under specific conditions as outlined in a fire management plan. Prescribed burns are planned, set, and extinguished by professionally trained staff following specific guidelines for wind, temperature, humidity, and soil moisture. Its use reduces fuel loads and restores and maintains many North Carolina natural communities that need fire to survive. It is intended to imitate naturally occurring lightning fires that are frequently suppressed by human intervention. The natural areas of the southeastern United States evolved with frequent fires, as more rfrequent lightning strikes occur in this region than in any other part of North America. Fire has been an important part of North Carolina's landscape for thousands of years, and many plants and animals have come to rely on it for their survival, including the longleaf pine, the state tree.

What are the benefits of prescribed burning?

Prescribed burning is beneficial for both wildlife and human populations. Burning can significantly reduce the danger of catastrophic, uncontrolled wildfires by removing most of the fuels that might be ignited by an unintended spark during a drought. Less smoke is emitted during a prescribed burn than during a wildfire, since prescribed burns are small and controlled. Reducing the threat of wildfires makes it easier to manage provate property for timber and woldlife. Burning creates a more productive forest, with healthier trees and plants, and more forage for wildlife. Sites can be prepared for seeding and planting and competing vegetation and disease can be controlled more easily.

Why do these agencies use fire?

Prescribed burns reduce competition and hazards to forest management. They also enhance the habitat that many endangered species and game species need to survive. Quail and deer benefit from the vigorous growth that occurs after a burn. Sixty-six rare plant species are only found in fire-maintained longleaf pine forests. When fire is excluded from these communities, hardwoods such as oak, gallberry, red bay and sweetbay will quickly grow up and shade out the herbaceous plants, reducing the overall plant diversity. Frequent burning is essential for longleaf pine to thrive. The federally endangered red-cockaded woodpecker builds cavities in old-growth longleaf pines. With the understory kept more open through prescribed burns, the woodpeckers' nests are safer from predators and there is less competition from other woodpeckers that prefer shrubby habitats. Prescribed burns are performed in this habitat only after extensive scientific research indicates how, when, and where a burn may be usefully applied and safely carried out.

recycled paper

What training is available for timber companies, conservation organizations, and private landowners conducting prescribed burns?

The North Carolina Forest Service provides training in how to conduct a prescribe burn and contracts to conduct these burns. Much of the N.C. Forest Service's work consists of controlling wild fires. Through education of private landowners on the benefits of prescribed burns, this agency hopes to reduce the chance of large wild fires occurring and encourage better forest management practices. The prescribed burning courses set strict standards for weather conditions and equipment in order to conduct a burn.

Are many plants killed by fire?

A prescribed burn will kill many plants that are not adapted to fire. Fire-tolerant areas contain many plants with extensive root systems. Since most of the heat from a fire is carried upward, little damage occurs to roots that are well-protected by soil. The above-ground portions of plants that are not consumed by fire may be killed by the heat or remain unscathed in patchy burns or relatively cool ground-fires. In either case, a fire quickly converts leaf and branch litter and other undecayed organic matter which a burn into ash. Nutrients in the ash are absorbed by plant roots and fertilize the vigorous new growth that usually follows a fire. As a result, an area that is repeatedly burned will eventually become dominated by fire-tolerant vegetation.

How quickly will plants recover?

During a growing season burn, regrowth usually occurs a few days after the burn. With the removal of the thatch of litter that insulates the ground, the blackened soil surface will absorb heat and warm up more rapidly than unburned areas nearby. Within days, many plants begin to send out new growth. By early summer the vegetation is often taller and more lush than it would have been without burning due to the extra fertilization. Fire stimulates flowering and fruiting of many species of grasses, sedges, and herbs. These seeds and fruits provide important food for many species of wildlife including Bachman's sparrow, black bear, fox squirrel, and bobwhite quail.

What happens to animals in a fire?

Birds and larger animals (such as rabbits and deer) can easily outdistance the flames and find cover in adjacent unburned areas. Smaller animals like mice, voles, and shrews seek shelter in underground burrows, where they can avoid the heat. Controlled burns are timed to avoid periods when young animals are likely to be vulnerable. The healthy, lush vegetation that grows after a fire often attracts more animals to browse. Since the understory is kept more open with the use of fire, red-cockaded woodpeckers' cavity nests are kept more secure from snakes and gray squirrels.

What other benefits are there from prescribed burning?

In addition to reversing the succession of woody plants, the overall diversity of plants and animals can be increased through burning. Unlike mowing, which has a uniform impact throughout an area, the variability within a burn can generate diverse conditions under which many species can thrive and reproduce. Wildlife habitat and forage are improved by burning as nutrients are cycled back into the soil. Burning also reduces diseases that may occur in trees. Longleaf pines are susceptible to fungal diseases and cone beetles that can be significantly reduced through controlled burns.

BILL
Prescribed Burning in Forests

NARRATIVE - This bill would not affect open burning or liability under the States' current laws. However, the bill would provide limited liability from smoke resulting from prescribed burning under new requirements for planning and managing a burn. Prescribed fire (planned reduction of forest fuels, under prescription, using controlled burning) is used to reduce the occurrence and destruction of forest land and woodland homes from uncontrolled forest fires, promote habitats for plants and animals, reduce forest insect and disease populations, prepare harvested forest areas for natural or artificial regeneration and improve private woodlands multi-use potentials.

Q- Would an individual be required to burn only under this law?
A- No. Only if the individual wished to have his/her smoke liability reduced.

Q- What is a certified burner?
A- A private landowner, forest consultant or private industry representative who completes a training program, designed and conducted by the NC Division of Forest Resources using existing resources.

Q- What does the certified burning training consist of?
A- Although not completed at this time, the certified burning training would follow similar training criteria as the existing Burning Manager program adopted and in use by the NC Division of Forest Resources.

Q- Why is it necessary to include limited immunity from liability in the bill?
A- Without any type of liability exclusion, there is no incentive to have a certified prescribed burner conducting a burn. Burning can presently be conducted by and would continue to be conducted by any individual who obtains a valid burning permit, under the state's current law.

Q- What restrictions must a certified burner comply with prior to burning?
A- Must have completed the certified burner training program, must obtain a valid burning permit and notify adjacent landowners, must comply with smoke management guidelines, including the prescription that smoke sensitive areas are not impacted, must ensure that weather conditions prescribed in the burning plan are present during the burning, must comply with Environmental Management rules and regulations, must comply with any local ordinances and must stay with the burn until the burn is completed.

Q- Does limited immunity from liability from smoke resulting from the burn relieve the certified burner from damage from the prescribed burning.
A- Not when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

Q- Who is liable if negligence is found or improper execution of the burn takes place.
A- The person who conducts the prescribed burn. This would be the landowner if the landowner is the certified burner conducting the burn. Otherwise the prescribed burner would be liable.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 193
Proposed Committee Substitute S193-PCS8681

Short Title: Fund On-Site Wastewater Systems Study. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO EVALUATE THE USE OF ON-SITE WASTEWATER MANAGEMENT SYSTEMS IN THE STATE.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated to the Board of Governors of The University of North Carolina the sum of two hundred thousand dollars ($200,000) for the 1998-99 fiscal year to be allocated to the Agricultural Research Service in the College of Agriculture and Life Sciences at North Carolina State University to be used to evaluate the functioning of on-site wastewater management systems in various watersheds and river basins of the State. This study:

(1) Shall determine which watersheds or river basins are most susceptible to environmental degradation from existing conventional septic and other types of on-site wastewater management systems in order to target future placement of enhanced on-site wastewater management technologies and strategies. In conducting the study, the Agricultural Research Service should identify one or more benchmark watersheds or subbasins for in-depth characterization of the impact of on-site wastewater management systems.

(2) Shall consider the best available data, including findings from previous studies, to analyze the functioning and impact on the

environment, including groundwater and surface water, of various on-site wastewater management systems.

(3) May examine the need for operator training and for public education to improve the effectiveness of on-site wastewater management systems.

Section 2. The Agricultural Research Service shall ensure that the confidentiality of any information supplied by, or collected about, any individual who voluntarily participates in the study authorized by Section 1 of this act is preserved.

Section 3. The Board of Governors of The University of North Carolina shall report its findings and recommendations concerning the study authorized by Section 1 of this act to the Environmental Review Commission on or before 1 January 2000. The Environmental Review Commission shall evaluate this report and make its findings and recommendations, if any, to the 2000 Regular Session of the 1999 General Assembly.

Section 4. This act becomes effective 1 July 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 193

Short Title: Fund Evaluation of Septic Tank Problems. (Public)

Sponsors: Senators Albertson; Dannelly, Hoyle, Jordan, Odom, Perdue, Rand, and Warren.

Referred to: Appropriations.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO EVALUATE SEPTIC TANKS IN THE NEUSE RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars ($150,000) for the 1997-98 fiscal year to be used to evaluate septic tanks in the Neuse River Basin including: (i) the number of septic tanks; (ii) the condition of the tanks; (iii) potential groundwater contamination from malfunctioning septic tank systems; (iv) impact of hurricane damage and flooding on septic tank systems; (v) the cost to repair or replace septic tanks; and (vi) viable alternatives to septic tanks.

Section 2. The Department shall report its findings on septic tanks to the Environmental Review Commission on or before December 1, 1997. The Environmental Review Commission shall report on its findings and recommendations to the General Assembly on the first day of the 1997 (1998 Regular Session) Legislative Session.

Section 3. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

April 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute (Fund On-site Wastewater Systems Study) for Senate Bill 193 (Fund Evaluation of Septic Tank Problems)

Proposed Committee Substitute for Senate Bill 193

Section 1 appropriates one hundred fifty thousand dollars ($150,000) for the 1998-99 fiscal year to the Board of Governors of The University of North Carolina to be allocated to the Agricultural Research Service at North Carolina State University to be used to evaluate the functioning of on-site wastewater management systems across the State. This study: (i) will determine which watersheds or river basins are most susceptible to environmental degradation from conventional on-site wastewater management systems (including septic systems); (ii) will consider the best available data (including previous studies) to analyze the impact on the environment and water quality of various on-site wastewater management systems; and (iii) may examine the need for operator training and public education to improve the effectiveness of on-site wastewater management systems.

Section 2 directs the Agricultural Research Service to ensure that the confidentiality of information supplied by or collected about an individual who voluntarily participates in the study is preserved.

Section 3 directs the Board of Governors of The University of North Carolina to report its findings and recommendations concerning the study of on-site wastewater management systems to the Environmental Review Commission on or before January 1, 2000. Section 3 also directs the Environmental Review Commission to evaluate the Board of Governors' report and to make findings and recommendations, if any, to the 2000 Regular Session of the 1999 General Assembly.

Section 4 makes the act effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 194*
Proposed Committee Substitute S194-PCS4590

Short Title: Amend Env. Laws. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; AND (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit

plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct

a hearing shall report the hearing with its evidence and record to the Commission."

Section 6.1. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 6.2. G.S. 143-215.112(d)(1a) reads as rewritten:

"(1a) Each governing body, or its authorized agent, shall have the power to assess civil penalties under G.S. 143-215.114A. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the governing body or its authorized agent within 30 days after receipt of notice, or such longer period not to exceed 180 days as the governing body or its authorized agent may specify, the governing body may institute a civil action in the superior court of the county in which the violation occurred, to recover the amount of the assessment. ~~Each day of continuing violation after written notification from the governing body or its authorized agent shall be considered a separate offense.~~ If any action or failure to act for which a penalty may be assessed under this section is continuous, the governing body or its authorized agent may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. In determining the amount of the penalty, the governing body or its authorized agent shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements."

Section 7. G.S. 143B-291 reads as rewritten:

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

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management~~

~~Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.

(3) One member who is a representative of the mining industry.

(4) One member who is a representative of the mining industry.

(5) One member who is a representative of nongovernmental conservation interests.

(6) One member who is a representative of nongovernmental conservation interests.

(7) One member who is a representative of nongovernmental conservation interests.

(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. -- The Governor ~~shall have the power to~~ may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in

accordance with the provisions of ~~G.S. 143B-13 of the Executive Organization Act of 1973.~~ G.S. 143B-13.

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 8. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 9. G.S. 143B-313.2 reads as rewritten:

"**§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.**

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 10. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 9 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 11. This act is effective when it becomes law.

OLD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 194*
Proposed Committee Substitute S194-PCS6648

Short Title: Amend Env. Laws. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; AND (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit

plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. ~~The notice required herein~~ Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

"(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. ~~Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the~~ The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct

a hearing shall report the hearing with its evidence and record to the Commission."

Section 6. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 7. G.S. 143B-291 reads as rewritten:

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

(a) Members, Selection. -- The North Carolina Mining Commission shall consist of nine members appointed by the ~~Governor. The Commission shall be composed of the following: one~~ Governor under a specified subdivision of this subsection as follows:

(1) One member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio. ~~Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.~~

(2) One member who is a representative of the mining industry.

(3) One member who is a representative of the mining industry.

(4) One member who is a representative of the mining industry.

(5) One member who is a representative of nongovernmental conservation interests.

(6) One member who is a representative of nongovernmental conservation interests.

(7) One member who is a representative of nongovernmental conservation interests.

(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.

~~The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The~~

~~remaining initial members shall be appointed by the Governor to staggered terms of six years.~~

(b) Terms. -- The term of office of a member of the Commission is six years. ~~Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.~~ At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years. The term of members appointed under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (4), (7), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

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

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

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

(g) Staff. -- All clerical and other services required by the Commission shall be supplied by the Secretary of the Department."

Section 8. In order to reestablish a schedule of six-year staggered terms for the Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act, the Governor, in making appointments to replace the two members of the Mining Commission who represent the mining industry and whose terms both expire on 30 June 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a four-year term expiring 30 June 2001.

Section 9. G.S. 143B-313.2 reads as rewritten:

"§ 143B-313.2. North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.

(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. ~~Three members shall be appointed by the Governor, four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the~~

~~House of Representatives in accordance with G.S. 120-121, and four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly.~~ In making appointments, each appointing authority shall specify under which subdivision of this subsection the person is appointed. Members shall be appointed as follows:

(1) One member appointed by the Governor.

(2) One member appointed by the Governor.

(3) One member appointed by the Governor.

(4) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(5) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(6) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

(8) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(9) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(10) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(11) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

(b) Terms. -- Members shall serve two-year terms. Members shall serve no more than two full two-year terms. Upon the expiration of a two-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under odd-numbered subdivisions of subsection (a) of this section shall expire on 30 June of odd-numbered years. The

term of members appointed under even-numbered subdivisions of subsection (a) of this section shall expire on 30 June of even-numbered years.

(c) Chair. -- The Governor shall appoint one member of the North Carolina Parks and Recreation Authority to serve as Chair.

(d) Vacancies. -- A vacancy on the North Carolina Parks and Recreation Authority shall be filled by the appointing authority responsible for making the appointment to that position as provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(e) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance.

~~(e)~~ (f) Compensation. -- The members of the North Carolina Parks and Recreation Authority shall receive per diem and necessary travel and subsistence expenses according to the provisions of G.S. 138-5.

(g) Meetings. -- The North Carolina Parks and Recreation Authority shall meet at least quarterly at a time and place designated by the Chair.

~~(d)~~ (h) Quorum. -- A majority of the North Carolina Parks and Recreation Authority shall constitute a quorum for the transaction of business.

~~(e)~~ (i) Staff. -- All clerical and other services required by the North Carolina Parks and Recreation Authority shall be provided by the Secretary of Environment, Health, and Natural Resources."

Section 10. In order to reestablish a schedule of two-year staggered terms for the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as amended by Section 9 of this act:

(1) The Governor, in making appointments to replace the one member of the North Carolina Parks and Recreation Authority appointed by the Governor whose term expires on 30 June 1997, shall appoint a member under G.S. 143B-313.2(a)(1) to a full two-year term expiring on 30 June 1999.

(2) The Governor, in making appointments to replace the two members of the North Carolina Parks and Recreation Authority appointed by the Governor whose terms expire on 30 June 1998, shall appoint one member under G.S. 143B-313.2(a)(2) to a full two-year term expiring on 30 June 2000 and shall appoint one member under G.S. 143B-313.2(a)(3) to a one-year term expiring 30 June 1999.

(3) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(4) and G.S 143B-313.2(a)(6) to full

two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(5) and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.

(4) The General Assembly, in making appointments to replace the four members of the North Carolina Parks and Recreation Authority appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate whose terms expire on 30 June 1998, shall appoint two members under G.S. 143B-313.2(a)(8) and G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June 2000 and shall appoint two members under G.S. 143B-313.2(a)(9) and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June 1999.

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 194*

Short Title: Amend Env. Laws. (Public)

Sponsors: Senators Albertson; Dannelly, Hoyle, Jordan, Odom, Perdue, Rand, and Warren.

Referred to: Agriculture/Environment/Natural Resources.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Renewal of certificates.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to

any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Commission shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of

the notice one time in a newspaper having general 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 hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4).

(4) The Commission may hold a public meeting on any matter within its scope of authority. The Commission may hold a public meeting in addition to any public hearing that is required under any provision of law, but a public meeting may not be substituted for any required public hearing. Except as may be otherwise provided by law, the Commission may determine the procedures for any public meeting it holds."

Section 5. G.S. 143-215.114A(b) reads as rewritten:

"(b) ~~Each day of continuing violation after written notification from the Secretary shall be considered a separate offense.~~ 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."

Section 6. This act is effective when it becomes law.

MICHAEL F. EASLEY
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

REPLY TO: J. Allen Jernigan
Environmental Division
Tel: (919) 733-7247
Fax: (919) 733-0791

April 22, 1997

The Honorable Charles W. Albertson
North Carolina Senate
North Carolina General Assembly
Raleigh, North Carolina 27602

RE: Advisory Opinion: Senate Bill 194, Amend Environmental Laws; N.C.G.S. § 143-215.114(b)

Dear Senator Albertson:

This responds to a question raised today in the Senate Committee on Agriculture, Environment, and Natural Resources regarding the provision of Senate Bill 194 (Amend Environmental Laws) which would amend N.C.G.S. § 143-215.114(b), governing the assessment of continuing penalties for air quality violations. The statute at subsection (a) presently provides for a maximum penalty of $10,000 for various enumerated types of violations. The purpose of the amendment is to clarify that subsection (b) allows continuing violations to be assessed from date the violation begins, not from the date that the violator actually receives a written notice of violation, which could be a significant time after the violation, depending on when it is discovered.

Although DEHNR and this office have consistently construed the air statute, like the water and groundwater statutes, to allow the assessment of up to $10,000 per day for continuing violations from the date of violation, some air quality violators have recently contested continuing penalties by arguing that the air statute only authorizes the assessment of continuing penalties from the date the notice of violation was received, as opposed to the date that the continuing violation began. Their argument relied largely on this inadvertent difference between these provisions. The inconsistency originated in early versions of the air statute, and was carried forward in the 1990 amendments which consolidated, clarified and recodified the Environmental Management Commission's civil penalty powers, and in the 1991 bill to comply with the federal 1990 Clean Air Act Amendments. 1989 Sess. Laws (Reg. Sess., 1990), chapters 1036 and 1045; Sess. Laws 1991, ch. 552, sec. 4.

The State must have "authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation," in order to comply with section 502(b)(5)(E) of the federal 1990 Clean Air Act Amendments. This is a mandatory requirement for approval of the

State's Title V Operating Permits Program. 40 C.F.R. § 70.11(a)(3)(i). The U.S. Environmental Protection Agency has previously advised the State that the inability to assess continuing violations from the date of violation will result in disapproval of that part of the State's Title V permitting program. EPA has the authority to sanction the State for such noncompliance, including the loss of federal highway funds and additional requirements on industries located in nonatttainment areas. EPA would also be able to assess the penalties itself, which would then be litigated in federal, rather than State court.

We hope this information is useful to you. Please advise if we may be of further assistance.

Very truly yours,

Daniel C Oakley

Daniel C. Oakley
Senior Deputy Attorney General

J. Allen Jernigan
Special Deputy Attorney General

cc: Andrew A. Vanore, Jr.
Jane P. Gray
Henry Lancaster
Richard Whisnant
Linda Rimer'
Alan Klimek
EP\16565

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 947

Short Title: Amend Interbasin Transfers. (Public)

Sponsors: Senators Cochrane; Clark, Conder, East, Foxx, Horton, Jordan, Kincaid, Rand, Soles, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN AN INTERBASIN TRANSFER PERMIT, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ISSUE SPECIAL ORDERS FOR INTERBASIN TRANSFER VIOLATIONS, AND TO LIMIT THE TOTAL AMOUNT OF WATER THAT MAY BE TRANSFERRED OUT OF ANY RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that the ~~potential detriments of the proposed transfer outweigh the~~ benefits of the ~~transfer.~~ proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7

shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment, Health, and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment, Health, and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment, Health, and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment, Health, and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment, Health, and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The amount of water transferred out of any river basin as a result of the aggregate of interbasin transfers in that basin shall not exceed two percent (2%) of the seven-day 10-year low flow of the river.

(l) The Commission may issue, modify, or revoke, a special order, or other appropriate instrument, to any person whom it finds in violation of this section. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the violation. The Commission may enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for the violation, subject to the provisions of G.S. 143-215.2(a1) and (b) regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

Any person who complies with the terms of, or as a result of the conditions specified in, a permit issued pursuant to this section, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to this section, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the regulation of interbasin transfers, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when the special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The action taken results in the elimination or alleviation of the detriment caused by the violation to the extent required by the permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) The person complies with the terms and conditions of the permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/28/96

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rolf Blizzard	Sen. Basnight's Office
Tom Bean	NC Wildlife Federation
Jon Holman	CCNC / Sierra Club
Stan Adams	EHNR - Forestry
John Shepherd	"
Dianne Parrish	"
Kim Smith	NCLM
Jana Hartsell	MCIC
Patty Berry	CCNC
Tanja Vujic	NCEDF
Glenn Dunn	Poyner & Spruill

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NC Petroleum Marketers Assoc.
Doug Howey	"
Tom Fransen	NC Division of Water Resources
Tony Young	"
John Morris	EHNR
Lind Small	EHNR/DEH
PG	Farm Bureau
Peter Zamil	NCDA
ANNA TEFFT	OSBM
Mac Boxley	N.C. Aggregates Assoc.
John Long	Martin Marietta

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bowen	R N Boone
Suzanne Williams	Boone Assoc.
Ed Regan	N.C.A.C.C.
R. ROGERS	EHNR
Russell Hageman	EHNR, Division of Air Quality
Keith Overcash	EHNR, DAQ
Alan Klimek	EHNR, DAQ
Alan Jernigan	AGO
DENNIS RAMSEY	E, H + NR / DWQ / WQS

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 29, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 29 , 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

SENATE BILL 177 - CLEAN WATER TRUST FUND/LOANS OKAY - Senator Kinnaird, sponsor, was recognized to explain the bill. Senator Odom and Senator Wellons requested that it go on record that they both voted "no" on the bill. Senator Conder moved that the bill be given a favorable report. After discussion, Senator Conder withdrew his motion so that additional work could be done on the bill before it is brought back before the committee.

SENATE BILL 671 - WASTEWATER IMPROVEMENT PERMITS/AB - Senator Albertson, sponsor, said that this bill would be referred to the Environmental Review Commission for further study and a possible conclusion.

SENATE BILL 954 - EXOTIC ANIMAL REGISTRY - Senator Webster, sponsor, explained. After discussion, Chairman Albertson said that the bill would be sent to the Agriculture & Forestry Study Commission for review.

SENATE BILL 947 - AMEND INTERBASIN TRANSFERS - Senator Cochrane, sponsor, said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. Senator Conder moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 29, 1997
11:00 a.m.
Room 1124 LB

AGENDA

SB 177	CLEAN WATER TRUST FUND/LOANS OKAY Senator Kinnaird
SB 671	WASTEWATER IMPROVEMENT PERMITS/AB Senator Albertson
SB 947	AMEND INTERBASIN TRANSFERS Senator Cochrane
SB 954	EXOTIC ANIMAL REGISTRY Senator Webster

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, April 29, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **947** AMEND INTERBASIN TRANSFERS

Draft Number:	PCSA745
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 177*

Short Title: Clean Water Trust Fund/Loans Okay. (Public)

Sponsors: Senators Kinnaird; Horton, Hoyle, Jenkins, Lee, Phillips, and Rand.

Referred to: Agriculture/Environment/Natural Resources.

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT TRUST FUND FOR LOANS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. 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 Board of Trustees may require a match of up to twenty percent (20%) 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 principle 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 waive the requirement to limit loans pursuant to guidelines adopted by the Board of Trustees.

(c) ~~Grants~~ Loans or Grants Not Available to Satisfy Compensatory Mitigation Requirements. -- No loan and no grant shall be ~~awarded~~ provided under this ~~article~~ Article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S.143-214.11."

Section 2. G.S. 113-145.6 reads as rewritten:

"§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Loan and Grant Funds. -- The Trustees shall allocate moneys from the Fund as loans or grants. A loan or grant may be ~~awarded~~ provided only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop ~~Grant~~ Criteria. -- The Trustees shall develop criteria for ~~awarding~~ providing loans and grants under this Article. The criteria developed shall include consideration of the following:

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

(c) Develop Additional Guidelines. -- The Trustees may develop guidelines in addition to the loan and grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. -- The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider

recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. -- The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. -- The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. -- The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. -- The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) The Chair of the Board of Trustees of the Clean Water Management Trust Fund shall report to the Environmental Review Commission beginning November 1, 1996, and annually thereafter on implementation of this section. A written copy of the report shall also be sent to the Fiscal Research Division of the General Assembly beginning November 1, 1996, and annually thereafter on implementation of this section."

Section 3. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 671*

Short Title: Wastewater Improvement Permits/AB. (Public)

Sponsors: Senators Albertson; Hoyle, Jordan, Martin of Pitt, Odom, Warren, and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL BOARDS OF HEALTH TO ESTABLISH LOCAL PROGRAMS THAT PROVIDE FOR PRELIMINARY EVALUATIONS OF PROPOSED SITES FOR WASTEWATER SYSTEMS THAT ARE NOT BINDING ON THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OR THE LOCAL HEALTH DEPARTMENT AND TO PROHIBIT ANY OTHER PRELIMINARY SITE EVALUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-336(a) reads as rewritten:

"(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. The local health department shall not perform an evaluation of a proposed site until an application for an improvement permit for a specific site is submitted in accordance with rules adopted by the Commission. When conducting an evaluation of a proposed site, the local health department shall not review or assess acreage and shall not conduct soil mapping. The local health department shall evaluate each individual site and either issue or deny the improvement permit. Except as provided in G.S. 130A-335(c1), a preliminary or a provisional evaluation shall not be performed. An improvement permit shall be issued in compliance with the rules adopted pursuant to this Article. An improvement permit shall include:

(1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.

(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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 954

Short Title: Exotic Animal Registry. (Public)

Sponsors: Senators Webster; and Kerr.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF AGRICULTURE TO DEVELOP A PLAN FOR ESTABLISHING A REGISTRY OF ALL EXOTIC ANIMALS HOUSED IN THE STATE.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that certain animals not indigenous to North Carolina pose a serious threat to human health and safety by virtue of their physical attributes and natural behavior. Often these animals are imported outside of their natural habitat and kept as pets. Therefore, the General Assembly recognizes a need to create a registry of such animals so that their presence is known to persons inhabiting the area in which such an animal is housed and that proper precautions may be taken in the event that such an animal escapes.

Section 2. The Animal Welfare Section of the Animal Health Division of the Department of Agriculture shall develop a plan for establishing a registry of exotic animals housed in this State. For purposes of this act, the term "exotic animal" means an animal:

(1) That is not indigenous to North Carolina; and

(2) That poses a significant threat to human health and safety.

The plan shall address methods for collecting data on the location of exotic animals housed in public or private facilities across the State. The plan shall also address potential methods for tagging exotic animals through the use of technology, identifying marks, or other means so that a particular animal can be identified despite changes in the possession or ownership of the animal.

The Wildlife Resources Commission and the North Carolina Zoological Park shall provide the Department with any necessary expertise in developing the plan required by this section.

Section 3. The Animal Welfare Division shall report the plan developed pursuant to this act upon the convening of the 1998 Regular Session of the 1997 General Assembly.

Section 4. Nothing in this act is intended to interfere with the lawful possession of exotic animals by citizens of this State.

Section 5. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 28, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 954: Exotic Animal Registry

Senate Bill 954, introduced by Senator Webster, directs the North Carolina Department of Agriculture to develop a plan, in consultation with the Wildlife Resources Commission and the North Carolina Zoological Park, for establishing a registry of exotic animals in the State. The purpose of such a registry would be to make persons in the area where the animal is located aware of its presence and allow for proper precautions in the event of the animal's escape.

The plan to be developed by NCDA shall address methods for collecting data on the location of exotic animals and address potential methods for tagging such animals so that an animal may be identified should ownership change. For purposes of the act, an exotic animal is one that is not indigenous to North Carolina and poses a significant threat to human health and safety.

The Department shall file its report on the plan by the convening of the 1998 Session of the 1997 General Assembly. The act is not intended to restrict the lawful possession of exotic animals in the State.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 947
Proposed Committee Substitute S947-PCSA745

Short Title: Amend Interbasin Transfers. (Public)

Sponsors:

Referred to:

April 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I(g) reads as rewritten:

"(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that the ~~potential detriments of the proposed transfer outweigh the~~ benefits of the ~~transfer.~~ proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree."

Section 2. The Environmental Review Commission shall study issues relating to the transfer of surface waters between river basins in the State. As a part of this study, the Environmental Review Commission shall consider whether, and on what basis, the total volume of water that may be transferred from any river basin should be limited and whether the Environmental Management Commission should be authorized to issue special orders to remedy violations of laws or rules regulating transfers. The Environmental Review Commission shall report its findings,

recommendations, and legislative proposals, if any, to the 1998 Regular Session of the General Assembly.

Section 3. As used in this section, "transfer" has the same meaning as in G.S. 143-215.22G. There is hereby imposed a moratorium on any new transfer and on any increase in the permitted volume of an existing transfer for which a certificate is required under G.S. 143-215.22I. The Environmental Management Commission shall not issue a certificate for a new transfer or approve an increase in the permitted volume of an existing transfer during the period that the moratorium imposed by this section is in effect. The moratorium imposed by this section does not apply to an application to increase the volume of an existing transfer that, on 1 May 1997, is registered under G.S. 143-215.22H and:

(1) Was not permitted under G.S. 153A-285, repealed by Section 4 of Chapter 348 of the 1993 Session Laws, or G.S. 162A-7, repealed by Section 6 of Chapter 348 of the 1993 Session Laws; and

(2) For which a certificate has not been issued under G.S. 143-215.22I.

Section 4. This act is effective when it becomes law. Section 3 of this act expires on the date that the 1997 General Assembly adjourns its 1998 Regular Session sine die.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 947

Short Title: Amend Interbasin Transfers. (Public)

Sponsors: Senators Cochrane; Clark, Conder, East, Foxx, Horton, Jordan, Kincaid, Rand, Soles, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO OBTAIN AN INTERBASIN TRANSFER PERMIT, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ISSUE SPECIAL ORDERS FOR INTERBASIN TRANSFER VIOLATIONS, AND TO LIMIT THE TOTAL AMOUNT OF WATER THAT MAY BE TRANSFERRED OUT OF ANY RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(g) ~~A~~ No certificate shall be granted for a water transfer unless the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that the ~~potential detriments of the proposed transfer outweigh the~~ benefits of the ~~transfer.~~ proposed transfer outweigh the potential detriments of the transfer and that those detriments have been mitigated to a reasonable degree.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7

shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment, Health, and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment, Health, and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment, Health, and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment, Health, and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment, Health, and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The amount of water transferred out of any river basin as a result of the aggregate of interbasin transfers in that basin shall not exceed two percent (2%) of the seven-day 10-year low flow of the river.

(l) The Commission may issue, modify, or revoke, a special order, or other appropriate instrument, to any person whom it finds in violation of this section. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the violation. The Commission may enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for the violation, subject to the provisions of G.S. 143-215.2(a1) and (b) regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

Any person who complies with the terms of, or as a result of the conditions specified in, a permit issued pursuant to this section, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to this section, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the regulation of interbasin transfers, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when the special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The action taken results in the elimination or alleviation of the detriment caused by the violation to the extent required by the permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) The person complies with the terms and conditions of the permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4/29/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carlyle Teague	Coop Council of NC
Paul Rau	N.C. Agribusiness Council
William Foster	DEHNR DEH OSWCS
Malcolm Blalock	DEHNR / DEH
Linda Sewell	"
M.A. Mixon	NC Dept of Agriculture Veterinary Division
David McLeod	NCDA
Jim Wilder	NC Soybean Assn.
John Cyrus	N.C. State Lawyer
Leroy Jackson	Plant Food Assn of NC
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Molly Diggins	NC Sierra Club
Tom BEAN	NC Wildlife Federation
Ed Regan	N.C.A.C.C.
Laura Hartzell	MCIC
Roc Bartley	N.C. Aggregates
John Lamm	Martin Marietta.
R. Paul Wilms	NCHSA
Ann Law	DENR
Gary Harris	NC Petroleum Mkt'rs. Assoc.
Doug Howey	"
Marian Dodd	League of Women Voters NC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 4-29-97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A. B. Swindell, IV	BFI
Jerry Tinderer	Hunton & Williams
Charles Case	" "
Kim Smith	DWQ
Preston Howard	DWQ
Ray Taylor	Kaplan Lowenstein
John McAlister	Duke Power
Andy Romanet	N.C.L.M.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Dunn	Poyner & Spruill
TANJA VUJIĆ	NCEDF
Patty Berry	CCNC
Jo Holman	CCNC / Sierra Club
Tom Fransen	NC Division of Water Resources
TONY YOUNG	"
John Morris	"
Peter Daniel	NCDA
Jerry Andrews	N.C. Park Service
Rolf Blizzard	Sen. Basnight's Office
Twila Nelson	MFC

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 13, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 13, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HOUSE BILL 460 - ABOLISH AQUARIUMS COMMISSION/AB. - Representative Culpepper, sponsor, was recognized to explain the bill. There was a proposed committee substitute and Senator Wellons moved for its adoption for discussion purposes. Motion carried. Senator Weinstein moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried. Upon recommendation, it was referred to Finance.

HOUSE BILL 484 - RECORD NOTICES OF OPEN DUMPS/AB. - Representative Weatherly, sponsor, explained the bill. Dexter Matthews, Chief, Solid Waste Section, DEHNR, answered questions from committee members. After much discussion, Senator Albertson said we would remove the bill from the calendar so that staff could look at the areas of concern. Representative Weatherly, sponsor, agreed to this.

HOUSE BILL 935 - PROMOTE LLAMA BREEDING - Representative Beall, sponsor, explained the bill, pointing out that there are between 600 and 700 llamas in North Carolina. Senator Jenkins moved that the bill be given a favorable report. Motion carried.

HOUSE BILL 999 - SOIL AND WATER COMMISSION/INSPECTIONS - Representative Rogers, sponsor, explained the bill. There were many questions on the bill. Answering some of the questions were Brian McGinn of the Attorney General's office and Vernon Cox of the Division of Soil and Water Conservation. Senator Albertson said that the bill would be displaced temporarily so that more information could be gathered.

Paula Gupton of the North Carolina Farm Bureau distributed the attached booklet, "Farm Facts" to the members.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 13, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

HB 460	ABOLISH AQUARIUMS COMMISSION/AB. Representative Culpepper
HB 484	RECORD NOTICES OF OPEN DUMPS/AB. Representative Weatherly
HB 935	PROMOTE LLAMA BREEDING. Representative Beall
HB 999	SOIL AND WATER COMMISSION/INSPECTIONS. Representative Rogers

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, May 13, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **935** PROMOTE LLAMA BREEDING.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, May 19, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**460** ABOLISH AQUARIUMS COMMISSION/AB.

Draft Number:	PCS8227
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 460
Committee Substitute Favorable 4/15/97
Committee Substitute #2 Favorable 4/30/97
Proposed Senate Committee Substitute H460-PCS8227

Short Title: Abolish Aquariums Commission/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE NORTH CAROLINA AQUARIUMS COMMISSION, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ADOPT ENTRANCE FEES FOR THE NORTH CAROLINA AQUARIUMS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 28 of Article 7 of Chapter 143B of the General Statutes is repealed.

Section 2. G.S. 143B-289.19 is recodified by transferring it from Part 5A of Article 7 of Chapter 143B of the General Statutes to Part 5B of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ 143B-289.19. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- creation.**

~~There~~ The Division of North Carolina Aquariums is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

Section 3. G.S. 143B-289.20 reads as rewritten:

"**§ 143B-289.20. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- organization; powers and duties.**

(a) The ~~Office~~ Division of North Carolina Aquariums shall be organized as prescribed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) ~~To establish~~ Establish and maintain the North Carolina ~~Aquariums;~~ Aquariums.

(1b) ~~To administer~~ Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives ~~periodically;~~ periodically.

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources on the most appropriate use consistent with the goals and objectives of the ~~Aquariums;~~ Aquariums.

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and ~~objectives;~~ objectives.

d. Recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium ~~programs;~~ programs.

e. Review Aquarium budget submissions to the Secretary ~~of the Department~~ of Environment, Health, and Natural ~~Resources;~~ Resources.

f. Recruit and recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources candidates for the positions of directors of the ~~North Carolina Aquariums; and~~ Aquariums.

g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.22.

(2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

(4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

(7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section."

Section 4. G.S. 143B-289.22 reads as rewritten:

"**§ 143B-289.22. Local advisory committees; duties; membership.**

Local advisory committees created pursuant to G.S. 143B-289.20(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Section 5. Part 5B of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-289.23. North Carolina Aquariums; fees; fund.**

(a) Fees. -- The Secretary of Environment, Health, and Natural Resources may adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

(b) Fund. -- The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used only for repair, maintenance, and educational exhibit construction at existing aquariums and to match private funds that are raised for these purposes.

(c) Disposition of Fees. -- All entrance fee receipts shall be credited to the North Carolina Aquariums Fund. The Secretary of Environment, Health, and Natural Resources may expend monies from the North Carolina Aquariums Fund only upon the authorization of the General Assembly."

Section 6. G.S. 143B-279.3(b)(23) is repealed.

Section 7. G.S. 120-123(59) is repealed.

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 460
Committee Substitute Favorable 4/15/97
Committee Substitute #2 Favorable 4/30/97

Short Title: Abolish Aquariums Commission/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE NORTH CAROLINA AQUARIUMS COMMISSION, TO DESIGNATE WHO HAS THE DUTY TO ESTABLISH AND REVISE FEES FOR THE NORTH CAROLINA AQUARIUMS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 28 of Article 7 of Chapter 143B of the General Statutes is repealed.

Section 2. G.S. 143B-289.19 is moved from Part 5A of Article 7 of Chapter 143B of the General Statutes to Part 5B of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ 143B-289.19. ~~Office of Marine Affairs~~ North Carolina Aquariums -- creation.**

There is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources a division to be known as the North Carolina Aquariums."

Section 3. G.S. 143B-289.20 reads as rewritten:

"**§ 143B-289.20. ~~Office of Marine Affairs~~ North Carolina Aquariums -- organization; powers and duties.**

(a) The ~~Office~~ division shall be organized as prescribed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) ~~To establish~~ Establish and maintain the North Carolina ~~Aquariums;~~ Aquariums.

(1b) ~~To administer~~ Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives ~~periodically;~~ periodically.

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources on the most appropriate use consistent with the goals and objectives of the ~~Aquariums;~~ Aquariums.

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and ~~objectives;~~ objectives.

d. Recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium ~~programs;~~ programs.

e. Review Aquarium budget submissions to the Secretary ~~of the Department~~ of Environment, Health, and Natural ~~Resources;~~ Resources.

f. Recruit and recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources candidates for the positions of directors of the North Carolina ~~Aquariums; and~~ Aquariums.

g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.22.

(2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

(4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

(7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section."

Section 4. G.S. 143B-289.22 reads as rewritten:

"**§ 143B-289.22. Local advisory committees; duties; membership.**

Local advisory committees created pursuant to G.S. 143B-289.20(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary ~~of the Department~~ of Environment,

Health, and Natural Resources for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Section 5. Part 5B of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-289.23. North Carolina Aquariums; fees; fund.**

(a) Fees. -- The Secretary of Environment, Health, and Natural Resources and the North Carolina Aquariums may establish and revise a schedule of uniform fees for the North Carolina Aquariums.

(b) Fund. -- The North Carolina Special Aquariums Fund, hereafter 'Fund', is hereby created, and shall be a special and nonreverting fund. The Fund shall be used only for repair, maintenance, and educational exhibit construction at existing aquariums. The Fund may also be used to match private funds that are raised for these purposes.

(c) Disposition of Fees. -- All entrance fee receipts shall be credited to the Fund. The Secretary of Environment, Health, and Natural Resources may expend monies from the Fund only upon the authorization of the General Assembly."

Section 6. G.S. 143B-279.3(b)(23) is repealed.

Section 7. G.S. 120-123(59) is repealed.

Section 8. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Ilene 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 13, 1997

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute for HB 460 - Abolish Aquariums Commission/AB.**

The proposed committee substitute for House Bill 460 repeals the North Carolina Aquariums Commission. This Commission's only duty is to recommend fees. It also moves the duties of the NC Aquariums Commission (recommend fees) and the Office of Marine Affairs (administer aquariums) to the Division of NC Aquariums. The proposed committee substitute authorizes the Secretary of Environment, Health, and Natural Resources to set entrance fees. Several technical changes are also made by the bill.

Section 1 of the proposed committee substitute repeals Part 28 of Article 7 of Chapter 143B, the North Carolina Aquarium Commission.

Sections 2 and 3 amend G.S. 143B-289.19 and G.S. 143B-289.20 respectively to change the name of the Office of Marine Affairs to the Division of North Carolina Aquariums, and make conforming changes.

Section 4 amends G.S. 143B-289.22 to make technical changes.

Section 5 creates G.S. 143B-289.23 to authorize the Secretary of Environment, Health, and Natural Resources to adopt a schedule of uniform entrance fees for the NC Aquariums. This new section also establishes the NC Special Aquariums Fund. Moneys from the Fund are to be used for repair, maintenance, and educational exhibit construction at existing aquariums. All entrance fees will be credited to the Fund and the Secretary may expend moneys from the Fund only upon authorization of the General Assembly.

Sections 6 and 7 repeal G.S. 143B-279.3(b)(23) and G.S. 120-123(59) respectively. These are technical changes to repeal references to the North Carolina Aquariums Commission.

Section 8 provides that the bill would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 484

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors: Representatives Weatherly; and Culp.

Referred to: Environment.

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8.

(c) Notice of an open dump shall be recorded as provided in G.S. 130A-301(f)."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and notices of open dumps.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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

by Date: .'

(2) The register of deeds shall record the Notice and index it in the grantor index under the name of the record owner or owners. After recording the Notice, the register of deeds shall return the Notice to the Department in care of the person listed as the contact person listed on the Notice.

(3) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of the open dump. The Cancellation shall be in a form similar to the original Notice and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 935

Short Title: Promote Llama Breeding. (Public)

Sponsors: Representatives Beall, Ramsey, and Brown.

Referred to: Agriculture.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE LLAMAS AS LIVESTOCK ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-52.01 reads as rewritten:

"**§ 113A-52.01. Applicability of this Article.**

This Article shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.

b. Dairy animals and dairy products.

c. Poultry and poultry products.

d. Livestock, including beef cattle, <u>llamas,</u> sheep, swine, horses, ponies, mules, and goats.

e. Bees and apiary products.

f. Fur producing animals.

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.

(3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(4) For the duration of an emergency, activities essential to protect human life."

Section 2. G.S. 68-15 reads as rewritten:

"§ 68-15. Term 'livestock' defined.

The word 'livestock' in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, ~~goats~~ goats, llamas, and swine."

Section 3. Any rules adopted by the Board of Agriculture that affect llamas shall not refer to llamas as exotic or wild animals. It is the intent of the General Assembly that llamas be treated as domesticated livestock in order to promote the development and improvement of the llama industry in the State. This section does not prohibit the Board of Agriculture from classifying llamas for animal health purposes in accordance with generally accepted standards of veterinary medicine. For purposes of this section, 'llama' means a South American camelid that is an animal of the genus llama. Llama includes llamas, alpacas, and guanacos. Llama does not include vicunas.

Section 4. This act is effective when it becomes law. Section 3 of this act applies to rules adopted or amended on or after this date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Committee Substitute Favorable 4/30/97

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until

repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Representatives of the Commission may with the consent of the owner enter upon and inspect property, public or private, at reasonable times for the purposes of investigating compliance with Commission or Department programs when such investigation is reasonably necessary to carry out the Commission's duties. If consent for entry is not obtained, an administrative search warrant shall be obtained pursuant to G.S. 15-27.2.

(c) Any person who willfully resists, delays, or obstructs an authorized representative of the Commission while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5/13/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wilbur Burns	NCDA
Peter Daniel	"
David McLeod	NCDA
Brian McGinn	Attorney General's Office
Vernon Cox	DSWC
Rhett B. White	North Carolina Aquariums
Patty Berry	CCNC
Kim Smith	NCLM
Jim Brothers	UNC Gen Admin — NCSU Ag Res
Sam Law	Turf Grass Council
Palmer Sigmon	TCNC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bowen	PW Bowen
Dustin Matt	Solid Waste Section DEHNR
Neal Conoley	N.C. Cooperative
AB Swindell	B.F.I.
[illegible]	[illegible]
[illegible]	NCFB
R. Rogers	EANR
Amy Henderson	Hunton & Williams
R. Paul Wilms	NCHBA
Mike Carpenter	NCHBA
John Cyrus	N.C. State Library

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES _____
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mollie Diggens	Sierra Club
Jill Holman	CCNC / Sierra Club

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 20, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 20, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

SENATE BILL 671 - WASTEWATER IMPROVEMENT PERMITS/AB. - Senator Albertson, sponsor. Senator Wellons, Vice Chairman, took over the chairmanship of the meeting so that Senator Albertson could explain the bill. The bill had been turned into a proposed committee substitute and Senator Albertson moved that it be adopted for discussion purposes. Motion carried. The purpose of the proposed committee substitute was to send this issue to the Environment Review Committee for study. If the proposed committee substitute is given a favorable report, it will be sent to the Rules Committee which will refer it to the ERC. Senator Wellons moved that the proposed committee substitute be given a favorable report. Motion carried and it was referred to the Rules Committee. Senator Albertson resumed chairmanship.

HOUSE BILL 484 - RECORD NOTICES OF OPEN DUMPS/AB. - Representative Weatherly, sponsor. There was a proposed committee substitute and Senator Albertson moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the PCS. Dexter Matthews, Chief of Solid Waste Section, DEHNR, answered questions from committee members and said he would encourage the committee not to change the definition of "open dumps". Senator McDaniel sent forth an amendment which was left pending discussion. (**NOTE:** A copy of this amendment is attached to the minutes of May 22, 1997.) Senator Horton moved that discussion of the bill be continued at next meeting. Motion carried.

HOUSE BILL 999 - SOIL & WATER COMMISSION/INSPECTIONS - Representative Rogers, sponsor. There was a proposed committee substitute and Senator Cooper moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the PCS. Dewey Botts, Director, Soil and Water Conservation, DEHNR, answered questions from committee members. Senator Cooper sent forth an amendment which was not acted on. (Copy of this amendment is attached.) Senator Foxx requested that the committee defer discussion of the PCS until another meeting so

that the amendment could be incorporated. Senator Albertson said discussion would continue at our next meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 20, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 671	WASTEWATER IMPROVEMENT PERMITS/AB. Senator Albertson
HB 484	RECORD NOTICES OF OPEN DUMPS/AB. Representative Weatherly
HB 999	SOIL & WATER COMMISSION/INSPECTIONS. Representative Rogers

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Wednesday, May 21, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **671** WASTEWATER IMPROVEMENT PERMITS/AB.

Draft Number:	PCS6682
Sequential Referral:	None
Recommended Referral:	Rules
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 671*
Proposed Committee Substitute S671-PCS6682

Short Title: Study Wastewater Permits & I/M Program. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY THE EVALUATION OF PROPOSED SITES FOR WASTEWATER SYSTEMS; TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION AND THE DIVISION OF AIR QUALITY OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, WITH THE ASSISTANCE AND COOPERATION OF THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF TRANSPORTATION, TO STUDY THE COSTS AND BENEFITS OF EXPANDING THE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM FOR MOTOR VEHICLES; TO IMPROVE COMPLIANCE WITH THE CURRENT EMISSIONS INSPECTION AND MAINTENANCE PROGRAM; AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY WHETHER THE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM SHOULD BE TRANSFERRED FROM THE DIVISION OF MOTOR VEHICLES TO THE DIVISION OF AIR QUALITY.

The General Assembly of North Carolina enacts:

Section 1. The Environmental Review Commission shall study issues relating to the preliminary evaluation of proposed sites for wastewater systems. The study shall specifically address whether local health departments should conduct preliminary evaluations of proposed sites for wastewater systems; how preliminary evaluations conducted by local health departments might be made more reliable; the extent to which an applicant may rely on a preliminary evaluation; and liability in

instances where the State fails to issue an improvement permit for a site for which a local health department has concluded that the site is appropriate for construction of a wastewater system. The Environmental Review Commission shall report its findings, recommendations, and legislative proposals, if any, to the 1998 Regular Session of the General Assembly.

Section 2. The Environmental Management Commission and the Division of Air Quality of the Department of Environment, Health, and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, shall study whether the emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes should be expanded to include all metropolitan counties. The study shall evaluate the costs and benefits of expanding the program, including the benefits resulting from a reduction in the likelihood that those counties will not meet the national ambient air quality standards for ozone and carbon monoxide in the future, thereby incurring the restrictions on industries, power plants, vehicles, and other activities that apply to nonattainment counties. Beginning 1 January 1998, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the matters to be evaluated pursuant to this section to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b).

Section 3. The Environmental Management Commission, the Division of Air Quality of the Department of Environment, Health, and Natural Resources, and the Division of Motor Vehicles of the Department of Transportation shall take appropriate steps to ensure that the current emissions inspection and maintenance program for motor vehicles administered under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes is effectively implemented and enforced. Beginning 1 October 1997, the Environmental Management Commission shall report its findings, recommendations, and any legislative proposals regarding the implementation and enforcement of the emissions inspection and maintenance program to the Environmental Review Commission as part of the quarterly report the Environmental Management Commission is required to make to the Environmental Review Commission by G.S. 143B-282(b). The Division of Motor Vehicles shall report on its progress in meeting the requirements of this section to the Environmental Review Commission on a quarterly basis beginning 1 October 1997.

Section 4. The Environmental Review Commission shall study the administration of the emissions inspection and maintenance program for motor vehicles under G.S. 20-128.2 and Part 2 of Article 3A of Chapter 20 of the General Statutes and whether that program should be transferred from the Division of Motor Vehicles of the Department of Transportation to the Environmental Management Commission and the Division of Air Quality in the Department of Environment, Health, and Natural Resources. The Environmental Review Commission shall report

its findings, recommendations, and legislative proposals, if any, to the 1998 Regular Session of the General Assembly.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 671*

Short Title: Wastewater Improvement Permits/AB. (Public)

Sponsors: Senators Albertson; Hoyle, Jordan, Martin of Pitt, Odom, Warren, and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL BOARDS OF HEALTH TO ESTABLISH LOCAL PROGRAMS THAT PROVIDE FOR PRELIMINARY EVALUATIONS OF PROPOSED SITES FOR WASTEWATER SYSTEMS THAT ARE NOT BINDING ON THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OR THE LOCAL HEALTH DEPARTMENT AND TO PROHIBIT ANY OTHER PRELIMINARY SITE EVALUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-336(a) reads as rewritten:

"(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. The local health department shall not perform an evaluation of a proposed site until an application for an improvement permit for a specific site is submitted in accordance with rules adopted by the Commission. When conducting an evaluation of a proposed site, the local health department shall not review or assess acreage and shall not conduct soil mapping. The local health department shall evaluate each individual site and either issue or deny the improvement permit. Except as provided in G.S. 130A-335(c1), a preliminary or a provisional evaluation shall not be performed. An improvement permit shall be issued in compliance with the rules adopted pursuant to this Article. An improvement permit shall include:

(1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.

(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.

North Carolina General Assembly
Legislative Services Office

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
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Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
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Raleigh, NC 27603-5925
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Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 20, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute 002 - Senate Bill 671, Study Wastewater Permits and I/M Program**

The proposed committee substitute directs the Environmental Review Commission (ERC) to study the evaluation of proposed sites for wastewater systems. The bill also directs the Environmental Management Commission (EMC) and the Division of Air Quality (DAQ), with the assistance and cooperation of the Division of Motor Vehicles (DMV), to study the costs and benefits of expanding the emissions inspection and maintenance program, to improve compliance with the current program. The bill also directs the ERC study whether the emissions inspection and maintenance program should be transferred from DMV to DAQ.

Section 1 directs ERC to study issues related to preliminary evaluations of proposed sites for wastewater systems. The ERC's study will include whether the local health departments should conduct preliminary evaluations of proposed sites; how those evaluations could be more reliable; the extent to which an applicant may rely on a preliminary evaluation; and the liability when the State fails to issue a permit for a site the local health department determined is appropriate for a wastewater system. Section 1 also directs the ERC to report any findings, recommendations, and legislative proposals to the 1998 Regular Session of the General Assembly.

Section 2 directs EMC and DAQ, with the assistance and cooperation of DMV, to study whether the emissions inspection and maintenance program should be expanded to include all metropolitan counties. Section 2 also directs that beginning January 1, 1998, EMC shall include in its quarterly report to ERC any findings, recommendations, and legislative proposals regarding the expansion of the program.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 3 directs EMC, DAQ, and DMV to take appropriate steps to ensure that the current emissions inspection and maintenance program is effectively implemented and enforced. Section 3 also directs that beginning October 1, 1997, EMC shall include in its quarterly report to ERC any findings, recommendations, and legislative proposals regarding the implementation and enforcement of the program. Section 3 also requires DMV to submit quarterly reports beginning October 1, 1997 to ERC on DMV's progress in meeting the requirements of this Section.

Section 4 directs ERC to study the administration of the emissions inspection and maintenance program and whether the program should be transferred from DMV to DAQ. Section 4 directs ERC to report its findings, recommendations, and any legislative proposals to the 1998 Regular Session of the General Assembly.

Section 5 makes this act effective when it becomes law.

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 484
PROPOSED SENATE COMMITTEE SUBSTITUTE H484-CSRT-001
10:18:24 EZT / 20-MAY-97

ATTENTION: Line numbers may change after adoption.

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of land clearing and inert debris in a landfill with a disposal area of ½ acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S. 130A-301.1(c). A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f). The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and Notice of Open Dump.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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).~~ (b) of this section.

(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 shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the

General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

(1) The Department shall file the Notice of Open Dump 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 and is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

Description of the real property: _____

Description of the particular area where the open dump is located: _____

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

by _____ Date: _____.'

(2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need

not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.

(3) The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person listed on the Notice of Open Dump.

(4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice of Open Dump."

Section 3. G.S. 130A-290(20) reads as rewritten:

"(20) 'Open dump' means ~~a~~ any facility or site where solid waste ~~disposal site which~~ is disposed of that is not a sanitary ~~landfill.~~ landfill and that is not a facility for the disposal of hazardous waste."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 484

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors: Representatives Weatherly; and Culp.

Referred to: Environment.

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8.

(c) Notice of an open dump shall be recorded as provided in G.S. 130A-301(f)."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and notices of open dumps.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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

by _____ Date: _____.'

(2) The register of deeds shall record the Notice and index it in the grantor index under the name of the record owner or owners. After recording the Notice, the register of deeds shall return the Notice to the Department in care of the person listed as the contact person listed on the Notice.

(3) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of the open dump. The Cancellation shall be in a form similar to the original Notice and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice."

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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Raleigh, NC 27603-5925
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 13, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

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.

H484-SMSC-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Committee Substitute Favorable 4/30/97
PROPOSED SENATE COMMITTEE SUBSTITUTE H999-CSRT-001
10:54:15 EZT / 20-MAY-97

ATTENTION: Line numbers may change after adoption.

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans;~~ ~~and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of Environment, Health, and Natural Resources may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, notwithstanding G.S. 15A-1340.23, shall be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective 1 December 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Committee Substitute Favorable 4/30/97

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until

repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Representatives of the Commission may with the consent of the owner enter upon and inspect property, public or private, at reasonable times for the purposes of investigating compliance with Commission or Department programs when such investigation is reasonably necessary to carry out the Commission's duties. If consent for entry is not obtained, an administrative search warrant shall be obtained pursuant to G.S. 15-27.2.

(c) Any person who willfully resists, delays, or obstructs an authorized representative of the Commission while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H999-CSRT-001

H. B. No. 999 DATE May 20, 1997

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

~~Rep.~~)
Sen.) Cooper

1 moves to amend the bill on page 2, line 31
2 ( ) WHICH CHANGES THE TITLE
3 by deleting " notwithstanding G.S. 15A-1340.23, "
4
5 and on page 2, line 32 and 33
6
7 by inserting a period after the word
8
9 "misdemeanor" and by deleting the
10
11 rest of the sentence.
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

FOR ENGROSSMENT

North Carolina General Assembly
Legislative Services Office

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
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Raleigh, NC 27603-5925
(919) 733-2578

May 13, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **House Bill 999: Soil and Water Conservation Commission/Inspections**

House Bill 999, introduced by Representative Rogers amends Part 7 of Article 7 of Chapter 143B of the General Statutes establishing the Soil and Water Commission.

Specifically the bill amends the powers and duties of the Commission, G.S. 143B-294, to provide the Commission authority to conduct inspections consistent with its duty to approve applications for watershed plans. The bill also adds two new subdivisions to G.S. 143B-294 to provide that representatives of the Commission, with consent, may enter at reasonable times on any property to determine compliance with its programs or the programs of the Department of Environment, Health, and Natural Resources, when such inspection is reasonably necessary to carry out the Commission's duties. If consent is not obtained, an administrative search warrant shall be obtained.. A person who willfully obstructs an authorized representative of the Commission in carrying out his duties is guilty Class 1 misdemeanor and is punishable by imprisonment not to exceed 90 days or by a fine not to exceed $5,000.

The act is effective when it becomes law except that the misdemeanor provisions become effective December 1, 1997 and apply to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5/20/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William Gilbert	DEHNR DEH On-Site
Rob Blizzard	Sen. Basnight's Office
Dewey Bott	DEHNR
R. Rogers	DEHNR
[illegible]	DEHNR - Solid Waste
Ed Bowen	R W Bone
Baker Elliott	CNT
Gene Brotherton	UNC General Admin - NCSU Ag Pgm
A.B. Swindell IV	B & FT
J. Holman	CENC/Sierra Club

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 22, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 22, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were sixteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

SENATE BILL 874 - ARBITRATION OF SEED CLAIMS - Senator Kerr, sponsor, explained the bill. Commissioner of Agriculture Jim Graham made comments on the bill. Senator Kinnaird sent forth an amendment and moved for its adoption. Motion carried. The amendment would increase membership of the Carolina Seedsman's Association to six so that there would be a total of two farmers represented. Senator Weinstein sent forth an amendment and moved for its approval. Motion carried. Speaking in favor of the bill were Marion Dilday, Circle Grove Seeds of Belhaven and Taylor Jeffreys, Jeffreys Seed Company of Goldsboro. Senator East moved that the bill be given a favorable report, as amended. This motion was not voted on. Senator Albertson said he thought a subcommittee should be appointed. He appointed Senator Wellons, Chairman, and Senators Odom and Horton to the subcommittee and asked them to study bill and get back with the committee.

HOUSE BILL 484 - RECORD NOTICES OF OPEN DUMPS/AB. - Representative Weatherly, sponsor. There was a proposed committee substitute before the committee and Senator Odom moved for its adoption for discussion purposes. Motion carried. Senator McDaniel had sent forth an amendment at a previous meeting but it had not been adopted; Representative Weatherly requested that the committee not pass the amendment. Senator Odom said that if the amendment were passed it would put the state out of federal compliance and moved that Senator McDaniel's amendment not be adopted. Motion carried. Senator Horton sent forth an amendment and moved for its approval. Senator Odom moved that Senator Horton's amendment not be adopted. No action was taken on the bill. Senator Albertson said the committee would discuss at the next meeting.

HOUSE BILL 999 - SOIL & WATER COMMISSION/INSPECTIONS - Representative Rogers, sponsor. There was a proposed committee substitute before the committee and Senator Weinstein moved for its adoption for discussion purposes.

Motion carried. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, May 22, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 874	ARBITRATION OF SEED CLAIMS. Senator Kerr
HB 484	RECORD NOTICES OF OPEN DUMPS/AB. Representative Weatherly
HB 999	SOIL & WATER COMMISSION/INSPECTIONS. Representative Rogers

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles Albertson, Chairman

Thursday, May 22, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**999** Soil and Water Commission/Inspections.

Draft Number:	PCS8241
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 874

Short Title: Arbitration of Seed Claims. (Public)

Sponsors: Senator Kerr.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Commissioner of Agriculture with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a State's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer against whom an action is brought in any court, State or federal, by a buyer who alleges that the buyer has suffered damages due to the failure of seeds purchased from a seed dealer to perform as labeled, as warranted, or as a result of negligence may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture by the party requesting the investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Arbitration committee created; membership; duties.

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and agricultural seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"§ 106-277.32. Duties of arbitration committee.

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, the arbitration committee may engage in all of the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

"§ 106-277.33. Filing an action regarding a defective seed claim.

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any action involving a complaint that has been the subject of arbitration under G.S. 106-277.32, any party may introduce the report of arbitration as evidence

of the facts found in the report, and the court may give such weight to the committee's findings and conclusions of law and recommendations as to damages and costs as the court deems appropriate, based upon all the evidence before the court. The court may consider any finding of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case."

Section 3. There is appropriated from the General Fund to the Department of Agriculture the sum of ten thousand dollars ($10,000) for the 1997-98 fiscal year and the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

Section 4. This act becomes effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

1st Edition

(Please type or use ballpoint pen)

H. B. No. _____ DATE 5/22/97

S. B. No. 874 Amendment No. 1

(to be filled in by Principal Clerk)

~~Rep.~~ Sen. Kinnaird

moves to amend the bill on page 2, line 22

by deleting the word "five" and substituting the word "six"; and further amends the bill on page 2, lines 26-27 by rewriting ~~those~~ lines to read:

"Carolina Seedsman's Association. The other three members shall include: two farmers who are not connected in any way to selling seeds at retail or wholesale and one".

SIGNED _____

ADOPTED V FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

1st Edition

H. B. No. _____ DATE 5/22/97

S. B. No. 874 Amendment No. 2
(to be filled in by Principal Clerk)

~~Rep.~~ Sen. Weinstein

moves to amend the bill on page 3, line 37

by rewriting that line to read:

"that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 22, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 874: Arbitration of Seed Claims.

Senate Bill 874, introduced by Senator Kerr, would require mandatory arbitration of seed claims. Complaint of defective seeds would be required to be filed within a time frame that would allow inspection of the affected seed, crops, or plants.

Section 1 of the bill repeals the existing provisions in the agriculture statutes allowing a farmer to file a complaint with the Commissioner of Agriculture and have the Department conduct an investigation to determine the facts of the matter and, when appropriate, recommend money damages as a result of the seed failure.

Section 2 of the bill sets forth the new provisions requiring arbitration of seed claims. G.S. 106-277.30 would require a person who believes that they have been damaged by failure of seeds to perform as labeled to file a complaint with the Commissioner of Agriculture and have the matter considered by an arbitration committee as a condition precedent to the filing of a legal action.

The complaint must be filed within time to allow inspection of the affected seeds, crops or plants. The person must pay a $100 filing fee with the complaint to offset the expenses of the arbitration committee. A copy of the complaint shall be sent to the dealer by certified mail and the dealer may file an answer within 10 days of receipt of the complaint.

In order to trigger the mandatory arbitration requirement, the seed dealer must place on the label notice that arbitration is required under the seed laws of some states as a precondition to maintaining a legal action. A seed dealer against whom an action has been brought may also request an investigation by the arbitration committee. A filing fee of $100 must accompany the request for an investigation.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

G.S. 106-277.31 sets forth the membership of the arbitration committee. The committee is to consist of 5 members appointed by the Commissioner. The Director of the Agricultural Research Service at NCSU, the Director of the North Carolina Cooperative Extension Service, and the President of the North Carolina Seedsmen's Association shall each recommend one member for appointment. Of the other two members, one shall be a farmer who is not connected to seed sales and one shall be an employee of the Department of Agriculture.

G.S. 106-277.32 sets forth the duties of the arbitration committee. In conducting an investigation the committee may (1) examine the buyer about how the seed was used; (2) examine the seller about how the seed was packaged, labeled, and sold; (3) grow a sample of the seed; (4) hold informal hearings; (5) seek evaluations from experts in allied disciplines; and (6) inspect the affected site. No investigation shall be made by less than the whole committee unless the chair of the committee directs so in writing. The record of the committee's activities shall be kept on file at the Department. All findings shall be transmitted to the parties within 30 days of completion of the arbitration. The findings shall be binding on the parties to the extent that they have agreed to be bound in any contract governing the purchase of the seed.

G.S. 106-277.33 provides for the filing of a legal action after the arbitration proceedings are completed. The report of arbitration may be introduced as evidence of the facts found in the report and the court may give such weight to the committee's findings and conclusions of law and recommendations as the court deems appropriate. In addition the court may take into consideration any finding with respect to the effect of a failure to cooperate with the arbitration and the effect of any delay in the proceedings on the arbitration committee's ability to determine the facts.

Section 3 of the act appropriates $10,000 in each year of the biennium to implement the act.

The act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 484
Proposed Senate Committee Substitute H484-PCS1380

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of land clearing and inert debris in a landfill with a disposal area of ½ acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S. 130A-301.1(c). A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f). The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and Notice of Open Dump.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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).~~ (b) of this section.

(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 shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

(1) The Department shall file the Notice of Open Dump 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. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

_____

Description of the real property: _____

_____

Description of the particular area where the open dump is located: _____

_____

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

by _____ Date: _____."

(2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.

(3) The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person in the Notice of Open Dump.

(4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice of Open Dump."

Section 3. G.S. 130A-290(20) reads as rewritten:

"(20) 'Open dump' means ~~a~~ any facility or site where solid waste ~~disposal site which~~ is disposed of that is not a sanitary ~~landfill.~~ landfill and that is not a facility for the disposal of hazardous waste."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 484

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors: Representatives Weatherly; and Culp.

Referred to: Environment.

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8.

(c) Notice of an open dump shall be recorded as provided in G.S. 130A-301(f)."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and notices of open dumps.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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

by _____ Date: _____.'

(2) The register of deeds shall record the Notice and index it in the grantor index under the name of the record owner or owners. After recording the Notice, the register of deeds shall return the Notice to the Department in care of the person listed as the contact person listed on the Notice.

(3) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of the open dump. The Cancellation shall be in a form similar to the original Notice and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice."

Section 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT FAILED

(Please type or use ballpoint pen)

H484-CSRT-

EDITION No. 001

H. B. No. 484 DATE May 20, 1997

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) McDaniel

Sen)

1 moves to amend the bill on page 4, line 24

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words "or site".

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SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H484-CSRT-001

H. B. No. 484 DATE May 22

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Horton
)
Sen.)

moves to amend the bill on page 4, line ~~19~~ 6

( ) WHICH CHANGES THE TITLE

by deleting the existing line in its entirety & rewriting the same as follows:

Section 4. This act shall not be effective until the open dumps located upon the state-owned lands known as Buxton Woods are remediated and a cancellation of Notice of Open Dump is filed as provided in section 4 of GS 130A-301

SIGNED Horton

ADOPTED _____ FAILED _____ TABLED ✓

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
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Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
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Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 13, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

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.

H484-SMSC-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Committee Substitute Favorable 4/30/97
Proposed Senate Committee Substitute H999-PCS8241

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation

Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of Environment, Health, and Natural Resources may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective 1 December 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Committee Substitute Favorable 4/30/97

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until

repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Representatives of the Commission may with the consent of the owner enter upon and inspect property, public or private, at reasonable times for the purposes of investigating compliance with Commission or Department programs when such investigation is reasonably necessary to carry out the Commission's duties. If consent for entry is not obtained, an administrative search warrant shall be obtained pursuant to G.S. 15-27.2.

(c) Any person who willfully resists, delays, or obstructs an authorized representative of the Commission while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

e 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 13, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **House Bill 999: Soil and Water Conservation Commission/Inspections**

House Bill 999, introduced by Representative Rogers amends Part 7 of Article 7 of Chapter 143B of the General Statutes establishing the Soil and Water Commission.

Specifically the bill amends the powers and duties of the Commission, G.S. 143B-294, to provide the Commission authority to conduct inspections consistent with its duty to approve applications for watershed plans. The bill also adds two new subdivisions to G.S. 143B-294 to provide that representatives of the Commission, with consent, may enter at reasonable times on any property to determine compliance with its programs or the programs of the Department of Environment, Health, and Natural Resources, when such inspection is reasonably necessary to carry out the Commission's duties. If consent is not obtained, an administrative search warrant shall be obtained.. A person who willfully obstructs an authorized representative of the Commission in carrying out his duties is guilty Class 1 misdemeanor and is punishable by imprisonment not to exceed 90 days or by a fine not to exceed $5,000.

The act is effective when it becomes law except that the misdemeanor provisions become effective December 1, 1997 and apply to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5/22/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Philip Prete	DEHNR Div. Waste Mgt
A.B. Swindell, IV	BFI
Michelle Cook	Weyerhaeuser
Doug Howey	NCDMA
Peter Daniel	NCDA
Ed Bowen	P.K. Bowen
Joe Olinger	CCNC / Sierra Club
Jill Holman	CCNC / Sierra Club
Albert Eure	White Hat Seed Farms, Inc.
TAYLOR JEFFREYS	JEFFREYS SEED CO / GOLDSBORO, NC
Lin Dilday	Circle Grove Seeds Belhaven NC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5-22-97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LAWRENCE DAVENPORT	J.P. DAVENPORT & SON NC SEEDSMEN ASSOC.
David McLeod	NCDA
R. Paul Wilms	NCMBA
Kim Smith	NCLM
Rolf Buzzard	SEN. BROUGHTON'S OFFICE
Mike Kelly	DWM / DENR
R ROGERS	ENNR
Jerry Henderson	NC Pork Council
Mike Carpenter	NCPSA
Thomas Smith	P/W
John May	NC CWA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5-22-97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A McMillan	DHR
Natalie Hawkins	Charlotte Chamber of Commerce
JOHN FRIEDRICK	NCSSM
JOHN COCHRAN	GREENSBORO N&R
Andy Romanet	N.C.L.M.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 29, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 29, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eighteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HOUSE BILL 484 - RECORD NOTICES OF OPEN DUMPS/AB. - Representative Weatherly, sponsor. This bill had been before the committee at the last meeting, but no vote had been taken on it. A proposed committee substitute had been adopted at the previous meeting for discussion purposes. Senator Horton had sent forth an amendment, but no vote had been taken on it. At today's meeting, Senator Horton withdrew his amendment from the previous meeting. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 261 - WELL CONTRACTORS CERTIFICATION - Senator Odom, sponsor, said there was a proposed committee substitute and moved for its adoption for discussion purposes. Motion carried. Senator Odom explained the proposed committee substitute. Attached to these minutes is a copy of a fiscal note as well as an assessment report. Buster Dellinger, President, North Carolina Ground Water Association, spoke in favor of this bill. Also, Arthur Mouberry, Chief, Water Quality, DEHNR, spoke in favor of the bill, and answered questions from committee members. Linda Sewall, Division of Environment Health, DEHNR, said they strongly supported this bill. Due to shortage of time, Senator Albertson said we would discuss this bill again at another meeting.

Meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, May 29, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 261	WELL CONTRACTORS CERTIFICATION. Senator Odom
HB 484	RECORD NOTICES OF OPEN DUMPS/AB. Representative Weatherly

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, May 29, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **484** RECORD NOTICES OF OPEN DUMPS/AB.

Draft Number:	PCS1380
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 484
Proposed Senate Committee Substitute H484-PCS1380

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of land clearing and inert debris in a landfill with a disposal area of ½ acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S. 130A-301.1(c). A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f). The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and Notice of Open Dump.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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).~~ (b) of this section.

(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 shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

(1) The Department shall file the Notice of Open Dump 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. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s): _____

Description of the real property: _____

Description of the particular area where the open dump is located: _____

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

by _____ Date: _____.'

(2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.

(3) The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person in the Notice of Open Dump.

(4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice of Open Dump."

Section 3. G.S. 130A-290(20) reads as rewritten:

"(20) 'Open dump' means ~~a~~ any facility or site where solid waste ~~disposal site which~~ is disposed of that is not a sanitary ~~landfill.~~ landfill and that is not a facility for the disposal of hazardous waste."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 484

Short Title: Record Notices of Open Dumps/AB. (Public)

Sponsors: Representatives Weatherly; and Culp.

Referred to: Environment.

March 10, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47.29.1 reads as rewritten:

"**§ 47-29.1. Recordation of waste disposal on land.**

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8.

(c) Notice of an open dump shall be recorded as provided in G.S. 130A-301(f)."

Section 2. G.S. 130A-301 reads as rewritten:

"**§ 130A-301. Recordation of permits for disposal of waste on ~~land.~~ land and notices of open dumps.**

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the ~~register of deeds' office~~ office of the register of deeds in the county or counties in 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

by Date: .'

(2) The register of deeds shall record the Notice and index it in the grantor index under the name of the record owner or owners. After recording the Notice, the register of deeds shall return the Notice to the Department in care of the person listed as the contact person listed on the Notice.

(3) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of the open dump. The Cancellation shall be in a form similar to the original Notice and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice."

Section 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

withdrawn by Sen. Horton on 5/29/97

EDITION No. H484-CSRT-001

H. B. No. 484 DATE May 22

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Horton
)
Sen.)

moves to amend the bill on page 4, line ~~19~~ 6

( ) WHICH CHANGES THE TITLE

by deleting the existing line in its entirety & rewriting the same as follows:

Section 4. This act shall not be effective until the open dumps located upon the state-owned lands known as Buxton Woods are remediated and a cancellation of Notice of Open Dumps is filed as provided in section 4 of GS 130A-301

SIGNED Horton

ADOPTED _____ FAILED _____ TABLED ✓

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 261*
Proposed Committee Substitute S261-PCS6685

Short Title: Well Contractors Certification. (Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Continuing Education. -- During a member's term on the Commission, the member shall meet the annual continuing education requirements established for certified well contractors. This requirement applies regardless of whether the member is a certified well contractor.

(g) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(h) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(j) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) 'Commission' means the Well Contractors Certification Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Person' means a natural person.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(5) 'Well contractor' means a person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) 'Well contractor activity' means the construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) No well contractor shall perform any well contractor activity without being certified under this Article.

(b) The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(c) This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.
(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.
(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.
(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred fifty dollars ($150.00); the annual fee may not exceed three hundred fifty dollars ($350.00) per year; and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.10. Promotion of training and other powers.**

The Commission and the Secretary may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article. They may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.11. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.13. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require

corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water

from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91(b) is repealed.

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission under G.S. 143B-301.12(a), as enacted by Section 1 of this act, shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) The requirement that members of the Well Contractors Certification Commission who are appointed to positions (1), (2), (3), and (4) be certified as well contractors under Article 7A of Chapter 87, as enacted by Section 1 of this act, shall not apply to initial appointments.

(c) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who has been actively and continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.13, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 261*

Short Title: Well Contractors Certification. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Continuing Education. -- During a member's term on the Commission, the member shall meet the annual continuing education requirements established for certified well contractors. This requirement applies regardless of whether the member is a certified well contractor.

(g) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

(h) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(j) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"**§ 87-98.1. Title.**

This Article may be cited as the North Carolina Well Contractors Certification Act.

"**§ 87-98.2. Definitions.**

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) 'Commission' means the Well Contractors Certification Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Person' means a natural person.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(5) 'Well contractor' means a person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) 'Well contractor activity' means the construction, installation, repair, alteration, or abandonment of any well.

"**§ 87-98.3. Purpose.**

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"**§ 87-98.4. Well contractor certification required; applicability.**

(a) No well contractor shall perform any well contractor activity without being certified under this Article.

(b) The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(c) This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Certification without examination.

(a) Unless the applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.9, the Commission shall issue a well contractor certificate without examination fee to any person who has been actively and continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

"§ 87-98.6. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.7. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.8. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"**§ 87-98.9. Disciplinary actions.**

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.10. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred fifty dollars ($150.00), the annual fee may not exceed three hundred fifty dollars ($350.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.11. Promotion of training and other powers.**

The Commission and the Secretary may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article. They may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.12. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.13. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.14. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.10."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91(b) is repealed.

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 10. Sections 1, 3, 4, and 7 through 10 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.14, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

May 29, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 261

Senate Bill 261 (Well Contractors Certification) was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The proposed committee substitute makes only technical corrections. Senate Bill 261 creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Section 1 establishes the Well Contractors Certification Commission (Commission) within the Department of Environment, Health, and Natural Resources (DEHNR). The Commission is authorized to adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well contractor certification laws, and adopt rules to secure federal aid for well contractor certification programs.

The Commission will consist of seven members as follows:

(1) A well contractor who works primarily on domestic water supply wells.
(2) A well contractor who works primarily on domestic water supply wells.
(3) A well contractor who works primarily on large capacity water supply wells.
(4) A well contractor who works primarily on nonwater supply wells.
(5) An employee of a county health department engaged in well inspection and permitting.
(6) An employee of a county health department engaged in well inspection and permitting.
(7) An at-large member not engaged in well contracting activities.

Members (1), (2), and (5) are appointed upon the recommendation of the Speaker of the House of Representatives. Members (3), (4), and (6) are appointed upon the recommendation of the President Pro Tempore of the Senate. Member (7) is appointed by the Governor. Members will serve staggered three-years terms.

Effective Date: When the act becomes law.

Section 2 establishes the Well Contractors Certification Act. The Act requires certification for a well contractor engaging in the construction, installation, repair, alteration, or abandonment of any well. Certification is not required for the performance of these activities by a person (i) who is working for and under the personal supervision of a certified well contractor or (ii) who constructs, repairs, or abandons a well located on land owned or leased by that person.

The Commission is directed by this Act to specify certain activities that do not require certification; establish different types of well contractor certifications based on the activities performed; and establish education, experience, and examination requirements for each type of well contractor certification. The Commission may also discipline well contractor through written reprimand, certificate suspension, or certificate revocation in cases of fraud or deception; failure to use reasonable care; gross negligence, or failure to complete continuing educational requirements. Furthermore, the Secretary of Environment, Health, and Natural Resources may request the Attorney General to seek injunctive relief to restrain a well contractor from committing a violation or require a well contractor to take corrective action to remedy a violation.

The Commission may set a fee for: examination not to exceed $150.00; annual certification not to exceed $350.00; and temporary certification not to exceed $100.00. These fees will be credited to the Well Construction Fund, a nonreverting fund within DEHNR to be used for the costs of administering the Well Contractor Certification program.

Effective Date: When the act becomes law, except that the certification requirement and the injunctive relief provisions become effective January 1, 1999.

Section 3 provides that persons violating the provisions of Well Contractors Certification Act will be subject to a civil penalty of not more than $100.00.

Effective Date: When the act becomes law.

Section 4 amends the definition of "well" so that it does not exclude a well constructed by an individual on land which is owned or leased by the individual, appurtenant to a single family dwelling, and intended for domestic use.

Effective Date: When the act becomes law.

Section 5 provides that fees collected pursuant to the registration of those engaged in well construction will be credited to the Well Construction Fund created by the Well Contractors Certification Act.

Effective Date: July 1, 1997.

Section 6 repeals the registration requirement for those engaged in well construction.

Effective Date: January 1, 1999.

Section 7 repeals the procedural provisions relating to notice and remedial action for violations of the Well Construction Act.

Effective Date: When the act becomes law.

Section 8 provides for the initial appointments to the Well Contractors Certification Commission.

Effective Date: When the act becomes law.

Section 9 is a grandfather provision requiring the Commission to issue a certificate, without examination, to any person engaged in well contractor activity since July 1, 1986 and who has been registered or employed by a corporation that has been registered with DEHNR since July 1, 1992.

Effective Date: When the act becomes law.

Section 10 authorizes the Commission to adopt temporary rules to implement this act.

Effective Date: When the act becomes law.

Section 11 sets out the effective dates.

Effective Date: When the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 261

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Senator Odom

FISCAL IMPACT

Yes (x) ** No ( ) No Estimate Available ( )

***Well Construction Fund* (created by this act)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES *					
Registration Fee	$31,250				
Certification Renewal		$227,500	$236,250	$245,000	$253,750
Certification by Examination		$30,000	$3,750	$3,750	$3,750
Temporary Certification		$2,500	$2,500	$2,500	$2,500
Total	**$31,250**	**$260,000**	**$242,500**	**$251,250**	**$260,000**
EXPENDITURES	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* ***Revenue estimate based on the maximum fee allowed by the act.***

** ***See statement on page 3, under* Assumptions and Methodology *regarding the creation of the Well Construction Fund.***

BILL SUMMARY: *TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.* Adds new Part 9A (Well Contractors Certification Commission) to GS Chapter. 143B creating a new certification commission and new Article 7A (Well Contractors Certification) imposing a new certification requirement on well contractors.

New commission. The Well Contractors Certification Commission is composed of seven members serving three-year staggered terms. Two members appointed by the General Assembly on recommendation of the Speaker must be certified well contractors, one east of Interstate 95 and one west. Two members appointed by the General Assembly on recommendation of the President Pro Tem. must be certified well contractors, one engaged primarily with large capacity water supply wells and one engaged primarily with non-supply wells such as monitoring or recovery wells. Two members would be employees of local county health departments actively engaged in well inspection and permitting, one appointed by the General Assembly on recommendation of the Speaker and one on the recommendation of the President Pro Tem. One member must appointed by the Governor from the public at large. The well contractor members will be selected from names nominated by anyone who is himself or herself a certified well contractor. The Commission may adopt rules with respect to certification of well contractors, make quasi-judicial decisions in any matter involving certification, and adopt rules necessary to secure federal grant-in-aid for the program of certification.

New certification requirement. Individuals engaged in the business of construction, installation, repair, alteration, or abandonment of wells must gain certification from the Commission. No person without certification may engage in such activity except (a) an individual performing services for a certified contractor and under the contractor's personal supervision or (b) an individual constructing, repairing, or abandoning a well located on land he or she owns or leases. Any person who has not been found to have engaged in improper conduct and who has been actively engaged as a well contractor since July 1, 1986 and has been continuously registered with the Department of Environment, Health, and Natural Resources since July 1, 1992 (or employed by a firm so registered) may be initially certified without examination. Imposes fees of $150 for examination fee for new applicants; $350 fee for annual renewal of certification; and $100 for temporary certification (good for 45 days, maximum). Fees will be deposited into a fund to pay the costs of the certification program. Certification may be suspended or revoked if the well contractor (1) engages in fraud in connection with acquiring certification or in well construction, (2) fails to use reasonable care or judgment in well construction, (3) has been grossly negligent or has demonstrated willful disregard for laws or regulations governing well construction, or (4) fails to complete continuing education requirements set by Commission.

Amends GS 87-94, which sets civil penalties for well regulation violations, to add a penalty of $100 for violation of certification requirements. Repeals GS 143-355(e), which now requires well contractors to register with the Department of Environment, Health, and Natural Resources. Repeals GS 87-91(b), which now requires registered or certified mail delivery of notice of Well Construction Act violations and makes corresponding changes in GS 87-94. [1]

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[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill, Volume 1997, Number 11, February 17, 1997.

ASSUMPTIONS AND METHODOLOGY:

According to the bill, the Well Contractors Certification Commission may set fees for temporary certification, certification by examination and annual certification renewal up to the maximums stated in the bill, to cover the costs of implementing this act. **All fees collected are to be credited to the Well Construction Fund, a non-reverting account within the Department of Environment, Health, and Natural Resources, to cover the costs of administering the Well Construction Certification program, in accordance with the provisions of this act. Thus, there will be no impact on the General Fund, nor the need for an additional appropriation.**

Revenues

Revenue estimates are based on the maximum fee allowed under this act; however, the Commission may set fees for examination and certification at lower rates, commensurate with actual program costs.

- Registration Fee

  Under current law, G.S. 143-355(e) requires persons, firms and corporations engaged in the well construction business to register with the Department of Environment, Health, and Natural Resources and pay a $50.00 registration fee each year. The bill requires this registration fee to be credited to the Well Construction Fund beginning July 1, 1997.

  There are approximately 600 well contractors currently registered, and the department expects an additional 25 persons to seek registration for the 1997-98 fiscal year. Therefore, total revenue from the registration fee for the 1997-98 fiscal year is projected to be $31,250 (625 registered contractors x $50 registration fee).

  The bill repeals this registration fee requirement effective January 1, 1999 to coincide with the effective date of the certification requirement. Since G.S. 143-355(e) designates the registration period to be January 1 to January 31 of each year, most of the revenues from this fee are collected during the early part of the calendar year. Therefore, no registration fee revenue is projected for the 1998-99 fiscal year, even though the registration requirement is in effect for the first six months of the 1998-99 fiscal year.

- Annual Certification Renewal

  The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at $350.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of $125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of $125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue ($350.00)	227,500	236,250	245,000	253,750
Annual Certification Revenue Based on Projected Operating Requirements ($125.00)	81,250	84,375	87,500	90,625

- Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to $150.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee ($150.00)	30,000	3,750	3,750	3,750

- Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to $100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee ($100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**

* *Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of $100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Mona Moon
APPROVED BY: Tom Covington**TomC**
DATE: May 12, 1997

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Well Contractors

Senate Bill 261
House Bill 251

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of well contractors. This report constitutes both the preliminary and final assessment report.

Representative Frank Mitchell, Chairman

Prepared by:
Linwood Jones, Counsel

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5/29/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bowen	R W Beck
Dwight "Buster" Dellinger	North Carolina Ground Water Assoc.
Arthur Mouberry	DEHNR - DWQ - Groundwater
Linda Small	DEHNR/DEH
TANJA VUJIĆ	NCEDF
Paul Dow	N.C. Agricultural Chemicals
Walter Denny	NCDA
France Webster	115 Polly Pl. Clayton, NC 27520
Mary Carmichael	Mecklenburg County
Jim Holman	CCNC / Sierra Club
Eddie Caldwell	W M C M C P.A.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 5/29/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANNA TEFFT	OSBM
Mike Carpenter	NCFSA
Paul Wilms	NCFBA
AB Swindell	BFI
Michelle Cook	Weyerhaeuser
ERSKINE CALDWELL	JONES COUNTY
JULIAN PHILPOTT	NC FARM BUREAU
Kim Smith	NCLM
Bob Sheum	NC Forestry Association
Joe O'Leary	Sierra Club / CCNC
Doug Howey	NCPMA

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 3, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 3, 1997, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eighteen committee members present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HOUSE BILL 194 - DRINKING WATER REVOLVING LOAN FUND - Representative Culp, sponsor, explained the bill. Senator Odom moved that the bill be given a favorable report. Motion carried.

SENATE BILL 261 - WELL CONTRACTORS CERTIFICATION - Senator Odom, sponsor, explained the proposed committee substitute that had been adopted for discussion at the meeting of May 29, 1997. A fiscal note and an assessment report on SB 261 are attached to these minutes. Linda Sewall of DEHNR answered questions from committee members on the bill. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Senator East moved that instead the bill be sent to a subcommittee for further study. After much debate, a division vote was called for on Senator Odom's motion. There were nine votes in favor of a favorable report for the proposed committee substitute, and six votes against. The proposed committee substitute was given a favorable report, unfavorable as to bill, with a recommended referral to Finance.

SENATE BILL 874 - ARIBTRATION OF SEED CLAIMS - Senator Kerr, sponsor. Chairman Albertson had appointed a subcommittee at the May 22, 1997 meeting to study this bill. Senator Wellons, chairman of the subcommittee, said there was a proposed committee substitute for the bill and Senator Odom moved that the PCS be adopted for discussion purposes. Motion carried. Barbara Riley of staff explained the proposed committee substitute. Speaking in favor of the bill was Taylor Jeffreys of Jeffreys Seed Company of Goldsboro. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to bill, with a sequential referred to Finance/Appropriations. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 3, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

SB 261	WELL CONTRACTORS CERTIFICATION Senator Odom
SB 874	ARBITRATION OF SEED CLAIMS Senator Kerr
HB 194	DRINKING WATER REVOLVING LOAN FUND Representative Culp

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT

Senator Albertson, Chairman

Tuesday, June 03, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **194** DRINKING WATER REVOLVING LOAN FUND.
Sequential Referral: NONE
Recommended Referral: NONE

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **261** WELL CONTRACTORS CERTIFICATION.
Draft Number: PCS6685
Sequential Referral: NONE
Recommended Referral: FINANCE
Long Title Amended: No

S.B. **874** ARBITRATION OF SEED CLAIMS.
Draft Number: PCS1827
Sequential Referral: FINANCE/APPROPRIATIONS
Recommended Referral: NONE
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 194
Committee Substitute Favorable 3/26/97

Short Title: Drinking Water Revolving Loan Fund. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ACCOUNT WITHIN THE CLEAN WATER 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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159G-5 is amended by adding a new subsection to read:

"(d) The Drinking Water Treatment Revolving Loan Fund is established as a special account within the Clean Water Revolving Loan and Grant Fund. This account shall be established and managed in accordance with the requirements of section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182; 110 Stat. 1662; 42 U.S.C. § 300j-12), to achieve the purposes and goals of the federal Safe Drinking Water Act Amendments of 1996. The funds in the Drinking Water Treatment Revolving Loan Fund may be used only for the purposes of providing revolving construction loans and other assistance as set forth in section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 and the regulations promulgated thereunder, including making grants to the extent permitted by these amendments or these regulations."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 3, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 194 (Drinking Water Revolving Loan Fund)

House Bill 194 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The committee substitute for House Bill 194 that received a favorable report from the House Committee on Environment made only technical corrections.

House Bill 194 establishes the Drinking Water Treatment Revolving Loan Fund within the Clean Water Revolving Loan and Grant Fund to receive federal funds allocated under the federal Safe Drinking Water Act Amendments of 1996. North Carolina could receive up to $46 million in federal funds that the State could loan to units of local government for constructing or improving public water systems. The federal grant would require a 20% State match and the Governor's Budget allocates $9.2 million to meet this matching requirement.

Section 1.

Section 1 of this bill amends G.S. 159G-5 to add a new subsection. The new subsection, G.S. 159G-5(d), establishes the Drinking Water Treatment Revolving Loan Fund as a special account within the Clean Water Revolving Loan and Grant Fund to receive federal funds allocated under the federal Safe Drinking Water Act Amendments of 1996.

Section 2.

Section 2 of this bill makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 261*
Proposed Committee Substitute S261-PCS6685

Short Title: Well Contractors Certification. (Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Continuing Education. -- During a member's term on the Commission, the member shall meet the annual continuing education requirements established for certified well contractors. This requirement applies regardless of whether the member is a certified well contractor.

(g) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(h) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(j) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"**§ 87-98.1. Title.**

This Article may be cited as the North Carolina Well Contractors Certification Act.

"**§ 87-98.2. Definitions.**

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) 'Commission' means the Well Contractors Certification Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Person' means a natural person.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(5) 'Well contractor' means a person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) 'Well contractor activity' means the construction, installation, repair, alteration, or abandonment of any well.

"**§ 87-98.3. Purpose.**

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"**§ 87-98.4. Well contractor certification required; applicability.**

(a) No well contractor shall perform any well contractor activity without being certified under this Article.

(b) The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(c) This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.
(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.
(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.
(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred fifty dollars ($150.00); the annual fee may not exceed three hundred fifty dollars ($350.00) per year; and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.10. Promotion of training and other powers.**

The Commission and the Secretary may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article. They may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.11. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.13. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require

corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water

from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91(b) is repealed.

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission under G.S. 143B-301.12(a), as enacted by Section 1 of this act, shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) The requirement that members of the Well Contractors Certification Commission who are appointed to positions (1), (2), (3), and (4) be certified as well contractors under Article 7A of Chapter 87, as enacted by Section 1 of this act, shall not apply to initial appointments.

(c) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who has been actively and continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.13, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

May 29, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 261

Senate Bill 261 (Well Contractors Certification) was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The proposed committee substitute makes only technical corrections. Senate Bill 261 creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Section 1 establishes the Well Contractors Certification Commission (Commission) within the Department of Environment, Health, and Natural Resources (DEHNR). The Commission is authorized to adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well contractor certification laws, and adopt rules to secure federal aid for well contractor certification programs.

The Commission will consist of seven members as follows:

(1) A well contractor who works primarily on domestic water supply wells.
(2) A well contractor who works primarily on domestic water supply wells.
(3) A well contractor who works primarily on large capacity water supply wells.
(4) A well contractor who works primarily on nonwater supply wells.
(5) An employee of a county health department engaged in well inspection and permitting.
(6) An employee of a county health department engaged in well inspection and permitting.
(7) An at-large member not engaged in well contracting activities.

Members (1), (2), and (5) are appointed upon the recommendation of the Speaker of the House of Representatives. Members (3), (4), and (6) are appointed upon the recommendation of the President Pro Tempore of the Senate. Member (7) is appointed by the Governor. Members will serve staggered three-years terms.

Effective Date: When the act becomes law.

Section 2 establishes the Well Contractors Certification Act. The Act requires certification for a well contractor engaging in the construction, installation, repair, alteration, or abandonment of any well. Certification is not required for the performance of these activities by a person (i) who is working for and under the personal supervision of a certified well contractor or (ii) who constructs, repairs, or abandons a well located on land owned or leased by that person.

The Commission is directed by this Act to specify certain activities that do not require certification; establish different types of well contractor certifications based on the activities performed; and establish education, experience, and examination requirements for each type of well contractor certification. The Commission may also discipline well contractor through written reprimand, certificate suspension, or certificate revocation in cases of fraud or deception; failure to use reasonable care; gross negligence, or failure to complete continuing educational requirements. Furthermore, the Secretary of Environment, Health, and Natural Resources may request the Attorney General to seek injunctive relief to restrain a well contractor from committing a violation or require a well contractor to take corrective action to remedy a violation.

The Commission may set a fee for: examination not to exceed $150.00; annual certification not to exceed $350.00; and temporary certification not to exceed $100.00. These fees will be credited to the Well Construction Fund, a nonreverting fund within DEHNR to be used for the costs of administering the Well Contractor Certification program.

Effective Date: When the act becomes law, except that the certification requirement and the injunctive relief provisions become effective January 1, 1999.

Section 3 provides that persons violating the provisions of Well Contractors Certification Act will be subject to a civil penalty of not more than $100.00.

Effective Date: When the act becomes law.

Section 4 amends the definition of "well" so that it does not exclude a well constructed by an individual on land which is owned or leased by the individual, appurtenant to a single family dwelling, and intended for domestic use.

Effective Date: When the act becomes law.

Section 5 provides that fees collected pursuant to the registration of those engaged in well construction will be credited to the Well Construction Fund created by the Well Contractors Certification Act.

Effective Date: July 1, 1997.

Section 6 repeals the registration requirement for those engaged in well construction.

Effective Date: January 1, 1999.

Section 7 repeals the procedural provisions relating to notice and remedial action for violations of the Well Construction Act.

Effective Date: When the act becomes law.

Section 8 provides for the initial appointments to the Well Contractors Certification Commission.

Effective Date: When the act becomes law.

Section 9 is a grandfather provision requiring the Commission to issue a certificate, without examination, to any person engaged in well contractor activity since July 1, 1986 and who has been registered or employed by a corporation that has been registered with DEHNR since July 1, 1992.

Effective Date: When the act becomes law.

Section 10 authorizes the Commission to adopt temporary rules to implement this act.

Effective Date: When the act becomes law.

Section 11 sets out the effective dates.

Effective Date: When the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 261*

Short Title: Well Contractors Certification. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Continuing Education. -- During a member's term on the Commission, the member shall meet the annual continuing education requirements established for certified well contractors. This requirement applies regardless of whether the member is a certified well contractor.

(g) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

(h) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(j) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"**§ 87-98.1. Title.**

This Article may be cited as the North Carolina Well Contractors Certification Act.

"**§ 87-98.2. Definitions.**

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) 'Commission' means the Well Contractors Certification Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Person' means a natural person.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(5) 'Well contractor' means a person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) 'Well contractor activity' means the construction, installation, repair, alteration, or abandonment of any well.

"**§ 87-98.3. Purpose.**

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"**§ 87-98.4. Well contractor certification required; applicability.**

(a) No well contractor shall perform any well contractor activity without being certified under this Article.

(b) The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(c) This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"**§ 87-98.5. Certification without examination.**

(a) Unless the applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.9, the Commission shall issue a well contractor certificate without examination fee to any person who has been actively and continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

"**§ 87-98.6. Types of certification; sole certification.**

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"**§ 87-98.7. Well contractor qualifications and examination.**

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"**§ 87-98.8. Issuance and renewal of certificates; temporary certification.**

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"**§ 87-98.9. Disciplinary actions.**

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.10. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred fifty dollars ($150.00), the annual fee may not exceed three hundred fifty dollars ($350.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.11. Promotion of training and other powers.**

The Commission and the Secretary may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article. They may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.12. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.13. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.14. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.10."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91(b) is repealed.

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 10. Sections 1, 3, 4, and 7 through 10 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.14, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 261

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Senator Odom

FISCAL IMPACT

Yes (x) ** No ( ) No Estimate Available ( )

Well Construction Fund **(created by this act)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES *					
Registration Fee	$31,250				
Certification Renewal		$227,500	$236,250	$245,000	$253,750
Certification by Examination		$30,000	$3,750	$3,750	$3,750
Temporary Certification		$2,500	$2,500	$2,500	$2,500
Total	**$31,250**	**$260,000**	**$242,500**	**$251,250**	**$260,000**
EXPENDITURES	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* ***Revenue estimate based on the maximum fee allowed by the act.***

** ***See statement on page 3, under*** **Assumptions and Methodology** ***regarding the creation of the Well Construction Fund.***

BILL SUMMARY: *TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.* Adds new Part 9A (Well Contractors Certification Commission) to GS Chapter. 143B creating a new certification commission and new Article 7A (Well Contractors Certification) imposing a new certification requirement on well contractors.

New commission. The Well Contractors Certification Commission is composed of seven members serving three-year staggered terms. Two members appointed by the General Assembly on recommendation of the Speaker must be certified well contractors, one east of Interstate 95 and one west. Two members appointed by the General Assembly on recommendation of the President Pro Tem. must be certified well contractors, one engaged primarily with large capacity water supply wells and one engaged primarily with non-supply wells such as monitoring or recovery wells. Two members would be employees of local county health departments actively engaged in well inspection and permitting, one appointed by the General Assembly on recommendation of the Speaker and one on the recommendation of the President Pro Tem. One member must appointed by the Governor from the public at large. The well contractor members will be selected from names nominated by anyone who is himself or herself a certified well contractor. The Commission may adopt rules with respect to certification of well contractors, make quasi-judicial decisions in any matter involving certification, and adopt rules necessary to secure federal grant-in-aid for the program of certification.

New certification requirement. Individuals engaged in the business of construction, installation, repair, alteration, or abandonment of wells must gain certification from the Commission. No person without certification may engage in such activity except (a) an individual performing services for a certified contractor and under the contractor's personal supervision or (b) an individual constructing, repairing, or abandoning a well located on land he or she owns or leases. Any person who has not been found to have engaged in improper conduct and who has been actively engaged as a well contractor since July 1, 1986 and has been continuously registered with the Department of Environment, Health, and Natural Resources since July 1, 1992 (or employed by a firm so registered) may be initially certified without examination. Imposes fees of $150 for examination fee for new applicants; $350 fee for annual renewal of certification; and $100 for temporary certification (good for 45 days, maximum). Fees will be deposited into a fund to pay the costs of the certification program. Certification may be suspended or revoked if the well contractor (1) engages in fraud in connection with acquiring certification or in well construction, (2) fails to use reasonable care or judgment in well construction, (3) has been grossly negligent or has demonstrated willful disregard for laws or regulations governing well construction, or (4) fails to complete continuing education requirements set by Commission.

Amends GS 87-94, which sets civil penalties for well regulation violations, to add a penalty of $100 for violation of certification requirements. Repeals GS 143-355(e), which now requires well contractors to register with the Department of Environment, Health, and Natural Resources. Repeals GS 87-91(b), which now requires registered or certified mail delivery of notice of Well Construction Act violations and makes corresponding changes in GS 87-94. [1]

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[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill, Volume 1997, Number 11, February 17, 1997.

ASSUMPTIONS AND METHODOLOGY:

According to the bill, the Well Contractors Certification Commission may set fees for temporary certification, certification by examination and annual certification renewal up to the maximums stated in the bill, to cover the costs of implementing this act. **All fees collected are to be credited to the Well Construction Fund, a non-reverting account within the Department of Environment, Health, and Natural Resources, to cover the costs of administering the Well Construction Certification program, in accordance with the provisions of this act. Thus, there will be no impact on the General Fund, nor the need for an additional appropriation.**

Revenues

Revenue estimates are based on the maximum fee allowed under this act; however, the Commission may set fees for examination and certification at lower rates, commensurate with actual program costs.

- Registration Fee

  Under current law, G.S. 143-355(e) requires persons, firms and corporations engaged in the well construction business to register with the Department of Environment, Health, and Natural Resources and pay a $50.00 registration fee each year. The bill requires this registration fee to be credited to the Well Construction Fund beginning July 1, 1997.

  There are approximately 600 well contractors currently registered, and the department expects an additional 25 persons to seek registration for the 1997-98 fiscal year. Therefore, total revenue from the registration fee for the 1997-98 fiscal year is projected to be $31,250 (625 registered contractors x $50 registration fee).

  The bill repeals this registration fee requirement effective January 1, 1999 to coincide with the effective date of the certification requirement. Since G.S. 143-355(e) designates the registration period to be January 1 to January 31 of each year, most of the revenues from this fee are collected during the early part of the calendar year. Therefore, no registration fee revenue is projected for the 1998-99 fiscal year, even though the registration requirement is in effect for the first six months of the 1998-99 fiscal year.

- Annual Certification Renewal

  The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at $350.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of $125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of $125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue ($350.00)	227,500	236,250	245,000	253,750
Annual Certification Revenue Based on Projected Operating Requirements ($125.00)	81,250	84,375	87,500	90,625

- Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to $150.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee ($150.00)	30,000	3,750	3,750	3,750

- Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to $100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee ($100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**

* *Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of $100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

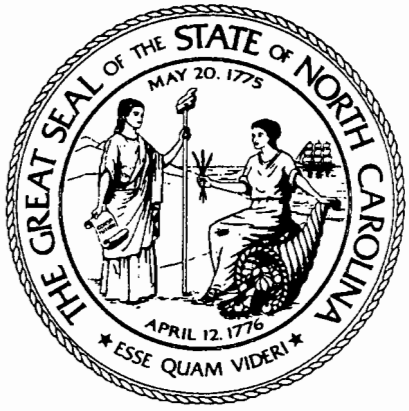
FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Mona Moon
APPROVED BY: Tom Covington**TomC**
DATE: May 12, 1997

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Well Contractors

Senate Bill 261
House Bill 251



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of well contractors. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 874
Proposed Committee Substitute S874-PCS1827

Short Title: Resolution of Seed Claims. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE INVESTIGATION AND RESOLUTION OF CLAIMS RESULTING FROM DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Filing complaint; investigation; referral to Seed Board.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or as warranted, the buyer may make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Commissioner of Agriculture with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the Seed Board incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Investigation Requested by Seed Dealer. -- Any seed dealer who has received notice, either orally or in writing, that a buyer believes that he or she has suffered damage due to the failure of agricultural or vegetable seed sold by the dealer to

perform as labeled or as warranted, may request an investigation by the Seed Board pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by registered mail. The buyer may file a response to the request with the Commissioner within 10 days of receipt of the request for an investigation.

(c) Referral to Seed Board. -- The Commissioner of Agriculture shall refer the complaint or request for investigation to the Seed Board to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"**§ 106-277.31. Notice required.**

Seed dealers shall legibly print or type on each seed container or affix a label on each seed container a notice in the following form or using reasonably equivalent language:

'Notice of Claims Procedure for Defective Seed

North Carolina provides an opportunity for persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted to have the matter investigated and heard before a special seed board as an alternative to filing a court action. To take advantage of this procedure, a purchaser of seed must file a complaint with the North Carolina Commissioner of Agriculture in time for the seed, crop, or plants to be inspected. Please contact the Commissioner of Agriculture for information about this claims procedure.'

"**§ 106-277.32. Seed Board created; membership; duties.**

(a) The Commissioner of Agriculture shall appoint a Seed Board composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the Board shall serve until replaced by the Commissioner of Agriculture. The Board shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the Board.

(b) A clerk shall be appointed to serve the Board. The clerk shall be an employee of the Department of Agriculture. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the Board as directed by the chairperson.

(c) The Department shall provide administrative support for the investigation under this section. The Board shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(d) Members of the Board appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Members of the Board who are State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-6.

(e) The Attorney General shall represent the Board in any and all legal proceedings that may arise concerning or against the Board.

"§ 106-277.33. Duties of Seed Board.

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, the Seed Board may engage in the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the Board to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the Board.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The Board shall keep a record of its activities and reports on file in the Department of Agriculture. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the investigation.

(c) No investigation shall be made by less than the whole membership of the Board unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the Board in reporting its findings and making its recommendations.

(d) The report of the investigation and the recommendations of the Seed Board shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of the complaint pursuant to G.S. 106-277.30.

"§ 106-277.34. Actions regarding defective seed claims; evidence.

In any action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the Seed Board. Statements of the parties and recommendations of the Seed Board as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable."

Section 3. The Cooperative Extension Service shall make information about the alternative claims procedure set forth in this act available to the farmers of the State. Among the means used to disseminate information about the program, the

Cooperative Extension Service may consider the publication of brochures, inclusion of the material in relevant continuing education programs, and through routine contacts with farmers by county extension agents.

Section 4. There is appropriated from the General Fund to the Department of Agriculture the sum of ten thousand dollars ($10,000) for the 1997-98 fiscal year and the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

Section 5. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 874

Short Title: Arbitration of Seed Claims. (Public)

Sponsors: Senator Kerr.

Referred to: Agriculture/Environment/Natural Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Commissioner of Agriculture with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a State's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer against whom an action is brought in any court, State or federal, by a buyer who alleges that the buyer has suffered damages due to the failure of seeds purchased from a seed dealer to perform as labeled, as warranted, or as a result of negligence may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture by the party requesting the investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Arbitration committee created; membership; duties.

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and agricultural seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"**§ 106-277.32. Duties of arbitration committee.**

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, the arbitration committee may engage in all of the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

"**§ 106-277.33. Filing an action regarding a defective seed claim.**

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any action involving a complaint that has been the subject of arbitration under G.S. 106-277.32, any party may introduce the report of arbitration as evidence

of the facts found in the report, and the court may give such weight to the committee's findings and conclusions of law and recommendations as to damages and costs as the court deems appropriate, based upon all the evidence before the court. The court may consider any finding of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case."

Section 3. There is appropriated from the General Fund to the Department of Agriculture the sum of ten thousand dollars ($10,000) for the 1997-98 fiscal year and the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

Section 4. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 22, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: Senate Bill 874: Arbitration of Seed Claims.

Senate Bill 874, introduced by Senator Kerr, would require mandatory arbitration of seed claims. Complaint of defective seeds would be required to be filed within a time frame that would allow inspection of the affected seed, crops, or plants.

Section 1 of the bill repeals the existing provisions in the agriculture statutes allowing a farmer to file a complaint with the Commissioner of Agriculture and have the Department conduct an investigation to determine the facts of the matter and, when appropriate, recommend money damages as a result of the seed failure.

Section 2 of the bill sets forth the new provisions requiring arbitration of seed claims. G.S. 106-277.30 would require a person who believes that they have been damaged by failure of seeds to perform as labeled to file a complaint with the Commissioner of Agriculture and have the matter considered by an arbitration committee as a condition precedent to the filing of a legal action.

The complaint must be filed within time to allow inspection of the affected seeds, crops or plants. The person must pay a $100 filing fee with the complaint to offset the expenses of the arbitration committee. A copy of the complaint shall be sent to the dealer by certified mail and the dealer may file an answer within 10 days of receipt of the complaint.

In order to trigger the mandatory arbitration requirement, the seed dealer must place on the label notice that arbitration is required under the seed laws of some states as a precondition to maintaining a legal action. A seed dealer against whom an action has been brought may also request an investigation by the arbitration committee. A filing fee of $100 must accompany the request for an investigation.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

G.S. 106-277.31 sets forth the membership of the arbitration committee. The committee is to consist of 5 members appointed by the Commissioner. The Director of the Agricultural Research Service at NCSU, the Director of the North Carolina Cooperative Extension Service, and the President of the North Carolina Seedsmen's Association shall each recommend one member for appointment. Of the other two members, one shall be a farmer who is not connected to seed sales and one shall be an employee of the Department of Agriculture.

G.S. 106-277.32 sets forth the duties of the arbitration committee. In conducting an investigation the committee may (1) examine the buyer about how the seed was used; (2) examine the seller about how the seed was packaged, labeled, and sold; (3) grow a sample of the seed; (4) hold informal hearings; (5) seek evaluations from experts in allied disciplines; and (6) inspect the affected site. No investigation shall be made by less than the whole committee unless the chair of the committee directs so in writing. The record of the committee's activities shall be kept on file at the Department. All findings shall be transmitted to the parties within 30 days of completion of the arbitration. The findings shall be binding on the parties to the extent that they have agreed to be bound in any contract governing the purchase of the seed.

G.S. 106-277.33 provides for the filing of a legal action after the arbitration proceedings are completed. The report of arbitration may be introduced as evidence of the facts found in the report and the court may give such weight to the committee's findings and conclusions of law and recommendations as the court deems appropriate. In addition the court may take into consideration any finding with respect to the effect of a failure to cooperate with the arbitration and the effect of any delay in the proceedings on the arbitration committee's ability to determine the facts.

Section 3 of the act appropriates $10,000 in each year of the biennium to implement the act.

The act becomes effective July 1, 1997.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/3/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Francis Scott Key	Baltimore MD
P Butler	NC Farm Bureau
Peter Daniel	NCDA
Jane Barthwick	UNC Gen Admin - NCSU Bio Econ
Joe Johnson	Capital Correspondence
Doug Howey	NCPMA
Gary Harris	NC Petroleum Marketers Assoc.
Arthur Mouberry	DEHNR: DWQ - Groundwater
Buster Dellinger	N.C. Ground Water Assoc.
DAVID HUTSON	N.C GROUND WATER ASSOC.
Vernon Jones	NC State Grange

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/3/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucas Pullen	Attorney
Stacey Parker	intern - Sen. Odom
Joe Olinger	CCNC / Sierra Club
Kim Smith	NCLM
Patty Berry	CCNC
TANJA VUTIĆ	NC EDF
Shali Bogavelli	NC EDF/DUKE UNIVERSITY
Linda Sewell	DENR
Ray N. Howell III	First Baptist Church Lexington, NC
Wallace Beaney	NCDA
Paul E. Allen	N.C. Farmbureau

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/3/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TAYLOR JEFFREYS	JEFFREYS SEED COMPANY
Howard Singletary	NCDA
Buck DeMarest	Bore? Core Inc.
Ed Scott	NCCBI
B.G Check	DENR
Laura Hartsell	MCK
Jane P. Gray	DOJ
Lt. Kelly Flinn	U.S. Air Force (Discharged)
R. ROGERS	DENR
Bob Thomas	NC Forestry Assoc.
Julian Phillips	NCFB

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES 6/9/97
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	N.C. State Grange

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 4, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Wednesday, June 4, 1997, at 1:00 p.m., in Room 544 of the Legislative Office Building. Senator Albertson, chairman, presided and there were nineteen committee members present.

The following bill was discussed. Copies of bill and any hand-outs are attached to these minutes.

HOUSE BILL 515 - ENVIRONMENTALLY SOUND POLICY ACT - Representative Morgan, sponsor. Senator Albertson said that in addition to today's meeting, the committee would also meet on June 5 at 8:30 a.m. and at 11:00 a.m. in Room 642. He said that comments from the public would be heard at the 8:30 meeting and anyone wishing to speak should see Norma Ware for sign-up sheet. Comments would be limited to three minutes per speaker. Senator Albertson said the plan was to take a vote on the bill at the 11:00 meeting.

Senator Albertson said there was a proposed committee substitute and that Senator Perdue would explain it and along the way staff would make appropriate comments. Senator Perdue moved that the proposed committee substitute be adopted for discussion purposes. Motion carried. Attached to these minutes is a detailed explanation of the PCS prepared by Jeff Hudson, committee counsel.

The meeting was adjourned after one and one-half hours to reconvene at 8:30 a.m. on June 5 in Room 643 at which time comments would be heard from the public.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Wednesday, June 4, 1997
1:00 p.m.
Room 544 - LOB

AGENDA

HB 515 ENVIRONMENTALLY SOUND POLICY ACT.
Representative Morgan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 515
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/29/97

Short Title: Environmentally Sound Policy Act. (Public)

Sponsors:

Referred to:

March 13, 1997

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.

The General Assembly of North Carolina enacts:

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

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

"ARTICLE 67.

"Swine Farms.

"**§ 106-800. Title.**

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

"**§ 106-801. Purpose.**

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

"**§ 106-802. Definitions.**

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

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds 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.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(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, or outdoor recreational facility, 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; and

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

(a1) 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 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.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

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

"**§ 106-804. Enforcement.**

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

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

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

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

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

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

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

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

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require

the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

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

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

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located, except that the notice to a county shall be to the county manager or the chairman if there is no county manager and the notice to a local health department shall be to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing if it finds, upon its own initiative or in response to a request from a member of the public, that there is a significant public interest in holding the hearing. The notice and conduct of the hearing shall be in accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3)."

Section 2.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

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

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

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

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

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

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

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

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

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

Section 6. There is established a temporary moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census; (ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

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

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion of a component or components of a swine farm or lagoon, if actual construction began prior to March 1, 1997, or if the owner of the swine farm entered into a bona fide contract to build the component or components prior to March 1, 1997. For purposes of this subdivision, "actual construction" is limited to the component or components of a swine farm or lagoon for which the foundation has been laid prior to March 1, 1997, from a blueprint drawing.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation

filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to the effective date of this section, been approved for a loan or line of credit from a lending institution to finance the construction or expansion and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste system approved by the Department.

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

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 1 and Sections 3 through 8 of this act are effective when this act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 2 of this act, apply to any intensive animal feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 2.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as

enacted by Section 2.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 515
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/29/97
Proposed Senate Committee Substitute H515-PCS8248

Short Title: Clean Water Responsibility Act. (Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1. (a) Moratorium Established. -- As used in this section, "swine farm" and "lagoon" have the same meaning as in G.S. 106-802. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a

new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is deemed permitted under 15A North Carolina Administrative Code 2H.0217.

(b) Exceptions. -- The moratorium established by subsection (a) of this section does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) or (7) of this section.

(3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.

(4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit under G.S. 143-215.1(a) or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:

a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.

b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.

c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or animal waste management system and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste management system that does not employ an anaerobic lagoon and that has been approved by the Department of Environment, Health, and Natural Resources.

(c) Establishing Eligibility for an Exemption. -- It shall be the responsibility of an applicant for a permit for an animal waste management system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through (7) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant.

PART II. AGRICULTURAL ZONING BY COUNTIES

Section 2.1. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may ~~not~~ affect property used for bona fide ~~farms, but any~~ farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm ~~purposes is subject to the regulations.~~ purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified

therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

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

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

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

Section 2.2. Zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, shall not apply to swine farms in existence at the time the zoning ordinance is adopted.

PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL OPERATIONS

Section 3.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B. Standards and plans adopted under this subdivision shall be required only to the extent that economically feasible technology sufficient to satisfy these standards and plans is available."

Section 3.2. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies, as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session), to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S.

143-215.107(a)(11), as enacted by Section 3.1 of this act, within six months after the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies if the report establishes that economically feasible odor control technology for animal operations is available. If economically feasible odor control technology for animal operations is available, the Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems no later than 1 March 1999. The Environmental Management Commission shall not adopt a temporary rule to regulate the emission of odors from animal waste management systems. The Environmental Management Commission shall report on its progress in developing and adopting a rule to regulate the emission of odors from animal waste management systems as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IV. SWINE FARM SITING ACT AMENDMENTS

Section 4.1. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"§ 106-800. Title.

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

"§ 106-801. Purpose.

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

"§ 106-802. Definitions.

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

(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;~~ residence.

(2) ~~at~~ At least 2,500 feet from any school, hospital, or ~~church; and~~ church.

(3) ~~at~~ At least 500 feet from any property boundary.

(a1) 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 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.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

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

"§ 106-804. Enforcement.

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

(1) Injunctive relief.

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

(3) Damages caused by the violation.

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

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

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

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

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

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

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

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

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

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners; all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources."

Section 4.2. G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this act, applies to any new liquid animal waste management system for which construction commences on or after the date this act becomes law and to any expansion of an existing liquid animal waste management system for which construction commences on or after the date this act becomes law.

PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN WATER REVOLVING LOAN AND GRANT FUND TO ASSIST LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED ON COMPREHENSIVE LAND-USE PLANNING BY LOCAL GOVERNMENTS

Section 5.1. G.S. 159G-10 reads as rewritten:

"**§ 159G-10. Priorities.**

(a) Determination. -- Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(a1) **(See note)** Expired.

(b) Priority Factors. -- All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for such funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. --

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for determining which local government units will receive a loan or grant. A local government unit that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in another local government

unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as a local government unit that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards.

(2) Wastewater Treatment Work Projects. -- The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. -- The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. -- The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. -- The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

~~(5)~~ (6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through ~~(4)~~ (5) of this subsection.

(c) Assignment of Priority. -- A written statement relative to each priority assigned shall be prepared by the receiving agency and shall be attached to the application. The priority assigned shall be conclusive.

(d) Failure to Qualify. -- Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information.

(e) Land-Use Plan. -- Local government units are encouraged to adopt comprehensive land-use plans. The Division of Community Assistance in the Department of Commerce shall, upon request, provide technical assistance to any economically distressed local government unit in preparing a comprehensive land-use plan. To qualify as a comprehensive land-use plan, a plan must meet all of the following requirements:

(1) Be adopted by the governing body of the local government unit covered by the plan.

(2) Promote economically and environmentally sustainable development.

(3) Establish verifiable goals to be met through compliance with the plan.

(4) Be approved by the Office of State Planning."

Section 5.2. G.S. 159G-3 is amended by adding a new subdivision to read:

"(7a) 'Economically distressed local government unit' means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A."

PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS

Section 6.1. G.S. 143-215.1 is amended by adding four new subsections to read:

"(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging either to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission or to other surface water bodies of the State specifically designated by the Commission where nitrogen is a nutrient of concern shall not discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow having a total nitrogen concentration of four milligrams of nitrogen per liter (4.0 mg/l). If the Commission determines that the assimilative capacity for nitrogen of a water body has been exceeded, the Commission shall establish a maximum mass load for total nitrogen for that water body. The maximum mass load for total nitrogen established by the Commission may require permitted flows to have a total nitrogen concentration less than those set out in this subsection. The maximum mass load of total nitrogen for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for nitrogen based on the permitted flow and total nitrogen concentration required by this subsection, whichever is less. The total nitrogen concentration of 4.0 mg/l for NSW and other waters required by this subsection apply only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July

1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to surface water bodies of the State specifically designated by the Commission where phosphorous is a nutrient of concern shall not discharge more than an average annual mass load of total phosphorous than would result from a discharge of the permitted flow having a total phosphorous concentration of two milligrams of phosphorous per liter (2.0 mg/l). If the Commission determines that the assimilative capacity for phosphorous of a water body has been exceeded, the Commission shall establish a maximum mass load for total phosphorous for that water body. The maximum mass load for total phosphorous established by the Commission may require permitted flows to have a total phosphorous concentration less than that set out in this subsection. The maximum mass load of total phosphorous for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for phosphorous based on the permitted flow and total phosphorous concentration required by this subsection, whichever is less.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorous that person discharges by the average annual mass load of total nitrogen and total phosphorous of the wastewater treatment facility that is eliminated. If the wastewater treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorous shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorous discharge monitoring requirements established by the Commission. This average annual load of nitrogen or phosphorous shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorous concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorous is equal to or is

less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased permitted flow does not result in an average annual mass load of total nitrogen or total phosphorous equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply."

Section 6.2. G.S. 143-215.6A(a) is amended by adding a new subdivision to read:

"(10) Violates G.S. 143-215.1(c1), G.S. 143-215.1(c2), or a rule adopted pursuant to G.S. 143-215.1(c1) or G.S. 143-215.1(c2)."

Section 6.3. By 1 November 1997, the Environmental Management Commission shall develop a schedule of dates between 1 January 1998, and 1 January 2003, by which existing facilities must comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall follow as closely as possible the dates on which permits for existing facilities must be renewed. New facilities and expansions of existing facilities for which an application for a permit is received by the Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission prior to the date this act becomes effective shall be treated as existing facilities.

PART VII. STORMWATER MANAGEMENT

Section 7.1. G.S. 143-214.7 reads as rewritten:

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

(a) Policy, Purpose and Intent. -- The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall ~~be authorized and directed to~~ implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide

basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish ~~waters;~~ waters.
(2) Water supply ~~watersheds;~~ watersheds.
(3) Outstanding resource ~~waters;~~ waters.
(4) High quality ~~waters; and~~ waters.
(5) ~~Other waters where~~ All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article. ~~Provided however, that prior to implementation of rules under this subdivision (5), the Commission shall consult with the Environmental Review Commission.~~

(c) ~~Chapter 150B of the General Statutes governs adoption of rules by the Commission.~~ The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies are authorized to adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

Section 7.2. The Environmental Management Commission shall make the first annual report required by G.S. 143-214.7(e), as enacted by Section 7.1 of this act, on or before 1 October 1998.

Section 7.3. The Department of Transportation shall work diligently and in full cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, using whatever resources may be necessary, to complete the development of a statewide stormwater management permit under the National Pollutant Discharge Elimination System (NPDES). The General Assembly intends that this permit govern all programs administered by the Department of Transportation and that the permit will be issued no later than 1 October 1997. The Department of Transportation and the Division of Water Quality

shall jointly report to the Environmental Review Commission as to their progress in meeting the mandate of this section no later than 1 October 1997.

PART VIII. COMPLETION OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR EACH OF THE STATE'S SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS; ADOPTION OF TOTAL MAXIMUM DAILY LOADS FOR EACH RIVER BASIN

Section 8.1. The General Assembly makes the following findings:

(1) There are 17 major river basins in the State.

(2) Many activities occur in the vicinity of each of these river basins, and the activities and conditions in one river basin may vary greatly from those in another river basin.

(3) The public is focusing on the swine industry's role in degrading water quality, but, in fact, numerous other industries and even private citizens are responsible for contributing nutrients and toxins to the waters of the State. Among the point source and nonpoint sources of nutrients and toxins in our State's waters are: municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, as well as animal operations.

(4) The best and most effective approach to protecting and improving water quality is a comprehensive, systemwide management approach.

(5) Basinwide water quality management is an approach already being taken by the Department of Environment, Health, and Natural Resources to improve the efficiency, effectiveness, and consistency of its water quality protection program. It is not a new regulatory program; it is a watershed-based approach that provides for basinwide permitting and integration of point and nonpoint source controls through existing regulatory and cooperative programs. The Neuse River Basinwide Management Plan has already been released. Seventeen basinwide plans are planned to be prepared by the Department over the next five years.

(6) The better solution to improving water quality lies not in abandoning efforts under way in an effort to find a new solution, but to accelerate effective efforts currently in progress by establishing a deadline for completing, and expediting the implementation of, the 17 comprehensive conservation and management plans for each major river basin in the State.

(7) The public should be informed of the complexity of the problems regarding water quality so that the public can appreciate the

effectiveness of a systemwide approach and the degree of effort that has already been expended to address these problems. Public involvement should be encouraged, and public education should be enhanced.

Section 8.2. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.8B. Basinwide water quality management plans.**

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all activities across a river basin and all point sources and nonpoint sources of nutrients and toxins, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, and animal operations.

(b) Each basinwide water quality management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the nutrients and toxins in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) Incorporate protective buffers along all perennial bodies of water for new developmental activities. The Commission shall consider the ecological reasons for each buffer and shall base any requirements for the buffer on those reasons. The Commission shall also consider and adopt an equitable approach for determining which developmental activities shall be defined as 'new developmental activities.'

(3) Require appropriate management of any new developmental activity that is agricultural, residential, commercial, or industrial in nature, if the new developmental activity is to occur on land that is located within a 100-year floodplain.

(4) If any of the waters located within the river basin are designated as nutrient sensitive water, then the basinwide water quality management plan shall establish a goal to reduce the average annual load of nutrients delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require that incremental progress toward achieving the goal be demonstrated each year. The Commission

shall develop a five-year plan to achieve the goal. In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(5) Any other components of the plan that the Commission determines to be necessary.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every five years to reflect changes in permits that have been renewed during the previous five-year permit renewal cycle, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge.

(d) The Commission and the Department shall each report on a quarterly basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing the basinwide water quality management plans. The report under this section by the Commission shall be made as a part of the quarterly report required under G.S. 143B-282(b). The report under this section by the Department shall be made on or before the first day of each calendar quarter."

Section 8.3. The Environmental Management Commission shall increase its current efforts to involve the public in the development and implementation of the basinwide water quality management plans, including conducting public hearings throughout the State. The Department of Environment, Health, and Natural Resources shall increase public education efforts to inform the public of the complexity of the problems related to water quality, the benefits of taking a comprehensive, systemwide approach to water quality improvement, and the need for all point and nonpoint sources of pollutants to have an active role in reducing nutrients and toxins, either by reducing the amount of nutrients and toxins used or by improving the treatment and disposal of wastewater, or both. The Department shall provide press releases on at least a monthly basis for the purpose of keeping the public well-informed of water quality issues in the State.

Section 8.4. G.S. 143B-282 is amended by adding a new subsection to read:

"(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing, on a basinwide basis, appropriate total maximum daily loads of pollutants for those targeted waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing planning process and shall adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined

by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups."

Section 8.5. G.S. 143B-282(a)(2) is amended by adding a new sub-subdivision to read:

"j. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B."

Section 8.6. The Environmental Management Commission may adopt rules to implement this Part as provided in Article 3 of Chapter 150B of the General Statutes. The Environmental Management Commission shall not adopt a temporary rule to implement this Part. The Environmental Management Commission shall report on its progress in implementing this Part as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IX. FERTILIZER USE AT GOLF COURSES

Section 9.1. Article 3 of Chapter 90A of the General Statutes is amended by adding a new Part to read:

"Part 3. Certification of Applicators of Soil Enriching Nutrients at Golf Courses.

"**§ 90A-48. Purpose.**

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health, to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's land for the recreational use and enjoyment of private and public golf courses, and to require the examination of persons who apply soil-enriching nutrients onto land at golf courses, and certification of their competency to apply or supervise the application of soil-enriching nutrients onto land at golf courses.

"**§ 90A-48.1. Definitions.**

As used in this Part:

(1) 'Application' means spraying, laying, spreading on, irrigating, or injecting soil-enriching nutrients onto land.

(2) 'Commission' means the Water Pollution Control System Operators Certification Commission.

(3) 'Operator in charge' means a person who holds a currently valid certificate for the application of soil-enriching nutrients onto land at golf courses and who has primary responsibility for their application.

(4) 'Soil-enriching nutrients' means fertilizers or soil-enriching substances containing nitrogen, phosphorus, zinc, or other soil-enriching elements or minerals.

(5) 'Owner' means the person who owns or controls the land used for a golf course or the person's lessee or designee.

"§ 90A-48.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of a golf course onto which soil-enriching nutrients are applied shall allow the application by a person who does not hold a valid certificate as an operator in charge of the application of soil-enriching nutrients onto land at golf courses issued by the Commission. No person shall perform the duties of an operator in charge of the application of soil-enriching nutrients onto land at golf courses without being certified under the provisions of this Part. Other persons may assist in the application of soil-enriching nutrients so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of a golf course onto which soil-enriching nutrients are applied may contract with a certified operator in charge of the application of soil-enriching nutrients onto land at golf courses to provide for the application of soil-enriching nutrients onto that land. The Commission may adopt rules requiring that any certified operator in charge who contracts with one or more owners or other persons in control of a golf course onto which soil-enriching nutrients are applied file an annual report with the Commission as to which property the services of the operator in charge are provided.

"§ 90A-48.3. Qualifications for certification; training; examination.

(a) The Commission shall develop and administer a certification program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses that provides for receipt of applications, training, and examination of applicants and for investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an operator in charge of the application of soil-enriching nutrients onto land at golf courses shall complete six hours of approved additional training during each three-year period following initial certification. A certified operator in charge of the application of soil-enriching nutrients onto land at golf courses who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate.

"§ 90A-48.4. Certificate renewals.

A certificate holder shall renew the certificate annually. A certificate holder who fails to renew the certificate within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

"§ 90A-48.5. Suspension; revocation of certificate.

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

(1) Engages in fraud or deceit in obtaining certification.
(2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.
(3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

"**§ 90A-48.6. Rules.**

The Commission shall adopt rules to implement the provisions of this Part."

PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL PENALTY LIABILITY

Section 10.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6E. Violation Points System applicable to swine farms.**

(a) The Commission shall develop a Violation Points System applicable to permits for animal waste management systems for swine farms. This system shall operate in addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority of the Commission to revoke a permit for an animal waste management system for a swine farm. The Violation Points System shall provide that:

(1) Violations that involve the greatest harm to the natural resources of the State, the groundwater or surface water quantity or quality, public health, or the environment shall receive the most points and shall be considered significant violations.
(2) Violations that are committed willfully or intentionally shall be considered significant violations.
(3) The number of points received shall be directly related to the degree of negligence or willfulness.
(4) The commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative number of points, within a limited period of time of not less than five years shall result in the mandatory revocation of a permit.
(5) The commission of one willful violation that results in serious harm may result in the revocation of a permit.

(b) In developing the Violation Points System under this section, the Commission shall determine the:

(1) Number of points that lesser violations must cumulatively total to result in the revocation of a permit.
(2) Limited period of time during which the commission of three significant violations, or the commission of a greater number of

lesser violations, will result in the revocation of the operator's permit. This limited period of time shall not be less than five years.

(3) Duration of the permit revocation.

(4) Conditions under which the person whose permit is revoked may reapply for another permit for an animal waste management system for a swine farm.

(c) In developing the Violation Points System under this section, the Commission shall provide for an appeals process."

Section 10.2. (a) The Department of Environment, Health, and Natural Resources shall develop a recommended system of civil penalties applicable to integrators of swine operations. These civil penalties shall be imposed upon the revocation of a permit of an operator under contract with that integrator for the production of swine at the time the violation that resulted in the revocation of the operator's permit occurred, whether or not that operator was under contract with that integrator throughout the period of time all the violations that contributed to this permit revocation occurred. In conjunction with developing this system of civil penalties for integrators of swine operations, the Environmental Management Commission shall provide that the Director of the Division of Water Quality of the Department of Environment, Health, and Natural Resources notify all integrators of all violations assessed against operators who are under contract for the production of swine with that integrator and, upon the written request by the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract. The Environmental Management Commission shall also study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful, wanton, or grossly negligent violation that results in significant environmental damage.

(b) No later than 1 March 1998, the Department of Environment, Health, and Natural Resources shall report its findings and recommendations, including legislative proposals, if any, on the issues to be studied under subsection (a) of this section. This report shall include a recommended system of civil penalties applicable to integrators of swine operations for violations by growers who are under contract with that integrator for the production of swine. The Environmental Review Commission shall determine whether to submit a legislative proposal based upon this recommended system to the 1997 General Assembly, 1998 Regular Session.

PART XI. CRIMINAL ENFORCEMENT FOR REPEATED VIOLATIONS; CLARIFICATION OF REQUIREMENT THAT PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE FINANCIALLY QUALIFIED

Section 11.1. G.S. 143-215.6A is amended by adding a new subsection to read:

"(a1) The Secretary shall refer to the State Bureau of Investigation for its review as to the possible commission of any criminal offense any person or facility that

discharges waste in a manner that significantly violates this Article or rules adopted pursuant to this Article on two or more separate occasions in any three-year period. Upon receipt of a referral under this section, the State Bureau of Investigation may conduct an investigation and, if appropriate, refer the matter to the district attorney in whose jurisdiction any criminal offense has occurred. This subsection shall not be construed to limit the authority of the Secretary to refer any matter to the State Bureau of Investigation for review without regard to the number of possible offenses within any particular period of time."

Section 11.2. G.S. 143-215.1(b) reads as rewritten:

"(b) Commission's Power as to Permits. --

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or 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 under subsection (a) of this ~~section; and~~ section. Financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test,

bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
   1. The environmental impact of the activities;
   2. How often the activities are carried out;
   3. The need for individual permit oversight; and
   4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:
   1. Performance conditions may be established by rule; and
   2. Individual or general permits are not required."

PART XII. ADDITIONAL STUDIES

Section 12.1. The Environmental Review Commission shall study the feasibility and the desirability of requiring persons who apply fertilizers or other soil-enriching nutrients onto land other than golf courses to be certified under a certification program that requires training and passing an examination and that is similar to the certification program required of those who apply soil-enriching nutrients onto land at golf courses, as required by Article 3 of Chapter 90A of the General Statutes, as enacted by Section 9.1 of this act. In conjunction with this study, the Environmental Review Commission shall consider the amounts of fertilizers used on public roadways, at public parks and recreation areas, at commercial properties, at churches, at athletic fields and schools, near airstrips at airports, and on residential

lawns and gardens that are maintained by commercial lawn services as well as those that are maintained by the residential dweller. During this study, the Department of Transportation shall report to the Environmental Review Commission the amounts of fertilizers and pesticides that it uses to maintain turfgrass, ornamental plantings, and trees along the State roadways. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.2. The Environmental Review Commission shall study the feasibility and desirability of establishing a voluntary education program designed to educate members of the public who maintain residential lawns or gardens concerning the impact nutrients and pesticides have on the environment of the State, the responsible use of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and pesticides into the surface and groundwaters of the State. In conjunction with this study, the Environmental Review Commission shall study the feasibility and desirability of directing the North Carolina Cooperative Extension Service to develop and implement such a voluntary education program. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.3. The Department of Agriculture shall submit the next North Carolina Turfgrass Survey to the Environmental Review Commission no later than one month after the survey is published.

Section 12.4. The Environmental Review Commission shall study the development of guidelines for best management practices for golf courses. The study shall address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.5. The Environmental Review Commission shall study the development of guidelines for best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing septic tank systems that supplement any rules governing septic tank systems that are adopted by the Commission for Health Services, including standards for devices and practices relating to septic tank installation, operation, maintenance, and repair. The Environmental Review Commission shall consider the use of incentives, including tax credits, that could be implemented to encourage the use of best management practices for septic tank systems. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session. As used in this section, the phrase "devices and practices" includes, but is not limited to:

(1) Filters or other devices designed to improve the efficiency of septic tank systems.

(2) Risers or other devices designed to facilitate pumping.

(3) Electronic warning devices that signal when the solid or liquid waste in the system has reached a level such that the septic tank needs to be pumped.

(4) Alternative and innovative systems for improved wastewater treatment and disposal.

(5) Any other approved technology or practice that demonstrates improved efficiency for septic systems.

PART XIII. ASSUMPTION OF CONTROL OF NONCOMPLYING PUBLICLY OWNED TREATMENT WORKS BY THE ENVIRONMENTAL MANAGEMENT COMMISSION

Section 13.1. G.S. 143-215.3(a) is amended by adding a new subdivision to read:

"(18) To assume control and operate a publicly owned treatment works that persistently fails to comply with this Article, rules adopted pursuant to this Article, or other federal and State laws, regulations and rules for the protection of public health and the environment. Before assuming control of a publicly owned treatment works, the Commission shall notify the unit of local government that owns or operates the treatment works that the Commission intends to assume control of the treatment works unless the local government immediately takes whatever steps are necessary to bring the treatment works into compliance with applicable requirements. The Commission shall also consult with the Local Government Commission before assuming control and operation of a publicly owned treatment works. If the Commission assumes control and operation of a publicly owned treatment works, the unit of local government that owns or operates the treatment works is liable to the Commission for all costs associated with the control and operation of the treatment works, including the cost of any repairs and improvements necessary to bring the treatment works into compliance with applicable requirements. If the Commission assumes control and operation of a publicly owned treatment works, it shall continue to operate the treatment works until such time as the Commission, in consultation with the Local Government Commission, is satisfied that the unit of local government is both capable of and willing to operate the treatment works in compliance with all applicable requirements."

PART XIV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 14.1. G.S. 143-215(e) is repealed.

Section 14.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 14.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 14.4. (a) G.S. 143-215.8B, as enacted by Section 8.2 of this act, becomes effective when this act becomes law, except that subdivisions (1) through (4) of G.S. 143-215.8B(c) become effective 1 January 1998. This act shall not be construed to invalidate the development and implementation of basinwide water quality management plans by the Environmental Management Commission and the Department of Environment, Health, and Natural Resources that has occurred prior to the date this act becomes effective.

(b) G.S. 90A-48.2, as enacted by Section 9.1 of this act, becomes effective 1 July 1998.

(c) Except as otherwise provided, each section of this act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 4, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel

Re: **Proposed Senate Committee Substitute for House Bill 515 - Clean Water Responsibility Act**

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1 establishes a two-year moratorium, from March 1, 1997 to March 1, 1999, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine). This moratorium does not prohibit construction:

- To repair a component of a swine farm or lagoon
- To replace a component of a swine farm or lagoon
- To meet design capacity in certified animal waste management plan filed with DEHNR prior to March 1, 1997
- To comply with animal waste management rules
- If the person undertaking the construction has been issued a permit prior to the date this act becomes effective
- If, prior to March 1, 1997, the person undertaking the construction has laid a foundation for the component being constructed
- If, prior to March 1, 1997, the person undertaking the construction entered into a bona fide written contract for construction
- If, prior to March 1, 1997, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit
- Of an innovative animal waste management system that does not employ an anaerobic lagoon and has been approved by DEHNR

The burden of proof for establishing, to the satisfaction of DEHNR, that an applicant meets a moratorium exemption is on the permit applicant.

PART II. AGRICULTURAL ZONING BY COUNTIES

Section 2.1 authorizes counties to adopt zoning regulations for swine farms served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or more. The zoning regulations authorized by this section may not exclude swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or more from the entire zoning jurisdiction.

Section 2.2 provides that zoning regulations authorized by Section 2.1 will not apply to swine farms in existence at the time the zoning ordinance is adopted.

PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL OPERATIONS

Section 3.1 directs the Environmental Management Commission (EMC) to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than March 1, 1999. These standards will be required only to the extent that economically feasible technology is available.

Section 3.2 contains provisions for the completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.

PART IV. SWINE FARM SITING ACT AMENDMENTS

Section 4.1 makes technical changes to the Swine Farm Siting Act. It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. It also adds a requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.

Section 4.2 provides that this prohibition applies only to construction or expansion that commences on or after the date this act becomes effective.

PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN WATER REVOLVING LOAN AND GRANT FUND TO ASSIST LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED ON COMPREHENSIVE LAND USE PLANNING BY LOCAL GOVERNMENTS.

Section 5.1 adds the existence of a comprehensive land-use plan to the priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund. The comprehensive land-use plan must be adopted by the unit of local government, promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning. The Division of Community Assistance in the Department of Commerce will provide assistance to any economically distressed local government unit (defined in Section 5.2) in preparing a comprehensive land use plan. Section 5.1 also directs the EMC to establish priority criteria for modifications to wastewater treatment facilities that must meet nitrogen and phosphorous limits for surface waters.

PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS

Section 6.1 prohibits facilities that discharge into Nutrient Sensitive Waters or into other surface waters of the State where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 4.0 milligrams per liter. This limit applies only to:

- Facilities placed into operation prior to July 1, 1997 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
- Facilities for which an authorization to construct is issued on or after July 1, 1997

Section 6.1 also directs the EMC to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 4.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been exceeded.

Section 6.1 also prohibits facilities that discharge into surface waters of the State where phosphorous is a nutrient of concern from discharging more than an amount of phosphorous than would result from a permitted flow at 2.0 milligrams per liter. Section 6.1 authorizes the EMC to establish a total amount of phosphorous that may be discharged into a water body less than that achieved by the 2.0 mg/l limit when the assimilative capacity for phosphorous of that water body has been exceeded.

Section 6.1 also allows facilities subject to the nitrogen/phosphorous discharge limits to form cooperative agreements in order to satisfy those limits.

Section 6.1 also allows a facility subject to the nitrogen/phosphorous discharge limits to request from the EMC approval of a discharge concentration that is greater than the general nitrogen/phosphorous discharge limits set by this section at a decreased permitted flow so long as the total amounts of nitrogen/phosphorous are equal to or less than that required by this section.

Section 6.2 authorizes the Secretary of Environment, Health, and Natural Resources (SEHNR) to assess a civil penalty of not more than $10,000 for violations of the nitrogen/phosphorous discharge limits established by Section 6.1.

Section 6.3 directs the EMC to develop a schedule of dates between January 1, 1998 and January 1, 2003 during which facilities must come into compliance with the nitrogen/phosphorous discharge limits established by Section 6.1.

PART VII. STORMWATER MANAGEMENT

Section 7.1 directs the EMC to develop model stormwater management programs that may be implemented by State agencies and units of local government.

Section 7.2 directs the EMC to deliver the first of its annual reports to the Environmental Review Commission (ERC) on the status of stormwater control programs on or before October 1, 1998.

Section 7.3 directs the Department of Transportation (DOT) to work with the Division of Water Quality, DEHNR, to complete the development of a Statewide stormwater management permit to

govern all programs administered by DOT. This permit is to be completed no later than October 1, 1997.

PART VIII. COMPLETION OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR EACH OF THE STATE'S SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS; ADOPTION OF POLLUTANT LIMITS FOR EACH RIVER BASIN.

Section 8.1 sets out findings regarding basinwide water quality management in the 17 major river basins in North Carolina.

Section 8.2 directs the EMC to develop and implement a basinwide water quality management plan for each of the State's 17 major river basins. In the development and implementation of these plans, all point and nonpoint sources of nutrients and toxins will be considered. Each plan will:

- Provide that all point and nonpoint sources share responsibility in reducing nutrients and toxins in the State's waters in a fair , reasonable, and proportionate manner
- Incorporate protective buffers along all perennial bodies of water for new developmental activities.
- Require appropriate limitations on new developmental activity within the 100-year flood-plain.
- Establish a nutrient reduction goal in Nutrient Sensitive Waters so that the uses of these Waters will no longer be classified as impaired.

Section 8.3 directs the EMC to increase its efforts to involve the public in the development and implementation of basinwide water quality management plans.

Section 8.4 directs the EMC to adopt limits on all pollutants for each of the State's 17 major river basins as required by federal law.

Section 8.5 authorizes the EMC to adopt rules to implement basinwide water quality management plans.

Section 8.6 contains rulemaking and reporting provisions related to basinwide water quality management plans.

PART IX. FERTILIZER USE AT GOLF COURSES

Section 9.1 establishes a certification and training program for persons who apply soil enriching nutrients to golf courses and prohibits the owner or person in control of a golf course from allowing an uncertified person from applying soil enriching nutrients to the golf course. The Water Pollution Control System Operators Certification Commission (WPCSOCC) is directed to develop and administer the certification program and to establish a training program for persons who apply soil enriching nutrients to golf courses. Section 9.1 also authorizes the WPCSOCC to suspend or revoke certification under certain circumstances and to assess a civil penalty not to exceed $1,000 per willful violation of the program.

PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL PENALTY LIABILITY.

Section 10.1 directs the EMC to develop a Violation Points System applicable to permits for animal waste management systems for swine farms. Those violations that cause the greatest environmental harm or that are committed willfully or intentionally are to be classified as significant. The commission of three significant violations (or a greater number of less significant violations) within a limited period of time, not less than five years, will result in the mandatory revocation of a permit. The commission of one willful violation that results in serious harm may result in the revocation of a permit.

Section 10.2 directs the DEHNR to develop a recommended system of civil penalties applicable to integrators of swine operations. A civil penalty will be imposed against an integrator upon the revocation of a permit of an operator under contract with the integrator for the production of swine at the time the violation that resulted in the revocation occurred. It also directs the EMC to study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful or grossly negligent violation that results in significant environmental damage.

PART XI. CRIMINAL ENFORCEMENT FOR REPEATED VIOLATIONS; CLARIFICATIONS OF REQUIREMENTS THAT PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE FINANCIALLY QUALIFIED

Section 11.1 directs the SEHNR to refer to the State Bureau of Investigation the possible commission of any criminal offense of any person or facility that discharges waste in a manner that significantly violates State law related to water and air resources on two or more separate occasions in any three-year period.

Section 11.2 directs the EMC to require that applicants for a permit to discharge must demonstrate that the applicant is financially qualified to carry out the activity for which the permit is required.

PART XII. ADDITIONAL STUDIES.

Section 12.1 directs the ERC to study the feasibility and desirability of requiring persons who apply soil enriching nutrients onto land, other than golf courses, to be certified under a certification and training program.

Section 12.2 directs the ERC to study the feasibility and desirability of establishing a voluntary education program designed to educate the public about the impact that nutrients and pesticides have on the environment, the responsible use of nutrients and pesticides, and ways of reducing the input of nutrients and pesticides into State waters.

Section 12.3 requires the Department of Agriculture to submit the next North Carolina Turfgrass Survey to the ERC within one month of the survey's publication.

Section 12.4 directs the ERC to study the development of guidelines for best management practices for golf courses. The study will address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment.

Section 12.5 directs the ERC to study guidelines for and incentives to encourage adoption of best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing systems.

PART XIII. ASSUMPTION OF CONTROL OF NON-COMPLYING PUBLICLY OWNED TREATMENT WORKS BY THE EMC.

Section 13.1 authorizes the EMC to assume control of and operate a publicly owned treatment works that persistently fails to comply with federal and State laws for the protection of public health and the environment. Prior to assuming control, the EMC must consult with the Local Government Commission and provide notice of intent to assume control and steps that may be taken to come into compliance to the unit of local government that owns or operates the publicly owned treatment works.

PART XIV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES.

Section 14.1 repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.

Section 14.2 explains that headings are merely for the convenience of the reader.

Section 14.3 is a severablity clause.

Section 14.4 contains effective dates. Section 14.4(a) makes the required components of each baisinwide water quality management plan effective January 1, 1998. Section 14.4(b) makes the provision requiring certification of persons applying soil enriching nutrients to golf courses effective July 1, 1998. Section 14.4(c) makes all other sections of this act effective when the act becomes law.

COMPARISON

Proposed Senate Committee Substitute for House Bill 515
Clean Water Responsibility Act

with

House Bill 515
Environmentally Sound Policy Act

and

House Bill 900
Nitrogen Limit/Clean Water Fund Modification

Jeff Hudson, Staff Attorney
Research Division
June 3, 1997

PCS HOUSE BILL 515: Part I. Moratorium on Construction or Expansion of Swine Farms	HOUSE BILL 515: Moratoriums on Construction or Expansion of Swine Farms
Section 1.1 establishes a two-year moratorium, from March 1, 1997 to March 1, 1999, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine).	**Section 7** establishes a one -year moratorium, beginning on the date this act becomes effective, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine).
This moratorium does not prohibit construction: • To repair a component of a swine farm or lagoon • To replace a component of a swine farm or lagoon • To meet design capacity in certified animal waste management plan filed with DEHNR prior to March 1, 1997 • To comply with animal waste management rules • If the person undertaking the construction has been issued a permit prior to the date this act becomes effective • If, prior to March 1, 1997, the person undertaking the construction has laid a foundation for the component being constructed • If, prior to March 1, 1997, the person undertaking the construction entered into a bona fide written contract for construction • If, prior to March 1, 1997, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit • Of an innovative animal waste management system that does not employ an anaerobic lagoon and has been approved by DEHNR	This moratorium does not prohibit construction: • To repair a component of a swine farm or lagoon • To replace a component of a swine farm or lagoon • To meet design capacity in registration of the swine operations filed with DEHNR prior to the date this act becomes law • To comply with animal waste management rules • (This moratorium prohibits construction regardless of whether a permit was issued prior to the date this act becomes effective) • If, prior to March 1, 1997, the person undertaking the construction has laid a foundation from a blueprint for the component being constructed • If, prior to March 1, 1997, the owner of the swine farm entered into a bona fide contract to build the component • If, prior to the effective date of this act, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit • Of an innovative animal waste management system approved by DEHNR
The burden of proof for establishing, to the satisfaction of DEHNR, that an applicant meets a moratorium exemption is on the permit applicant.	*No comparable provision*
No comparable provision	**Section 6** establishes a moratorium, beginning January 1, 1997 to one-year from the date this act becomes effective, on the construction or expansion of swine farms (250 swine), lagoons, and animal waste management systems for swine farms in counties with: • A population of under 75,000 • Over $150 million on expenditures for travel and tourism • Not in the coastal area

PCS HOUSE BILL 515: Part II. Agricultural Zoning by Counties	HOUSE BILL 515: Agricultural Zoning by Counties
Section 2.1 authorizes counties to adopt zoning regulations for swine farms served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or more.	**Section 4** authorizes counties to adopt zoning regulations for intensive animal feeding operations (new or enlarged swine farm with a design capacity of 800,000 pounds SSLW or more).
The zoning regulations authorized by this section may not exclude swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or more from the entire zoning jurisdiction.	*No comparable provision*
Section 2.2 provides that zoning regulations authorized by Section 2.1 will not apply to swine farms in existence at the time the zoning ordinance is adopted.	**Section 5** provides that zoning regulations authorized by Section 4 adopted prior to the date Section 4 becomes effective are retroactively validated.

PCS HOUSE BILL 515: Part III. Control of Odor Emissions from Animal Operations	HOUSE BILL 515: Control of Odor Emissions from Animal Operations
Section 3.1 directs the Environmental Management Commission to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than March 1, 1999.	**Section 2.1** directs the Environmental Management Commission to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than May 1, 1999.
These standards will be required only to the extent that economically feasible technology is available.	*No comparable provision*
Section 3.2 contains provisions for completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.	**Section 8(c)** contains provisions for completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.

PCS HOUSE BILL 515: Part IV. Swine Farm Siting Act Amendments	HOUSE BILL 515: Swine Farm Siting Act Amendments
Section 4.1 makes technical changes to the Swine Farm Siting Act.	**Section 2** makes technical changes to the Swine Farm Siting Act.
It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. Section 4.2 provides that this prohibition applies only to construction or expansion that commences on or after the date this act becomes effective.	It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. Section 8 provides that this prohibition applies only to construction or expansion that commences after the date this act becomes effective, but does not apply to construction or expansion occurring on or after the effective date to meet design capacity or comply with applicable rules.
It adds the requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.	It adds the requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.
No comparable provision	Prior to the issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing.
No comparable provision	It adds the following setback requirements for a swine house or lagoon that is a component of a swine farm: • 2,500 feet from any national park, State park, national forest, State forest, wildlife refuge, fragile area, historic area, or outdoor recreational facility (any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members) • 1,320 feet from any surface waters of the State (any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other accumulation of water). • 1,000 feet from those swine farms approaching an intensive animal feeding operation in size (500,000 pounds SSLW). • 1,500 feet from those swine farms significantly exceeding an intensive animal feeding operation in size (1,000,000 pounds SSLW). • 500 feet from any drinking water supply.

PCS HOUSE BILL 515: Part V. Priority for Loans or Grants from the Clean Water Revolving Loan and Grant Fund to Assist Local Governments in Meeting the Nitrogen and Phosphorous Limits for Surface Waters; Priority for Funding from Various Funding Sources Based on Comprehensive Land Use Planning by Local Governments	HOUSE BILL 900: 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 Achieve Further Reduction of Nitrogen and Authorize the Use of the Clean Water Management Trust Fund for Loans
Section 5.1 adds the existence of a comprehensive land-use plan to the priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund. The comprehensive land-use plan must be adopted by the unit of local government, promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning. The Division of Community Assistance in the Department of Commerce will provide assistance to any economically distressed local government unit (defined in Section 5.2) in preparing a comprehensive land use plan. This section also directs the Environmental Management Commission to establish priority criteria for modifications to wastewater treatment facilities that must meet nitrogen and phosphorous limits for surface waters.	**Section 3** authorizes the use of moneys from the Clean Water Management Trust Fund to be used to modify existing permitted wastewater treatment facilities that are subject to the nitrogen limit imposed by Section 1. No more than 25% of money credited to the Fund can be used for modifications to comply with the nitrogen limit imposed by Section 1. **Sections 4** and **5** provide that moneys can be dispersed from the Clean Water Management Trust Fund in the form of loans as well as grants.

PCS HOUSE BILL 515: Part VI. Nitrogen and Phosphorous Limits for Surface Waters	HOUSE BILL 900: Nitrogen Limits for Certain Waters
Section 6.1 prohibits facilities that discharge into Nutrient Sensitive Waters or into other surface waters of the State where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 4.0 milligrams per liter. This limit applies only to: • Facilities placed into operation prior to July 1, 1997 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 • Facilities for which an authorization to construct is issued on or after July 1, 1997	**Section 1** prohibits facilities that discharge into Nutrient Sensitive Waters where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 6.0 milligrams per liter. This limit applies only to: • Facilities placed into operation prior to July 1, 1997 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 • Facilities for which an authorization to construct is issued on or after July 1, 1997

PCS HOUSE BILL 515: Part VI. Nitrogen and Phosphorous Limits for Surface Waters	HOUSE BILL 900: Nitrogen Limits for Certain Waters
This section also directs the Environmental Management Commission to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 4.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been exceeded.	This section also directs the Environmental Management Commission to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 6.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been over-allocated.
Section 6.1 also prohibits facilities that discharge into surface waters of the State where phosphorous is a nutrient of concern from discharging more than an amount of phosphorous than would result from a permitted flow at 2.0 milligrams per liter. This section also authorizes the Environmental Management Commission to establish a total amount of phosphorous that may be discharged into a water body less than that achieved by the 2.0 mg/l limit when the assimilative capacity for phosphorous of that water body has been exceeded.	*No comparable provision*
Section 6.1 also allows facilities subject to the nitrogen/phosphorous discharge limits to form cooperative agreements in order to satisfy those limits.	**Section 1** also allows facilities subject to the nitrogen discharge limit to form cooperative agreements in order to satisfy this limits.
Section 6.1 also allows a facility subject to the nitrogen/phosphorous discharge limits to request from the Environmental Management Commission approval of a discharge concentration that is greater than the general nitrogen/phosphorous discharge limits set by this section at a decreased permitted flow so long as the total amounts of nitrogen/phosphorous are equal to or less than that required by this section.	*No comparable provision*
Section 6.2 authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of not more than $10,000 per violation per day for violations of the nitrogen/phosphorous discharge limits established by Section 6.1.	**Section 2** authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of not more than $10,000 for violations of the nitrogen discharge limit established by Section 1.
Section 6.3 directs the Environmental Management Commission to develop a schedule of dates between January 1, 1998 and January 1, 2003 during which facilities must come into compliance with the nitrogen/phosphorous discharge limits established by Section 6.1.	**Section 6** directs the Environmental Management Commission to develop a schedule of dates between November 1, 1997 and January 1, 2005 during which facilities must come into compliance with the nitrogen discharge limit established by Section 1.

PCS HOUSE BILL 515: Part VII. Stormwater Management	HOUSE BILL 515 AND HOUSE BILL 900
Section 7.1 directs the Environmental Management Commission to develop model stormwater management programs that may be implemented by State agencies and units of local government.	*No comparable provision*
Section 7.2 directs the Environmental Management Commission to deliver the first of its annual reports to the Environmental Review Commission on the status of stormwater control programs on or before October 1, 1998.	*No comparable provision*
Section 7.3 directs the Department of Transportation (DOT) to work with the Division of Water Quality, DEHNR, to complete the development of a Statewide stormwater management permit to govern all programs administered by DOT. This permit is to be completed no later than October 1, 1997.	*No comparable provision*

PCS HOUSE BILL 515: Part VIII. Completion of Basinwide Water Quality Management Plans for each of the State's Seventeen River Basins; Additional Requirements for Basinwide Water Quality Management Plans; Adoption of Pollutant Limits for each River Basin	HOUSE BILL 515 AND HOUSE BILL 900
Section 8.1 sets out findings regarding basinwide water quality management in the 17 major river basins in North Carolina.	*No comparable provision*
Section 8.2 directs the Environmental Management Commission to develop and implement a basinwide water quality management plan for each of the State's 17 major river basins. In the development and implementation of these plans, all point and nonpoint sources of nutrients and toxins will be considered. Each plan will: • Provide that all point and nonpoint sources share responsibility in reducing nutrients and toxins in the State's waters in a fair , reasonable, and proportionate manner • Incorporate protective buffers along all perennial bodies of water for new developmental activities.	*No comparable provision*

PCS HOUSE BILL 515: Part VIII. Completion of Basinwide Water Quality Management Plans for each of the State's Seventeen River Basins; Additional Requirements for Basinwide Water Quality Management Plans; Adoption of Pollutant Limits for each River Basin	HOUSE BILL 515 AND HOUSE BILL 900
• Require appropriate limitations on new developmental activity within the 100-year flood-plain. • Establish a nutrient reduction goal in Nutrient Sensitive Waters so that the uses of these Waters will no longer be classified as impaired.	*No comparable provisions*
Section 8.3 directs the Environmental Management Commission to increase its efforts to involve the public in the development and implementation of basinwide water quality management plans.	*No comparable provision*
Section 8.4 directs the Environmental Management Commission to adopt limits on all pollutants for each of the State's 17 major river basins as required by federal law.	*No comparable provision*
Section 8.5 authorizes the Environmental Management Commission to adopt rules to implement basinwide water quality management plans.	*No comparable provision*
Section 8.6 contains rulemaking and reporting provisions related to basinwide water quality management plans.	*No comparable provision*

PCS HOUSE BILL 515: Part IX. Fertilizer Use at Golf Courses	HOUSE BILL 515 AND HOUSE BILL 900
Section 9.1 establishes a certification and training program for persons who apply soil enriching nutrients to golf courses and prohibits the owner or person in control of a golf course from allowing an uncertified person from applying soil enriching nutrients to the golf course. The Environmental Management Commission is directed to develop and administer the certification program and to establish a training program for persons who apply soil enriching nutrients to golf courses. The Environmental Management Commission is also authorized to suspend or revoke certification under certain circumstances and to assess a civil penalty not to exceed $1,000 per willful violation of the program.	*No comparable provision*

PCS HOUSE BILL 515: Part X. Graduated Violation Points System for Swine Operators; Study of Swine Integrators Civil Penalty Liability.	HOUSE BILL 515 AND HOUSE BILL 900
Section 10.1 directs the Environmental Management Commission to develop a Violation Points System applicable to permits for animal waste management systems for swine farms. Those violations that cause the greatest environmental harm or that are committed willfully or intentionally are to be classified as significant. The commission of three significant violations (or a greater number of less significant violations) within a limited period of time, not less than five years, will result in the mandatory revocation of a permit. The commission of one willful violation that results in serious harm may result in the revocation of a permit.	*No comparable provision*
Section 10.2 directs the Department of Environment, Health, and Natural Resources to develop a recommended system of civil penalties applicable to integrators of swine operations. A civil penalty will be imposed against an integrator upon the revocation of a permit of an operator under contract with the integrator for the production of swine at the time the violation that resulted in the revocation occurred. This Section also directs the Environmental Management Commission to study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful or grossly negligent violation that results in significant environmental damage.	*No comparable provision*

PCS HOUSE BILL 515: Part XI. Criminal Enforcement for Repeated Violations; Clarifications of Requirements that Permit Applicants Demonstrate That They Are Financially Qualified	HOUSE BILL 515 AND HOUSE BILL 900
Section 11.1 directs the Secretary of Environment, Health, and Natural Resources to refer to the State Bureau of Investigation the possible commission of any criminal offense of any person or facility that discharges waste in a manner that significantly violates State law related to water and air resources on two or more separate occasions in any three-year period.	*No comparable provision*

PCS HOUSE BILL 515: Part XI. Criminal Enforcement for Repeated Violations; Clarifications of Requirements that Permit Applicants Demonstrate That They Are Financially Qualified	HOUSE BILL 515 AND HOUSE BILL 900
Section 11.2 directs the Environmental Management Commission to require that applicants for a permit to discharge must demonstrate that the applicant is financially qualified to carry out the activity for which the permit is required.	*No comparable provision*

PCS HOUSE BILL 515: Part XII. Additional Studies.	HOUSE BILL 515 AND HOUSE BILL 900
Section 12.1 directs the Environmental Review Commission to study the feasibility and desirability of requiring persons who apply soil enriching nutrients onto land, other than golf courses, to be certified under a certification and training program.	*No comparable provision*
Section 12.2 directs the Environmental Review Commission to study the feasibility and desirability of establishing a voluntary education program designed to educate the public about the impact nutrients and pesticides have on the environment, the responsible use of nutrients and pesticides, and ways of reducing the input of nutrients and pesticides into State waters.	*No comparable provision*
Section 12.3 requires the Department of Agriculture to submit the next North Carolina Turfgrass Survey to the Environmental Review Commission within one month of the survey's publication.	*No comparable provision*
Section 12.4 directs the Environmental Review Commission to study the development of guidelines for best management practices for golf courses. The study will address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment.	*No comparable provision*

PCS HOUSE BILL 515: Part XII. Additional Studies.	HOUSE BILL 515 AND HOUSE BILL 900
Section 12.5 directs the Environmental Review Commission to study guidelines for and incentives to encourage adoption of best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing systems.	*No comparable provision*

PCS HOUSE BILL 515: Part XIII. Assumption of Control of Non-complying Publicly Owned Treatment Works by the Environmental Management Commission	HOUSE BILL 515 AND HOUSE BILL 900
Section 13.1 authorizes the Environmental Management Commission to assume control of and operate a publicly owned treatment works that persistently fails to comply with federal and State laws for the protection of public health and the environment. Prior to assuming control, the Environmental Management Commission must consult with the Local Government Commission and provide notice of intent to assume control and steps that may be taken to come into compliance to the unit of local government that owns or operates the publicly owned treatment works.	*No comparable provision*

PCS HOUSE BILL 515: Part XIV. Miscellaneous Provisions; Effective Dates	HOUSE BILL 515
Section 14.1 repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.	**Section 3** repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.
Section 14.2 explains that headings are merely for the convenience of the reader.	*No comparable provision*
Section 14.3 is a severablity clause.	*No comparable provision*
Section 14.4 contains effective dates.	**Section 8** of House Bill 515 and **Section 7** of House Bill 900 contain effective dates.

Nutrient Strategies Adopted
by the
Environmental Management Commission

Water Classified as Nutrient Sensitive Waters (NSW)	Nutrient(s) of Concern
Chowan River Basin	Phosphorus and Nitrogen
Tar-Pamlico River Basin	Phosphorus and Nitrogen
New River, White Oak River Basin[1]	Phosphorus and Nitrogen
Neuse River Basin	Phosphorus and Nitrogen
Lake Jordan Watershed[2]	Phosphorus
Waters with Nutrient Strategies, not Classified as NSW (strategies are documented in basin plans)	
Lake Wylie Watershed[3]	Phosphorus and Nitrogen
Deep River Watershed[4]	Phosphorus
High Rock Lake Watershed (Pending)	Phosphorus
Facilities Limited for Nutrients, not in NSW Classified Waters (based on localized problems)	
CMUD-McDowell Creek WWTP	Phosphorus and Nitrogen
Henderson-Nutbush Creek WWTP	Phosphorus
High Point-Eastside WWTP (Pending)[4]	Phosphorus and Nitrogen

[1]The initial NSW strategy allowed for implementation of TN limits on individual discharging facilities, where appropriate

[2]Studies are ongoing to determine if nitrogen needs limiting in localized areas

[3]The Lake Wylie Watershed does not include Sugar and McAlpine Creek Watersheds

[4]High Point-Eastside WWTP is located in the Deep River Watershed, however, as a result of the excessive concentrations of nitrogen in the upper watershed and High Point's high contribution of nitrogen, the pending requirements are for nitrogen and phosphorus.

NOTE: Each management strategy for nutrient control has been individually developed based on the specific characteristics of the particular basin. The management strategies are established for both point and nonpoint sources. The strategies may be mandatory and/or voluntary.

NC Senate Clean Water Responsibility Act

A comprehensive approach to preserving North Carolina's precious water resources

In 1996, the NC Senate did much to keep the state's water clean: An ongoing trust fund–$47 million in its first year and $44 million in the Senate budget this year–to buy land along waterways; a wetlands restoration program; stringent permitting and set backs for hog farms.

The Clean Water Responsibility Act introduced today expands those reforms by asking everyone to share responsibility in keeping our rivers and streams clear of pollution. It includes:

- Temporarily curbing the expansion of the hog industry;
- Tools to help the state and local governments oversee the industry;
- A method of ensuring all violators are held responsible;
- Comprehensive planning across the state to ensure clean water;
- Strict limits on wastewater treatment plants;
- Studies to help us learn more about pollution.

In combination with the Clean Water Bonds infrastructure bill—which would establish a $1 billion fund to help communities safely dispose of waste and distribute clean water—the Clean Water Responsibility Act will ensure that we work together to protect our water.

Curbing expansion of the hog industry

Two-year moratorium on swine farms

The moratorium will temporarily halt the growth in hog farms as the state awaits information, such as the results of an isotope study which help us know more about who is responsible for polluting our rivers.

Research at NC State University that focuses on odor control, lagoon, groundwater, and waste management should be completed in two years. In addition, scientists are researching alternatives to the current lagoon systems; the effects of animal waste lagoons on groundwater; and ways to convert animal waste to other uses.

The moratorium will stop the construction or expansion of swine farms that contain 250 or more hogs and lagoon waste systems beginning March 1, 1997 and expiring March 1, 1999. This moratorium does not prohibit construction to repair, replace, meet design capacity, comply with animal waste management rules.

Counties may zone large hog farms

Adds local control and community involvement by allowing county commissioners to decide where to place animal waste management systems with capacities of 600,000 pounds of steady live weight or more.

Authorize the Environmental Management Commission to control odor from animal operations

- The EMC will adopt standards to control emissions and the UNC Board of Governors is asked to finish its report on odor control technologies by Nov. 1, 1997. The bill also directs the EMC to regulate odor emission from no later than March 1, 1999.

Swine Farm Siting Act amendments

To avoid natural disasters from contributing to runoff, the amendment prohibits construction of a liquid animal waste management system on land within the 100-year floodplain.

"Graduated points" violation system for hog operations

We must tell irresponsible operators and integrators—that means everyone responsible for hog operations—that carelessness will not be tolerated. Just as the state accumulates "points" for driver's licenses, the EMC will establish a point system for hog operators.

After a finding of three "significant violations," for example, an operator's permit could be automatically revoked. For one serious violation, DEHNR could choose to revoke a permit after just one offense. And it holds everyone involved responsible, including the integrators and the growers.

Cut pollution from cities, towns, industries and other dischargers

Limit the nitrogen and phosphorous in our state's waters

Nitrogen that flows from our wastewater plants causes algae blooms, which in turn kills fish and other life that should thrive in our rivers.

Much as the phosphorous reduction in 1987 curbed harmful discharges in our waters, reducing the amount of nitrogen is crucial.

This bill directs wastewater facilities that discharge into **Nutrient Sensitive Waters** (such as the Neuse River, the Tar -Pamlico, the Chowan and parts of the Jordan Lake and New River areas) to keep their nitrogen discharges at **4.0 milligrams** of nitrogen per liter of permitted flow.

Continued reduction in phosphorous

Establish a **2.0 milligram of phosphorus** per liter concentration limit on wastewater facilities which discharge into phosphorus-sensitive waters. The facilities will be brought in to compliance over five years.

To help local governments meet the new standards, the bill gives them priority in obtaining grants or loans from the Clean Water Revolving Loan and Grant Fund if they plan properly

Local governments will be asked to implement **comprehensive land-use plans**, which will be used as a priority criteria. The plan must promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning.

- The EMC is asked to establish **priority criteria** for modifications to wastewater treatment facilities that must meet the new nitrogen standards.
- The Division of Community Assistance will provide **help to economically distressed** units of local government in preparing land use management plans.

Criminal penalties for the most serious pollution offenses

Spills and other acts of carelessness must not be tolerated. The bill requires the DEHNR Secretary to ask the **SBI** to investigate any person or facility that violates our state standards and discharges waste two or more times during a three-year period.

The EMC may take control of failing treatment plants

The EMC, in consultation with the Local Government Commission, may **take over** publicly owned treatment plants that fail to comply with the rules. Control continues until the EMC deems the local government capable of taking it back.

Bond requirement to ensure that dischargers are held financially responsible

To prevent dischargers from walking away from failing systems, the bill would allow the EMC to establish **bonding requirements** for anyone who wants a permit to construct waste disposal systems, such as package plants.

Stormwater Management.

The EMC is directed to develop model **stormwater runoff management plans**. Local governments and state agencies are authorized to implement stormwater control programs that meet model standards adopted by the EMC.

The state of North Carolina must take the lead. The bill directs the state **Department of Transportation** (DOT) to work with the Division of Water Quality and DEHNR to complete the development of a statewide stormwater management permit to govern all programs administered by DOT by Oct. 1, 1997.

Planning for our water's health

EMC will complete Basinwide Water Quality Management Plans for each of the State's 17 river basins

The EMC will complete and implement 17 basinwide water quality management plans by Jan. 1, 1998, and each plan will be reviewed every five years in accordance with the renewal of permits in the basin. In the development of these plans, all point and nonpoint sources will be considered.

- Incorporate **protective buffers** along all perennial bodies of water for new developmental activities;
- Provide that all **point and nonpoint** sources share responsibility in reducing nutrients and toxins in the State's waters;
- Require appropriate management on new developments within the **100-year flood-plain;**
- Establish a **goal to reduce nutrients** delivered into estuaries and other surface waters.

Adoption of Total Maximum Daily Loads (TDML) for each River Basin Additional Requirements for Basinwide Water Quality Management Plans;

- The EMC will develop and implement limits on all pollutants for each of the State's 17 river basins as required by federal law.
- The EMC's has statutory **authority** to promulgate rules to implement this part of the bill.
- In the course of preparing the **basinwide** water quality management plans, the Department is directed to identify and report to the ERC concentrations of heavy metals and other pollutants found in surface waters.

Anyone who applies fertilizer at golf courses will be properly trained

To ensure that fertilizers are spread properly, The EMC will adopt a **certification and training** program for those who apply soil enriching nutrients to golf courses.

Studies to learn more about North Carolina's water quality

- ERC will study the feasibility and desirability of requiring **anyone** who applies **fertilizer** to receive training and certification.
- ERC will study the utilization of the North Carolina Cooperative Extension Service to implement a voluntary **residential nutrient and pesticide** management education program.
- The state Department of Transportation will report to the ERC on how best to govern **fertilizer use** along the sides of state maintained roads.
- The ERC to study **Best Management Practices** for **golf courses**. The study will specifically address water use; stormwater runoff; use of fertilizers, pesticides, and herbicides; and waste management.
- The ERC will study the development of guidelines for Best Management Practices for **septic tank systems**. These guidelines may include filters, electronic warning devices, and other innovative technologies or practices.

NC Senate Clean Water Bonds
Senate Bill 232

Protecting clean water means providing proper water and sewer disposal systems across the state. The Senate's Clean Water Responsibility Act asks local governments, industries and others to reduce the pollutants going into state waters. Clean Water Bonds will help accomplish that.

Clean Water Bonds can help North Carolina grow responsibly, fix problems with small systems that have been unable to join large systems, and give local governments a cost-effective source of revenue.

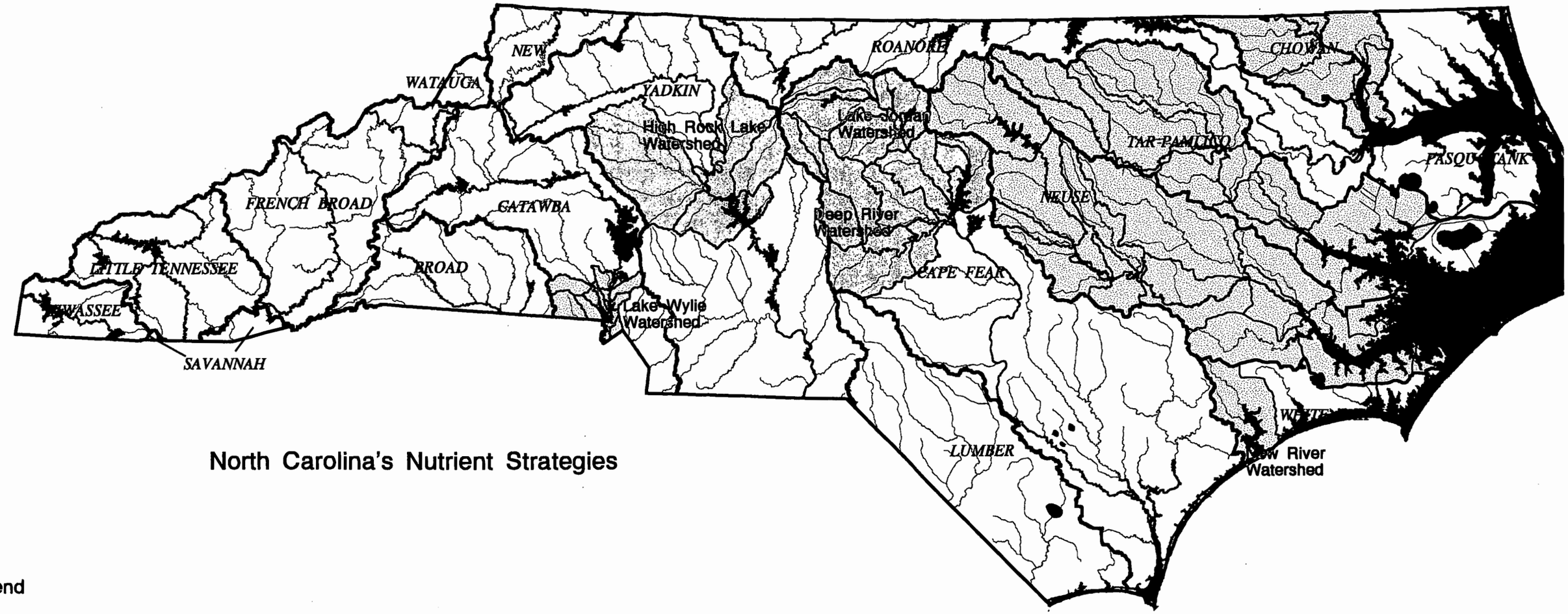
Why Clean Water Bonds?

- Estimates on North Carolina's water and sewer needs range from $2.7 billion to $11.34 billion over the next 20 years.
- Approximately 1.5 million North Carolina households, roughly half, have permitted septic tanks, many of which are in poor condition or failing.
- Of the 527 municipalities in North Carolina, 402--or 76 percent--have no bond rating or have ratings below 75. Most are rural and unable to afford infrastructure improvement.

(Department of Environment, Health and Natural Resources, 1995; US Environmental Protection Agency, 1997, the Rural Center, 1997)

The proposal would work this way:

- Voters would be asked to approve $1 billion in state general obligation bonds for local government to use for water and sewer projects.
- $800 million as "pass-through" grants or loans, with local governments borrowing at a favorable state rate and then repaying the money.
- $200 million would be dedicated to the Clean Water Revolving Loan and Grant Fund and for matching funds for federal wastewater or water supply assistance funds for the 1998-99 and 1999-2000 fiscal years. The fund helps small, poor communities obtain low-interest loans and grants to pay for clean water projects.
- The remainder would be used as loans to local governments; 69 percent for wastewater projects and 31 percent for water supply systems and water conservation projects.
- State cost would be minimal since the local governments would return the money.



North Carolina's Nutrient Strategies

Legend

- River Basin Boundary
- Major Waterbodies

Subbasins With Nutrient Limits:

- Total Phosphorus and Total Nitrogen
- Total Phosphorus
- Total Phosphorus - Pending

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DEHNR
Division of Water Quality
June 1997

VISITOR REGISTRATION SHEET

Wednesday, June 4, 1997

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Horlosky	NC Park Council
B K Wilkinson	NC Ag Council
Harvey Moore	Duplin County
Zeb Alley	Farmers for Fairness
Al Swindell	BET
Paul Lawler	Lawler Consulting
Con Covey	BPMHL
Ed Regan	N.C.A.C.C.
Nancy Bradley	NCEBD
Alice Garland	Electricities
Joyce Peters	JPR-SOC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Kim Smith	NCLM
Walter Cherry	NCPC
Deborah Johnson	Sampson Co.
Paul Dew	N.C. Agribusiness
Lois Britt	Murphy Family Farms
Deborah Merritt	Murphy Family Farms
Joe McClees	N.C. Septic Tank
ANNA T EFFT	OSBM
George Everett	MCIC
ELLIS HANKINS	NCLM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J.B Moore	Town of Valdese / League
Mike Carpenter	NCBBA
R. Rogers	FHWA
[illegible]	Meares Van Allen
Butch Gunnells	NC Soft Drink Assoc.
R. Paul Wilms	NCHBA
[illegible]	DENR
Linda Rimer	NC DENR
[illegible]	NCOA
Peter Daniel	NCDA
Marian Dodd	League of Women Voters NC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Fieber	DEHNR
James L. Lee	IP
Laura Hartsell	MCIC
Mac Boxley	N.C. Aggregates Assoc.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Wilder	N.C. Soybean Assn.
Preston Howard	DEHNR/DWQ
Emily Saunders	NC Wildlife Federation
TANJA VUJIĆ	NC EDF
Molly Diggins	NS Sierra Club
Greg Parker	Wild Life Action
DAVID HERLONG	State Planning
Carter Vaden	Office of the Governor
Tom Bean	NC Wildlife Federation
Joe Olinger	Sierra Club / CCNC
Bill Holman	CCNC / Sierra Club

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 5, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 5, 1997, at 8:30 a.m., recessed at 10:00 a.m., and reconvened at 11:00 a.m., in Room 643 of the Legislative Office Building. Senator Albertson, chairman, presided and all twenty members of the committee were present.

HOUSE BILL 515 - ENVIRONMENTALLY SOUND POLICY ACT - Representative Morgan, sponsor. Copies of bill and any hand-outs are attached to these minutes. A detailed summary and a comparison sheet are also attached. A proposed committee substitute had been adopted for discussion purposes at the meeting on June 4, copy of which is attached.

Senator Albertson said the committee would hear comments from those who had signed up to speak. Their comments would be limited to three minutes each. Some speakers had prepared written comments; however, it was not a requirement that their comments be written. The written comments that were presented to the committee clerk are attached to these minutes. Making comments were:

Whitley Stephenson, President, North Carolina Pork Council
Don Butler, Pork Producer
Leslie Bevacqua, N. C. Citizens for Business and Industry
Andy Romenet, North Carolina League of Municipalities
Ed Regan, North Carolina Association of County Commissioners
Bill Holman, Conservation Council of North Carolina and Sierra Club
Tom Bean, North Carolina Wildlife Federation
Joe McClees, N. C. Septic Tank Association
Sherri Evans-Stanton, Department of Environment, Health and Natural Resources
John Williams, Certified Golf Course Superintendent, Buies Creek
Sam Lang, Turfgrass Council of North Carolina
Bob Rogers, Certified Golf Course Superintendent, Carolina Country Club, Raleigh
Julian Philpott, Secretary and General Counsel, N. C. Farm Bureau
Jim Pridgen, concerned citizen
Eric Umstead, Agriculture Resources Center, a nonprofit organization

Mr. Umstead had asked specific questions in his presentation, and Senator Odom requested that he submit them, in writing, to the committee.

Committee members had questions for several of those making presentations. After this question and answer session, Senator Albertson said the committee would take a recess for the staff to work on some of the questions raised and that the committee would reconvene at 11:00 a.m.

The meeting reconvened at 11:00 a.m. and the committee began debate on the proposed committee substitute which had been adopted for discussion purposes. Senator Perdue, who was explaining the PCS, answered questions and provided clarification of points raised in the 8:30 meeting. Senator Page sent forth an amendment and moved for its adoption. Motion carried. George Givens of staff suggested that the amendment should be changed to provide further clarification and then engrossed in the proposed committee substitute before the committee, and the chairman gave authorization for Givens to do so.

George Givens, committee counsel, answered questions from the members and offered clarification of certain items. Senator Horton had lengthy questions on nutrient-sensitive waters which Senator Perdue satisfactorily answered.

Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, June 5, 1997
8:30 a.m. and 11:00 a.m.
Room 643

AGENDA

HB 515 ENVIRONMENTALLY SOUND POLICY ACT.
Representative Morgan

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, June 09, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**515** ENVIRONMENTALLY SOUND POLICY ACT.

Draft Number:	PCS6270
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 515
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/29/97
Proposed Senate Committee Substitute H515-PCS6270

Short Title: Clean Water Responsibility Act. (Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE CLEAN WATER RESPONSIBILITY ACT, A COMPREHENSIVE AND BALANCED PROGRAM TO PROTECT WATER QUALITY, PUBLIC HEALTH, AND THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1. (a) Moratorium Established. -- As used in this section, "swine farm" and "lagoon" have the same meaning as in G.S. 106-802. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a

new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is deemed permitted under 15A North Carolina Administrative Code 2H.0217.

(b) Exceptions. -- The moratorium established by subsection (a) of this section does not prohibit:

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) or (7) of this section.

(3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.

(4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit under G.S. 143-215.1(a) or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:

a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.

b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.

c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or animal waste management system and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste management system that does not employ an anaerobic lagoon and that has been approved by the Department of Environment, Health, and Natural Resources.

(c) Establishing Eligibility for an Exemption. -- It shall be the responsibility of an applicant for a permit for an animal waste management system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through (7) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant.

PART II. AGRICULTURAL ZONING BY COUNTIES

Section 2.1. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may ~~not~~ affect property used for bona fide ~~farms, but any~~ farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm ~~purposes is subject to the regulations.~~ purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified

therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

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

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

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

Section 2.2. Zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, shall not, with respect to a swine farm in existence at the time the zoning ordinance is adopted:

(1) Prohibit the continued existence of the swine farm.

(2) Require the amortization of the swine farm.

(3) Prohibit the repair or replacement on the same site of the swine farm so long as the repair or replacement does not increase the swine population beyond the population that the animal waste management system serving the swine farm is designed to accommodate, as set forth in the permit for the animal waste management system.

PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL OPERATIONS

Section 3.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B. Standards and plans adopted under this subdivision shall be required only to the extent that

economically feasible technology sufficient to satisfy these standards and plans is available."

Section 3.2. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies, as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session), to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(a)(11), as enacted by Section 3.1 of this act, within six months after the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies if the report establishes that economically feasible odor control technology for animal operations is available. If economically feasible odor control technology for animal operations is available, the Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems no later than 1 March 1999. The Environmental Management Commission shall not adopt a temporary rule to regulate the emission of odors from animal waste management systems. The Environmental Management Commission shall report on its progress in developing and adopting a rule to regulate the emission of odors from animal waste management systems as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IV. SWINE FARM SITING ACT AMENDMENTS

Section 4.1. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.
"Swine Farms.

"§ 106-800. Title.

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

"§ 106-801. Purpose.

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

"§ 106-802. Definitions.

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

(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;~~ residence.

(2) ~~at~~ At least 2,500 feet from any school, hospital, or ~~church; and~~ church.

(3) ~~at~~ At least 500 feet from any property boundary.

(a1) 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 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.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

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

"§ 106-804. Enforcement.

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

(1) Injunctive relief.

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

(3) Damages caused by the violation.

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

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

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

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

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

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

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

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

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

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners; all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources."

Section 4.2. G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this act, applies to any new liquid animal waste management system for which construction commences on or after the date this act becomes law and to any expansion of an existing liquid animal waste management system for which construction commences on or after the date this act becomes law.

PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN WATER REVOLVING LOAN AND GRANT FUND TO ASSIST LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED ON COMPREHENSIVE LAND-USE PLANNING BY LOCAL GOVERNMENTS

Section 5.1. G.S. 159G-10 reads as rewritten:

"**§ 159G-10. Priorities.**

(a) Determination. -- Determination of priorities to be assigned each eligible application shall be made semiannually by each receiving agency during each fiscal year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1) shall be considered by the receiving agency with every other application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and eligible for consideration during the same priority period, to determine the priority to be assigned to each application. The same procedure shall apply to every eligible application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any application which does not contain the information required by this Chapter or regulations adopted by the receiving agency(s) shall not be deemed received until such information is furnished by the applicant to the receiving agency.

(a1) **(See note)** Expired.

(b) Priority Factors. -- All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for such funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. --

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for determining which local government units will receive a loan or grant. A local government unit that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in another local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as a local government unit that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards.

(2) Wastewater Treatment Work Projects. -- The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. -- The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. -- The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. -- The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

~~(5)~~ (6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through ~~(4)~~ (5) of this subsection.

(c) Assignment of Priority. -- A written statement relative to each priority assigned shall be prepared by the receiving agency and shall be attached to the application. The priority assigned shall be conclusive.

(d) Failure to Qualify. -- Any application filed under G.S. 159G-5(c), G.S. 159G-6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned the application shall be considered for a revolving loan or grant during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a revolving loan or grant during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time, and may amend any pending application to include additional data or information.

(e) Land-Use Plan. -- Local government units are encouraged to adopt comprehensive land-use plans. The Division of Community Assistance in the Department of Commerce shall, upon request, provide technical assistance to any economically distressed local government unit in preparing a comprehensive land-use plan. To qualify as a comprehensive land-use plan, a plan must meet all of the following requirements:

(1) Be adopted by the governing body of the local government unit covered by the plan.

(2) Promote economically and environmentally sustainable development.

(3) Establish verifiable goals to be met through compliance with the plan.

(4) Be approved by the Office of State Planning."

Section 5.2. G.S. 159G-3 is amended by adding a new subdivision to read:

"(7a) 'Economically distressed local government unit' means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A."

PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS

Section 6.1. G.S. 143-215.1 is amended by adding four new subsections to read:

"(c1) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging either to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission or to other surface water bodies of the State specifically designated by the Commission where nitrogen is a nutrient of concern shall not discharge more than an average annual mass load of total nitrogen than would result from a discharge of the permitted flow having a total nitrogen concentration of four milligrams of nitrogen per liter (4.0 mg/l). If the Commission determines that the assimilative capacity for nitrogen of a water body has been exceeded, the Commission shall establish a maximum mass load for total nitrogen for that water body. The maximum mass load for total nitrogen established by the Commission may require

permitted flows to have a total nitrogen concentration less than those set out in this subsection. The maximum mass load of total nitrogen for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for nitrogen based on the permitted flow and total nitrogen concentration required by this subsection, whichever is less. The total nitrogen concentration of 4.0 mg/l for NSW and other waters required by this subsection apply only to:

(1) Facilities that were placed into operation prior to 1 July 1997 or for which an authorization to construct was issued prior to 1 July 1997 and that have a design capacity to discharge 500,000 gallons per day or more.

(2) Facilities for which an authorization to construct is issued on or after 1 July 1997.

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to surface water bodies of the State specifically designated by the Commission where phosphorous is a nutrient of concern shall not discharge more than an average annual mass load of total phosphorous than would result from a discharge of the permitted flow having a total phosphorous concentration of two milligrams of phosphorous per liter (2.0 mg/l). If the Commission determines that the assimilative capacity for phosphorous of a water body has been exceeded, the Commission shall establish a maximum mass load for total phosphorous for that water body. The maximum mass load for total phosphorous established by the Commission may require permitted flows to have a total phosphorous concentration less than that set out in this subsection. The maximum mass load of total phosphorous for all wastewater discharges into a water body shall not exceed that required to meet the wastewater discharge allocation or the annual mass load for phosphorous based on the permitted flow and total phosphorous concentration required by this subsection, whichever is less.

(c3) A person to whom subsection (c1) or (c2) of this section applies may meet the limits established under those subsections either individually or on the basis of a cooperative agreement with other persons who hold individual wastewater permits if the cooperative agreement is approved by the Commission. A person to whom subsection (c1) or (c2) of this section applies whose agreement to accept wastewater from another wastewater treatment facility that discharges into the same water body and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the average annual mass load of total nitrogen and total phosphorous that person discharges by the average annual mass load of total nitrogen and total phosphorous of the wastewater treatment facility that is eliminated. If the wastewater treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per day, the average annual mass load of total nitrogen or phosphorous shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and phosphorous discharge monitoring requirements established by the Commission. This average annual load of

nitrogen or phosphorous shall be assigned to the wastewater discharge allocation of the wastewater treatment facility that accepts the wastewater.

(c4) A person to whom subsection (c1) of this section applies may request the Commission to approve a total nitrogen concentration greater than that set out in subsection (c1) of this section at a decreased permitted flow so long as the average annual mass load of total nitrogen is equal to or is less than that required under subsection (c1) of this section. A person to whom subsection (c2) of this section applies may request the Commission to approve a total phosphorous concentration greater than that set out in subsection (c2) of this section at a decreased permitted flow so long as the average annual mass load of total phosphorous is equal to or is less than that required under subsection (c2) of this section. If, after any 12-month period following approval of a greater concentration at a decreased permitted flow, the Commission finds that the greater concentration at a decreased permitted flow does not result in an average annual mass load of total nitrogen or total phosphorous equal to or less than those that would be achieved under subsections (c1) and (c2) of this section, the Commission shall rescind its approval of the greater concentration at a decreased permitted flow and the requirements of subsections (c1) and (c2) of this section shall apply."

Section 6.2. G.S. 143-215.6A(a) is amended by adding a new subdivision to read:

"(10) Violates G.S. 143-215.1(c1), G.S. 143-215.1(c2), or a rule adopted pursuant to G.S. 143-215.1(c1) or G.S. 143-215.1(c2)."

Section 6.3. By 1 November 1997, the Environmental Management Commission shall develop a schedule of dates between 1 January 1998, and 1 January 2003, by which existing facilities must comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2), as enacted by Section 6.1 of this act. The schedule of compliance dates shall follow as closely as possible the dates on which permits for existing facilities must be renewed. New facilities and expansions of existing facilities for which an application for a permit is received by the Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission prior to the date this act becomes effective shall be treated as existing facilities.

PART VII. STORMWATER MANAGEMENT

Section 7.1. G.S. 143-214.7 reads as rewritten:

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

(a) Policy, Purpose and Intent. -- The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal

counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall ~~be authorized and directed to~~ implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish ~~waters;~~ waters.
(2) Water supply ~~watersheds;~~ watersheds.
(3) Outstanding resource ~~waters;~~ waters.
(4) High quality ~~waters; and~~ waters.
(5) ~~Other waters where~~ All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article. ~~Provided however, that prior to implementation of rules under this subdivision (5), the Commission shall consult with the Environmental Review Commission.~~

(c) ~~Chapter 150B of the General Statutes governs adoption of rules by the Commission.~~ The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies are authorized to adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

Section 7.2. The Environmental Management Commission shall make the first annual report required by G.S. 143-214.7(e), as enacted by Section 7.1 of this act, on or before 1 October 1998.

Section 7.3. The Department of Transportation shall work diligently and in full cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, using whatever resources may be necessary, to complete the development of a statewide stormwater management permit under the National Pollutant Discharge Elimination System (NPDES). The General Assembly intends that this permit govern all programs administered by the Department of Transportation and that the permit will be issued no later than 1 October 1997. The Department of Transportation and the Division of Water Quality shall jointly report to the Environmental Review Commission as to their progress in meeting the mandate of this section no later than 1 October 1997.

PART VIII. COMPLETION OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR EACH OF THE STATE'S SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS; ADOPTION OF TOTAL MAXIMUM DAILY LOADS FOR EACH RIVER BASIN

Section 8.1. The General Assembly makes the following findings:

(1) There are 17 major river basins in the State.

(2) Many activities occur in the vicinity of each of these river basins, and the activities and conditions in one river basin may vary greatly from those in another river basin.

(3) The public is focusing on the swine industry's role in degrading water quality, but, in fact, numerous other industries and even private citizens are responsible for contributing nutrients and toxins to the waters of the State. Among the point source and nonpoint sources of nutrients and toxins in our State's waters are: municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, as well as animal operations.

(4) The best and most effective approach to protecting and improving water quality is a comprehensive, systemwide management approach.

(5) Basinwide water quality management is an approach already being taken by the Department of Environment, Health, and Natural Resources to improve the efficiency, effectiveness, and consistency of its water quality protection program. It is not a new regulatory program; it is a watershed-based approach that provides for basinwide permitting and integration of point and nonpoint source controls through existing regulatory and cooperative programs.

The Neuse River Basinwide Management Plan has already been released. Seventeen basinwide plans are planned to be prepared by the Department over the next five years.

(6) The better solution to improving water quality lies not in abandoning efforts under way in an effort to find a new solution, but to accelerate effective efforts currently in progress by establishing a deadline for completing, and expediting the implementation of, the 17 comprehensive conservation and management plans for each major river basin in the State.

(7) The public should be informed of the complexity of the problems regarding water quality so that the public can appreciate the effectiveness of a systemwide approach and the degree of effort that has already been expended to address these problems. Public involvement should be encouraged, and public education should be enhanced.

Section 8.2. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.8B. Basinwide water quality management plans.**

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all activities across a river basin and all point sources and nonpoint sources of nutrients and toxins, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, and animal operations.

(b) Each basinwide water quality management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the nutrients and toxins in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) Incorporate protective buffers along all perennial bodies of water for new developmental activities. The Commission shall consider the ecological reasons for each buffer and shall base any requirements for the buffer on those reasons. The Commission shall also consider and adopt an equitable approach for determining which developmental activities shall be defined as 'new developmental activities.'

(3) Require appropriate management of any new developmental activity that is agricultural, residential, commercial, or industrial in nature, if the new developmental activity is to occur on land that is located within a 100-year floodplain.

(4) If any of the waters located within the river basin are designated as nutrient sensitive water, then the basinwide water quality management plan shall establish a goal to reduce the average annual load of nutrients delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require that incremental progress toward achieving the goal be demonstrated each year. The Commission shall develop a five-year plan to achieve the goal. In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(5) Any other components of the plan that the Commission determines to be necessary.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every five years to reflect changes in permits that have been renewed during the previous five-year permit renewal cycle, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge.

(d) The Commission and the Department shall each report on a quarterly basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing the basinwide water quality management plans. The report under this section by the Commission shall be made as a part of the quarterly report required under G.S. 143B-282(b). The report under this section by the Department shall be made on or before the first day of each calendar quarter."

Section 8.3. The Environmental Management Commission shall increase its current efforts to involve the public in the development and implementation of the basinwide water quality management plans, including conducting public hearings throughout the State. The Department of Environment, Health, and Natural Resources shall increase public education efforts to inform the public of the complexity of the problems related to water quality, the benefits of taking a comprehensive, systemwide approach to water quality improvement, and the need for all point and nonpoint sources of pollutants to have an active role in reducing nutrients and toxins, either by reducing the amount of nutrients and toxins used or by improving the treatment and disposal of wastewater, or both. The Department shall

provide press releases on at least a monthly basis for the purpose of keeping the public well-informed of water quality issues in the State.

Section 8.4. G.S. 143B-282 is amended by adding a new subsection to read:

"(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing, on a basinwide basis, appropriate total maximum daily loads of pollutants for those targeted waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing planning process and shall adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups."

Section 8.5. G.S. 143B-282(a)(2) is amended by adding a new sub-subdivision to read:

"j. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B."

Section 8.6. The Environmental Management Commission may adopt rules to implement this Part as provided in Article 3 of Chapter 150B of the General Statutes. The Environmental Management Commission shall not adopt a temporary rule to implement this Part. The Environmental Management Commission shall report on its progress in implementing this Part as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART IX. FERTILIZER USE AT GOLF COURSES

Section 9.1. Article 3 of Chapter 90A of the General Statutes is amended by adding a new Part to read:

"Part 3. Certification of Applicators of Soil Enriching Nutrients at Golf Courses.

"§ 90A-48. Purpose.

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health, to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's land for the recreational use and enjoyment of private and public golf courses, and to require the examination of persons who apply soil-enriching nutrients onto land at golf courses, and certification of their competency to apply or supervise the application of soil-enriching nutrients onto land at golf courses.

"§ 90A-48.1. Definitions.

As used in this Part:

(1) 'Application' means spraying, laying, spreading on, irrigating, or injecting soil-enriching nutrients onto land.

(2) 'Commission' means the Water Pollution Control System Operators Certification Commission.

(3) 'Operator in charge' means a person who holds a currently valid certificate for the application of soil-enriching nutrients onto land at golf courses and who has primary responsibility for their application.

(4) 'Soil-enriching nutrients' means fertilizers or soil-enriching substances containing nitrogen, phosphorus, zinc, or other soil-enriching elements or minerals.

(5) 'Owner' means the person who owns or controls the land used for a golf course or the person's lessee or designee.

"§ 90A-48.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of a golf course onto which soil-enriching nutrients are applied shall allow the application by a person who does not hold a valid certificate as an operator in charge of the application of soil-enriching nutrients onto land at golf courses issued by the Commission. No person shall perform the duties of an operator in charge of the application of soil-enriching nutrients onto land at golf courses without being certified under the provisions of this Part. Other persons may assist in the application of soil-enriching nutrients so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of a golf course onto which soil-enriching nutrients are applied may contract with a certified operator in charge of the application of soil-enriching nutrients onto land at golf courses to provide for the application of soil-enriching nutrients onto that land. The Commission may adopt rules requiring that any certified operator in charge who contracts with one or more owners or other persons in control of a golf course onto which soil-enriching nutrients are applied file an annual report with the Commission as to which property the services of the operator in charge are provided.

"§ 90A-48.3. Qualifications for certification; training; examination.

(a) The Commission shall develop and administer a certification program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses that provides for receipt of applications, training, and examination of applicants and for investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water Quality of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for an operator in charge of the application of soil-enriching nutrients onto land at golf courses. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an operator in charge of the application of soil-enriching nutrients onto land at golf courses shall complete six hours of approved additional training during each three-year period following initial

certification. A certified operator in charge of the application of soil-enriching nutrients onto land at golf courses who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate.

"**§ 90A-48.4. Certificate renewals.**

A certificate holder shall renew the certificate annually. A certificate holder who fails to renew the certificate within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

"**§ 90A-48.5. Suspension; revocation of certificate.**

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

(1) Engages in fraud or deceit in obtaining certification.

(2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.

(3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

"**§ 90A-48.6. Rules.**

The Commission shall adopt rules to implement the provisions of this Part."

PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL PENALTY LIABILITY

Section 10.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.6E. Violation Points System applicable to swine farms.**

(a) The Commission shall develop a Violation Points System applicable to permits for animal waste management systems for swine farms. This system shall operate in addition to the provisions of G.S. 143-215.6A. This system shall not alter the authority of the Commission to revoke a permit for an animal waste management system for a swine farm. The Violation Points System shall provide that:

(1) Violations that involve the greatest harm to the natural resources of the State, the groundwater or surface water quantity or quality, public health, or the environment shall receive the most points and shall be considered significant violations.

(2) Violations that are committed willfully or intentionally shall be considered significant violations.

(3) The number of points received shall be directly related to the degree of negligence or willfulness.

(4) The commission of three significant violations, or the commission of lesser violations that result in a predetermined cumulative number of points, within a limited period of time of not less than five years shall result in the mandatory revocation of a permit.

(5) The commission of one willful violation that results in serious harm may result in the revocation of a permit.

(b) In developing the Violation Points System under this section, the Commission shall determine the:

(1) Number of points that lesser violations must cumulatively total to result in the revocation of a permit.

(2) Limited period of time during which the commission of three significant violations, or the commission of a greater number of lesser violations, will result in the revocation of the operator's permit. This limited period of time shall not be less than five years.

(3) Duration of the permit revocation.

(4) Conditions under which the person whose permit is revoked may reapply for another permit for an animal waste management system for a swine farm.

(c) In developing the Violation Points System under this section, the Commission shall provide for an appeals process."

Section 10.2. (a) The Department of Environment, Health, and Natural Resources shall develop a recommended system of civil penalties applicable to integrators of swine operations. These civil penalties shall be imposed upon the revocation of a permit of an operator under contract with that integrator for the production of swine at the time the violation that resulted in the revocation of the operator's permit occurred, whether or not that operator was under contract with that integrator throughout the period of time all the violations that contributed to this permit revocation occurred. In conjunction with developing this system of civil penalties for integrators of swine operations, the Environmental Management Commission shall provide that the Director of the Division of Water Quality of the Department of Environment, Health, and Natural Resources notify all integrators of all violations assessed against operators who are under contract for the production of swine with that integrator and, upon the written request by the integrator, notify that integrator of all violations assessed an operator with whom the integrator contemplates entering into a contract. The Environmental Management Commission shall also study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful, wanton, or grossly negligent violation that results in significant environmental damage.

(b) No later than 1 March 1998, the Department of Environment, Health, and Natural Resources shall report its findings and recommendations, including legislative proposals, if any, on the issues to be studied under subsection (a) of this section. This report shall include a recommended system of civil penalties applicable to integrators of swine operations for violations by growers who are under contract

with that integrator for the production of swine. The Environmental Review Commission shall determine whether to submit a legislative proposal based upon this recommended system to the 1997 General Assembly, 1998 Regular Session.

PART XI. CRIMINAL ENFORCEMENT FOR REPEATED VIOLATIONS; CLARIFICATION OF REQUIREMENT THAT PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE FINANCIALLY QUALIFIED

Section 11.1. G.S. 143-215.6A is amended by adding a new subsection to read:

"(a1) The Secretary shall refer to the State Bureau of Investigation for its review as to the possible commission of any criminal offense any person or facility that discharges waste in a manner that significantly violates this Article or rules adopted pursuant to this Article on two or more separate occasions in any three-year period. Upon receipt of a referral under this section, the State Bureau of Investigation may conduct an investigation and, if appropriate, refer the matter to the district attorney in whose jurisdiction any criminal offense has occurred. This subsection shall not be construed to limit the authority of the Secretary to refer any matter to the State Bureau of Investigation for review without regard to the number of possible offenses within any particular period of time."

Section 11.2. G.S. 143-215.1(b) reads as rewritten:

"(b) Commission's Power as to Permits. --

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or 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 under subsection (a) of this ~~section; and~~ section. Financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and
2. Individual or general permits are not required."

PART XII. ADDITIONAL STUDIES

Section 12.1. The Environmental Review Commission shall study the feasibility and the desirability of requiring persons who apply fertilizers or other soil-enriching nutrients onto land other than golf courses to be certified under a certification program that requires training and passing an examination and that is similar to the certification program required of those who apply soil-enriching nutrients onto land at golf courses, as required by Article 3 of Chapter 90A of the General Statutes, as enacted by Section 9.1 of this act. In conjunction with this study, the Environmental Review Commission shall consider the amounts of fertilizers used on public roadways, at public parks and recreation areas, at commercial properties, at churches, at athletic fields and schools, near airstrips at airports, and on residential lawns and gardens that are maintained by commercial lawn services as well as those that are maintained by the residential dweller. During this study, the Department of Transportation shall report to the Environmental Review Commission the amounts of fertilizers and pesticides that it uses to maintain turfgrass, ornamental plantings, and trees along the State roadways. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.2. The Environmental Review Commission shall study the feasibility and desirability of establishing a voluntary education program designed to educate members of the public who maintain residential lawns or gardens concerning the impact nutrients and pesticides have on the environment of the State, the responsible use of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and pesticides into the surface and groundwaters of the State. In conjunction with this study, the Environmental Review Commission shall study the feasibility and desirability of directing the North Carolina Cooperative Extension Service to develop and implement such a voluntary education program. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.3. The Department of Agriculture shall submit the next North Carolina Turfgrass Survey to the Environmental Review Commission no later than one month after the survey is published.

Section 12.4. The Environmental Review Commission shall study the development of guidelines for best management practices for golf courses. The study shall address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Section 12.5. The Environmental Review Commission shall study the development of guidelines for best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement

of existing septic tank systems that supplement any rules governing septic tank systems that are adopted by the Commission for Health Services, including standards for devices and practices relating to septic tank installation, operation, maintenance, and repair. The Environmental Review Commission shall consider the use of incentives, including tax credits, that could be implemented to encourage the use of best management practices for septic tank systems. The Environmental Review Commission shall submit its legislative recommendations, if any, resulting from this study to the 1997 General Assembly, 1998 Regular Session. As used in this section, the phrase "devices and practices" includes, but is not limited to:

(1) Filters or other devices designed to improve the efficiency of septic tank systems.
(2) Risers or other devices designed to facilitate pumping.
(3) Electronic warning devices that signal when the solid or liquid waste in the system has reached a level such that the septic tank needs to be pumped.
(4) Alternative and innovative systems for improved wastewater treatment and disposal.
(5) Any other approved technology or practice that demonstrates improved efficiency for septic systems.

PART XIII. ASSUMPTION OF CONTROL OF NONCOMPLYING PUBLICLY OWNED TREATMENT WORKS BY THE ENVIRONMENTAL MANAGEMENT COMMISSION

Section 13.1. G.S. 143-215.3(a) is amended by adding a new subdivision to read:

"(18) To assume control and operate a publicly owned treatment works that persistently fails to comply with this Article, rules adopted pursuant to this Article, or other federal and State laws, regulations and rules for the protection of public health and the environment. Before assuming control of a publicly owned treatment works, the Commission shall notify the unit of local government that owns or operates the treatment works that the Commission intends to assume control of the treatment works unless the local government immediately takes whatever steps are necessary to bring the treatment works into compliance with applicable requirements. The Commission shall also consult with the Local Government Commission before assuming control and operation of a publicly owned treatment works. If the Commission assumes control and operation of a publicly owned treatment works, the unit of local government that owns or operates the treatment works is liable to the Commission for all costs associated with the control and operation of the treatment works, including the cost of any repairs and improvements necessary to bring the treatment works into

compliance with applicable requirements. If the Commission assumes control and operation of a publicly owned treatment works, it shall continue to operate the treatment works until such time as the Commission, in consultation with the Local Government Commission, is satisfied that the unit of local government is both capable of and willing to operate the treatment works in compliance with all applicable requirements."

PART XIV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 14.1. G.S. 143-215(e) is repealed.

Section 14.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 14.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 14.4. (a) G.S. 143-215.8B, as enacted by Section 8.2 of this act, becomes effective when this act becomes law, except that subdivisions (1) through (4) of G.S. 143-215.8B(l) become effective 1 January 1998. This act shall not be construed to invalidate the development and implementation of basinwide water quality management plans by the Environmental Management Commission and the Department of Environment, Health, and Natural Resources that has occurred prior to the date this act becomes effective.

(b) G.S. 90A-48.2, as enacted by Section 9.1 of this act, becomes effective 1 July 1998.

(c) Except as otherwise provided, each section of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 515
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/29/97

Short Title: Environmentally Sound Policy Act. (Public)

Sponsors:

Referred to:

March 13, 1997

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.

The General Assembly of North Carolina enacts:

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

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

"ARTICLE 67.

"Swine Farms.

"§ 106-800. Title.

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

"§ 106-801. Purpose.

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

"§ 106-802. Definitions.

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

(1a) 'Intensive animal feeding operation' means a new or enlarged swine farm with a design capacity of more than 800,000 pounds 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.

(3a) 'Outdoor recreational facility' means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(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, or outdoor recreational facility, 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; and

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

(a1) 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 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.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

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

"**§ 106-804. Enforcement.**

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

(1) Injunctive relief.

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

(3) Damages caused by the violation.

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

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

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

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

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

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

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require

the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

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

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

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, ~~attempt to~~ notify all adjoining property ~~owners and~~ owners, all property owners who own property located across a public road, street, or highway from the swine ~~farm~~ farm, the county or counties in which the farm site is located, and the local health departments of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is ~~located.~~ located, except that the notice to a county shall be to the county manager or the chairman if there is no county manager and the notice to a local health department shall be to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.

(2) The type of swine farm and the design capacity of the animal waste management system.

(3) The name and address of the technical specialist preparing the waste management plan.

(4) The address of the local Soil and Water Conservation District office.

(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment, Health, and Natural Resources.

Prior to issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing if it finds, upon its own initiative or in response to a request from a member of the public, that there is a significant public interest in holding the hearing. The notice and conduct of the hearing shall be in accordance with the relevant public meeting provisions of G.S. 143-215.1(c)(3)."

Section 2.1. G.S. 143-215.107(a) is amended by adding a new subdivision to read:

"(11) To develop and adopt standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B."

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

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

"**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

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

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

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

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

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

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

Section 6. There is established a temporary moratorium for any new or expanding swine farm or lagoon for which a permit is required under Part 1A of Chapter 143 of the General Statutes for any area in the State that: (i) has a county population of less than 75,000 according to the most recent decennial federal census; (ii) has over one hundred fifty million dollars ($150,000,000) on expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until the expiration of a one-year period beginning on the date this act becomes effective, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802.

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

(1) Construction to repair a component of an existing swine farm or lagoon.

(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (4) of this section.

(3) Construction or expansion of a component or components of a swine farm or lagoon, if actual construction began prior to March 1, 1997, or if the owner of the swine farm entered into a bona fide contract to build the component or components prior to March 1, 1997. For purposes of this subdivision, "actual construction" is limited to the component or components of a swine farm or lagoon for which the foundation has been laid prior to March 1, 1997, from a blueprint drawing.

(4) Construction or expansion on or after the date this act becomes law for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a registration of the swine operation

filed with the Department of Environment, Health, and Natural Resources before the date this act becomes law.

(5) Construction or expansion on or after the date this act becomes law for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to the effective date of this section, been approved for a loan or line of credit from a lending institution to finance the construction or expansion and has obligated or expended funds derived from the loan or line of credit.

(7) Construction or expansion of an innovative animal waste system approved by the Department.

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

(1) For the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources prior to the effective date of this act.

(2) For the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources, or an animal waste management plan approved prior to the effective date of this act.

(3) For the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

(b) Section 1 and Sections 3 through 8 of this act are effective when this act becomes law. Section 1, Sections 3 through 8, and the provisions of Section 2 of this act applicable to intensive animal feeding operations as defined in G.S. 106-802, as amended by Section 2 of this act, apply to any intensive animal feeding operation for which construction began on or after 1 January 1997, regardless of the date on which the site evaluation was completed.

(c) Section 2.1 of this act is effective when it becomes law. The Environmental Management Commission shall publish the text of a proposed rule to regulate the emission of odors from animal operations under G.S. 143-215.107(11), as

enacted by Section 2.1 of this act, within six months of the date on which the North Carolina Agricultural Research Service at North Carolina State University issues its final report on economically feasible odor control technologies as provided in Section 27.3 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) and in any event, not later than 1 May 1998. The Environmental Management Commission shall adopt a rule to regulate the emission of odors from animal waste management systems within one year of the date the Commission publishes the text of a proposed rule as required by this subsection and in any event, not later than 1 May 1999. The Board of Governors of The University of North Carolina shall present its final report and recommendations on economically feasible odor control technologies to the Environmental Review Commission and the Environmental Management Commission not later than 1 November 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 515

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

H515PCS8248-ART-023.01

Date June 5, 1997

Comm. Sub. [YES]
Amends Title [NO]
PCS8248 for the Third Edition

Senator Page

moves to amend the bill on page 4, lines 26 by inserting, at the end of that line:

"A county may not apply a zoning regulation adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, to prohibit, as a nonconforming use, the continued existence of a swine farm, to require the amortization of a swine farm, or to prohibit the repair or replacement of a swine farm in existence at the time this act becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 4, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel

Re: **Proposed Senate Committee Substitute for House Bill 515 - Clean Water Responsibility Act**

PART I. MORATORIUM ON CONSTRUCTION OR EXPANSION OF SWINE FARMS

Section 1.1 establishes a two-year moratorium, from March 1, 1997 to March 1, 1999, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine). This moratorium does not prohibit construction:

- To repair a component of a swine farm or lagoon
- To replace a component of a swine farm or lagoon
- To meet design capacity in certified animal waste management plan filed with DEHNR prior to March 1, 1997
- To comply with animal waste management rules
- If the person undertaking the construction has been issued a permit prior to the date this act becomes effective
- If, prior to March 1, 1997, the person undertaking the construction has laid a foundation for the component being constructed
- If, prior to March 1, 1997, the person undertaking the construction entered into a bona fide written contract for construction
- If, prior to March 1, 1997, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit
- Of an innovative animal waste management system that does not employ an anaerobic lagoon and has been approved by DEHNR

The burden of proof for establishing, to the satisfaction of DEHNR, that an applicant meets a moratorium exemption is on the permit applicant.

PART II. AGRICULTURAL ZONING BY COUNTIES

Section 2.1 authorizes counties to adopt zoning regulations for swine farms served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or more. The zoning regulations authorized by this section may not exclude swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or more from the entire zoning jurisdiction.

Section 2.2 provides that zoning regulations authorized by Section 2.1 will not apply to swine farms in existence at the time the zoning ordinance is adopted.

PART III. CONTROL OF ODOR EMISSIONS FROM ANIMAL OPERATIONS

Section 3.1 directs the Environmental Management Commission (EMC) to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than March 1, 1999. These standards will be required only to the extent that economically feasible technology is available.

Section 3.2 contains provisions for the completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.

PART IV. SWINE FARM SITING ACT AMENDMENTS

Section 4.1 makes technical changes to the Swine Farm Siting Act. It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. It also adds a requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.

Section 4.2 provides that this prohibition applies only to construction or expansion that commences on or after the date this act becomes effective.

PART V. PRIORITY FOR LOANS OR GRANTS FROM THE CLEAN WATER REVOLVING LOAN AND GRANT FUND TO ASSIST LOCAL GOVERNMENTS IN MEETING THE NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS; PRIORITY FOR FUNDING FROM VARIOUS FUNDING SOURCES BASED ON COMPREHENSIVE LAND USE PLANNING BY LOCAL GOVERNMENTS.

Section 5.1 adds the existence of a comprehensive land-use plan to the priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund. The comprehensive land-use plan must be adopted by the unit of local government, promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning. The Division of Community Assistance in the Department of Commerce will provide assistance to any economically distressed local government unit (defined in Section 5.2) in preparing a comprehensive land use plan. Section 5.1 also directs the EMC to establish priority criteria for modifications to wastewater treatment facilities that must meet nitrogen and phosphorous limits for surface waters.

PART VI. NITROGEN AND PHOSPHOROUS LIMITS FOR SURFACE WATERS

Section 6.1 prohibits facilities that discharge into Nutrient Sensitive Waters or into other surface waters of the State where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 4.0 milligrams per liter. This limit applies only to:

- Facilities placed into operation prior to July 1, 1997 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
- Facilities for which an authorization to construct is issued on or after July 1, 1997

Section 6.1 also directs the EMC to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 4.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been exceeded.

Section 6.1 also prohibits facilities that discharge into surface waters of the State where phosphorous is a nutrient of concern from discharging more than an amount of phosphorous than would result from a permitted flow at 2.0 milligrams per liter. Section 6.1 authorizes the EMC to establish a total amount of phosphorous that may be discharged into a water body less than that achieved by the 2.0 mg/l limit when the assimilative capacity for phosphorous of that water body has been exceeded.

Section 6.1 also allows facilities subject to the nitrogen/phosphorous discharge limits to form cooperative agreements in order to satisfy those limits.

Section 6.1 also allows a facility subject to the nitrogen/phosphorous discharge limits to request from the EMC approval of a discharge concentration that is greater than the general nitrogen/phosphorous discharge limits set by this section at a decreased permitted flow so long as the total amounts of nitrogen/phosphorous are equal to or less than that required by this section.

Section 6.2 authorizes the Secretary of Environment, Health, and Natural Resources (SEHNR) to assess a civil penalty of not more than $10,000 for violations of the nitrogen/phosphorous discharge limits established by Section 6.1.

Section 6.3 directs the EMC to develop a schedule of dates between January 1, 1998 and January 1, 2003 during which facilities must come into compliance with the nitrogen/phosphorous discharge limits established by Section 6.1.

PART VII. STORMWATER MANAGEMENT

Section 7.1 directs the EMC to develop model stormwater management programs that may be implemented by State agencies and units of local government.

Section 7.2 directs the EMC to deliver the first of its annual reports to the Environmental Review Commission (ERC) on the status of stormwater control programs on or before October 1, 1998.

Section 7.3 directs the Department of Transportation (DOT) to work with the Division of Water Quality, DEHNR, to complete the development of a Statewide stormwater management permit to

govern all programs administered by DOT. This permit is to be completed no later than October 1, 1997.

PART VIII. COMPLETION OF BASINWIDE WATER QUALITY MANAGEMENT PLANS FOR EACH OF THE STATE'S SEVENTEEN RIVER BASINS; ADDITIONAL REQUIREMENTS FOR BASINWIDE WATER QUALITY MANAGEMENT PLANS; ADOPTION OF POLLUTANT LIMITS FOR EACH RIVER BASIN.

Section 8.1 sets out findings regarding basinwide water quality management in the 17 major river basins in North Carolina.

Section 8.2 directs the EMC to develop and implement a basinwide water quality management plan for each of the State's 17 major river basins. In the development and implementation of these plans, all point and nonpoint sources of nutrients and toxins will be considered. Each plan will:

- Provide that all point and nonpoint sources share responsibility in reducing nutrients and toxins in the State's waters in a fair , reasonable, and proportionate manner
- Incorporate protective buffers along all perennial bodies of water for new developmental activities.
- Require appropriate limitations on new developmental activity within the 100-year flood-plain.
- Establish a nutrient reduction goal in Nutrient Sensitive Waters so that the uses of these Waters will no longer be classified as impaired.

Section 8.3 directs the EMC to increase its efforts to involve the public in the development and implementation of basinwide water quality management plans.

Section 8.4 directs the EMC to adopt limits on all pollutants for each of the State's 17 major river basins as required by federal law.

Section 8.5 authorizes the EMC to adopt rules to implement basinwide water quality management plans.

Section 8.6 contains rulemaking and reporting provisions related to basinwide water quality management plans.

PART IX. FERTILIZER USE AT GOLF COURSES

Section 9.1 establishes a certification and training program for persons who apply soil enriching nutrients to golf courses and prohibits the owner or person in control of a golf course from allowing an uncertified person from applying soil enriching nutrients to the golf course. The Water Pollution Control System Operators Certification Commission (WPCSOCC) is directed to develop and administer the certification program and to establish a training program for persons who apply soil enriching nutrients to golf courses. Section 9.1 also authorizes the WPCSOCC to suspend or revoke certification under certain circumstances and to assess a civil penalty not to exceed $1,000 per willful violation of the program.

PART X. GRADUATED VIOLATION POINTS SYSTEM FOR SWINE OPERATORS; STUDY OF SWINE INTEGRATORS CIVIL PENALTY LIABILITY.

Section 10.1 directs the EMC to develop a Violation Points System applicable to permits for animal waste management systems for swine farms. Those violations that cause the greatest environmental harm or that are committed willfully or intentionally are to be classified as significant. The commission of three significant violations (or a greater number of less significant violations) within a limited period of time, not less than five years, will result in the mandatory revocation of a permit. The commission of one willful violation that results in serious harm may result in the revocation of a permit.

Section 10.2 directs the DEHNR to develop a recommended system of civil penalties applicable to integrators of swine operations. A civil penalty will be imposed against an integrator upon the revocation of a permit of an operator under contract with the integrator for the production of swine at the time the violation that resulted in the revocation occurred. It also directs the EMC to study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful or grossly negligent violation that results in significant environmental damage.

PART XI. CRIMINAL ENFORCEMENT FOR REPEATED VIOLATIONS; CLARIFICATIONS OF REQUIREMENTS THAT PERMIT APPLICANTS DEMONSTRATE THAT THEY ARE FINANCIALLY QUALIFIED

Section 11.1 directs the SEHNR to refer to the State Bureau of Investigation the possible commission of any criminal offense of any person or facility that discharges waste in a manner that significantly violates State law related to water and air resources on two or more separate occasions in any three-year period.

Section 11.2 directs the EMC to require that applicants for a permit to discharge must demonstrate that the applicant is financially qualified to carry out the activity for which the permit is required.

PART XII. ADDITIONAL STUDIES.

Section 12.1 directs the ERC to study the feasibility and desirability of requiring persons who apply soil enriching nutrients onto land, other than golf courses, to be certified under a certification and training program.

Section 12.2 directs the ERC to study the feasibility and desirability of establishing a voluntary education program designed to educate the public about the impact that nutrients and pesticides have on the environment, the responsible use of nutrients and pesticides, and ways of reducing the input of nutrients and pesticides into State waters.

Section 12.3 requires the Department of Agriculture to submit the next North Carolina Turfgrass Survey to the ERC within one month of the survey's publication.

Section 12.4 directs the ERC to study the development of guidelines for best management practices for golf courses. The study will address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment.

Section 12.5 directs the ERC to study guidelines for and incentives to encourage adoption of best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing systems.

PART XIII. ASSUMPTION OF CONTROL OF NON-COMPLYING PUBLICLY OWNED TREATMENT WORKS BY THE EMC.

Section 13.1 authorizes the EMC to assume control of and operate a publicly owned treatment works that persistently fails to comply with federal and State laws for the protection of public health and the environment. Prior to assuming control, the EMC must consult with the Local Government Commission and provide notice of intent to assume control and steps that may be taken to come into compliance to the unit of local government that owns or operates the publicly owned treatment works.

PART XIV. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES.

Section 14.1 repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.

Section 14.2 explains that headings are merely for the convenience of the reader.

Section 14.3 is a severablity clause.

Section 14.4 contains effective dates. Section 14.4(a) makes the required components of each baisinwide water quality management plan effective January 1, 1998. Section 14.4(b) makes the provision requiring certification of persons applying soil enriching nutrients to golf courses effective July 1, 1998. Section 14.4(c) makes all other sections of this act effective when the act becomes law.

COMPARISON

Proposed Senate Committee Substitute for House Bill 515
Clean Water Responsibility Act

with

House Bill 515
Environmentally Sound Policy Act

and

House Bill 900
Nitrogen Limit/Clean Water Fund Modification

Jeff Hudson, Staff Attorney
Research Division
June 3, 1997

PCS HOUSE BILL 515: Part I. Moratorium on Construction or Expansion of Swine Farms	HOUSE BILL 515: Moratoriums on Construction or Expansion of Swine Farms
Section 1.1 establishes a two-year moratorium, from March 1, 1997 to March 1, 1999, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine).	**Section 7** establishes a one -year moratorium, beginning on the date this act becomes effective, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 swine).
This moratorium does not prohibit construction: • To repair a component of a swine farm or lagoon • To replace a component of a swine farm or lagoon • To meet design capacity in certified animal waste management plan filed with DEHNR prior to March 1, 1997 • To comply with animal waste management rules • If the person undertaking the construction has been issued a permit prior to the date this act becomes effective • If, prior to March 1, 1997, the person undertaking the construction has laid a foundation for the component being constructed • If, prior to March 1, 1997, the person undertaking the construction entered into a bona fide written contract for construction • If, prior to March 1, 1997, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit • Of an innovative animal waste management system that does not employ an anaerobic lagoon and has been approved by DEHNR	This moratorium does not prohibit construction: • To repair a component of a swine farm or lagoon • To replace a component of a swine farm or lagoon • To meet design capacity in registration of the swine operations filed with DEHNR prior to the date this act becomes law • To comply with animal waste management rules • (This moratorium prohibits construction regardless of whether a permit was issued prior to the date this act becomes effective) • If, prior to March 1, 1997, the person undertaking the construction has laid a foundation from a blueprint for the component being constructed • If, prior to March 1, 1997, the owner of the swine farm entered into a bona fide contract to build the component • If, prior to the effective date of this act, the person undertaking the construction has been approved for a line of credit for the construction and has expended funds from the line of credit • Of an innovative animal waste management system approved by DEHNR
The burden of proof for establishing, to the satisfaction of DEHNR, that an applicant meets a moratorium exemption is on the permit applicant.	*No comparable provision*
No comparable provision	**Section 6** establishes a moratorium, beginning January 1, 1997 to one-year from the date this act becomes effective, on the construction or expansion of swine farms (250 swine), lagoons, and animal waste management systems for swine farms in counties with: • A population of under 75,000 • Over $150 million on expenditures for travel and tourism • Not in the coastal area

PCS HOUSE BILL 515: Part II. Agricultural Zoning by Counties	HOUSE BILL 515: Agricultural Zoning by Counties
Section 2.1 authorizes counties to adopt zoning regulations for swine farms served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or more.	**Section 4** authorizes counties to adopt zoning regulations for intensive animal feeding operations (new or enlarged swine farm with a design capacity of 800,000 pounds SSLW or more).
The zoning regulations authorized by this section may not exclude swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or more from the entire zoning jurisdiction.	*No comparable provision*
Section 2.2 provides that zoning regulations authorized by Section 2.1 will not apply to swine farms in existence at the time the zoning ordinance is adopted.	**Section 5** provides that zoning regulations authorized by Section 4 adopted prior to the date Section 4 becomes effective are retroactively validated.

PCS HOUSE BILL 515: Part III. Control of Odor Emissions from Animal Operations	HOUSE BILL 515: Control of Odor Emissions from Animal Operations
Section 3.1 directs the Environmental Management Commission to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than March 1, 1999.	**Section 2.1** directs the Environmental Management Commission to adopt standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) no later than May 1, 1999.
These standards will be required only to the extent that economically feasible technology is available.	*No comparable provision*
Section 3.2 contains provisions for completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.	**Section 8(c)** contains provisions for completion of studies, adoption of rules, and presentation of reports related to control of the emission of odors from animal operations.

PCS HOUSE BILL 515: Part IV. Swine Farm Siting Act Amendments	HOUSE BILL 515: Swine Farm Siting Act Amendments
Section 4.1 makes technical changes to the Swine Farm Siting Act.	**Section 2** makes technical changes to the Swine Farm Siting Act.
It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. Section 4.2 provides that this prohibition applies only to construction or expansion that commences on or after the date this act becomes effective.	It prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain. Section 8 provides that this prohibition applies only to construction or expansion that commences after the date this act becomes effective, but does not apply to construction or expansion occurring on or after the effective date to meet design capacity or comply with applicable rules.
It adds the requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.	It adds the requirement that any person intending to construct a swine farm after the date this act becomes effective must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.
No comparable provision	Prior to the issuance of a permit for an intensive animal feeding operation, the Environmental Management Commission may hold a public hearing.
No comparable provision	It adds the following setback requirements for a swine house or lagoon that is a component of a swine farm: • 2,500 feet from any national park, State park, national forest, State forest, wildlife refuge, fragile area, historic area, or outdoor recreational facility (any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members) • 1,320 feet from any surface waters of the State (any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other accumulation of water). • 1,000 feet from those swine farms approaching an intensive animal feeding operation in size (500,000 pounds SSLW). • 1,500 feet from those swine farms significantly exceeding an intensive animal feeding operation in size (1,000,000 pounds SSLW). • 500 feet from any drinking water supply.

PCS HOUSE BILL 515: Part V. Priority for Loans or Grants from the Clean Water Revolving Loan and Grant Fund to Assist Local Governments in Meeting the Nitrogen and Phosphorous Limits for Surface Waters; Priority for Funding from Various Funding Sources Based on Comprehensive Land Use Planning by Local Governments	HOUSE BILL 900: 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 Achieve Further Reduction of Nitrogen and Authorize the Use of the Clean Water Management Trust Fund for Loans
Section 5.1 adds the existence of a comprehensive land-use plan to the priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund. The comprehensive land-use plan must be adopted by the unit of local government, promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning. The Division of Community Assistance in the Department of Commerce will provide assistance to any economically distressed local government unit (defined in Section 5.2) in preparing a comprehensive land use plan. This section also directs the Environmental Management Commission to establish priority criteria for modifications to wastewater treatment facilities that must meet nitrogen and phosphorous limits for surface waters.	**Section 3** authorizes the use of moneys from the Clean Water Management Trust Fund to be used to modify existing permitted wastewater treatment facilities that are subject to the nitrogen limit imposed by Section 1. No more than 25% of money credited to the Fund can be used for modifications to comply with the nitrogen limit imposed by Section 1. **Sections 4** and **5** provide that moneys can be dispersed from the Clean Water Management Trust Fund in the form of loans as well as grants.

PCS HOUSE BILL 515: Part VI. Nitrogen and Phosphorous Limits for Surface Waters	HOUSE BILL 900: Nitrogen Limits for Certain Waters
Section 6.1 prohibits facilities that discharge into Nutrient Sensitive Waters or into other surface waters of the State where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 4.0 milligrams per liter. This limit applies only to: • Facilities placed into operation prior to July 1, 1997 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 • Facilities for which an authorization to construct is issued on or after July 1, 1997	**Section 1** prohibits facilities that discharge into Nutrient Sensitive Waters where nitrogen is a nutrient of concern from discharging more than an amount of nitrogen than would result from a permitted flow at 6.0 milligrams per liter. This limit applies only to: • Facilities placed into operation prior to July 1, 1997 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 • Facilities for which an authorization to construct is issued on or after July 1, 1997

PCS HOUSE BILL 515: Part VI: Nitrogen and Phosphorous Limits for Surface Waters	HOUSE BILL 900: Nitrogen Limits for Certain Waters
This section also directs the Environmental Management Commission to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 4.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been exceeded.	This section also directs the Environmental Management Commission to establish a total amount of nitrogen that may be discharged into a water body that may be less than that achieved by the 6.0 mg/l limit when the assimilative capacity for nitrogen of that water body has been over-allocated.
Section 6.1 also prohibits facilities that discharge into surface waters of the State where phosphorous is a nutrient of concern from discharging more than an amount of phosphorous than would result from a permitted flow at 2.0 milligrams per liter. This section also authorizes the Environmental Management Commission to establish a total amount of phosphorous that may be discharged into a water body less than that achieved by the 2.0 mg/l limit when the assimilative capacity for phosphorous of that water body has been exceeded.	*No comparable provision*
Section 6.1 also allows facilities subject to the nitrogen/phosphorous discharge limits to form cooperative agreements in order to satisfy those limits.	**Section 1** also allows facilities subject to the nitrogen discharge limit to form cooperative agreements in order to satisfy this limits.
Section 6.1 also allows a facility subject to the nitrogen/phosphorous discharge limits to request from the Environmental Management Commission approval of a discharge concentration that is greater than the general nitrogen/phosphorous discharge limits set by this section at a decreased permitted flow so long as the total amounts of nitrogen/phosphorous are equal to or less than that required by this section.	*No comparable provision*
Section 6.2 authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of not more than $10,000 per violation per day for violations of the nitrogen/phosphorous discharge limits established by Section 6.1.	**Section 2** authorizes the Secretary of Environment, Health, and Natural Resources to assess a civil penalty of not more than $10,000 for violations of the nitrogen discharge limit established by Section 1.
Section 6.3 directs the Environmental Management Commission to develop a schedule of dates between January 1, 1998 and January 1, 2003 during which facilities must come into compliance with the nitrogen/phosphorous discharge limits established by Section 6.1.	**Section 6** directs the Environmental Management Commission to develop a schedule of dates between November 1, 1997 and January 1, 2005 during which facilities must come into compliance with the nitrogen discharge limit established by Section 1.

PCS HOUSE BILL 515: Part VII. Stormwater Management	HOUSE BILL 515 AND HOUSE BILL 900
Section 7.1 directs the Environmental Management Commission to develop model stormwater management programs that may be implemented by State agencies and units of local government.	*No comparable provision*
Section 7.2 directs the Environmental Management Commission to deliver the first of its annual reports to the Environmental Review Commission on the status of stormwater control programs on or before October 1, 1998.	*No comparable provision*
Section 7.3 directs the Department of Transportation (DOT) to work with the Division of Water Quality, DEHNR, to complete the development of a Statewide stormwater management permit to govern all programs administered by DOT. This permit is to be completed no later than October 1, 1997.	*No comparable provision*

PCS HOUSE BILL 515: Part VIII. Completion of Basinwide Water Quality Management Plans for each of the State's Seventeen River Basins; Additional Requirements for Basinwide Water Quality Management Plans; Adoption of Pollutant Limits for each River Basin	HOUSE BILL 515 AND HOUSE BILL 900
Section 8.1 sets out findings regarding basinwide water quality management in the 17 major river basins in North Carolina.	*No comparable provision*
Section 8.2 directs the Environmental Management Commission to develop and implement a basinwide water quality management plan for each of the State's 17 major river basins. In the development and implementation of these plans, all point and nonpoint sources of nutrients and toxins will be considered. Each plan will: • Provide that all point and nonpoint sources share responsibility in reducing nutrients and toxins in the State's waters in a fair , reasonable, and proportionate manner • Incorporate protective buffers along all perennial bodies of water for new developmental activities.	*No comparable provision*

PCS HOUSE BILL 515: Part VIII. Completion of Basinwide Water Quality Management Plans for each of the State's Seventeen River Basins; Additional Requirements for Basinwide Water Quality Management Plans; Adoption of Pollutant Limits for each River Basin	HOUSE BILL 515 AND HOUSE BILL 900
• Require appropriate limitations on new developmental activity within the 100-year flood-plain. • Establish a nutrient reduction goal in Nutrient Sensitive Waters so that the uses of these Waters will no longer be classified as impaired.	*No comparable provisions*
Section 8.3 directs the Environmental Management Commission to increase its efforts to involve the public in the development and implementation of basinwide water quality management plans.	*No comparable provision*
Section 8.4 directs the Environmental Management Commission to adopt limits on all pollutants for each of the State's 17 major river basins as required by federal law.	*No comparable provision*
Section 8.5 authorizes the Environmental Management Commission to adopt rules to implement basinwide water quality management plans.	*No comparable provision*
Section 8.6 contains rulemaking and reporting provisions related to basinwide water quality management plans.	*No comparable provision*

PCS HOUSE BILL 515: Part IX. Fertilizer Use at Golf Courses	HOUSE BILL 515 AND HOUSE BILL 900
Section 9.1 establishes a certification and training program for persons who apply soil enriching nutrients to golf courses and prohibits the owner or person in control of a golf course from allowing an uncertified person from applying soil enriching nutrients to the golf course. The Environmental Management Commission is directed to develop and administer the certification program and to establish a training program for persons who apply soil enriching nutrients to golf courses. The Environmental Management Commission is also authorized to suspend or revoke certification under certain circumstances and to assess a civil penalty not to exceed $1,000 per willful violation of the program.	*No comparable provision*

PCS HOUSE BILL 515: Part X. Graduated Violation Points System for Swine Operators; Study of Swine Integrators Civil Penalty Liability.	HOUSE BILL 515 AND HOUSE BILL 900
Section 10.1 directs the Environmental Management Commission to develop a Violation Points System applicable to permits for animal waste management systems for swine farms. Those violations that cause the greatest environmental harm or that are committed willfully or intentionally are to be classified as significant. The commission of three significant violations (or a greater number of less significant violations) within a limited period of time, not less than five years, will result in the mandatory revocation of a permit. The commission of one willful violation that results in serious harm may result in the revocation of a permit.	*No comparable provision*
Section 10.2 directs the Department of Environment, Health, and Natural Resources to develop a recommended system of civil penalties applicable to integrators of swine operations. A civil penalty will be imposed against an integrator upon the revocation of a permit of an operator under contract with the integrator for the production of swine at the time the violation that resulted in the revocation occurred. This Section also directs the Environmental Management Commission to study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful or grossly negligent violation that results in significant environmental damage.	*No comparable provision*

PCS HOUSE BILL 515: Part XI. Criminal Enforcement for Repeated Violations; Clarifications of Requirements that Permit Applicants Demonstrate That They Are Financially Qualified	HOUSE BILL 515 AND HOUSE BILL 900
Section 11.1 directs the Secretary of Environment, Health, and Natural Resources to refer to the State Bureau of Investigation the possible commission of any criminal offense of any person or facility that discharges waste in a manner that significantly violates State law related to water and air resources on two or more separate occasions in any three-year period.	*No comparable provision*

PCS HOUSE BILL 515: Part XI. Criminal Enforcement for Repeated Violations; Clarifications of Requirements that Permit Applicants Demonstrate That They Are Financially Qualified	HOUSE BILL 515 AND HOUSE BILL 900
Section 11.2 directs the Environmental Management Commission to require that applicants for a permit to discharge must demonstrate that the applicant is financially qualified to carry out the activity for which the permit is required.	*No comparable provision*

PCS HOUSE BILL 515: Part XII. Additional Studies.	HOUSE BILL 515 AND HOUSE BILL 900
Section 12.1 directs the Environmental Review Commission to study the feasibility and desirability of requiring persons who apply soil enriching nutrients onto land, other than golf courses, to be certified under a certification and training program.	*No comparable provision*
Section 12.2 directs the Environmental Review Commission to study the feasibility and desirability of establishing a voluntary education program designed to educate the public about the impact nutrients and pesticides have on the environment, the responsible use of nutrients and pesticides, and ways of reducing the input of nutrients and pesticides into State waters.	*No comparable provision*
Section 12.3 requires the Department of Agriculture to submit the next North Carolina Turfgrass Survey to the Environmental Review Commission within one month of the survey's publication.	*No comparable provision*
Section 12.4 directs the Environmental Review Commission to study the development of guidelines for best management practices for golf courses. The study will address golf course planning, siting, design, construction, maintenance, and operation in relation to water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; waste management; and any other matters necessary to protect water quality, public health, and the environment.	*No comparable provision*

PCS HOUSE BILL 515: Part XII. Additional Studies.	HOUSE BILL 515 AND HOUSE BILL 900
Section 12.5 directs the Environmental Review Commission to study guidelines for and incentives to encourage adoption of best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing systems.	*No comparable provision*

PCS HOUSE BILL 515: Part XIII. Assumption of Control of Non-complying Publicly Owned Treatment Works by the Environmental Management Commission	HOUSE BILL 515 AND HOUSE BILL 900
Section 13.1 authorizes the Environmental Management Commission to assume control of and operate a publicly owned treatment works that persistently fails to comply with federal and State laws for the protection of public health and the environment. Prior to assuming control, the Environmental Management Commission must consult with the Local Government Commission and provide notice of intent to assume control and steps that may be taken to come into compliance to the unit of local government that owns or operates the publicly owned treatment works.	*No comparable provision*

PCS HOUSE BILL 515: Part XIV. Miscellaneous Provisions; Effective Dates	HOUSE BILL 515
Section 14.1 repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.	**Section 3** repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government.
Section 14.2 explains that headings are merely for the convenience of the reader.	*No comparable provision*
Section 14.3 is a severablity clause.	*No comparable provision*
Section 14.4 contains effective dates.	**Section 8** of House Bill 515 and **Section 7** of House Bill 900 contain effective dates.

Nutrient Strategies Adopted
by the
Environmental Management Commission

Water Classified as Nutrient Sensitive Waters (NSW)	Nutrient(s) of Concern
Chowan River Basin	Phosphorus and Nitrogen
Tar-Pamlico River Basin	Phosphorus and Nitrogen
New River, White Oak River Basin[1]	Phosphorus and Nitrogen
Neuse River Basin	Phosphorus and Nitrogen
Lake Jordan Watershed[2]	Phosphorus
Waters with Nutrient Strategies, not Classified as NSW (strategies are documented in basin plans)	
Lake Wylie Watershed[3]	Phosphorus and Nitrogen
Deep River Watershed[4]	Phosphorus
High Rock Lake Watershed (Pending)	Phosphorus
Facilities Limited for Nutrients, not in NSW Classified Waters (based on localized problems)	
CMUD-McDowell Creek WWTP	Phosphorus and Nitrogen
Henderson-Nutbush Creek WWTP	Phosphorus
High Point-Eastside WWTP (Pending)[4]	Phosphorus and Nitrogen

[1]The initial NSW strategy allowed for implementation of TN limits on individual discharging facilities, where appropriate

[2]Studies are ongoing to determine if nitrogen needs limiting in localized areas

[3]The Lake Wylie Watershed does not include Sugar and McAlpine Creek Watersheds

[4]High Point-Eastside WWTP is located in the Deep River Watershed, however, as a result of the excessive concentrations of nitrogen in the upper watershed and High Point's high contribution of nitrogen, the pending requirements are for nitrogen and phosphorus.

NOTE: Each management strategy for nutrient control has been individually developed based on the specific characteristics of the particular basin. The management strategies are established for both point and nonpoint sources. The strategies may be mandatory and/or voluntary.

NC Senate Clean Water Responsibility Act

A comprehensive approach to preserving North Carolina's precious water resources

In 1996, the NC Senate did much to keep the state's water clean: An ongoing trust fund–$47 million in its first year and $44 million in the Senate budget this year–to buy land along waterways; a wetlands restoration program; stringent permitting and set backs for hog farms.

The Clean Water Responsibility Act introduced today expands those reforms by asking everyone to share responsibility in keeping our rivers and streams clear of pollution. It includes:

- Temporarily curbing the expansion of the hog industry;
- Tools to help the state and local governments oversee the industry;
- A method of ensuring all violators are held responsible;
- Comprehensive planning across the state to ensure clean water;
- Strict limits on wastewater treatment plants;
- Studies to help us learn more about pollution.

In combination with the Clean Water Bonds infrastructure bill—which would establish a $1 billion fund to help communities safely dispose of waste and distribute clean water—the Clean Water Responsibility Act will ensure that we work together to protect our water.

Curbing expansion of the hog industry

Two-year moratorium on swine farms

The moratorium will temporarily halt the growth in hog farms as the state awaits information, such as the results of an isotope study which help us know more about who is responsible for polluting our rivers.

Research at NC State University that focuses on odor control, lagoon, groundwater, and waste management should be completed in two years. In addition, scientists are researching alternatives to the current lagoon systems; the effects of animal waste lagoons on groundwater; and ways to convert animal waste to other uses.

The moratorium will stop the construction or expansion of swine farms that contain 250 or more hogs and lagoon waste systems beginning March 1, 1997 and expiring March 1, 1999. This moratorium does not prohibit construction to repair, replace, meet design capacity, comply with animal waste management rules.

Counties may zone large hog farms

Adds local control and community involvement by allowing county commissioners to decide where to place animal waste management systems with capacities of 600,000 pounds of steady live weight or more.

Authorize the Environmental Management Commission to control odor from animal operations

- The EMC will adopt standards to control emissions and the UNC Board of Governors is asked to finish its report on odor control technologies by Nov. 1, 1997. The bill also directs the EMC to regulate odor emission from no later than March 1, 1999.

Swine Farm Siting Act amendments

To avoid natural disasters from contributing to runoff, the amendment prohibits construction of a liquid animal waste management system on land within the 100-year floodplain.

"Graduated points" violation system for hog operations

We must tell irresponsible operators and integrators—that means everyone responsible for hog operations—that carelessness will not be tolerated. Just as the state accumulates "points" for driver's licenses, the EMC will establish a point system for hog operators.

After a finding of three "significant violations," for example, an operator's permit could be automatically revoked. For one serious violation, DEHNR could choose to revoke a permit after just one offense. And it holds everyone involved responsible, including the integrators and the growers.

Cut pollution from cities, towns, industries and other dischargers

Limit the nitrogen and phosphorous in our state's waters

Nitrogen that flows from our wastewater plants causes algae blooms, which in turn kills fish and other life that should thrive in our rivers.

Much as the phosphorous reduction in 1987 curbed harmful discharges in our waters, reducing the amount of nitrogen is crucial.

This bill directs wastewater facilities that discharge into **Nutrient Sensitive Waters** (such as the Neuse River, the Tar -Pamlico, the Chowan and parts of the Jordan Lake and New River areas) to keep their nitrogen discharges at 4.0 **milligrams** of nitrogen per liter of permitted flow.

Continued reduction in phosphorous

Establish a **2.0 milligram of phosphorus** per liter concentration limit on wastewater facilities which discharge into phosphorus-sensitive waters. The facilities will be brought in to compliance over five years.

To help local governments meet the new standards, the bill gives them priority in obtaining grants or loans from the Clean Water Revolving Loan and Grant Fund if they plan properly

Local governments will be asked to implement **comprehensive land-use plans**, which will be used as a priority criteria. The plan must promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning.

- The EMC is asked to establish **priority criteria** for modifications to wastewater treatment facilities that must meet the new nitrogen standards.
- The Division of Community Assistance will provide **help to economically distressed** units of local government in preparing land use management plans.

Criminal penalties for the most serious pollution offenses

Spills and other acts of carelessness must not be tolerated. The bill requires the DEHNR Secretary to ask the **SBI** to investigate any person or facility that violates our state standards and discharges waste two or more times during a three-year period.

The EMC may take control of failing treatment plants

The EMC, in consultation with the Local Government Commission, may **take over** publicly owned treatment plants that fail to comply with the rules. Control continues until the EMC deems the local government capable of taking it back.

Bond requirement to ensure that dischargers are held financially responsible

To prevent dischargers from walking away from failing systems, the bill would allow the EMC to establish **bonding requirements** for anyone who wants a permit to construct waste disposal systems, such as package plants.

Stormwater Management.

The EMC is directed to develop model **stormwater runoff management plans**. Local governments and state agencies are authorized to implement stormwater control programs that meet model standards adopted by the EMC.

The state of North Carolina must take the lead. The bill directs the state **Department of Transportation** (DOT) to work with the Division of Water Quality and DEHNR to complete the development of a statewide stormwater management permit to govern all programs administered by DOT by Oct. 1, 1997.

Planning for our water's health

EMC will complete Basinwide Water Quality Management Plans for each of the State's 17 river basins

The EMC will complete and implement 17 basinwide water quality management plans by Jan. 1, 1998, and each plan will be reviewed every five years in accordance with the renewal of permits in the basin. In the development of these plans, all point and nonpoint sources will be considered.

- Incorporate **protective buffers** along all perennial bodies of water for new developmental activities;
- Provide that all **point and nonpoint** sources share responsibility in reducing nutrients and toxins in the State's waters;
- Require appropriate management on new developments within the **100-year flood-plain;**
- Establish a **goal to reduce nutrients** delivered into estuaries and other surface waters.

Adoption of Total Maximum Daily Loads (TDML) for each River Basin Additional Requirements for Basinwide Water Quality Management Plans;

- The EMC will develop and implement limits on all pollutants for each of the State's 17 river basins as required by federal law.
- The EMC's has statutory **authority** to promulgate rules to implement this part of the bill.
- In the course of preparing the **basinwide** water quality management plans, the Department is directed to identify and report to the ERC concentrations of heavy metals and other pollutants found in surface waters.

Anyone who applies fertilizer at golf courses will be properly trained

To ensure that fertilizers are spread properly, The EMC will adopt a **certification and training** program for those who apply soil enriching nutrients to golf courses.

Studies to learn more about North Carolina's water quality

- ERC will study the feasibility and desirability of requiring **anyone** who applies **fertilizer** to receive training and certification.
- ERC will study the utilization of the North Carolina Cooperative Extension Service to implement a voluntary **residential nutrient and pesticide** management education program.
- The state Department of Transportation will report to the ERC on how best to govern **fertilizer use** along the sides of state maintained roads.
- The ERC to study **Best Management Practices** for **golf courses**. The study will specifically address water use; stormwater runoff; use of fertilizers, pesticides, and herbicides; and waste management.
- The ERC will study the development of guidelines for Best Management Practices for **septic tank systems**. These guidelines may include filters, electronic warning devices, and other innovative technologies or practices.

Senate Clean Water Responsibility Act

June 3, 1997

Part I. Moratorium on Construction or Expansion of Swine Farms.

- Section 1.1 establishes a moratorium that begins on March 1, 1997 and expires on March 1, 1999 on the construction or expansion of swine farms of 250 or more hogs and lagoons. This moratorium does not prohibit construction:
  - To repair.
  - To replace.
  - To meet design capacity.
  - To comply with animal waste management rules.
  - If prior to March 1, 1997 the person undertaking the construction:
    - Laid a foundation;
    - Entered into a bona fide written contract for actual construction;
    - Been approved for a line of credit and has expended funds from the line of credit.
  - Construction or expansion of an operation of an innovative animal waste management system approved by the department.
  - To construct if operation is permitted before this act is ratified.
- Burden of proof falls on individual to demonstrate that he/she falls within the exemption.

Part II. Agricultural Zoning by Counties.

- Section 2.1 allows counties to zone animal waste management systems with capacities of 600,000 lbs. steady live weight or more. Counties may not zone in a manner that would exclude all swine farm operations from the entire zoning jurisdiction (Mobile Home Language).
- Section 2.2 Zoning regulations will not apply to farms in existence at the time the ordinance is adopted.

Part III. Control of Odor Emissions from Animal Operations.

- Section 3.1 authorizes the Environmental Management Commission to adopt standards to control the emission of odors from animal operations if sufficient technology that is economically feasible has been developed.
- Section 3.2 directs the UNC Board of Governors to issue its final report on economically feasible odor control technologies to the EMC prior to November 1, 1997. It also directs the EMC to adopt a rule to regulate the emission of odors from animal waste management systems no later than March1, 1999 and only if sufficient technology has been developed that is economically feasible.

Part IV. Swine Farm Siting Act Amendments.

- Section 4.1 makes mainly technical changes to the Swine Farm Siting Act and prohibits the construction of a component of a liquid animal waste management system, other than a land application site, on land that is located within the 100-year floodplain.

Part V. Priority for Loans or Grants from the Clean Water Revolving Loan and Grant Fund to Assist Local Government in Meeting the Nitrogen Limit for Nutrient Sensitive Waters and Outstanding Resource Waters.

- Section 5.1 adds the existence of a comprehensive land-use plan to the priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund. The comprehensive land-use plan must be adopted by the unit of local government, promote economically and environmentally sustainable development, establish verifiable goals, and be approved by the Office of State Planning. This section also directs the EMC to establish priority criteria for modifications to wastewater treatment facilities that must meet the 4.0 milligram of nitrogen per liter limit for facilities discharging into Nutrient Sensitive Waters or Outstanding Resource Waters.
- Provide technical assistance upon request to economically distressed units of local government in preparing land use management plans. Assistance would be provided by the Division of Community Assistance.
- Section 5.2 Economically distressed units of local government means a local government unit located in whole or in part in an economically distressed county as designated by the Department of Commerce.

Part VI. Nitrogen Limits and Phosphorous Limits for Surface Waters.

- Section 6.1 establishes a 4.0 milligram of nitrogen per liter concentration limit on wastewater facilities that discharge into Nutrient Sensitive Waters or other site specific waters determined by the department. This section allows facilities subject to the nitrogen discharge limit to form cooperative agreements in order to satisfy the nitrogen discharge limits and allows for unit to apply for a variance from the limit at a reduced permitted flow. These limits will be reached over a 5 year phase-in.
- Section 6.1 also establishes a 2.0 milligram of phosphorus per liter concentration limit on wastewater facilities that discharge into waters where phosphorus is a nutrient of concern as determined by the Commission.
- Section 6.3 designates that these facilities will be brought into compliance over a five year phase-in.

Part VII. Stormwater Management.

- Section 7.1 EMC is directed to develop model stormwater runoff management plans. Local governments and state agencies are authorized to implement stormwater control programs that meet model standards adopted by the EMC and receive EMC approval.
- Section 7.3 directs the Department of Transportation (DOT) to work with the Division of Water Quality, DEHNR, to complete the development of a Statewide stormwater management permit to govern all programs administered by DOT. This permit is to be completed no later than October 1, 1997.

Part VIII. Completion of Basinwide Water Quality Management Plans for each of the State's Seventeen River Basins; Additional Requirements for Basinwide Water Quality Management Plans; Adoption of Total Maximum Daily Loads (TDML) for each River Basin

- Section 8.2 directs the EMC to complete and implement each of the 17 basinwide water quality management plans and directs that each plan will be reviewed every 5 years in accordance with the renewal of permits in the basin. In the development of these plans, all point and nonpoint sources will be considered. Effective Jan. 1, 1998, in addition to other factors deemed necessary by the Department and Commission, each plan will:
    - Provide that all point and nonpoint sources share responsibility in reducing nutrients and toxins in the State's waters in a fair, reasonable, and proportionate manner.
    - Incorporate protective buffers along all perennial bodies of water for new developmental activities.
    - Require appropriate management on new developmental activity within the 100-year flood-plain.
    - Establish a goal to reduce loading of nutrients delivered into estuaries and other surface waters.

  This Section also directs the EMC to develop and implement limits on all pollutants for each of the State's 17 river basins as required by federal law.
- Section 8.5 establishes the EMC's statutory authority to promulgate rules to implement this part of the bill. In the course of preparing the basinwide water quality management plans, the Department is directed to identify and report to the ERC concentrations of heavy metals and other pollutants found in surface waters.

Part IX. Fertilizer Use at Golf Courses.

- Section 9.2 EMC to adopt a certification and training program for those who apply soil enriching nutrients (fertilizer) to golf courses.

Part X. Graduated Points Violation System for Swine Operations

- Section 10.1 Direct the EMC to adopt rules establishing a point system for violations on swine operations. Violations resulting in the most serious damage to the environment and water quality would receive the most points ["significant violation"]. In accordance with the point system, after a finding of three "significant violations" within a limited period of time, the operator's permit would be revoked. If the revocation is upheld after an opportunity for appeal, the operator would be prohibited from being issued another permit for an appropriate number of years [similar to enhanced punishment for an "habitual offender"]. The point system would also establish a combination of lesser violations which, taken together, could equal a "significant violation." After three combinations of lesser violations, the operator's permit would be revoked. Same appeal rights would apply.
- Section 10.2 EMC is directed to develop a recommended system of penalties and liability applicable to integrators of swine operations. This system would incorporate penalties for integrators if the contract grower has lost his permit due to habitual violations or where contract growers commit willful violations re..ulting in significant harm to the environment and/or public health.

Part XI. Criminal Enforcement for Repeated Violations and Financial Qualifications for Permit Applicants.

- Section 11.1 Secretary to refer to SBI for its review possible criminal offenses for any person or facility that discharges waste in violation two or more times during a three year period.
- Section 11.2 Language has been provided by the Department and would allow the EMC to establish bonding requirements for individuals desiring permits to construct waste disposal systems.

Part XII. Studies

- Section 12.2 ERC to study the feasibility and desirability of requiring persons who apply fertilizer to be certified.
- Section 12.3 ERC will study the utilization of the North Carolina Cooperative Extension Service to develop and implement a voluntary residential nutrient and pesticide management education program.
- Section 12.4 DOT to report to ERC on fertilizer use on roadsides of state maintained roads.

- Section 12.5 Section 5.1 directs the ERC to study Best Management Practices for golf courses. The study will specifically address water usage; stormwater runoff; use of fertilizers, pesticides, and herbicides; and waste management.
- Section 12.6 ERC will study the development of guidelines for Best Management Practices for Septic Tank Systems. These guidelines may include filters, risers, electronic warning devices, and other innovative technologies or practices and (tax credits) incentive plans.

Part XIII. Assumption of Control of Non-Complying Publicly Owned Treatment Works by EMC

- Section 13.1 Authorizes the EMC, in consultation with the Local Government Commission, to take over publicly owned treatment works that fail to comply with the rules and regulations governing such facilities. Control continues until such time the EMC, in consultation with the Local Government Commission, deems the local government is capable and willing to operate the treatment facility in compliance with all applicable laws.

Part XIII. Miscellaneous Provisions; Effective Dates.

- Repeal G.S. 143-215(e)

NC Senate Clean Water Bonds
Senate Bill 232

Protecting clean water means providing proper water and sewer disposal systems across the state. The Senate's Clean Water Responsibility Act asks local governments, industries and others to reduce the pollutants going into state waters. Clean Water Bonds will help accomplish that.

Clean Water Bonds can help North Carolina grow responsibly, fix problems with small systems that have been unable to join large systems, and give local governments a cost-effective source of revenue.

Why Clean Water Bonds?

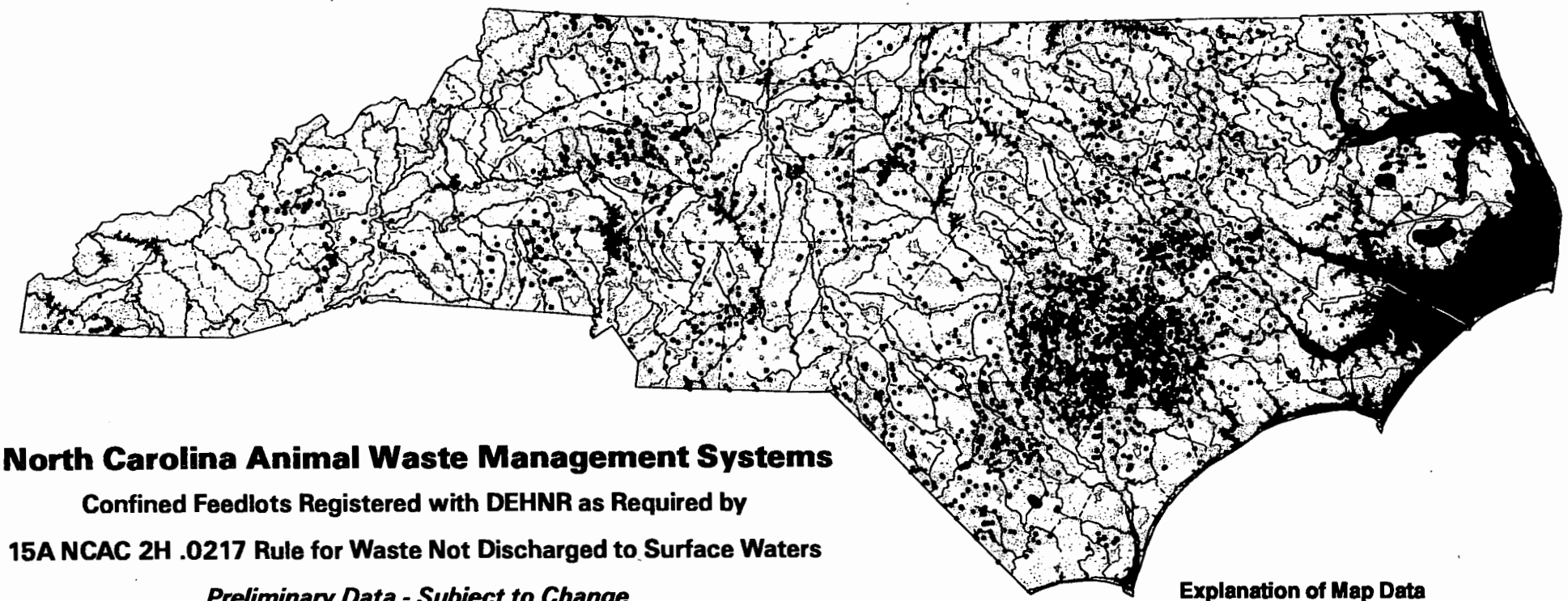
- Estimates on North Carolina's water and sewer needs range from $2.7 billion to $11.34 billion over the next 20 years.
- Approximately 1.5 million North Carolina households, roughly half, have permitted septic tanks, many of which are in poor condition or failing.
- Of the 527 municipalities in North Carolina, 402--or 76 percent--have no bond rating or have ratings below 75. Most are rural and unable to afford infrastructure improvement.

(Department of Environment, Health and Natural Resources, 1995; US Environmental Protection Agency, 1997, the Rural Center, 1997)

The proposal would work this way:

- Voters would be asked to approve $1 billion in state general obligation bonds for local government to use for water and sewer projects.
- $800 million as "pass-through" grants or loans, with local governments borrowing at a favorable state rate and then repaying the money.
- $200 million would be dedicated to the Clean Water Revolving Loan and Grant Fund and for matching funds for federal wastewater or water supply assistance funds for the 1998-99 and 1999-2000 fiscal years. The fund helps small, poor communities obtain low-interest loans and grants to pay for clean water projects.
- The remainder would be used as loans to local governments; 69 percent for wastewater projects and 31 percent for water supply systems and water conservation projects.
- State cost would be minimal since the local governments would return the money.

Plate 2



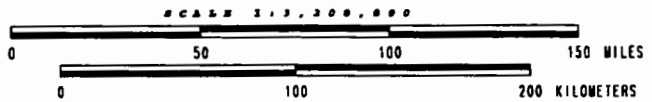
North Carolina Animal Waste Management Systems

Confined Feedlots Registered with DEHNR as Required by

15A NCAC 2H .0217 Rule for Waste Not Discharged to Surface Waters

Preliminary Data - Subject to Change

- County Boundary
- River and Shoreline
- River Basin Boundary
- Swine Facility
- Cattle Facility
- Poultry Facility
- Horse Facility



North Carolina State Plane Coordinate System NAD27

Department of Soil Science

Dr. John L. Havlin, Head

North Carolina State University

Box 7619 * Raleigh, N.C. 27695 * 919-515-2655

Produced May 1997, Kris C. Matson

Explanation of Map Data

This map displays locations of animal operations included in the NC Department of Environment, Health, and Natural Resources (DEHNR) Division of Water Quality (DWQ) registration database. Operations included are those deemed permitted under the 15A NCAC 2H .0217 Rule for Waste Not Discharged to Surface Waters.

Animal operations are registered under this rule if the facility serves:

- 250 or more swine;
- 100 or more confined cattle;
- 75 or more horses;
- 1,000 or more sheep; and
- 30,000 or more confined poultry using a liquid waste management system.

Animal operations NOT included in the database include:

- those with fewer animals than the threshold number; and
- poultry operations with dry litter waste management systems.

Locational errors are evident on this map. Operations are shown as provided by the DWQ at the time of map production; those plotting outside the state boundary are not displayed. The DWQ is reviewing these data and incorrect locations will be changed. For additional information about the registration database, contact the DWQ at: 919-733-5083.

The base map is derived from digital data obtained under agreement with the NC Center for Geographic Information and Analysis (NC CGIA). Included are:

- Major Hydrography, a subset of USGS 1:100,000-scale hydrographic data;
- River Basins delineated from the NRCS Hydrologic Units data - 1996;
- Incorporated Municipal areas compiled by the NC DOT - 1994; and
- NC County Boundaries compiled from 1:100,000-scale USGS quadrangles - 1990.

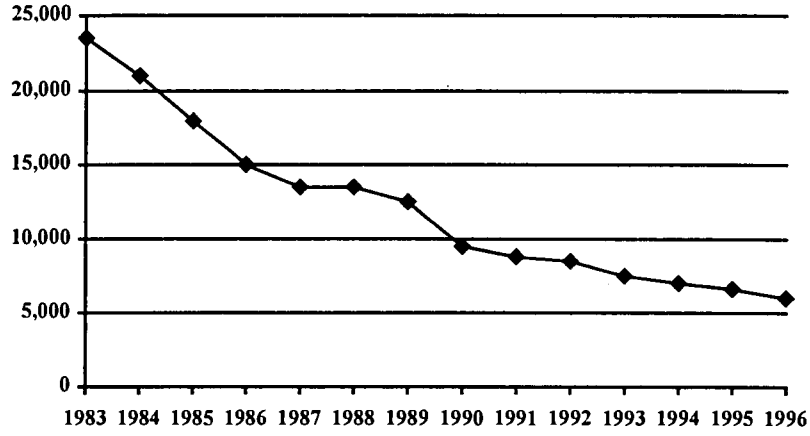
For information about digital geographic data for North Carolina, contact the NC CGIA at 919-733-2090 or http://cgia.cgia.state.nc.us/ncgdc.

COMPARISON OF THE TOTAL NUMBER OF HOG OPERATIONS AND THE TOTAL HOG POPULATION 1983 - 1996

Source of Data: NC Department of Agriculture

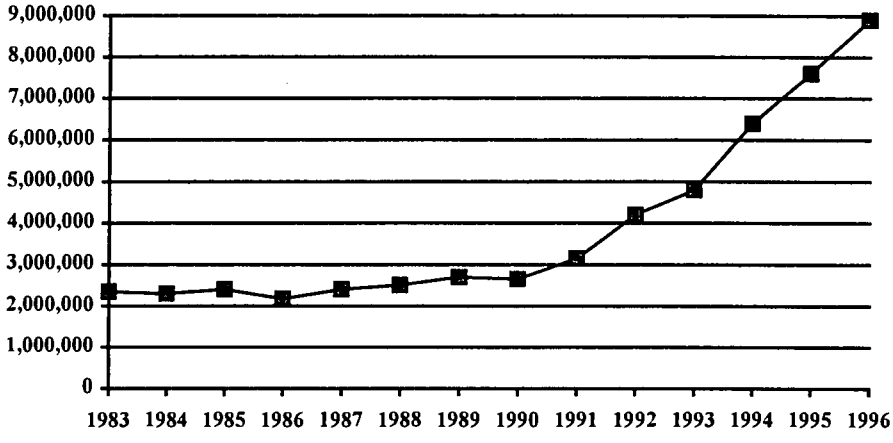
Total Number of Hog Operations

(includes any farm in NC with one or more hogs on hand anytime during the year)



Total Hog Population

(as of June 1st of each year)



May 9, 1997

NC HOG STATISTICS
1983 - 1996

Total Number of Hog Operations (includes any farm in NC with one or more hogs on hand anytime during the year.)

YEAR	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	% CHANGE FROM 1983-1996
1-99 Hogs	21,300	19,000	15,800	13,100	11,700	11,700	10,800	7,900	7,100	6,700	5,700	5,000	4,400	4,000	-81%
100-499 Hogs	1,400	1,300	1,300	1,100	960	950	870	750	700	650	580	550	460	310	-78%
500-999 Hogs	800	700	900	800	320	320	300	280	300	300	280	280	260	190	-76%
1000-1999 Hogs	*No Data Available*				520	530	510	570	700	350	320	350	380	300	-42%
2000+ Hogs	*No Data Available*									500	620	820	1,100	1,200	140%

- Generally, operations with less than 1,000 head are independent operations. Operations over 1,000 head are usually involved in a contract operation.
- Contract operations account for 93 percent of the total number of hogs while independent growers account for only about 7 percent of the total number of hogs.

Total Hog Population as of June 1st of Each Year

YEAR	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	% CHANGE FROM 1983-1996
Total # of Hogs	2,350,000	2,300,000	2,400,000	2,175,000	2,400,000	2,550,000	2,700,000	2,650,000	3,150,000	4,200,000	4,800,000	6,400,000	7,600,000	8,900,000	299%

- The number of hogs has increased four-fold, or almost 300%, since 1983.

Source of Data: NC Department of Agriculture and the NC Department of Environment, Health, and Natural Resources

May 9, 1997

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
George McLean	George	McLean	2/25/97	4/21/97	Existing
Britt & Foley		B&F Farms Inc	2/26/97	4/21/97	Existing
Kitty Noecker Farm	Harold J	Smith	2/26/97	4/21/97	Existing
Phil Bulluck Farm	Walter P.	Bulluck	2/27/97	5/12/97	Existing
Crow's Nest		Crow's Nest Farm	2/28/97	4/28/97	Existing
Collins Swine Farm	Bobby	Collins	2/28/97	4/21/97	Existing
Monk Whaley Farm	Monk	Whaley	3/4/97	4/21/97	Existing
Berry Anderson Farm	Berry	Anderson Jr	3/7/97	4/28/97	Existing
Robert Dale Holt	Robert D.	Holt	3/7/97	4/28/97	Existing
Beaver Branch Farm	Reiferd	Nichols	3/7/97	5/5/97	Existing
Double T Farms	Keith	Thornton	3/10/97	4/21/97	Existing
Henry Blizzard Farm	Henry	Blizzard	3/11/97	4/28/97	Existing
ThomKenn Farms		ThompKen Farms	3/11/97		Existing
Jack Alphin Farm 1-9	Jack	Alphin	3/11/97	4/21/97	Existing
Danny L. Brown	Danny L.	Brown	3/14/97	4/21/97	Existing
Northside Farm	Alpheus B.	Bullock Sr.	3/14/97		Existing
Weston Farms, Inc.	Danny	Weston	3/17/97	4/21/97	Existing
Strickland Farms	Reginald	Strickland	3/18/97	4/21/97	Existing
AHA Farms		AHA Farms	3/20/97		Existing
Hoke Smith Jr #1		Estate of R. Hoke	3/20/97		Existing
Farm #2 - Aaron		Estate of Hoke	3/20/97		Existing
Hoke Smith Jr #3	Julia F.	Smith	3/20/97		Existing
Hoke Smith Jr #4		Estate of R. Hoke	3/20/97		Existing

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Hall Farm		Coharie Hog	3/20/97	4/21/97	Existing
M&T Farm	John H.	McLean	3/20/97	4/28/97	Existing
Eddie Johnson	Eddie	Johnson	3/20/97	4/21/97	Existing
C.E.R. Inc.	Ronald	Hutchinson	3/20/97	4/21/97	Existing
Carroll Jackson Farm	Carroll	Jackson	3/21/97	4/28/97	Existing
Gatlin Hunting Club	Richard	Anderson	3/21/97	4/28/97	Existing
Singletary Sow Farm		Murphy Family F	3/24/97	4/28/97	Existing
Squires Farm (Sow)		Murphy Family F	3/24/97	4/28/97	Existing
Marcus Daniels Farm	Marcus	Daniels	3/24/97	4/21/97	Existing
M & H Sow Farm		Murphy Honour	3/24/97	4/28/97	Existing
Southern Pines 1 & 2		Murphy Family F	3/24/97	4/28/97	Existing
Lee Brothers Farm	Earl	Lee	3/24/97	4/21/97	Existing
Waddell Farms	Schley	Waddell	3/24/97	4/21/97	Existing
Ed Stevens	Ed	Stevens	3/24/97	4/21/97	Existing
Cain Complex		Murphy Family F	3/25/97	4/28/97	Existing
Ingold Sow Farm		Murphy Family F	3/25/97	4/21/97	Existing
Farm #17		Brown's of Carol	3/25/97	5/5/97	Existing
Applefield Farm-Uppr	Phillip	Faucette	3/25/97		Existing
Funston Farms - New	Wilbur E.	Earp	3/25/97	5/19/97	Existing
Sandy Evans 13-20	Sandy	Evans	3/25/97		Existing
Razorback Farms	Jimmy	Wiggins	3/27/97	4/28/97	Existing
Carroll's Farm 7701	F.J. &	Faison	3/31/97		Existing
Donnie Peedin Farm	Donnie	Peedin	3/31/97		Existing

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Broadwater Farms,	Shirley L.	Clemmons	4/2/97	4/28/97	Existing
Carroll's Foods	Howard	Hobson	4/4/97		Existing
Bell Swamp Farms,	Ila Raye	Lundy	4/10/97		Existing
Circle Q Sow Farms	Craig	Quinn	4/14/97	5/5/97	Existing
Gary & Mike Sutton	Donald W.	Sutton	4/14/97	4/28/97	Existing
Rex Smith Farms Inc	Rex	Smith	4/15/97	4/28/97	Existing
Exum Mills Sow		Goldsboro Hog	4/15/97	4/28/97	Existing
Squirrel Ridge Sow		Goldsboro Hog	4/15/97	5/12/97	Existing
Republican Sow		Goldsboro Hog	4/15/97	5/5/97	Existing
Coastal Farms Inc #3		Coastal Farms Inc	4/15/97	4/28/97	Existing
Carolina Swine	Mac / Wade	Jones / Dunbar	4/16/97		Existing
Aaron Smith Farm	Arron	Smith	4/16/97	5/5/97	Existing
Bryant Worley Farm	J. Bryant	Worley	4/17/97	4/28/97	Existing
E & J Farm	George	Garner	4/17/97	4/28/97	Existing
M & M Swine Farm	Chris	Murphy	4/17/97	5/5/97	Existing
Major Jones Farm	Major	Jones	4/18/97	5/12/97	Existing
Ronald Ezzell Farm	Ronald	Ezzell	4/18/97	4/28/97	Existing
Hairr II	Wesley	Hairr	4/18/97	4/28/97	Existing
Nobles Farm	Johnny	Nobles	4/21/97	5/5/97	Existing
Outback Farms LLC	Eric/Robert	Pierce	4/21/97	4/28/97	Existing
Dan Lewis	Dan	Lewis	4/21/97		Existing
EMS Hog Farms Inc		EMS Hog Farms	4/21/97	5/5/97	Existing
Clay Ridge Farm	Mike	Hardy	4/22/97	4/28/97	Existing

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Farrow-wood Sow	Stan	Draughon	4/22/97		Existing
Barham Farms Home	Julian	Barham	4/23/97		Existing
Cecil Barnhill and	Gregg	Barnhill	4/23/97	5/26/97	Existing
Holland Farms	Richard	Holland	4/23/97	4/28/97	Existing
E&S Farm	Ira D.	Johnson	4/23/97		Existing
7578		Carroll's Foods I	4/24/97	5/5/97	Existing
7579		Carroll's Foods I	4/24/97		Existing
7572		Carroll's Foods I	4/24/97		Existing
7576		Carroll's Foods I	4/24/97		Existing
7573		Carroll's Foods I	4/24/97	5/5/97	Existing
7374		Carroll's Foods I	4/24/97	5/5/97	Existing
Sandy Ridge Farm	Ben R.	Dunn	4/24/97	5/5/97	Existing
Yelverton Farms Ltd	J.T.	Yelverton	4/24/97		Existing
Beach Island Farm	Thomas D.	Thigpen	4/24/97	5/5/97	Existing
Joe & Dwight Sholar	Joe	Sholar	4/24/97		Existing
David T. Phillips	David/Paul	Phillips	4/24/97	5/5/97	Existing
Carroll's Farm #		Carroll's Realty	4/24/97	5/5/97	Existing
Carolina Bay Farms ,		Carolina Bay	4/24/97		Existing
Ralph & Suzanne	Ralph/Suza	Britt	4/24/97		Existing
Russ Jones Farm	Russ	Jones	4/24/97	5/5/97	Existing
7375		Carroll's Foods I	4/25/97	5/5/97	Existing
Pigs-R-Us/Miller's	Michael	Miller	4/25/97	5/5/97	Existing
J&J Swine Farm	Billy	Jones	4/25/97	5/19/97	Existing

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Vanguard Farms	William H.	Clark	4/28/97	5/12/97	Existing
Robinson Farms Inc.	Ronald	Robinson	4/28/97	5/12/97	Existing
Rosewood #3	Reginald	Spain	4/28/97		Existing
William Earl Cruse	William Earl	Cruse	4/28/97		Existing
Tom Mintz Farm	Tom	Mintz	4/29/97		Existing
Tommy Grantham	Tommy	Grantham	4/29/97	5/5/97	Existing
Robert Grantham Jr.	Robert	Grantham Jr	4/29/97	5/12/97	Existing
Browns of Carolina		Brown's of Carol	4/30/97		Existing
Double C Farms	Caroll / Eric	Cottle / Cox	4/30/97		Existing
Eugene Whaley	Eugene	Whaley	4/30/97	5/12/97	Existing
Flowers Hog Farm	Peggy M.	Flowers	4/30/97	5/12/97	Existing
Farm #28		Brown's of Carol	4/30/97	5/12/97	Existing
Farm 94		Brown's of Carol	4/30/97		Existing
Eddie Griffin Farm	Eddie	Griffin	5/1/97	5/19/97	Existing
Stoneybrook Farms	Robert, Jack,	Phillips, Bissette,	5/2/97	5/12/97	Existing
Hurst Farm	Ernest	Hurst	5/5/97	5/12/97	Existing
Pope Brothers	Joseph &	Pope	5/5/97	5/19/97	Existing
Spring Valley Farm	Dieter	Engel	5/5/97		Existing
Pope Bros Farm Inc		Pope Bros Farms	5/5/97		Existing
Applefield Farm-Low	Phillip	Faucette	5/5/97		Existing
Creekside Farms	Richard	Anderson	5/5/97	5/12/97	Existing
T. G. Gibson	T. G.	Gibson, III	5/5/97		Existing
Leonard Smith Farm	Cecil	Smith	5/5/97	5/12/97	Existing

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
J.E. Grady & Sons	Jerry	Grady	5/5/97	5/12/97	Existing
Pender II	Randall	Stoecker	5/6/97	5/12/97	Existing
McQueen Farm Inc.	McQueen	Campbell	5/7/97	5/19/97	Existing
N&T Farm 1-8	Neil & Tom	Whitfield	5/7/97	5/19/97	Existing
Garland & Petty		Murphy Family F	5/8/97		Existing
Danny Brown Farm	Danny	Brown	5/9/97		Existing
Turbo Hog 1		Turbo Hog Farms	5/9/97		Existing
AGM Inc Farm	Bobbie	McLawhorn	5/12/97		Existing
John Kilpatrick CKII	John	Kilpatrick	5/12/97		Existing
Southwoods	Leon	Hardee	5/12/97		Existing
Stafford Farm		Murphy Family F	5/12/97	5/19/97	Existing
J&W Swine Co Inc	A.B.	Jackson	5/14/97		Existing
Farm 35 & 33		Smithfield	5/21/97		Existing
Rodney Hall Farm	Rodney	Hall	2/25/97	4/11/97	Expanded
Agri-Grow Inc	Dennis	Graham	2/26/97	3/27/97	Expanded
P-6		Prestage Farms	3/14/97	4/11/97	Expanded
Dexter Jackson Farm	William	Jackson	3/31/97	4/30/97	Expanded
Taylor #2	Ray	Collier	4/1/97	4/28/97	Expanded
Whaley Farm	Johna Mae	Howard Casey	4/14/97	5/12/97	Expanded
Sasser's Mill		Sasser's Mill	4/14/97	5/12/97	Expanded
South Branch Farm	Edwin	Blanchard	4/14/97	4/28/97	Expanded
Melvin Bostic Farm	William	Bostic	4/15/97		Expanded
Pleasant Grove		Kornegay	4/16/97	4/28/97	Expanded

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Possum Branch	Edwin	Blanchard	4/18/97	5/19/97	Expanded
White Oaks Farm Inc		B&B Partnership	4/23/97		Expanded
Coy Carter Farm	Coy	Carter	5/16/97		Expanded
Quin Deca Farm	Thomas K.	Barefoot	1/21/97	4/21/97	Individual
Cherry Hospital -		NCDA-Ag	1/27/97	3/21/97	Individual
Harrison Pork	Willie	Harrison	2/14/97		Individual
Vestal Farm #1 & #2		Murphy Family F	3/3/97		Individual
Joe Dunn Farm	Joe	Dunn	3/12/97		Individual
Joey Carter #5-7	Joey	Carter	3/20/97		Individual
Bill's Pig Farm	Bill	Ellis	3/20/97		Individual
2539		Carroll's Foods I	5/6/97		Individual
White Oaks Farm Inc		B&B Partnership	5/9/97		Individual
			2/18/97	3/27/97	New
Debose Nursery	Michael	Debose	3/3/97	3/27/97	New
			3/6/97	3/27/97	New
Warren Miller Farm		Miller Farms, Inc.	3/14/97	4/28/97	New
Rabbit Island #3	Ricky Alan	Bostic	3/14/97	3/21/97	New
			3/17/97	3/27/97	New
Pigtime Nurseries	Susan &	Hall	3/19/97	4/11/97	New
Andrew Farm	Glenn	McLawhorn	3/24/97	4/28/97	New
Kickup Nursery #1	John W. &	Moore	3/31/97	4/11/97	New
Kathy Eatmon #1	Gregory S.	Eatmon	3/31/97	4/11/97	New
WBW II	Tom	Whitfield	3/31/97		New

Permit Applications January 1, 1997 - May 21, 1997

Farm Name	Owner		Appl. Rcvd.	Issued	Type
Ronald Peterson and	Ronald	Peterson	4/11/97	4/28/97	New
Steve Brewer Farm	Steve	Brewer	4/15/97	4/28/97	New
Carroll's Farm #		Carroll's Foods I	4/18/97		New
Taylor's Bridge Sow		Murphy Family F	4/21/97	5/12/97	New
D & L Farms	Terry and	Matthews and	4/22/97	5/5/97	New
Super Sow	Jimmy	Stroud	4/22/97	5/5/97	New
Coyote Nurseries		Maxwell Foods,	4/24/97	5/19/97	New
Ben Rice Nursery #1	Ben	Rice	4/25/97	5/5/97	New
Triple L Livestock,		Triple L Livestock,	4/30/97	5/19/97	New
Mr. Holmes Sites #1 -		Murphy Family F	5/2/97		New
Coachwhip Nursery	Sam	Ennis	5/5/97	5/19/97	New
King Farms	Vincent	King	5/6/97	5/19/97	New
Pinnacle Sow Farm		JCT, LLC.	5/8/97		New
Pine View #1& #2		JCT, LLC	5/8/97		New
Odum Nursery	William	Odum Jr.	5/9/97	5/19/97	New
Circle Q #2		Circle Q Farms Inc	5/12/97		New
Deer Track		JCT, LLC	5/13/97		New
TDM 30 (Best Bros.)	Robin and	Best	5/14/97		New
Bryant Hog Farms	Ray	Bryant	5/16/97		New
Farrowood #2	Stan	Draughon	5/16/97		New
Pear Orchard Farms,	Jerry	Glenn	5/19/97		New

23
5
11.5

OFFICE OF THE PRESIDENT PRO TEMPORE
SENATOR MARC BASNIGHT

O. ROLF BLIZZARD, III
DIRECTOR OF RESEARCH AND SPECIAL PROJECTS

MEMORANDUM

TO: SENATOR PERDUE

SUBJECT: FERTILIZER APPLICATION PROGRAM

DATE: JUNE 5, 1997

Pursuant to Senator Foxx's question concerning the pesticide application program, I spoke with Susan Iddings about the pesticide application program to find out how it worked. The certification requirement for private applicators of restricted use pesticides by the North Carolina Pesticide Board is authorized under G.S. 143-440. The North Carolina Pesticide Board is under the Department of Agriculture. According to David McLeod, Director, Legal Staff, DOA, the Pesticide Board meets monthly and reviews violations and penalties at these meetings. He is checking to see what information he can get regarding Sen. Foxx's question particular to farmers. He said the Board reviews about 6 to 8 alleged violations per month, but most of these involve commercial applicators, not farmers (included in private applicators), and most result in settlement agreements.

Susan is obtaining more information from him and will be forwarding it to me when she has it together. Incidentally, **the fertilizer application program that Susan patterned was not modeled after the pesticide program**. Rather it was **modeled after the applicator of animal waste certification program** enacted last year in SB 1217. In fact, Susan used the former as her model, so they are almost identical. You may want to clarify to the committee members this point.

RM. 2003
PHONE (919) 733-6854

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601-2808
FAX (919) 733-8740

OFFICE OF THE PRESIDENT PRO TEMPORE
SENATOR MARC BASNIGHT

O. ROLF BLIZZARD, III
DIRECTOR OF RESEARCH AND SPECIAL PROJECTS

MEMORANDUM

TO: SENATOR PERDUE

SUBJECT: COMPREHENSIVE LAND USE PLANNING

DATE: JUNE 5, 1997

Senator Foxx raised questions to you yesterday concerning criteria for comprehensive land use planning. I have researched this with David Owens at the Institute of Government and have the following to report.

The comprehensive plan traditionally provides the analytic and policy foundation for a community's land use management efforts. Many plans were funded in the 1960's through federal funding (the "701" program). Thus, this is not a new idea to local governments in our state. Almost half of the states now have mandated a comprehensive plan and set standards for them. North Carolina is not among these states.

Comprehensive plans typically entail the following contents:

- Background information
- Community History
- Population Development and Economic Trends
- Surveys of Natural Features – e.g. soils, flood plains, slopes
- Surveys of Public Infrastructure – roads, water and sewer lines, schools, parks
- Surveys of existing land uses
- Surveys of citizen attitudes
- Maps
- Discussion of issues
- Policy statements – goals, objectives, choices
- Description of implementation planned

Typical sections of the plan include:

- Land Use
- Housing

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FAX (919) 733-8740

- Transportation
- Community facilities
- Recreation and Open Space
- Economic Development
- Community design
- Natural hazards
- Downtown revitalization

Comprehensive plans are not regulations. They do not have a binding legal effect. Land use ordinances (such as zoning or subdivision regulations) are necessary for plan implementation. The plan acts as the community's official blueprint for growth.

As I stated earlier, planning is a known science and has been studied for quite some time now. In fact, our university system has graduate schools specifically dedicated to the art of planning, and the Institute of Government offers a plethora of assistance in this subject matter in the employment of David Owens. Local governments in North Carolina are aware of its existence and many of them have exercised the knowledge in putting comprehensive land use plans together.

If you would like more information on this subject matter, I am sure that I can locate it for you. If you have any further questions, please feel free to contact me.

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Comments by Whitley Stephenson - President, North Carolina Pork Council

I commend your effort on a comprehensive bill to address water quality. This is something that the Pork Council has been asking for. I am pleased to see that this bill adresses water quailty as a whole, not just singling out pork production. However I don't think that the bill goes far enough in some areas, such as the 100 year floodplain. The Pork Council wholeheartedly endorsed no new construction of swine farms in the 100 year floodplain. But if I recall correctly, Fran flooded several municipal systems as well as countless septic tank systems. Why should these be allowed to continue to build in the 100 year floodplain?

I applaud the bill's efforts to tackle the zoning issue and am pleased to see language that would protect swine farms from being excluded in entire zoning jurisdictions.I do feel, however, that the 600,000 pound steady state live weight number is too low and should be moved to at least 800,000 pounds.This would represent a 1800 sow farrow to wean unit.This size is much more economically viable for the independent family farmer. 600,000 pounds is too low if you are targeting large farms and so low that the independent family farm will be placed at a significant disadvantage and will carry most of the burden of the new regulations.

I do appreciate the siting setbacks remaining as they are, because I feel zoning will address siting concrens relative to specific areas of the state.

Concerning the moratorium, I feel it is a very positive step to allow farms to be built if they employ innovative waste management technology. This one sentence will do more to push new technology to come from the private sector than anything I can think of. I also believe that if the bill allows counties the option to zone swine farms, then the counties should also have the option to have a moratorium or not. However,I am disappointed that the moratorium only applies to swine farms - apparently for their use of a lagoon and spray field waste treatment system - when this very type of system is being called "new and innovative" for municipal waste treatment. I understand that a lagoon and spray field system is being planned for an area in Craven County at a time when this system is being condemed for swine operations.

Again, I commend you on your efforts to look at water quality as a whole and not single out pork producers as others have done. Pork porducers recognize that we ALL play a role in our environmental quailty and will work together with others to improve it.

Remarks to Senate Committee on Agriculture, Environment and Natural Resources – June 5, 1997

I am Leslie Bevacqua, representing North Carolina Citizens for Business and Industry. I appreciate having an opportunity to comment on the proposed Clean Water Responsibility Act.

We applaud the efforts of those who were involved in drafting this bill. You have attempted to take a holistic look at addressing water quality concerns and we commend you for that.

Both point and non-point sources contribute to our water quality and it is important that both point and non-point sources also contribute to achieving a healthy, clean environment. Environmental problems cannot be adequately addressed by looking only at one area of concern. So we appreciate your attempts to take a comprehensive look at trying to address these problems.

The bill that is before you is complex and addresses a number of issues. Because of the short period of time that we have had to review the bill, we have not been able to get feedback and comments from a cross-section of our members. There are two areas in the proposal, however, that we believe are potential areas for concern.

Section 6 of the bill sets lower limits for discharges of nitrogen and phosphorous. Without additional information, I don't know what difficulties our members will encounter in trying to meet these new restrictions. It is also unclear to me, without additional information, that these are the limits that need to be set to provide good water quality. I hope that the committee will look closely at this section of the bill and seek additional input before a final determination is made on setting the new limits.

The second part of the bill that I believe needs further consideration is Section 11 dealing with criminal enforcement for repeated violations. We concur with Senator Perdue's comments at Tuesday's press conference that "acts of carelessness must not be tolerated".

We encourage our members to conduct their operations in an environmentally conscious manner and in compliance with all duly enacted standards, regulations and permit conditions. The language in the bill refers to serious violations and it is not clear about what constitutes a serious violation or how such a determination will be made.

There is a third item that I would like to address that we strongly support – additional funding for water and sewer. Although the clean water bond is not specifically included in this bill, it has been noted that the one billion dollar bond bill to provide infrastructure for water and sewer is a part of the proposed comprehensive package to address water quality.

NCCBI believes this is an important part of the package. It will aid communities across the state and will boost economic development. We are pleased to endorse the bond proposal. As with the School & road bond, NCCBI will pledge to work very ~~hard~~ hard to secure passage of a Bond issue for water & sewer

Business and industry has worked hard over the years to comply with strict water and air regulations to insure that North Carolina has a good environment and a sound economy. As you debate these issues, we hope that you will try to maintain fairness and equity for all the stakeholders involved.

VISITOR REGISTRATION SHEET

8:30 AM

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

6/5/97
(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bowen	R W Bowen
Molly Diggins	NC Sierra Club
Jim Padgett	1108 Indian Creek Estates Goldston, N.C. 27252 DRC
JOE FOSTER	1215 INDIAN CREEK ESTATES GOLDSTON NC 27252
Sarah Fieler	DEHNR
Ann Case	DEHNR
John Brake	Brake Call & Stroup
Richard Unstead	615 Willard Place, Raleigh, NC 27603 HRC, DOT
Eileen Gauntt	DEHNR
Don Safrit	DEHNR - DWQ
Colon H. Sullins	DEHNR - DWQ

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DENNIS RAMSEY	DWQ / WQ SECTION
Mac Boxley	N.C. Aggregates
Deborah Johnson	Prestage Farms
Lois Britt	Murphy Family Farms
Suzanne Williams	Bove & Associates
Don Butler	Carroll's Foods
Walter Cherry	NC Pork Council
Roger Bove	Bove & Assoc — N.C. Pork Council
Joe McCall	N.C. State
Glenn Jernigan	Agricultural Alliance & N.C.
Pete David	NCDA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William Denny	NCRA
Paul Dew	N.C. Agribusiness
Jim Wilder	N.C. Soybean Assn.
Maurice Weaver	NCDA
Cam Cass	BPMHL
Emily Saunders	NC Wildlife Federation
Tanja Vujic	NC EDF
John K. Williams	Carolinas Golf Course Supt. Assoc.
Robert J. Rogers	Turfgrass Council of N.C.
E. Ann Christian	Atty.
Bennie Wilson	NCPP

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Moore	Duplin County
Ellis Hawkins	NCLM
Boyd Gamble	City of Charlotte
Kim Smith	NCLM
Jeff Moore	Town of Valdese
Paula Thomas	NCLM
A.B. Swindell IV	BFI
Dana Simmons	ZPD, PA
Ron Aycock	County Com. Assoc.
Ed Regan	N.C.A.C.C.
ANNA TEFFT	OSBM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Palmer Sugg	Turfgrass Council of NC
Sam Ray	Turfgrass Council of NC
Robert J. Rogers	Turfgrass Council of N.C.
Andy Romanet	N.C.L.M.
Charles Tomlinson	Turfgrass Council of NC
George Everett	MCIC
William Travers	U.S.T.A.
Jane P. Gray	DOJ
	NCFB

VISITOR REGISTRATION SHEET

11:00 AM

6/5/97

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANNA TEFFT	OSBM
[signature]	Beach Assoc NC Bar Conf
Walter Cherry	NC Pork Council
Ed Bowen	R W Bowen
John Cyrus	N.C. State Grange
Peter Daniel	NCDA
Cam Cross	BPMHL
Paul F Reed	N.C. Agribusiness
[signature]	Agricultural Alliance of N.C.
Nancy Moore	Duplin Co.
[signature]	Duplin County
Molly Diggins	NC Sierra Club

VISITOR REGISTRATION SHEET

11:00 A.M.

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/5/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C. Ann Christian	Atty
Jaquine Williams	Bode & Assoc.
Lois Reed	Murphy-Family Farms
Deborah Johnson	Prestage Farms
Bob Sloan	NC Poultry association
[illegible]	Nucor Vulcan
Mac Boxley	NC. Aggregates
Jim Fleming	Tyson Foods, Inc
Emily Saunders	NC Wildlife Federation
Tom Beason	NC Wildlife Federation
D. Holmes	CCNC / Sierra Club

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 11:00 A.M. 6/5/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Griffin	410 Bob White Run Salisbury, NC 28147
Marian Dodd	League of Women Voters NC 3900 Barrett Dr. 5311 Raleigh 27609
R. Paul Wilms	NCMBA
J. Michael Carpenter	NCMBA
DENNIS RAMSEY	DWQ / WQS
Greg Thorpe	DWQ / WQS
David Meredith	N. C. State Grange
Sherri Tenn-Hunt	DEHNR
Coleen H. Sullins	DEHNR - DWQ
Don Safrit	DEHNR - DWQ
Don Butler	Carroll's Foods

VISITOR REGISTRATION SHEET

11:00 A.M.

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES 6/5/97

Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Rogers	DENR
Sarah Fieler	DEHNR
Ellis Hankins	NCLM
Jack Betts	Charlotte Observer
[illegible]	NC Assoc of Realtors

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 12, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 12, 1997, at 11:00 a.m. in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and seventeen members of the committee were present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HB 227 - INACTIVE HAZ. SITES RECORDATION - Representative Hackney, sponsor. There was a proposed committee substitute and Senator Weinstein moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the PCS for Representative Hackney. Senator Weinstein moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

HB 430 - PERMISSIBLE SALES TO ZOO/AB. - Representative Culp, sponsor, explained the bill. Sherri Evans-Stanton, Assistant Secretary, DEHNR, answered questions from committee members. Senator Conder moved for a favorable report; however, a vote was not taken. Senator Albertson said there were so many unanswered questions from committee members that the bill would be taken off the agenda until the next meeting to allow staff to work on the bill.

HB 457 - AMEND FOREST DEVELOPMENT ACT/AB. - Representative Weatherly, sponsor, explained the bill. Senator Cochrane moved that the bill be given a favorable report. Motion carried and bill was sequentially referred to Finance.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
COMMITTEE

Thursday, June 12, 1997
11:00 a.m.
Room 1124 - LB

AGENDA

HB 227	INACTIVE HAZ. SITES RECORDATION. Representative Hackney
HB 430	PERMISSIBLE SALES TO ZOO/AB. Representative Culp
HB 457	AMEND FOREST DEVELOPMENT ACT/AB. Representative Weatherly

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, June 16, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**457** AMEND FOREST DEVELOPMENT ACT/AB.
Sequential Referral: FINANCE
Recommended Referral: NONE

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **227** INACTIVE HAZ. SITES RECORDATION.
Draft Number: PCS4125
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 227*
Proposed Committee Substitute H227-PCS4125

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors:

Referred to:

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"**§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.**

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) ~~This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which~~ Recordation under this section is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action pursuant to this ~~Part.~~ Part unless the Secretary determines that either:

(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with

the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. Notwithstanding the provisions of G.S. 143-215.84 and G.S. 143-215.94E and except as provided in subsection (d) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session), no person shall be required to clean up a discharge or release from a leaking petroleum underground storage tank that has been classified as having a Class CDE impact pursuant to subsection (b) of Section 1 of Chapter 648 of the 1995 Session Laws (1996 Regular Session).

Section 3. The Environmental Management Commission shall adopt the rule required by G.S. 143-215.94V(b) and Section 6 of Chapter 648 of the 1995 Session Laws (1996 Regular Session) as a temporary rule no later than 30 June 1997.

Section 4. This act is effective when it becomes law. Section 2 of this act expires when the temporary rule required by Section 3 of this act becomes effective as provided in G.S. 150B-21.3(a).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 227*

Short Title: Inactive Haz. Sites Recordation. (Public)

Sponsors: Representatives Hackney; Hightower and Culp.

Referred to: Environment.

February 17, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.8 reads as rewritten:

"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him to do so, shall submit to the Department a survey plat of areas designated by the Department which has been prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". 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 with respect to permanently surveyed benchmarks; and

(2) The type, location, and quantity of hazardous substances disposed of on the site, to the best of the owner's knowledge.

Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.

(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.

(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 such 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 inactive hazardous substance or waste disposal site 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 hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

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(1) A concentration of a hazardous substance or hazardous waste that poses a danger to public health or the environment will remain following implementation of the voluntary remedial action program.

(2) The voluntary remedial action program is not being implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the owner, operator, or other responsible party.

(h) The Secretary may waive recordation under this section with respect to any residential real property that is contaminated solely because a hazardous substance or hazardous waste migrated to the property from other property by means of groundwater flow if disclosure of the contamination is required under Chapter 47E of the General Statutes. An owner of residential real property whose recordation requirement is waived by the Secretary under this subsection and who fails to disclose contamination as required by Chapter 47E of the General Statutes is subject to both the penalties and remedies under this Chapter applicable to a person who fails to comply with the recordation requirements of this section as though those requirements had not been waived and to the remedies available under Chapter 47E of the General Statutes."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 12, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for House Bill 227 (Inactive Haz. Sites Recordation)

House Bill 227 was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). The proposed committee substitute for House Bill 227 differs from the bill as introduced by the addition of Sections 2 and 3. This proposed committee substitute is identical to the committee substitute for Senate Bill 114 adopted by the Senate Committee on Agriculture, Environment, and Natural Resources on April 3, 1997 and passed by the full Senate on April 7, 1997.

Section 1 provides 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:

(1) A dangerous concentration of hazardous substance or waste will remain after the voluntary remedial action is implemented, or

(2) The 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 also authorizes the Secretary to waive recordation for any residential property contaminated due to migration of a hazardous substance or waste through groundwater flow if disclosure of the contamination is required by the Residential Real Property Disclosure Act (Chapter 47E of the General Statutes). An owner whose recordation requirement is waived and who fails to disclose the contamination, as required by the Residential Real Property Disclosure Act, is subject to the penalties of G.S. 130A-22 (Administrative penalties), G.S. 130A-25 (Misdemeanor), and the Residential Real Property Disclosure Act.

Section 2 clarifies that cleanup is not required for discharges or releases from leaking petroleum underground storage tanks having a class CDE impact.

Section 3 directs the Environmental Management Commission to adopt a temporary rule no later than June 30, 1997 to establish a risk-based approach for the cleanup of discharges and releases from petroleum underground storage tanks.

Section 4 makes this act effective when it becomes law. It also provides that Section 2 of this act expires when the temporary rule required by Section 3 of this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 430
Second Edition Engrossed 5/13/97

Short Title: Permissible Sales at Zoo/AB. (Public)

Sponsors: Representative Culp.

Referred to: State Government, if favorable, Finance.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE NORTH CAROLINA ZOOLOGICAL PARK FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(18) The maintenance or operation by the Department of Environment, Health, and Natural Resources of an exhibition center, theater, conference center, or associated restaurant and lodging facilities within the North Carolina Zoological Park or the leasing of land by the Department of Environment, Health, and Natural Resources for any such facility."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

ne 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

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Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 12, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 430 (Permissible Sales at Zoo)

G.S. 66-58 (Sale of merchandise by governmental units) prohibits State agencies from competing with private businesses. There are, however, a number of exceptions set out in the statute.

Section 1 adds an exception by exempting the maintenance or operation by the Department of Environment, Health, and Natural Resources (DEHNR) of an exhibition center, theater, conference center, or associated restaurant and lodging facilities within the North Carolina Zoological Park or the leasing of land by DEHNR for any such facility.

Section 2 makes the act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 457
Committee Substitute Favorable 4/2/97

Short Title: Amend Forest Development Act/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"**§ 113A-178. Definitions.**

As used in this Article:

(1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, and

cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.

(4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) 'Eligible ~~lands' shall mean~~ land' means land owned by an eligible landowner.

(6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.

(8) 'Forest development fund' ~~shall mean~~ means the special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the Forest Development Fund, created by G.S. 113A-183.

(9) 'Secretary' ~~shall mean~~ means the Secretary of Environment, Health, and Natural Resources.

(10) 'Maintain' means to make every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and being cleared or partially cleared of trees for any purpose other than as provided in an approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-180.1. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and

covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) A landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"**§ 113A-183. Forest Development Fund.**

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a nonreverting ~~fund to be designated the Forest Development Fund,~~ fund, for which fiscal management and responsibility are ~~hereby~~ vested in the Secretary. The Fund is a special trust fund, and the State Treasurer shall credit interest to the Fund.

(b) This ~~fund~~ Fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, ~~and~~ for any funds appropriated specifically for the forest development program from the ~~general fund.~~ General Fund, for monetary contribution and donations, and for accrued interest. ~~Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues~~ Revenues derived from the forest development assessment ~~shall not revert but~~ shall remain in the Forest Development Fund until expended under the provisions of this Article.

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act shall be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund to the Forest Development Fund designated specifically for equipment purchase."

Section 4. This act becomes effective June 30, 1997.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 12, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: House Bill 457: Amend Forest Development Act/AB

House Bill 457, introduced by Representative Weatherly, makes two changes to the Forest Development Act, Article 11 of Chapter 113A of the General Statutes.

The Forest Development Act was enacted in 1977 in recognition of the environmental impacts associated with forestry operations and that the demand for forest products could not be met through management of public and industry forest resources alone. G.S. 113A-177. The Forest Development Act provides financial assistance (forest cost-share funds) to eligible landowners to implement approved forestry practices to increase the productivity of their land. There is an assessment levied on primary forest products processed from North Carolina timber that provides the primary source of funding for this program. Additional funding is appropriated by the General Assembly.

It is estimated that, as of 1995, 561,000 acres had been planted in trees through the program. However, instances of willful destruction and neglect of trees for which cost-sharing payments have been received are increasing thus frustrating the purpose of the cost-share payments to bring more timber full cycle to commercial harvest. The bill seeks to address this problem by requiring repayment of cost-share funds when trees, and the practices implemented under the program, are not maintained for a 10 year period.

Section 2 of the bill adds a new section to the Forest Development Act to require that eligible landowners enter into written agreements with the Department in order to receive cost-share funds. The agreement must describe the land and the practices to be implemented and maintained thereon and set forth the requirement that these practices must be maintained for 10 years. "Maintain" is defined as making every reasonable effort to protect the reforested area from destructive fire, insects, disease, and clearing other than for purposes outlined in the forest management plan. If the landowner fails to maintain the practices for a 10 year period he must

repay all cost-share funds received under the agreement. If a landowner voluntarily reliquishes control of the property, he must either obtain a written agreement from the new owner to maintain the approved practices for the remainder of the 10 year period or repay the cost-share funds.

The bill also amends the Fund itself to make it nonreverting, to direct the State Treasurer to credit interest to the Fund, and to remove the expenditure limit on the Fund. Under current law, expenditures from the Fund are limited to four times the amount of the General Fund appropriation that year.

The act becomes effective June 30, 1997.

VISITOR REGISTRATION SHEET Thursday, June 12, 1997

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlotte Jesneck	DEHNR - DWM
Eric Meyer	DEHNR - DWM
Paul Lawler	Lawler Consult
Mike Carpenter	NCHBA
R. Paul Wilms	NCHBA
Wellford Denny	NCDA
John Bowdish	Zeb Alley P.A.
Ann Case	DEHNR
Sarah Fieler	DEHNR
[illegible]	NCFB
Johnny Gray	OSBM
Shelley Altieri	OSBM

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — Thursday, June 12, 1997

Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Mezzo	Moore & Van Allen
A. Holman	CCNC / Sierra Club
Patty Berry	CCNC
Ocie McKeel	SCENIC NC
TANJA VUJIĆ	NC EDF
Peter David	NCDA
Alan Miles	Bailey & Dixon LLP
BILL SCOGGIN	NCBA
Brenda Daugherty	Sprint
K. KOGERS	EHNR
Bob Stevens	NC Forestry Association

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — Thursday June 12, 1997

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dianne Parrish	EHNR - Forestry
Dan Whittle	EHNR
Bedford Everett	-
Laura Hartzell	MCIC
Kim Smith	NCLM
Henry M Lancaster	DBHNR

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 19, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 19, 1997, at 8:30 a.m. in Room 414 of the Legislative Office Building. Senator Albertson, chairman, presided and ten members of the committee were present.

The following bill was discussed. Copies of bill and any hand-outs are attached to these minutes.

HB 430 - PERMISSIBLE SALES AT ZOO/AB. - Representative Culp, sponsor. There was a proposed committee substitute and Senator Horton moved that it be adopted for discussion purposes. Motion carried. George Givens of staff explained the proposed committee substitute. Commenting in favor of the bill were: Dr. David Jones, Director, N. C. Zoological Park in Asheboro; Russ Williams, President, Asheboro-Randolph Chamber of Commerce; and Dr. Phillip K. McKnelly, Director of Parks and Recreation. Senator Conder moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, June 19, 1997
8:30 a.m.
Room 414

AGENDA

HB 430	PERMISSIBLE SALES AT ZOO/AB. Representative Culp

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, June 23, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **430** Permissible Sales at Zoo/AB.

Draft Number:	PCS1408
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 430
Second Edition Engrossed 5/13/97
Proposed Senate Committee Substitute H430-PCS1408

Short Title: Permissible Sales at Zoo/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE NORTH CAROLINA ZOOLOGICAL PARK FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE, AND TO PROVIDE FOR THE ADOPTION OF RULES AUTHORIZING SPECIAL-USE PERMITS FOR THE USE OF PYROTECHNICS IN STATE PARKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment, Health, and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities."

Section 2. G.S. 113-35 is amended by adding a new subsection to read:

"(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may impose any conditions on a

permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions include, but are not limited to, a requirement that the permitee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits as determined by the Secretary."

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department of Environment, Health, and Natural Resources may adopt temporary rules to implement the provisions of G.S. 113-35(a1), as enacted by Section 2 of this act.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 430
Second Edition Engrossed 5/13/97

Short Title: Permissible Sales at Zoo/AB. (Public)

Sponsors: Representative Culp.

Referred to: State Government, if favorable, Finance.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE NORTH CAROLINA ZOOLOGICAL PARK FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(18) The maintenance or operation by the Department of Environment, Health, and Natural Resources of an exhibition center, theater, conference center, or associated restaurant and lodging facilities within the North Carolina Zoological Park or the leasing of land by the Department of Environment, Health, and Natural Resources for any such facility."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
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(919) 733-6660

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Raleigh, NC 27603-5925
(919) 733-4910

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Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 19, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for House Bill 430

G.S. 66-58 (Sale of merchandise by governmental units) prohibits State agencies from competing with private businesses. There are, however, a number of exceptions set out in the statute.

Section 1 adds an exception by exempting from this prohibition the leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment, Health, and Natural Resources (DEHNR) to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurant and lodging facilities.

G.S. 113-35 directs DEHNR to make reasonable rules for the regulation of the use of State parks by the public. Pursuant to this authority, DEHNR has adopted a park and recreation area rule to prohibit the possession or use of pyrotechnics.

Section 2 amends G.S. 113-35 to authorize DEHNR to adopt rules under which the Secretary may issue a special use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The use of pyrotechnics in State parks must be supervised by experts and be authorized by the board of commissioners of the county in which the pyrotechnics are to be used. The Secretary may impose conditions on a permit necessary to protect public health, safety, and welfare.

Section 3 authorizes DEHNR to adopt temporary rules to implement the provision established in Section 2 of this act.

Section 4 makes the act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET Thursday, June 19, 1997

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Fieler	DEHNR
R. Rogers	DENR
[illegible]	NCDA
Johnny Gray	OSBM
[illegible]	DEHNR
[illegible]	DEHNR/DPR

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 24, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 24, 1997, at 9:00 a.m. in Room 414 of the Legislative Office Building. Senator Albertson, chairman, presided and eleven members of the committee were present. **Senator Albertson said that no vote would be taken on today's agenda.**

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HB 998 - SOUTHERN DAIRY COMPACT - Representative Brown, sponsor, was recognized to explain the bill. Representative Frank Mitchell was recognized to speak on the bill. He cited the plight of the dairy farmer and the difficulty they are having keeping afloat. Speaking in support of the bill were: David Meredith, farmer from Randolph County and a member of the State Grange; Paula Gupton, N. C. Farm Bureau; and Dewitt Hardee, N. C. Department of Agriculture. Chester Lowder, N. C. Farm Bureau, answered questions from committee members. Dewitt Hardee, N. C. Department of Agriculture, also commented on contracts.

HB 251 - WELL CONTRACTORS CERTIFICATION - Representative Culp, sponsor, was recognized to explain the bill. George Givens of staff answered questions from committee members. Speaking in favor of the bill was Buster Dellinger of the North Carolina Groundwater Association.

HB 1032 - AUTHORIZE LANDFILL LINER - Representative Allred, sponsor, was recognized to explain the bill. Senator Weinstein said there was a proposed committee substitute for the bill and moved for its adoption for discussion purposes. Motion carried. Dexter Matthews, Solid Waste Management, DEHNR, made comments on the bill. Representative Allred said there was no objection to this bill from anyone that he knew of.

Senate bill 985 had been on the agenda, but was not discussed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 24, 1997
9:00 a.m.
Room 414 - LOB

AGENDA

HB 251	WELL CONTRACTORS CERTIFICATION Representative Culp
HB 998	SOUTHERN DAIRY COMPACT Representative Brown
HB 1032	AUTHORIZE LANDFILL LINER Representative Allred
SB 985	ALTERNATE LANDFILL LINER Senator Bob Martin

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 998*

Short Title: Southern Dairy Compact. (Public)

Sponsors: Representatives Brown and Mitchell.

Referred to: Agriculture, if favorable, Appropriations.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"Southern Dairy Compact.

"**§ 106-810. Southern Dairy Compact entered into; form of Compact.**

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

"**§ 1. Statement of purpose, findings, and declaration of policy.**

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their

ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II. Definitions and Rules of Construction

"§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3.

(2) 'Commission' means the Southern Dairy Compact Commission established by this compact.

(3) 'Commission marketing order' means regulations adopted by the Commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(4) 'Compact' means this interstate compact.

(5) 'Compact over-order price' means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(6) 'Milk' means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(7) 'Partially regulated plant' means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) 'Participating state' means a state which has become a party to this compact by the enactment of concurring legislation.

(9) 'Pool plant' means any milk plant located in a regulated area.

(10) 'Region' means the territorial limits of the states which are parties to this compact.

(11) 'Regulated area' means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) 'State dairy regulation' means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.

"**§ 3. Rules of construction.**

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the Commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1. It is the intent of this compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. Commission Established

"**§ 4. Commission established.**

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission.

"**§ 5. Voting requirements.**

All actions taken by the Commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area that covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

"**§ 6. Administration and management.**

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the

Commission. The Commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may engage in all of the following:

(1) Sue and be sued in any state or federal court.

(2) Have a seal and alter the same at pleasure.

(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.

(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge the revenue of the Commission as security therefor, subject to the provisions of Section 18 of this compact.

(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications.

(6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.

(7) Retain personal services on a contract basis.

"§ 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. Powers of the Commission

"§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to

measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

"**§ 9. Equitable farm prices.**

(a) The powers granted in this section and Section 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this Article authorizes the Commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents ($1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing

class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The Commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The Commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The Commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the Commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

"§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in Section 2, subdivision (9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of Section 18 of Article VII.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. Rule-Making Procedure.

"**§ 11. Rule-making procedure.**

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

"**§ 12. Findings and referendum.**

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 53 (c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13.

"**§ 13. Producer referendum.**

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers

that an order is being considered and that each producer may register his or her approval or disapproval with the Commission either directly or through his or her cooperative.

"**§ 14. Termination of over-order price or marketing order.**

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. Enforcement

"**§ 15. Records, reports, access to premises.**

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the Commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the Commission. The Commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars ($1,000) or to imprisonment

for not more than one year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

"**§ 16. Subpoena, hearings and judicial review.**

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the Commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission form obtaining relief pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

"**§ 17. Enforcement with respect to handlers.**

(a) Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. Finance

"**§ 18. Finance of start-up and regular costs.**

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under Section 6, subdivision (d), paragraph 4. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the Commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed $.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the Commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

"**§ 19. Audit and accounts.**

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. Entry into Force; Additional Members and Withdrawal

"§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has been obtained.

"§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the governors of all the participating states. No withdrawal shall affect any liability already already incurred by or chargeable to a participating state prior to the time of such withdrawal.

"§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact.

"§ 106-811. Appointment of members to the Southern Dairy Compact Commission.

(a) The delegation from the State of North Carolina to the Southern Dairy Compact Commission, as established in Article IV of the Compact, shall be composed of five members appointed as follows:

(1) One member representing consumers of milk, appointed by the Governor.

(2) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(3) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(4) Two members appointed by the Commissioner of Agriculture, one of whom shall be a dairy farmer engaged in the production of milk at the time of appointment or reappointment.

(b) Members must be registered to vote in the State.

(c) Members shall serve a term of four years and may be reappointed, but no member shall serve more than three consecutive terms. Members shall serve until their successors are duly appointed. Any appointment to fill an unexpired term shall be for the balance of the unexpired term and shall be made by the appropriate

appointing authority. A member may be removed by the appointing authority, in accordance with G.S. 143B-13. The Commissioner of Agriculture shall designate one member of the delegation to serve as chair, at the pleasure of the Commissioner.

(d) Members of the delegation shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the delegation shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the delegation shall be provided by the Commissioner of Agriculture."

Section 2. There is appropriated from the General Fund to the Southern Dairy Compact Commission, as established by Article III of the compact, as enacted in Section 1 of this act, the sum of twenty-five thousand dollars ($25,000) for the 1997-98 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 1998-99 fiscal year to be used by the Commission to conduct its activities pursuant to this act.

Section 3. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 23, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **House Bill 998: Southern Dairy Compact**

House Bill 998, introduced by Representative Brown, enacts into North Carolina law the Southern Dairy Compact. The compact legislation was developed in meetings of 14 southern states in an effort to address the problems faced by the southern dairy industry. Its purpose is to regulate the price for milk received by the farmers, by setting prices for milk above those set by federal marketing orders, in order to assure a stable, local supply of milk and the continued viability of a dairy industry in the southern region.

The legislation establishes a Compact Commission, that would consist of a delegation of 3 to 5 members from each participating state. Each state would have one vote and Commission matters would be decided by majority vote, except for the establishment or termination of an "over-order" price or a commission marketing order, which would require a 2/3 vote of the Commission.

A compact "over-order" price shall apply only to Class I milk and shall not exceed $1.50 per gallon at Atlanta. This price may be adjusted to reflect differences in minimum federal order prices in the region. In the event the federal marketing orders are terminated, the Commission has the authority to establish commission marketing orders. A commission marketing order may apply to all classes and uses of milk.

The Commission would have the authority to adopt rules using the rule-making procedures of Section 4 of the Federal Administrative Procedure Act. In establishing an over-order pricing order or commission marketing order, the Commission shall conduct a referendum among producers to determine their approval or disapproval of the proposed pricing order.

Costs of establishing the Commission may be covered by an assessment on milk handlers who purchase milk from producers in the region of $.015 per hundred weight. The assessment is to be collected monthly for up to 1 year after the Commission convenes. In addition, the

Commission has the authority to borrow funds, however, it may not pledge the credit of any participating state.

The Compact takes effect when three States of the listed states have enacted its provisions into law and the consent of Congress has been obtained. To date, Louisiana and Arkansas have enacted this legislation. T

The bill calls for an appropriation of $25,000 for FY 1997-1998 and $25,000 for FY 1998-1999 to the Compact Commission to conduct its activities.

The act becomes effective July 1, 1997.

HB998

Maola

"Fresher Milk From Greener Pastures"

May 23, 1997

State of North Carolina
House Of Representatives
State Legislative Building
Raleigh, NC 27601-1096
Attention: Agriculture Committee
Rep. John Walter Brown
Chairman

To the Honorable John Walter Brown:

It is our understanding that on Tuesday, May 20, the House Agriculture Committee heard arguments by various persons who were opposed to the establishment of an Interstate Dairy Compact in the State of North Carolina. It is also our understanding that one or more persons stated that Maola Milk & Ice Cream Company joined other milk processors in opposing this compact. As we were neither represented at this hearing, nor did we authorize anyone to speak for our company, we would like to state our position in regard to the legislation that would establish this compact.

For a number of years, North Carolina has been a deficit state, that is we have been unable to supply the demand for milk with milk produced in our state. This has been the result of a rapid population growth and a continually dwindling number of dairy farms in the state. In 1980 there were 1,280 active dairy farms in North Carolina. By 1991 the number had declined to 810. At the end of 1996 we were down to 547. Already this year we have lost another twenty and by the end of the year we expect to lose up to 70 more due to the environmental requirements that go into effect 1/1/98. Dairy farmers simply continue to be unable to survive economically.

The decline in milk production in our own state has resulted in our having to import increasingly large volumes of milk from other states as far away as New York, Wisconsin and even New Mexico. The majority of Maola's milk supply is purchased from independent North Carolina dairy farmers who ship directly to us. The remainder of our supply is purchased from milk cooperatives, primarily Carolina

MAOLA MILK & ICE CREAM COMPANY, P.O. DRAWER S, 305 AVENUE C, NEW BERN, NC 28563 (919) 638-1131 FAX (919) 638-2268

Virginia Milk Producer's Association, Inc. In the past twelve months, Maola has been required to pay import charges of more than $750,000.00 on more than 21,000,000 pounds of milk that Carolina Virginia had to import from other states. These import costs increased the price of raw milk as much as $3.41 per hundred pounds and caused the total cost per hundred pounds to be as much as $22.04. A copy of one month's Carolina Virginia invoice to Maola is attached, demonstrating the impact of these import charges.

History has well documented that under existing rules, our local dairymen cannot economically survive, that they are going out of the dairy business rapidly and that higher levels of imported milk are rapidly increasing milk costs at every level. We believe that the arguments that the establishment of the compact will result in higher milk prices are in error and are very short sighted. Further we believe that the correct, long term solution is to find a way to equitably stabilize raw milk prices in North Carolina at a level at which our existing producers can survive, which will encourage herd expansion and which will create an environment in which others will be willing to make the required investment to get into the milk producing business. As North Carolina becomes self sufficient in satisfying our consumer demands for dairy products we believe that the long term result will be lower prices, not higher ones. In addition, the agricultural economy of North Carolina will also be the winner, rather that that of Wisconsin, New Mexico and other states.

Therefore, it is the position of Maola Milk & Ice Cream Company that we will not join those who oppose the establishment of the Southern Dairy Compact. Those who have stated that Maola supports the opposition were in error and did not speak with authorization of the management of Maola Milk & Ice Cream Company. The Compact is far from perfect but it appears that the overall result would be positive for producers, processors and consumers. We would encourage the House to require that the new commission would include at least one milk processor, to have a more equal and fair representation of interested parties.

Sincerely,

James B. Green

James B. Green
Vice President & General Manager

Carolina Virginia Milk Producers Association, Inc.

P.O. Box 32307
Charlotte, NC 28232-2307
Phone: 704-334-9558 Fax: 704-377-0531

INVOICE

Customer: Maola Dairies
PO Drawer S
New Bern NC 28560

Date: 07/31/96
Final Settlement
Invoice# F079656

Deliveries:	Product Lbs	BF Lbs	Av BF Test
Member Producer Receipts	3,262,997	116,874	3.58180%
Maryland & Va	1,160,982	41,646	3.58714%
			0.00000%
Total Deliveries	4,423,979	158,520	3.58320%

Classification of Deliveries	Product Lbs	BF Differential	Price @ 3.5 BF	Average BF Test	Value
Order 5 Blend	3,262,997	1.59	16.48	3.58180%	541,985.78
Order 5 Blend	1,160,982	1.59	16.48	3.58714%	192,938.33
Zone Adjustment	4,423,979		0.1500		6,635.97
Import Costs	2,085,258		3.4100		71,107.30
Over Order Premiums					
Class I	3,508,878		2.0000		70,177.56
Class II, III	562,691		0.8000		4,501.53
These prices are subject to a maximum credit of .30 CWT for cost savings provided to producers.					74,679.09
Receiving Tests	4,071,569		(0.1000)		(4,071.57)
Receiving Equal Volume 7 Days	4,071,569		(0.1555)		(6,332.41)
					(10,403.98)
Virginia Class I - Eastern	312,847		1.9300		6,037.95
Virginia Class I - Western	39,563		1.6500		652.79
Southwest Market			1.0900		0.00
VA SMC Assessment	352,410		(0.0004)		(137.36)
Va SMC Audit Adjustment (Oct, 95 - Mar, 96)					187.77
					6741.15
					883,683.64
LESS ADVANCES					(332,352.60)
					0.00
Final Settlement Amount Due					**$551,331.04**

Bank Wiring Instructions:	Carolina Virginia Milk Producers Association
	Branch Bank & Trust
	Bank Routing Number - 053101121
	Bank Account Number - 1561110618

TOTAL 22.04

NC Milk 19.52

876 940

19.94

North Carolina General Assembly

Rep. Frank Mitchell

The Southern Dairy Compact

Why It Is Needed and What It Does

HB 998

The Southern Dairy Compact establishes a regional milk pricing system for the southern region. Working with the existing federal milk pricing program, the Compact allows for the regulation of the farm price of fluid, or drinking, milk sold in the South. Uniquely serving both farmers and consumers in the South, the Compact will at once stabilize the region's dairy industry and protect the interests of consumers.

The southern states are establishing the Compact because the region's dairy farmers have not fared well under the current federal milk pricing system. In addition to the overall downward trend, federally established prices have also fluctuated erratically, making it difficult for farmers to develop dependable business plans for their farm operations. Not surprisingly, as a result, fully 171 of North Carolina's dairy farms have ceased operation during 1995 and 1996.

Besides their importance as the local, fresh source of a staple food stuff, dairy farms are an important part of North Carolina's agriculture economy. Sales of dairy products exceeded $192 million in 1995, fully affecting the state's economy more than $500 million.

On the other side of the equation, the Compact protects and promotes the interests of the region's consumers. The Compact would encourage stable pricing and help preserve a local supply of fresh, high quality milk at less cost than imported supplies.

In brief:

- The goal of the Compact is to stabilize milk production. GAO and USDA studies show that the erratic fluctuations in the federal price structure have paradoxically contributed to higher consumer milk prices along with reduced farmer income. Research shows also, conversely, that price stability keeps milk prices lower on the store shelf and higher on the farm.

- The Compact can stabilize milk prices to the benefit of consumers as well as farmers because the Compact Commission has the authority to adjust the erratic fluctuations in the federal price structure. By removing these erratic

SOUTHERN STATES:
AL, AR, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

fluctuations, the Commission will maintain farm price stability and, simultaneously, discourage sudden and sustained price hikes at the store level.

- The Compact also includes many specific provisions which protect the consumer -- contrary to what opponents of the Compact claim. The Compact requires that any price regulation be approved by a two-thirds vote of the Compact's delegation. Most significantly, any individual state may exempt itself from the pricing regulation by a simple vote of its delegation to the commission. These provisions simultaneously ensure that a consensus must exist before price regulations can be imposed and that the rights of the individual states are protected if such a consensus is lacking.

- The Commission has the additional authority to investigate and expose wholesale and retail price fixing. Research has shown that retail stores, especially, are able to use their market power to transmit increases in farm prices to the consumer without transmitting corresponding decreases in farm prices. The Commission's potent investigatory power will serve as a deterrent to price-fixing practices in the marketplace.

- Independent economists have studied what would have happened if the Compact had been in effect between 1992 and 1995. They determined, using USDA milk price data, that farm income could have gone up significantly without any increase in consumer prices.

DRAFT

Question and Answers About
The Southern Interstate Dairy Compact (5/23/97)

1. Is the Compact constitutional, or does it suffer the same problem as other, state, fluid milk pricing programs?

An interstate compact is "invulnerable to constitutional attack under the Commerce Clause." Northeast Bancorp, Inc. V. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985). Congressional approval of the Compact would thus eliminate the constitutional infirmity of individual state regulatory programs identified in West Lynn vs Massachusetts.

2. How is the farm price of raw milk currently regulated under federal law? Does the federal regulation distinguish between the milk produced within the Compact and that brought in from outside the Compact?

Federal law regulates uniformly the minimum price that all processors must pay for any *raw* milk purchased from dairy farmers for sale as fluid milk in a federal order. The federal regulation makes no distinction based on the geographic location of milk production for market. Processors who purchase raw milk outside the Compact area for fluid milk sales pay the same minimum price as processors located inside the Compact. Currently, most of the fluid milk consumed in the proposed Southern Compact area is processed locally.

3. What additional price regulation would be imposed by the Compact?

The prices set by the Market Orders are regulated minimum prices for the market. Farmers, individually or collectively, commonly obtain marginally higher prices through negotiation with their processor-customers. In addition, the DCMA currently negotiates some higher, "over-order" prices for Class I milk in the southern region. Unfortunately, the DCMA has not been able to hold the "over-order" price for raw milk in the southern region.

The Compact creates an interstate commission with authority to impose a regional over-order price for the Southern Compact area. The commission's authority extends only to the farm price for milk ultimately sold for fluid consumption in the Compact area. Any Compact regulation would be only a marginal, "over-order" addition to the federal floor price, and have no effect on the operation of the federal order program.

Examples of pricing under the Compact:

*For *bulk* milk: As noted above, if the Federal Market Order minimum price for *raw* milk was $14.69 per hundredweight and the Compact commission imposed a $1.00 "Compact Over-Order Price," the new regulated floor price for the Compact region would be $15.69 ($14.69 under federal regulation + $1.00 by operation of the Compact). Milk processors would thus be

required to pay $15.69 for all of the *raw* milk they purchased for ultimate sale as fluid milk in the Compact region.

*For packaged milk: The increase in the regulated floor would also be applied uniformly to packaged beverage milk brought from outside the Compact for sale in the Compact region. Using the $1.00 "Compact Over Price" example, this would mean that the processors outside the Compact providing this milk would pay $15.69 as their regulated floor price on the farm: the $14.69 federal Market Order price + the $1.00 Compact Over-Order Price for raw milk.

4. Would the Compact impose an "anti-competitive tariff" upon Southern Compact milk dealers and farmers, to enforce the Compact over-order price?

No. There would be no restriction placed on the ability of any non-Southern Compact farmer or processor, from any state, to market fluid milk in the Southern Compact region. The flow of milk into and out of the region would be according to the same competitive pattern as exists in today's market. The regulated market would also function the same as under today's federal regulation, except for any increase in the regulated floor price imposed under the Compact.

Moreover, the Compact would be administered completely unlike a tariff because the ***proceeds of the Compact regulation would be distributed to all farmers who supplied the regulated milk, without regard to the supplying farmers' states of residence***. As under federal law, the Compact regulation would treat all of the regulated milk as part of a common, regulated "pool." The proceeds of the Compact pool, as with the federally-regulated pool, would be "blended" out uniformly to all farmers who supply the Compact pool and make up the Southern Compact milkshed, regardless of their state of residence.

In short, the Compact is not a tariff because the proceeds of the regulation will trace back to all the producing farms in any state, rather than remain only in the Southern Compact Region. As with existing federal law, this provided a uniform, regulatory framework for all farmers and processors doing business in the Southern Compact Region, without competitive advantage or disadvantage to anyone.

5. Could the Compact be used to subsidize sales of Southern Compact milk beyond the Compact region?

No. The Compact commission's regulatory authority is limited to milk sales within the Compact region and could not be used to subsidize sales beyond the Compact region.

6. What effect will the Compact have on consumer prices in the Southern Compact?

Passage of the Compact might cause a short-term increase in consumer prices. If the Compact commission does raise the farm price, it is likely the consumer price will rise in some proportionate amount in the short term. It must be noted, however, that there is a sufficient margin between the farm and consumer price to absorb a significant increase in the farm price

without any corresponding increase at the store, so that prediction of an increase in consumer prices is not a certainty.

7. What impact will the Compact have on the WIC program?

The Compact commission is expressly authorized to exempt the WIC program from application of any Compact regulation as necessary.

8. Won't increased prices reduce consumer demand, thereby harming farmers through reduced sales?

The commission must consider this elasticity of demand as part of the regulatory process of deciding whether to impose a price increase.

9. Will a higher Compact price cause increased production of surplus milk, lowering the price of farmers around the country?

No, the Compact would not cause production of surplus milk to the point of lowering the price paid to the farmer. Compact Sec 9(f) and the congressional consent provision require the Compact commission to implement a program to prevent overproduction as part of any regulation imposing an over-order price.

10. Could the Compact commission regulate the price of milk used for manufactured dairy products, or those that move in the national market?

Except the Northeast Dairy Compact, no other compacts are authorizing the pricing of a commodity. However, this Compact is significantly less complicated and less costly than some other interstate compacts that Congress has approved. The Northwest Power Act established an interstate commission responsible for designing a comprehensive energy conservation plan for the Pacific Northwest. The commission's operating budget is more than $8 million and affect the electric power rate base of every business and residence in the Pacific Northwest.

There are also a number of interstate compacts in place for the disposal of low-level radioactive waste. Strictly speaking, nuclear waste may not be a commodity, but Congressional authorization of its regulation is a far more aggressive use of the interstate compact clause than that proposed by this Dairy Compact.

12. Would this Compact be a precedent for other commodities?

A compact for fluid milk pricing is significantly different from compacts for other commodities might be. Several qualities, such as perishability, inelastic local demand and excessive bulk make milk a unique and regional commodity. In short, this compact's effect is severely limited in terms of product and geography. By contrast a compact for other commodities, such as tomatoes or wine, could not be so constrained in effect because they can be stored for long periods of time and are shipped great distances to a broader market.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 251
Committee Substitute Favorable 6/9/97

Short Title: Well Contractors Certification. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

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

(h) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.
"Well Contractors Certification.

"§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) Commission. -- The Well Contractors Certification Commission.

(2) Department. -- The Department of Environment, Health, and Natural Resources.

(3) Person. -- A natural person.

(4) Secretary. -- The Secretary of Environment, Health, and Natural Resources.

(5) Well contractor. -- A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.

(6) Well contractor activity. -- The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) Certification Required. -- No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. -- This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.

(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars ($100.00), the annual fee may not exceed two hundred dollars ($200.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.10. Promotion of training.**

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.11. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.13. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural

Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a);~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State

shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91 reads as rewritten:

"**§ 87-91. ~~Notice.~~ Notice of violation; remedial action order.**

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this ~~Article,~~ Article or any rule ~~or regulation~~ adopted pursuant ~~thereto,~~ to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. ~~Such~~ The notice shall identify the provision of this ~~Article, or regulation issued hereunder,~~ Article or rule adopted pursuant to this Article alleged to be violated and the facts alleged to constitute ~~such~~ the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) ~~Such Department shall serve the notice and any order requiring remedial action on the person alleged to be in violation, shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Department of Environment, Health, and Natural Resources, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.~~ The notice may be served by any means authorized under G.S. 1A-1, Rule 4."

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who, since 1 July 1992, has been actively and continuously engaged in well contractor activity and who has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 251 (Well Contractors Certification)

House Bill 251 (Well Contractors Certification) was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). It creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Section 1 establishes the Well Contractors Certification Commission (Commission) within the Department of Environment, Health, and Natural Resources (DEHNR). The Commission is authorized to adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well contractor certification laws, and adopt rules to secure federal aid for well contractor certification programs.

The Commission will consist of seven members as follows:

(1) A well contractor who works primarily on domestic water supply wells.
(2) A well contractor who works primarily on domestic water supply wells.
(3) A well contractor who works primarily on large capacity water supply wells.
(4) A well contractor who works primarily on nonwater supply wells.
(5) An employee of a county health department engaged in well inspection and permitting.
(6) An employee of a county health department engaged in well inspection and permitting.
(7) An at-large member not engaged in well contracting activities.

Members (1), (2), and (5) are appointed upon the recommendation of the Speaker of the House of Representatives. Members (3), (4), and (6) are appointed upon the recommendation of the President Pro Tempore of the Senate. Member (7) is appointed by the Governor. Members will serve staggered three-years terms.

Effective Date: When the act becomes law.

Section 2 establishes the Well Contractors Certification Act. The Act requires certification for a well contractor engaging in the construction, installation, repair, alteration, or abandonment of any well. Certification is not required for the performance of these activities by a person (i) who is working for and under the personal supervision of a certified well contractor or (ii) who constructs, repairs, or abandons a well located on land owned or leased by that person.

The Commission is directed by this Act to specify certain activities that do not require certification; establish different types of well contractor certifications based on the activities performed; and establish education, experience, and examination requirements for each type of well contractor certification. The Commission may also discipline well contractors through written reprimand, certificate suspension, or certificate revocation in cases of fraud or deception, failure to use reasonable care, gross negligence, or failure to complete continuing educational requirements. Furthermore, the Secretary of Environment, Health, and Natural Resources may request the Attorney General to seek injunctive relief to restrain a well contractor from committing a violation or require a well contractor to take corrective action to remedy a violation.

The Commission may set a fee for: examination not to exceed $100.00; annual certification not to exceed $200.00; and temporary certification not to exceed $100.00. These fees will be credited to the Well Construction Fund, a nonreverting fund within DEHNR to be used for the costs of administering the Well Contractor Certification program.

Effective Date: When the act becomes law, except that the certification requirement and the continuing education provisions become effective January 1, 1999.

Section 3 provides that persons violating the provisions of Well Contractors Certification Act will be subject to a civil penalty of not more than $100.00.

Effective Date: When the act becomes law.

Section 4 amends the definition of "well" so that it does not exclude a well constructed by an individual on land which is owned or leased by the individual, appurtenant to a single family dwelling, and intended for domestic use.

Effective Date: When the act becomes law.

Section 5 provides that fees collected pursuant to the registration of those engaged in well construction will be credited to the Well Construction Fund created by the Well Contractors Certification Act.

Effective Date: July 1, 1997.

Section 6 repeals the registration requirement for those engaged in well construction.

Effective Date: January 1, 1999.

Section 7 authorizes the Environmental Management Commission to issue special orders requiring specific remedial action upon a violation of the North Carolina Well Construction Act.

Effective Date: When the act becomes law.

Section 8 provides for the initial appointments to the Well Contractors Certification Commission.

Effective Date: When the act becomes law.

Section 9 is a grandfather provision requiring the Commission to issue a certificate, without examination, to any person who, since July 1, 1992, has been engaged in well contractor activity and who has been individually registered or employed by a corporation that has been registered with DEHNR.

Effective Date: When the act becomes law.

Section 10 authorizes the Commission to adopt temporary rules to implement this act.

Effective Date: When the act becomes law.

Section 11 sets out the effective dates.

Effective Date: When the act becomes law.

Differences Between

Senate Bill 261 Well Contractors Certification (2nd Edition)

(favorable report, Senate Committee on Agriculture, Environment, and Nartural Resources)

and

House Bill 251 Well Contractors Certification (2nd Edition)

House Bill 251, 2nd Edition, Well Contractors Certification, differs from Senate Bill 261, 2nd Edition, Well Contractors Certification by:

- Deleting the continuing education requirements for members of the Well Contractors Certification Commission

- Authorizing the Environmental Management Commission to issue special orders requiring remedial action rather than deleting the remedial action provisions.

- Decreasing the examination fee from $150.00 to $100.00 and the certification fee from $350.00 to $200.00

- Directing the Well Contractors Certification Commission to issue a certificate, without examination, to any person who, since July 1, 1992, has been engaged in well contractor activity and who has been individually registered or employed by a corporation that has been registered with the Department of Environment, Health, and Natural Resources. Senate Bill 261 directs the Commission to issue a certificate, without examination, to any person who has been engaged in well contractor activity since July 1, 1986 and who has been individually registered or employed by a corporation that has been registered with the Department of Environment, Health, and Natural Resources.

- Making the continuing education requirements for certified well contractors effective January 1, 1999 rather than when the act becomes law.

- Making stylistic changes

Jeff Hudson, Committee Counsel
Mary Shuping, Administrative Assistant
June 24, 1997

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 251

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Representative Culp

FISCAL IMPACT

Yes (x) ** No ( ) No Estimate Available ( )

Well Construction Fund **(created by this act)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES *					
Registration Fee	$31,250				
Certification Renewal		$227,500	$236,250	$245,000	$253,750
Certification by Examination		$30,000	$3,750	$3,750	$3,750
Temporary Certification		$2,500	$2,500	$2,500	$2,500
Total	**$31,250**	**$260,000**	**$242,500**	**$251,250**	**$260,000**
EXPENDITURES	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* ***Revenue estimate based on the maximum fee allowed by the act.***

** ***See statement on page 3, under*** **Assumptions and Methodology** ***regarding the creation of the Well Construction Fund.***

BILL SUMMARY: *TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.* Adds new Part 9A (Well Contractors Certification Commission) to GS Chapter. 143B creating a new certification commission and new Article 7A (Well Contractors Certification) imposing a new certification requirement on well contractors.

New commission. The Well Contractors Certification Commission is composed of seven members serving three-year staggered terms. Two members appointed by the General Assembly on recommendation of the Speaker must be certified well contractors, one east of Interstate 95 and one west. Two members appointed by the General Assembly on recommendation of the President Pro Tem. must be certified well contractors, one engaged primarily with large capacity water supply wells and one engaged primarily with non-supply wells such as monitoring or recovery wells. Two members would be employees of local county health departments actively engaged in well inspection and permitting, one appointed by the General Assembly on recommendation of the Speaker and one on the recommendation of the President Pro Tem. One member must appointed by the Governor from the public at large. The well contractor members will be selected from names nominated by anyone who is himself or herself a certified well contractor. The Commission may adopt rules with respect to certification of well contractors, make quasi-judicial decisions in any matter involving certification, and adopt rules necessary to secure federal grant-in-aid for the program of certification.

New certification requirement. Individuals engaged in the business of construction, installation, repair, alteration, or abandonment of wells must gain certification from the Commission. No person without certification may engage in such activity except (a) an individual performing services for a certified contractor and under the contractor's personal supervision or (b) an individual constructing, repairing, or abandoning a well located on land he or she owns or leases. Any person who has not been found to have engaged in improper conduct and who has been actively engaged as a well contractor since July 1, 1986 and has been continuously registered with the Department of Environment, Health, and Natural Resources since July 1, 1992 (or employed by a firm so registered) may be initially certified without examination. Imposes fees of $150 for examination fee for new applicants; $350 fee for annual renewal of certification; and $100 for temporary certification (good for 45 days, maximum). Fees will be deposited into a fund to pay the costs of the certification program. Certification may be suspended or revoked if the well contractor (1) engages in fraud in connection with acquiring certification or in well construction, (2) fails to use reasonable care or judgment in well construction, (3) has been grossly negligent or has demonstrated willful disregard for laws or regulations governing well construction, or (4) fails to complete continuing education requirements set by Commission.

Amends GS 87-94, which sets civil penalties for well regulation violations, to add a penalty of $100 for violation of certification requirements. Repeals GS 143-355(e), which now requires well contractors to register with the Department of Environment, Health, and Natural Resources. Repeals GS 87-91(b), which now requires registered or certified mail delivery of notice of Well Construction Act violations and makes corresponding changes in GS 87-94. [1]

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[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill, Volume 1997, Number 11, February 17, 1997.

ASSUMPTIONS AND METHODOLOGY:

According to the bill, the Well Contractors Certification Commission may set fees for temporary certification, certification by examination and annual certification renewal up to the maximums stated in the bill, to cover the costs of implementing this act. **All fees collected are to be credited to the Well Construction Fund, a non-reverting account within the Department of Environment, Health, and Natural Resources, to cover the costs of administering the Well Construction Certification program, in accordance with the provisions of this act. Thus, there will be no impact on the General Fund, nor the need for an additional appropriation.**

Revenues

Revenue estimates are based on the maximum fee allowed under this act; however, the Commission may set fees for examination and certification at lower rates, commensurate with actual program costs.

- Registration Fee

  Under current law, G.S. 143-355(e) requires persons, firms and corporations engaged in the well construction business to register with the Department of Environment, Health, and Natural Resources and pay a $50.00 registration fee each year. The bill requires this registration fee to be credited to the Well Construction Fund beginning July 1, 1997.

  There are approximately 600 well contractors currently registered, and the department expects an additional 25 persons to seek registration for the 1997-98 fiscal year. Therefore, total revenue from the registration fee for the 1997-98 fiscal year is projected to be $31,250 (625 registered contractors x $50 registration fee).

  The bill repeals this registration fee requirement effective January 1, 1999 to coincide with the effective date of the certification requirement. Since G.S. 143-355(e) designates the registration period to be January 1 to January 31 of each year, most of the revenues from this fee are collected during the early part of the calendar year. Therefore, no registration fee revenue is projected for the 1998-99 fiscal year, even though the registration requirement is in effect for the first six months of the 1998-99 fiscal year.

- Annual Certification Renewal

  The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at $350.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of $125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of $125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue ($350.00)	227,500	236,250	245,000	253,750
Annual Certification Revenue Based on Projected Operating Requirements ($125.00)	81,250	84,375	87,500	90,625

- Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to $150.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee ($150.00)	30,000	3,750	3,750	3,750

- Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to $100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee ($100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**

* *Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of $100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Mona Moon
APPROVED BY: Tom Covington**TomC**
DATE: May 12, 1997

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Well Contractors

Senate Bill 261
House Bill 251

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of well contractors. This report constitutes both the preliminary and final assessment report.

Representative Frank Mitchell, Chairman

Prepared by:
Linwood Jones, Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1032
Committee Substitute Favorable 4/24/97
Proposed Senate Committee Substitute H1032-PCS6283

Short Title: Authorize Alternate Landfill Liners. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

The General Assembly of North Carolina enacts:

Section 1. The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfill liners that are at least as protective as the liner currently authorized under the rules of the Commission for Health Services.

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Commission for Health Services shall adopt the rule required by Section 1 of this act as a temporary rule no later than 1 July 1998.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1032
Committee Substitute Favorable 4/24/97

Short Title: Authorize Landfill Liner. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR AN ALTERNATE LANDFILL LINER THAT IS AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

The General Assembly of North Carolina enacts:

Section 1. The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for an alternate landfill liner that is at least as protective as the liner currently authorized under the rules of the Commission for Health Services.

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Commission for Health Services shall adopt the rule required by Section 1 of this act as a temporary rule no later than 1 July 1998.

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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
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Raleigh, NC 27603-5925
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Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 1032 (Authorize Alternate Landfill Liners)
Senate Bill 985 (Authorize Alternate Landfill Liners)

The Proposed Senate Committee Substitute for House Bill 1032 (Authorize Alternate Landfill Liners) is identical to the Proposed Senate Committee Substitute for its companion bill, Senate Bill 985 (Authorize Alternate Landfill Liners).

Section 1 directs the Commission for Health Services (Commission) to adopt a rule regarding design criteria for municipal solid waste landfills that complies with federal law and that provides for alternate landfill liners that are at least as protective as those currently authorized by Commission rules.

Section 2 directs the Commission to adopt the rule required by Section 1 as a temporary rule no later than July 1, 1998.

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 985

Short Title: Alternate Landfill Liner. (Public)

Sponsors: Senator Martin of Pitt.

Referred to: Agriculture/Environment/Natural Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF AN ALTERNATE LANDFILL LINER FOR MUNICIPAL SANITARY LANDFILLS THAT MEETS EQUALLY PROTECTIVE DESIGN CRITERIA AS THE CURRENTLY AUTHORIZED LINER.

The General Assembly of North Carolina enacts:

Section 1. No later than July 1, 1998, the Environmental Management Commission shall adopt rules regarding design criteria for municipal sanitary landfills that authorize the use of an alternate landfill liner for a municipal sanitary landfill that complies with 40 C.F.R. Part 258.40(a)(1), which meets equally protective design criteria as the currently authorized landfill liner.

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/24/97

Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paula Shupe	Farm Bureau
Beckie Street	Land O Sun
Amy Jo Bain	Smith Anderson
David Meredith	N.C. State Grange
Will Cherry	Intern Rep. Neely
Buster Dellinger	N.C. Ground Water Assoc.
Arthur Mouberry	DEHNR - NWQ - Groundwater
Sandra Long	Self
R. Carl Wilms	NCMBA
Peter Daniel	NCDA
Welder Denny	NCDA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/24/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Dew	N.C. Pork Producers
Hawk Johnson	Philip Morris
Mark Mumford	Poyner & Spruill
Ed Bonsal	Melvin & Bonsal
AB Swindell	BFI
Jim Blackburn	N.C. Association of County Commissioners

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 26, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 26, 1997, at 8:30 a.m. in Room 414 of the Legislative Office Building. Senator Albertson, chairman, presided and eleven members of the committee were present.

The following bills were discussed. Copies of bills and any hand-outs are attached to these minutes.

HOUSE BILL 251 - WELL CONTRACTORS CERTIFICATION - Representative Culp, sponsor, was recognized to explain the bill. Senator Odom moved that the bill be given a favorable report. A division vote was called for, and Senator Odom requested that his motion for a favorable report be withdrawn for the present. Later in the meeting, the bill was reconsidered. Senator Odom again moved that the bill be given a favorable report. Motion carried, and the bill was sequentially referred to Finance.

HOUSE BILL 998 - SOUTHERN DAIRY COMPACT - Representative Brown, sponsor. Senator Weinstein moved that the bill be given a favorable report. Motion carried, and bill was sequentially referred to Appropriations.

HOUSE BILL 1032 - AUTHORIZE LANDFILL LINER - Representative Allred, sponsor. At the committee's meeting on June 24, a proposed committee substitute had been adopted for discussion purposes and this PCS was now before the committee. George Givens of staff explained the proposed committee substitute. Senator Foxx moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

Senate Bill 985 was not discussed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, June 26, 1997
8:30 a.m.
Room 414

HB 251	WELL CONTRACTORS CERTIFICATION Representative Culp
HB 998	SOUTHERN DAIRY COMPACT Representative Brown
HB 1032	AUTHORIZE LANDFILL LINER Representative Allred
SB 985	ALTERNATE LANDFILL LINER Senator Bob Martin

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, June 26, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**251** Well Contractors Certification
Sequential Referral: Finance
Recommended Referral: None

H.B. **998** Southern Dairy Compact.
Sequential Referral: Appropriations
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1032** Authorize Landfill Liner.
Draft Number: PCS6283
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 251
Committee Substitute Favorable 6/9/97

Short Title: Well Contractors Certification. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"§ 143B-301.12. Membership of Commission.

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

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

(h) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.
"Well Contractors Certification.

"§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) Commission. -- The Well Contractors Certification Commission.
(2) Department. -- The Department of Environment, Health, and Natural Resources.
(3) Person. -- A natural person.
(4) Secretary. -- The Secretary of Environment, Health, and Natural Resources.
(5) Well contractor. -- A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.
(6) Well contractor activity. -- The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) Certification Required. -- No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. -- This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.
(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars ($100.00), the annual fee may not exceed two hundred dollars ($200.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.10. Promotion of training.**

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.11. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.13. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural

Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) 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 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, unless the violator contests the assessment or requests remission of the assessment in whole or in part. 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 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.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State

shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91 reads as rewritten:

"**§ 87-91. ~~Notice.~~ Notice of violation; remedial action order.**

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this ~~Article,~~ Article or any rule ~~or regulation~~ adopted pursuant ~~thereto,~~ to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. ~~Such~~ The notice shall identify the provision of this ~~Article, or regulation issued hereunder,~~ Article or rule adopted pursuant to this Article alleged to be violated and the facts alleged to constitute ~~such~~ the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) ~~Such Department shall serve the notice and any order requiring remedial action on the person alleged to be in violation, shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Department of Environment, Health, and Natural Resources, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.~~ The notice may be served by any means authorized under G.S. 1A-1, Rule 4."

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who, since 1 July 1992, has been actively and continuously engaged in well contractor activity and who has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 251 (Well Contractors Certification)

House Bill 251 (Well Contractors Certification) was recommended to the 1997 General Assembly by the Environmental Review Commission (ERC). It creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Section 1 establishes the Well Contractors Certification Commission (Commission) within the Department of Environment, Health, and Natural Resources (DEHNR). The Commission is authorized to adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well contractor certification laws, and adopt rules to secure federal aid for well contractor certification programs.

The Commission will consist of seven members as follows:

(1) A well contractor who works primarily on domestic water supply wells.
(2) A well contractor who works primarily on domestic water supply wells.
(3) A well contractor who works primarily on large capacity water supply wells.
(4) A well contractor who works primarily on nonwater supply wells.
(5) An employee of a county health department engaged in well inspection and permitting.
(6) An employee of a county health department engaged in well inspection and permitting.
(7) An at-large member not engaged in well contracting activities.

Members (1), (2), and (5) are appointed upon the recommendation of the Speaker of the House of Representatives. Members (3), (4), and (6) are appointed upon the recommendation of the President Pro Tempore of the Senate. Member (7) is appointed by the Governor. Members will serve staggered three-years terms.

Effective Date: When the act becomes law.

Section 2 establishes the Well Contractors Certification Act. The Act requires certification for a well contractor engaging in the construction, installation, repair, alteration, or abandonment of any well. Certification is not required for the performance of these activities by a person (i) who is working for and under the personal supervision of a certified well contractor or (ii) who constructs, repairs, or abandons a well located on land owned or leased by that person.

The Commission is directed by this Act to specify certain activities that do not require certification; establish different types of well contractor certifications based on the activities performed; and establish education, experience, and examination requirements for each type of well contractor certification. The Commission may also discipline well contractors through written reprimand, certificate suspension, or certificate revocation in cases of fraud or deception, failure to use reasonable care, gross negligence, or failure to complete continuing educational requirements. Furthermore, the Secretary of Environment, Health, and Natural Resources may request the Attorney General to seek injunctive relief to restrain a well contractor from committing a violation or require a well contractor to take corrective action to remedy a violation.

The Commission may set a fee for: examination not to exceed $100.00; annual certification not to exceed $200.00; and temporary certification not to exceed $100.00. These fees will be credited to the Well Construction Fund, a nonreverting fund within DEHNR to be used for the costs of administering the Well Contractor Certification program.

Effective Date: When the act becomes law, except that the certification requirement and the continuing education provisions become effective January 1, 1999.

Section 3 provides that persons violating the provisions of Well Contractors Certification Act will be subject to a civil penalty of not more than $100.00.

Effective Date: When the act becomes law.

Section 4 amends the definition of "well" so that it does not exclude a well constructed by an individual on land which is owned or leased by the individual, appurtenant to a single family dwelling, and intended for domestic use.

Effective Date: When the act becomes law.

Section 5 provides that fees collected pursuant to the registration of those engaged in well construction will be credited to the Well Construction Fund created by the Well Contractors Certification Act.

Effective Date: July 1, 1997.

Section 6 repeals the registration requirement for those engaged in well construction.

Effective Date: January 1, 1999.

Section 7 authorizes the Environmental Management Commission to issue special orders requiring specific remedial action upon a violation of the North Carolina Well Construction Act.

Effective Date: When the act becomes law.

Section 8 provides for the initial appointments to the Well Contractors Certification Commission.

Effective Date: When the act becomes law.

Section 9 is a grandfather provision requiring the Commission to issue a certificate, without examination, to any person who, since July 1, 1992, has been engaged in well contractor activity and who has been individually registered or employed by a corporation that has been registered with DEHNR.

Effective Date: When the act becomes law.

Section 10 authorizes the Commission to adopt temporary rules to implement this act.

Effective Date: When the act becomes law.

Section 11 sets out the effective dates.

Effective Date: When the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 251

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Representative Culp

FISCAL IMPACT

Yes (x) ** No ( ) No Estimate Available ( )

Well Construction Fund **(created by this act)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES *					
Registration Fee	$31,250				
Certification Renewal		$227,500	$236,250	$245,000	$253,750
Certification by Examination		$30,000	$3,750	$3,750	$3,750
Temporary Certification		$2,500	$2,500	$2,500	$2,500
Total	**$31,250**	**$260,000**	**$242,500**	**$251,250**	**$260,000**
EXPENDITURES	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* ***Revenue estimate based on the maximum fee allowed by the act.***

** ***See statement on page 3, under*** **Assumptions and Methodology** ***regarding the creation of the Well Construction Fund.***

BILL SUMMARY: *TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.* Adds new Part 9A (Well Contractors Certification Commission) to GS Chapter. 143B creating a new certification commission and new Article 7A (Well Contractors Certification) imposing a new certification requirement on well contractors.

New commission. The Well Contractors Certification Commission is composed of seven members serving three-year staggered terms. Two members appointed by the General Assembly on recommendation of the Speaker must be certified well contractors, one east of Interstate 95 and one west. Two members appointed by the General Assembly on recommendation of the President Pro Tem. must be certified well contractors, one engaged primarily with large capacity water supply wells and one engaged primarily with non-supply wells such as monitoring or recovery wells. Two members would be employees of local county health departments actively engaged in well inspection and permitting, one appointed by the General Assembly on recommendation of the Speaker and one on the recommendation of the President Pro Tem. One member must appointed by the Governor from the public at large. The well contractor members will be selected from names nominated by anyone who is himself or herself a certified well contractor. The Commission may adopt rules with respect to certification of well contractors, make quasi-judicial decisions in any matter involving certification, and adopt rules necessary to secure federal grant-in-aid for the program of certification.

New certification requirement. Individuals engaged in the business of construction, installation, repair, alteration, or abandonment of wells must gain certification from the Commission. No person without certification may engage in such activity except (a) an individual performing services for a certified contractor and under the contractor's personal supervision or (b) an individual constructing, repairing, or abandoning a well located on land he or she owns or leases. Any person who has not been found to have engaged in improper conduct and who has been actively engaged as a well contractor since July 1, 1986 and has been continuously registered with the Department of Environment, Health, and Natural Resources since July 1, 1992 (or employed by a firm so registered) may be initially certified without examination. Imposes fees of $150 for examination fee for new applicants; $350 fee for annual renewal of certification; and $100 for temporary certification (good for 45 days, maximum). Fees will be deposited into a fund to pay the costs of the certification program. Certification may be suspended or revoked if the well contractor (1) engages in fraud in connection with acquiring certification or in well construction, (2) fails to use reasonable care or judgment in well construction, (3) has been grossly negligent or has demonstrated willful disregard for laws or regulations governing well construction, or (4) fails to complete continuing education requirements set by Commission.

Amends GS 87-94, which sets civil penalties for well regulation violations, to add a penalty of $100 for violation of certification requirements. Repeals GS 143-355(e), which now requires well contractors to register with the Department of Environment, Health, and Natural Resources. Repeals GS 87-91(b), which now requires registered or certified mail delivery of notice of Well Construction Act violations and makes corresponding changes in GS 87-94. [1]

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[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill, Volume 1997, Number 11, February 17, 1997.

ASSUMPTIONS AND METHODOLOGY:

According to the bill, the Well Contractors Certification Commission may set fees for temporary certification, certification by examination and annual certification renewal up to the maximums stated in the bill, to cover the costs of implementing this act. **All fees collected are to be credited to the Well Construction Fund, a non-reverting account within the Department of Environment, Health, and Natural Resources, to cover the costs of administering the Well Construction Certification program, in accordance with the provisions of this act. Thus, there will be no impact on the General Fund, nor the need for an additional appropriation.**

Revenues

Revenue estimates are based on the maximum fee allowed under this act; however, the Commission may set fees for examination and certification at lower rates, commensurate with actual program costs.

- Registration Fee

  Under current law, G.S. 143-355(e) requires persons, firms and corporations engaged in the well construction business to register with the Department of Environment, Health, and Natural Resources and pay a $50.00 registration fee each year. The bill requires this registration fee to be credited to the Well Construction Fund beginning July 1, 1997.

  There are approximately 600 well contractors currently registered, and the department expects an additional 25 persons to seek registration for the 1997-98 fiscal year. Therefore, total revenue from the registration fee for the 1997-98 fiscal year is projected to be $31,250 (625 registered contractors x $50 registration fee).

  The bill repeals this registration fee requirement effective January 1, 1999 to coincide with the effective date of the certification requirement. Since G.S. 143-355(e) designates the registration period to be January 1 to January 31 of each year, most of the revenues from this fee are collected during the early part of the calendar year. Therefore, no registration fee revenue is projected for the 1998-99 fiscal year, even though the registration requirement is in effect for the first six months of the 1998-99 fiscal year.

- Annual Certification Renewal

  The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at $350.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of $125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of $125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue ($350.00)	227,500	236,250	245,000	253,750
Annual Certification Revenue Based on Projected Operating Requirements ($125.00)	81,250	84,375	87,500	90,625

- Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to $150.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee ($150.00)	30,000	3,750	3,750	3,750

- Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to $100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee ($100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**

** Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of $100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Mona Moon
APPROVED BY: Tom Covington**TomC**
DATE: May 12, 1997

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Well Contractors

Senate Bill 261
House Bill 251

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of well contractors. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Rep. Frank Mitchell, Chairman

Senator Fletcher Hartsell	Representative Eugene McCombs
Senator Brad Miller	Representative Wilma Sherrill
Senator R.C. Soles, Jr.	Representative Gene Wilson
Senator Allen Wellons	Representative Douglas Yongue

Counsel: Mr. Linwood Jones
Mrs. Linda Attarian

90LLJ-0265H

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

(1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.

(2) Whether the profession possesses qualities that distinguish it from ordinary labor.

(3) Whether practice of the profession requires specialized skill or training.

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.

(5) Whether the public can effectively be protected by other means.

(6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

WELL CONTRACTORS

Well contracting involves the construction, installation, repair, alteration, or abandonment of a well. A person who undertakes one of these activities is a well contractor. Under Senate Bill 261 and House Bill 251, the well contractor, unless otherwise exempt, must be licensed by the North Carolina Well Contractors Certification Commission. The Commission, a 7-member panel appointed by the General Assembly (6 appointees) and the Governor (1 appointee), would be created within the Department of Environment, Health, and Natural Resources.

Anyone practicing as a well contractor since July 1, 1986 and either (1) registered with DEHNR since July 1, 1992 or (2) an employee of a company registered with DEHNR since July 1, 1992 would be licensed without examination. All others, unless exempt, would be required to meet the educational, experience, and examination requirements imposed by the Commission (*see proposed G.S. §87-98.7).* The existing registration law, which requires well contractors to register with DEHNR, would be repealed.

Improper well construction can lead to groundwater contamination, as pollutants such as pesticides, septic tank waste, and oil can seep through the well into the groundwater. More than one-half of all North Carolinians obtain their drinking water from groundwater. To ensure their safety, it is critical that well contractors demonstrate at least a minimum level of competence in well

construction. Contractors need to be familiar with drilling rigs and related equipment, the uses of different casings, well screens, drilling bits, and specialized tools, geologic formations, disinfection methods, and groundwater contamination. North Carolina law regulates well construction (*Article 7 of Chapter 87* of the General Statutes), but these laws do not ensure the competency of well contractors. During the first half of this decade, DEHNR issued notices of violations covering more than 625 violations at nearly 500 different water supply wells throughout the State. Many of these wells had multiple violations.

The Legislative Committee on New Licensing Boards finds that the sponsors have met the six statutory criteria by which the Committee judges licensure proposals, as follows:

(1) The unregulated practice of the profession can substantially harm or endanger the public health, safety, or welfare, and the potential for such harm is recognizable and not remote nor dependent upon tenuous argument.

(2) The practice of the profession possesses qualities that distinguish it from ordinary labor.

(3) The practice of the profession requires specialized skill and training.

(4) A substantial majority of the public does not have the knowledge or experience to evaluate the practitioner's competence.

(5) The public cannot be effectively protected by other means.

(6) Licensure would not have a substantial adverse economic impact upon consumers.

The Legislative Committee on New Licensing Boards recommends licensure of well contractors. This assessment report constitutes both the preliminary and the final assessment report for the licensing of well contractors. The report is based on the proposed licensing of well contractors, as set out in Senate Bill 261 and House Bill 251, the response to the Committee's questionnaire (attached), and testimony before the Committee on May 12, 1997.

Department of Environment, Health and Natural Resources
Responses to the Committee on New Licensing Boards
House Bill 251, Senate Bill 261
Well Contractors Certification

(1) In what ways has the marketplace failed to regulate adequately the profession or occupation?

Improperly constructed wells will serve as sources or conduits of surface/near surface contaminants into the underground water reservoirs. Additionally, there are a number of specialized skills required to properly construct and repair wells. However, there is no presently existing licensing or certification board with the jurisdiction to ensure that those engaged in well contractor activities have the knowledge, skills and abilities necessary to properly provide these contractor services. In fact, under current state law, it is theoretically possible for any individual, regardless of age or skill level, to become registered as a well contractor in North Carolina.

(2) Have there been any complaints about the regulated profession or occupation? Please give specific examples including (unless confidentiality must be maintained) complainant's names and addresses.

From 1990 through 1995, the state has, as a result of complaints and subsequent inspections, issued notices of violation covering more than 625 violations at almost 500 separate water supply wells. Many wells had multiple violations [e.g. well not grouted; no sanitary well seal; unsafe wellhead completion; well located too close to septic tank/drainfield or other waste sources; etc.] that resulted in a threat to the well owner and family [e.g. the presence of sediments, fecal coliforms, nitrates, pesticides and heating oils in the well]. Specific examples are given in the latter part of item (3) below.

(3) In what ways has the public health, safety or welfare sustained harm, or is in imminent danger of harm, because of the lack of state regulation?

More than 50% of the citizens of North Carolina rely on groundwater as a source of their drinking water supply. Each of these must have a water supply well. Every citizen relying on an improperly constructed water supply well runs the risk of groundwater contamination and the associated health risks each time it rains or when there is a nearby leak or spill of pesticides, septic tank waste, heating oil, etc. As new wells are constructed by uncertified and potentially unqualified people, additional citizens are exposed to potential health risks.

If the contractors who construct wells <u>do not have</u> the necessary training, experience and equipment (and there are no minimum levels for any of the three), then the public <u>will not be able to have:</u>

1) A drinking water supply designed to be protective of human health;
2) A longer-lived and more reliable source of potable drinking water. One of the primary reasons for the loss of use of a well or well

system is groundwater contamination. Contamination is often caused by the percolation of contaminated water, or chemicals, down beside the well casing;

3) Confidence that the well contractor, contracted with to provide a source of drinking water, is capable of delivering a well constructed according to established standards; and
4) Confidence that the well that is constructed will not have to be replaced (or extensively repaired) due to improper installation.

In addition to those instances where well related violations were serious enough to require the state to issue a notice of violation, there have been a number of cases where additional enforcement action was necessary. That additional enforcement action was necessary because the well contractor could not, or would not, repair the well to standards where it was no longer a threat to human health. A sampling of those cases are as follows:

*Types of Violations	Well Owner Name	Address
(1), (2)	John Smith	Gold Hill, NC
(1), (3)	Barbara Carpenter	Crouse, NC
(1)	Louie Jackson	Salisbury, NC
(1)	Paul Eudy	Concord, NC
(1)	Webster Hollar	Lenoir, NC
(1)	Kenneth Carron	Chocowinity, NC
(1)	Mary Freeole	Salisbury, NC
(1)	Sabrina Kincade	Salisbury, NC
(1)	Todd Arrowood	Vale, NC
(1), (2)	Eddie Hughes	Hickory,NC
(1)	Wm. McLaughlin	Concord, NC
(1), (2)	Farrel Houser	Lincolnton, NC
(1), (2)	Richard Harwell	Hickory, NC
(4)	Todd Johnson	Vale, NC
(1), (2)	Rick Crofts	Newton, NC
(1), (2)	Jesse Clark	Maiden, NC

* Type of Well Violation-Key

(1) Missing/insufficient/improper cement casing grout
(2) Improper wellhead completion (no sanitary seal, cracked casing, improper sealing of casing/water-line joints)
(3) High level of solids and/or coliform bacteria in well
(4) Improper well abandonment that threatens drinking water supply.

(4) Is there potential for substantial harm or danger by the profession or occupation to the public health, safety or welfare? How can this potential for substantial harm or danger be recognized?

The potential for substantial harm or danger to the public was summarized in the responses to items (1) and (3). Unfortunately, the public does not have enough technical knowledge in the critical areas (i.e. geology, hydrogeology, proper well construction and development, well disinfection, contamination concerns, and well vulnerability), in order to make a determination regarding contractor competence. Since the final product that is delivered is underground and unavailable for inspection without specialized testing equipment, the public must accept the word of the well contractor that the well has been installed

in a safe and legal fashion.

(5) **Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).**

The federal government has deferred to the states in the matter of well contractor licensing/certification. Approximately 70% of the States have recognized a need to license/certify those who engage in these activities. Those states include the following:

Arizona	Georgia	Maryland	New Jersey
Arkansas	Hawaii	Massachusetts	Mexico
California	Idaho	Minnesota	Oklahoma
Colorado	Illinois	Mississippi	Oregon
Connecticut	Indiana	Missouri	Pennsylvania
Delaware	Iowa	Montana	South Carolina
Florida	Kansas	Nebraska	Texas
Louisiana	Kentucky	Nevada	Virginia
		New Hampshire	Washington

(6) **What will be the economic advantage of certification be to the public?**

Some of the economic benefits (as a result of having a contractor with requisite demonstrable training, experience and equipment) were outlined in the response to item (3). A summarization of benefits would be that:

1) The well owner will benefit in that fewer new wells and pumps will have to be paid for due to contamination resulting from inept well construction, development, and repair.

2) The public will benefit from reduced health concerns, and fewer associated health care costs, as a result of a safer drinking water supply.

(7) **What will be the economic disadvantages of licensing to the public?**

It is anticipated that well drillers will pay a yearly certification fee of $125.00 or less. A well contractor that constructs 50 wells per year would spread the cost among the well owners, thus increasing the cost to each owner of $2.00 - $3.00 per well. It is not unusual for drillers to construct more than 50 wells per year.

(8) **What will be the economic advantages of licensing to the practitioners?**

The well contractors will benefit from increased business as the certification process weeds out those who lack the knowledge and skills required to be adequately performing the work.

(9) **What will be the economic disadvantages of licensing to the practitioners?**

There should be no economic disadvantage to the majority of well contractors who have the requisite knowledge, skills and abilities. However, those who lack those skills will not be allowed to conduct well contractor activities until they have rectified those deficiencies.

(10) **Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.**

The potential benefits versus potential harm are identified in the responses to items (1), (3), and (6).

(11) **Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor. How is each justified?**

A number of specialized skills are required for well and pump contractors. Some of those skills and the adverse effects that can result from a lack of those skills, are as follows:

For Well Contractors:

1) familiarity with the operation and maintenance of drilling rigs and associated equipment;
2) familiarity with the advantages and disadvantages of the various well casings, well screens, drilling bits, specialized tools and circulation/well development fluids;
3) familiarity with the various geologic formations found in the state and the problems associated with drilling in each geologic environment;
4) familiarity with the proper methodologies to be used in the development and disinfection of wells; and
5) familiarity with the causes of contamination and the methodology to be used in order to best protect the well.

Lack of familiarity with these aspects of well drilling can result in the introduction of contamination into the water supply; misuse of well construction materials that are incompatible with the area geology or quality of the groundwater; attempts to use improper equipment, methods or materials to install a well that cannot be properly constructed without different equipment, methods or materials; and an inability to identify and rectify problems that occur due to a deficiency in one of the five items listed above.

(12) What are other qualities of the profession or occupation that distinguish it from ordinary labor?

See the reposes to item (11) and (15).

(13) Will certification requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

Certification requirements will apply to anyone in the trade or business of well contracting **except as follows**:

(1) An individual who performs labor or services for, and under the supervision of, a certified contractor; and
(2) An Individual who construct wells on land that is owned or leased by that individual;

14) What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?

More than 50% of the citizens of North Carolina rely on groundwater for their drinking water supply. Each of these must have a safe, reliable water supply well. Each citizen relying on an improperly constructed water supply well runs the risk of groundwater contamination and the associated health risks. As new wells are constructed by uncertified and potentially unqualified people, additional citizens are exposed to potential health risk. At the end of the 1996 registration period there were 565 registered well contractors.

Well Contractors are required to notify the DEHNR whenever a new well is drilled. The following shows the number of new wells (and thus the approximate number of persons who have utilized well contractor services for those wells) drilled over the last four years in North Carolina:

1992	7,394 new wells
1993	7,412 new wells
1994	7,289 new wells
1995	7,124 new wells

15) What kind of knowledge or experience does the public need to be able to evaluate the services offered by the occupation or profession?

The proper construction and repair of drinking water supply wells require specialized skills the ordinary homecwner cannot obtain. In addition, some of these activities require specialized equipment and technical expertise to operate that equipment. (NOTE: the capital expense involved with acquiring many drilling rigs and accessory equipment can exceed $100,000. Such an investment is not financially reasonable for most homeowners.) Since the final product (i.e. the well) that is delivered is mostly underground and largely unavailable

for inspection without specialized knowledge and testing equipment, the public must accept the word of the well contractor that the well has been installed in a safe and legal fashion. Given this situation, the public should be able to be confident that the well contractor has been evaluated for, and been certified as having, the requisite training and experience to provide them with a dependable, safe water supply well system that meets applicable industry standards and state rules.

16) **Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?**

Two associations exist for well contractors. These are the North Carolina Groundwater Association (NCGA) and the National Water Well Association (NWWA). Membership in both organizations is voluntary and only a percentage of practicing well contractors join. Approximately 35% of the registered well contractors in North Carolina are members of the North Carolina Groundwater Association. Both the NCGA and the NWWA have a voluntary code of ethics, and the NWWA currently maintains a voluntary but limited certification program.

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Differences Between

Senate Bill 261 Well Contractors Certification (2nd Edition)

(favorable report, Senate Committee on Agriculture, Environment, and Nartural Resources)

and

House Bill 251 Well Contractors Certification (2nd Edition)

House Bill 251, 2nd Edition, Well Contractors Certification, differs from Senate Bill 261, 2nd Edition, Well Contractors Certification by:

- Deleting the continuing education requirements for members of the Well Contractors Certification Commission

- Authorizing the Environmental Management Commission to issue special orders requiring remedial action rather than deleting the remedial action provisions.

- Decreasing the examination fee from $150.00 to $100.00 and the certification fee from $350.00 to $200.00

- Directing the Well Contractors Certification Commission to issue a certificate, without examination, to any person who, since July 1, 1992, has been engaged in well contractor activity and who has been individually registered or employed by a corporation that has been registered with the Department of Environment, Health, and Natural Resources. Senate Bill 261 directs the Commission to issue a certificate, without examination, to any person who has been engaged in well contractor activity since July 1, 1986 and who has been individually registered or employed by a corporation that has been registered with the Department of Environment, Health, and Natural Resources.

- Making the continuing education requirements for certified well contractors effective January 1, 1999 rather than when the act becomes law.

- Making stylistic changes

Jeff Hudson, Committee Counsel
Mary Shuping, Administrative Assistant
June 24, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 998*

Short Title: Southern Dairy Compact. (Public)

Sponsors: Representatives Brown and Mitchell.

Referred to: Agriculture, if favorable, Appropriations.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"Southern Dairy Compact.

"**§ 106-810. Southern Dairy Compact entered into; form of Compact.**

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

"**§ 1. Statement of purpose, findings, and declaration of policy.**

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their

ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II. Definitions and Rules of Construction

"**§ 2. Definitions.**

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3.

(2) 'Commission' means the Southern Dairy Compact Commission established by this compact.

(3) 'Commission marketing order' means regulations adopted by the Commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(4) 'Compact' means this interstate compact.

(5) 'Compact over-order price' means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(6) 'Milk' means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(7) 'Partially regulated plant' means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) 'Participating state' means a state which has become a party to this compact by the enactment of concurring legislation.

(9) 'Pool plant' means any milk plant located in a regulated area.

(10) 'Region' means the territorial limits of the states which are parties to this compact.

(11) 'Regulated area' means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) 'State dairy regulation' means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.

"**§ 3. Rules of construction.**

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the Commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1. It is the intent of this compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. Commission Established

"§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission.

"§ 5. Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area that covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

"§ 6. Administration and management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the

Commission. The Commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may engage in all of the following:

(1) Sue and be sued in any state or federal court.

(2) Have a seal and alter the same at pleasure.

(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.

(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge the revenue of the Commission as security therefor, subject to the provisions of Section 18 of this compact.

(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications.

(6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.

(7) Retain personal services on a contract basis.

"§ 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. Powers of the Commission

"§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to

measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

"**§ 9. Equitable farm prices.**

(a) The powers granted in this section and Section 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this Article authorizes the Commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents ($1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing

class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The Commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The Commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The Commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the Commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

"§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in Section 2, subdivision (9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of Section 18 of Article VII.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. Rule-Making Procedure.

"§ 11. Rule-making procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

"§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 53 (c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13.

"§ 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers

that an order is being considered and that each producer may register his or her approval or disapproval with the Commission either directly or through his or her cooperative.

"**§ 14. Termination of over-order price or marketing order.**

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. Enforcement

"**§ 15. Records, reports, access to premises.**

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the Commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the Commission. The Commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars ($1,000) or to imprisonment

for not more than one year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

"**§ 16. Subpoena, hearings and judicial review.**

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the Commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission form obtaining relief pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

"**§ 17. Enforcement with respect to handlers.**

(a) Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. Finance

"§ 18. Finance of start-up and regular costs.

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under Section 6, subdivision (d), paragraph 4. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the Commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed $.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the Commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

"§ 19. Audit and accounts.

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. Entry into Force; Additional Members and Withdrawal

"§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has been obtained.

"§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the governors of all the participating states. No withdrawal shall affect any liability already already incurred by or chargeable to a participating state prior to the time of such withdrawal.

"§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact.

"§ 106-811. Appointment of members to the Southern Dairy Compact Commission.

(a) The delegation from the State of North Carolina to the Southern Dairy Compact Commission, as established in Article IV of the Compact, shall be composed of five members appointed as follows:

(1) One member representing consumers of milk, appointed by the Governor.

(2) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(3) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(4) Two members appointed by the Commissioner of Agriculture, one of whom shall be a dairy farmer engaged in the production of milk at the time of appointment or reappointment.

(b) Members must be registered to vote in the State.

(c) Members shall serve a term of four years and may be reappointed, but no member shall serve more than three consecutive terms. Members shall serve until their successors are duly appointed. Any appointment to fill an unexpired term shall be for the balance of the unexpired term and shall be made by the appropriate

appointing authority. A member may be removed by the appointing authority, in accordance with G.S. 143B-13. The Commissioner of Agriculture shall designate one member of the delegation to serve as chair, at the pleasure of the Commissioner.

(d) Members of the delegation shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the delegation shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the delegation shall be provided by the Commissioner of Agriculture."

Section 2. There is appropriated from the General Fund to the Southern Dairy Compact Commission, as established by Article III of the compact, as enacted in Section 1 of this act, the sum of twenty-five thousand dollars ($25,000) for the 1997-98 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 1998-99 fiscal year to be used by the Commission to conduct its activities pursuant to this act.

Section 3. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 23, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **House Bill 998: Southern Dairy Compact**

House Bill 998, introduced by Representative Brown, enacts into North Carolina law the Southern Dairy Compact. The compact legislation was developed in meetings of 14 southern states in an effort to address the problems faced by the southern dairy industry. Its purpose is to regulate the price for milk received by the farmers, by setting prices for milk above those set by federal marketing orders, in order to assure a stable, local supply of milk and the continued viability of a dairy industry in the southern region.

The legislation establishes a Compact Commission, that would consist of a delegation of 3 to 5 members from each participating state. Each state would have one vote and Commission matters would be decided by majority vote, except for the establishment or termination of an "over-order" price or a commission marketing order, which would require a 2/3 vote of the Commission.

A compact "over-order" price shall apply only to Class I milk and shall not exceed $1.50 per gallon at Atlanta. This price may be adjusted to reflect differences in minimum federal order prices in the region. In the event the federal marketing orders are terminated, the Commission has the authority to establish commission marketing orders. A commission marketing order may apply to all classes and uses of milk.

The Commission would have the authority to adopt rules using the rule-making procedures of Section 4 of the Federal Administrative Procedure Act. In establishing an over-order pricing order or commission marketing order, the Commission shall conduct a referendum among producers to determine their approval or disapproval of the proposed pricing order.

Costs of establishing the Commission may be covered by an assessment on milk handlers who purchase milk from producers in the region of $.015 per hundred weight. The assessment is to be collected monthly for up to 1 year after the Commission convenes. In addition, the

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Commission has the authority to borrow funds, however, it may not pledge the credit of any participating state.

The Compact takes effect when three States of the listed states have enacted its provisions into law and the consent of Congress has been obtained. To date, Louisiana and Arkansas have enacted this legislation. T

The bill calls for an appropriation of $25,000 for FY 1997-1998 and $25,000 for FY 1998-1999 to the Compact Commission to conduct its activities.

The act becomes effective July 1, 1997.

Maola

"Fresher Milk From Greener Pastures"

May 23, 1997

State of North Carolina
House Of Representatives
State Legislative Building
Raleigh, NC 27601-1096
Attention: Agriculture Committee
Rep. John Walter Brown
Chairman

To the Honorable John Walter Brown:

It is our understanding that on Tuesday, May 20, the House Agriculture Committee heard arguments by various persons who were opposed to the establishment of an Interstate Dairy Compact in the State of North Carolina. It is also our understanding that one or more persons stated that Maola Milk & Ice Cream Company joined other milk processors in opposing this compact. As we were neither represented at this hearing, nor did we authorize anyone to speak for our company, we would like to state our position in regard to the legislation that would establish this compact.

For a number of years, North Carolina has been a deficit state, that is we have been unable to supply the demand for milk with milk produced in our state. This has been the result of a rapid population growth and a continually dwindling number of dairy farms in the state. In 1980 there were 1,280 active dairy farms in North Carolina. By 1991 the number had declined to 810. At the end of 1996 we were down to 547. Already this year we have lost another twenty and by the end of the year we expect to lose up to 70 more due to the environmental requirements that go into effect 1/1/98. Dairy farmers simply continue to be unable to survive economically.

The decline in milk production in our own state has resulted in our having to import increasingly large volumes of milk from other states as far away as New York, Wisconsin and even New Mexico. The majority of Maola's milk supply is purchased from independent North Carolina dairy farmers who ship directly to us. The remainder of our supply is purchased from milk cooperatives, primarily Carolina

Maola Milk & Ice Cream Company, P.O. Drawer S, 305 Avenue C, New Bern, NC 28563 (919) 638-1131 Fax (919) 638-2268

Virginia Milk Producer's Association, Inc. In the past twelve months, Maola has been required to pay import charges of more than $750,000.00 on more than 21,000,000 pounds of milk that Carolina Virginia had to import from other states. These import costs increased the price of raw milk as much as $3.41 per hundred pounds and caused the total cost per hundred pounds to be as much as $22.04. A copy of one month's Carolina Virginia invoice to Maola is attached, demonstrating the impact of these import charges.

History has well documented that under existing rules, our local dairymen cannot economically survive, that they are going out of the dairy business rapidly and that higher levels of imported milk are rapidly increasing milk costs at every level. We believe that the arguments that the establishment of the compact will result in higher milk prices are in error and are very short sighted. Further we believe that the correct, long term solution is to find a way to equitably stabilize raw milk prices in North Carolina at a level at which our existing producers can survive, which will encourage herd expansion and which will create an environment in which others will be willing to make the required investment to get into the milk producing business. As North Carolina becomes self sufficient in satisfying our consumer demands for dairy products we believe that the long term result will be lower prices, not higher ones. In addition, the agricultural economy of North Carolina will also be the winner, rather that that of Wisconsin, New Mexico and other states.

Therefore, it is the position of Maola Milk & Ice Cream Company that we will not join those who oppose the establishment of the Southern Dairy Compact. Those who have stated that Maola supports the opposition were in error and did not speak with authorization of the management of Maola Milk & Ice Cream Company. The Compact is far from perfect but it appears that the overall result would be positive for producers, processors and consumers. We would encourage the House to require that the new commission would include at least one milk processor, to have a more equal and fair representation of interested parties.

Sincerely,

James B. Green

James B. Green
Vice President & General Manager

Carolina Virginia Milk Producers Association, Inc.

P.O. Box 32307
Charlotte, NC 28232-2307
Phone: 704-334-9558 Fax: 704-377-0531

INVOICE

Customer: Maola Dairies
PO Drawer S
New Bern NC 28560

Date: 07/31/96
Final Settlement
Invoice# F079656

Deliveries:	Product Lbs	BF Lbs	Av BF Test
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Maryland & Va	1,160,982	41,646	3.58714%
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	These prices are subject to a maximum credit of .30 CWT for cost savings provided to producers.					74,679.09
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Carolina Virginia Milk Producers Association
Branch Bank & Trust
Bank Routing Number - 053101121
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TOTAL 22.04

NC Milk 19.52

876 940

19.99

North Carolina General Assembly

Rep. Frank Mitchell

The Southern Dairy Compact

Why It Is Needed and What It Does

HB 998

The Southern Dairy Compact establishes a regional milk pricing system for the southern region. Working with the existing federal milk pricing program, the Compact allows for the regulation of the farm price of fluid, or drinking, milk sold in the South. Uniquely serving both farmers and consumers in the South, the Compact will at once stabilize the region's dairy industry and protect the interests of consumers.

The southern states are establishing the Compact because the region's dairy farmers have not fared well under the current federal milk pricing system. In addition to the overall downward trend, federally established prices have also fluctuated erratically, making it difficult for farmers to develop dependable business plans for their farm operations. Not surprisingly, as a result, fully 171 of North Carolina's dairy farms have ceased operation during 1995 and 1996.

Besides their importance as the local, fresh source of a staple food stuff, dairy farms are an important part of North Carolina's agriculture economy. Sales of dairy products exceeded $192 million in 1995, fully affecting the state's economy more than $500 million.

On the other side of the equation, the Compact protects and promotes the interests of the region's consumers. The Compact would encourage stable pricing and help preserve a local supply of fresh, high quality milk at less cost than imported supplies.

In brief:

- The goal of the Compact is to stabilize milk production. GAO and USDA studies show that the erratic fluctuations in the federal price structure have paradoxically contributed to higher consumer milk prices along with reduced farmer income. Research shows also, conversely, that price stability keeps milk prices lower on the store shelf and higher on the farm.

- The Compact can stabilize milk prices to the benefit of consumers as well as farmers because the Compact Commission has the authority to adjust the erratic fluctuations in the federal price structure. By removing these erratic

SOUTHERN STATES:
AL, AR, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

fluctuations, the Commission will maintain farm price stability and, simultaneously, discourage sudden and sustained price hikes at the store level.

- The Compact also includes many specific provisions which protect the consumer -- contrary to what opponents of the Compact claim. The Compact requires that any price regulation be approved by a two-thirds vote of the Compact's delegation. Most significantly, any individual state may exempt itself from the pricing regulation by a simple vote of its delegation to the commission. These provisions simultaneously ensure that a consensus must exist before price regulations can be imposed and that the rights of the individual states are protected if such a consensus is lacking.

- The Commission has the additional authority to investigate and expose wholesale and retail price fixing. Research has shown that retail stores, especially, are able to use their market power to transmit increases in farm prices to the consumer without transmitting corresponding decreases in farm prices. The Commission's potent investigatory power will serve as a deterrent to price-fixing practices in the marketplace.

- Independent economists have studied what would have happened if the Compact had been in effect between 1992 and 1995. They determined, using USDA milk price data, that farm income could have gone up significantly without any increase in consumer prices.

DRAFT

Question and Answers About
The Southern Interstate Dairy Compact (5/23/97)

1. Is the Compact constitutional, or does it suffer the same problem as other, state, fluid milk pricing programs?

An interstate compact is "invulnerable to constitutional attack under the Commerce Clause." Northeast Bancorp, Inc. V. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985). Congressional approval of the Compact would thus eliminate the constitutional infirmity of individual state regulatory programs identified in West Lynn vs Massachusetts.

2. How is the farm price of raw milk currently regulated under federal law? Does the federal regulation distinguish between the milk produced within the Compact and that brought in from outside the Compact?

Federal law regulates uniformly the minimum price that all processors must pay for any *raw* milk purchased from dairy farmers for sale as fluid milk in a federal order. The federal regulation makes no distinction based on the geographic location of milk production for market. Processors who purchase raw milk outside the Compact area for fluid milk sales pay the same minimum price as processors located inside the Compact. Currently, most of the fluid milk consumed in the proposed Southern Compact area is processed locally.

3. What additional price regulation would be imposed by the Compact?

The prices set by the Market Orders are regulated minimum prices for the market. Farmers, individually or collectively, commonly obtain marginally higher prices through negotiation with their processor-customers. In addition, the DCMA currently negotiates some higher, "over-order" prices for Class I milk in the southern region. Unfortunately, the DCMA has not been able to hold the "over-order" price for raw milk in the southern region.

The Compact creates an interstate commission with authority to impose a regional over-order price for the Southern Compact area. The commission's authority extends only to the farm price for milk ultimately sold for fluid consumption in the Compact area. Any Compact regulation would be only a marginal, "over-order" addition to the federal floor price, and have no effect on the operation of the federal order program.

Examples of pricing under the Compact:

*For *bulk* milk: As noted above, if the Federal Market Order minimum price for *raw* milk was $14.69 per hundredweight and the Compact commission imposed a $1.00 "Compact Over-Order Price," the new regulated floor price for the Compact region would be $15.69 ($14.69 under federal regulation + $1.00 by operation of the Compact). Milk processors would thus be

required to pay $15.69 for all of the *raw* milk they purchased for ultimate sale as fluid milk in the Compact region.

*For packaged milk: The increase in the regulated floor would also be applied uniformly to packaged beverage milk brought from outside the Compact for sale in the Compact region. Using the $1.00 "Compact Over Price" example, this would mean that the processors outside the Compact providing this milk would pay $15.69 as their regulated floor price on the farm: the $14.69 federal Market Order price + the $1.00 Compact Over-Order Price for raw milk.

4. Would the Compact impose an "anti-competitive tariff" upon Southern Compact milk dealers and farmers, to enforce the Compact over-order price?

No. There would be no restriction placed on the ability of any non-Southern Compact farmer or processor, from any state, to market fluid milk in the Southern Compact region. The flow of milk into and out of the region would be according to the same competitive pattern as exists in today's market. The regulated market would also function the same as under today's federal regulation, except for any increase in the regulated floor price imposed under the Compact.

Moreover, the Compact would be administered completely unlike a tariff because the ***proceeds of the Compact regulation would be distributed to all farmers who supplied the regulated milk, without regard to the supplying farmers' states of residence***. As under federal law, the Compact regulation would treat all of the regulated milk as part of a common, regulated "pool." The proceeds of the Compact pool, as with the federally-regulated pool, would be "blended" out uniformly to all farmers who supply the Compact pool and make up the Southern Compact milkshed, regardless of their state of residence.

In short, the Compact is not a tariff because the proceeds of the regulation will trace back to all the producing farms in any state, rather than remain only in the Southern Compact Region. As with existing federal law, this provided a uniform, regulatory framework for all farmers and processors doing business in the Southern Compact Region, without competitive advantage or disadvantage to anyone.

5. Could the Compact be used to subsidize sales of Southern Compact milk beyond the Compact region?

No. The Compact commission's regulatory authority is limited to milk sales within the Compact region and could not be used to subsidize sales beyond the Compact region.

6. What effect will the Compact have on consumer prices in the Southern Compact?

Passage of the Compact might cause a short-term increase in consumer prices. If the Compact commission does raise the farm price, it is likely the consumer price will rise in some proportionate amount in the short term. It must be noted, however, that there is a sufficient margin between the farm and consumer price to absorb a significant increase in the farm price

without any corresponding increase at the store, so that prediction of an increase in consumer prices is not a certainty.

7. What impact will the Compact have on the WIC program?

The Compact commission is expressly authorized to exempt the WIC program from application of any Compact regulation as necessary.

8. Won't increased prices reduce consumer demand, thereby harming farmers through reduced sales?

The commission must consider this elasticity of demand as part of the regulatory process of deciding whether to impose a price increase.

9. Will a higher Compact price cause increased production of surplus milk, lowering the price of farmers around the country?

No, the Compact would not cause production of surplus milk to the point of lowering the price paid to the farmer. Compact Sec 9(f) and the congressional consent provision require the Compact commission to implement a program to prevent overproduction as part of any regulation imposing an over-order price.

10. Could the Compact commission regulate the price of milk used for manufactured dairy products, or those that move in the national market?

Except the Northeast Dairy Compact, no other compacts are authorizing the pricing of a commodity. However, this Compact is significantly less complicated and less costly than some other interstate compacts that Congress has approved. The Northwest Power Act established an interstate commission responsible for designing a comprehensive energy conservation plan for the Pacific Northwest. The commission's operating budget is more than $8 million and affect the electric power rate base of every business and residence in the Pacific Northwest.

There are also a number of interstate compacts in place for the disposal of low-level radioactive waste. Strictly speaking, nuclear waste may not be a commodity, but Congressional authorization of its regulation is a far more aggressive use of the interstate compact clause than that proposed by this Dairy Compact.

12. Would this Compact be a precedent for other commodities?

A compact for fluid milk pricing is significantly different from compacts for other commodities might be. Several qualities, such as perishability, inelastic local demand and excessive bulk make milk a unique and regional commodity. In short, this compact's effect is severely limited in terms of product and geography. By contrast a compact for other commodities, such as tomatoes or wine, could not be so constrained in effect because they can be stored for long periods of time and are shipped great distances to a broader market.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1032
Committee Substitute Favorable 4/24/97
Proposed Senate Committee Substitute H1032-PCS6283

Short Title: Authorize Alternate Landfill Liners. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

The General Assembly of North Carolina enacts:

Section 1. The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfill liners that are at least as protective as the liner currently authorized under the rules of the Commission for Health Services.

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Commission for Health Services shall adopt the rule required by Section 1 of this act as a temporary rule no later than 1 July 1998.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1032
Committee Substitute Favorable 4/24/97

Short Title: Authorize Landfill Liner. (Public)

Sponsors:

Referred to:

April 21, 1997

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North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

June 24, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: House Bill 1032 (Authorize Alternate Landfill Liners)
Senate Bill 985 (Authorize Alternate Landfill Liners)

The Proposed Senate Committee Substitute for House Bill 1032 (Authorize Alternate Landfill Liners) is identical to the Proposed Senate Committee Substitute for its companion bill, Senate Bill 985 (Authorize Alternate Landfill Liners).

Section 1 directs the Commission for Health Services (Commission) to adopt a rule regarding design criteria for municipal solid waste landfills that complies with federal law and that provides for alternate landfill liners that are at least as protective as those currently authorized by Commission rules.

Section 2 directs the Commission to adopt the rule required by Section 1 as a temporary rule no later than July 1, 1998.

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 985

Short Title: Alternate Landfill Liner. (Public)

Sponsors: Senator Martin of Pitt.

Referred to: Agriculture/Environment/Natural Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF AN ALTERNATE LANDFILL LINER FOR MUNICIPAL SANITARY LANDFILLS THAT MEETS EQUALLY PROTECTIVE DESIGN CRITERIA AS THE CURRENTLY AUTHORIZED LINER.

The General Assembly of North Carolina enacts:

Section 1. No later than July 1, 1998, the Environmental Management Commission shall adopt rules regarding design criteria for municipal sanitary landfills that authorize the use of an alternate landfill liner for a municipal sanitary landfill that complies with 40 C.F.R. Part 258.40(a)(1), which meets equally protective design criteria as the currently authorized landfill liner.

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 6/26/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dewitt Hunter	NCDA
Arthur Mouberry	DENR - DWQ - Groundwater
Rebecca Mouberry	SAIC
Beckie Street	LAND-O-SUN
Johnny Gray	OSBM
Shelley Wooten	OSBM
David Meredith	N.C. State Grange
Buster Dellinger	N.C. Groundwater Assoc.
R. Paul Wilms	NCMBA
Mary Mumford	Poyner & Spruill
Peter Daniel	NCDA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	DENR - Solid Waste Section
TANJA VUJIC	NC EDF

Maola

"Fresher Milk From Greener Pastures"

May 23, 1997

State of North Carolina
House Of Representatives
State Legislative Building
Raleigh, NC 27601-1096
Attention: Agriculture Committee
Rep. John Walter Brown
Chairman

To the Honorable John Walter Brown:

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Vice President & General Manager

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	Branch Bank & Trust
	Bank Routing Number - 053101121
	Bank Account Number - 1561110618

TOTAL 22.04

NC MILK 19.52

876 940

19.94

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 3, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, July 3, 1997, at 9:00 a.m., in Room 414 of the Legislative Office Building. Senator Albertson, chairman, presided and there were thirteen committee members present.

The following bill was discussed, copy of which is attached:

HOUSE BILL 1121 - BROWNFIELDS PROPERTY REUSE ACT - Representative McComas, sponsor, was recognized. George Givens of staff explained the bill. A fiscal note on this bill is attached. Charles Case of Hunton and Williams clarified parts of the bill. Leslie Bevacqua, N. C. Citizens for Business and Industry, spoke in favor of the bill. Senator Weinstein moved that the bill be given a favorable report. Motion carried and bill was sequentially referred to Finance.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 1, 1997
8:30 a.m.
Room 414 - LOB

AGENDA

HB 1121	BROWNFIELDS PROPERTY REUSE ACT. Representative McComas

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, July 03, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)**1121** Brownfields Property Reuse Act
Sequential Referral: Finance
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1121
Committee Substitute Favorable 5/14/97
Committee Substitute #2 Favorable 6/11/97

Short Title: Brownfields Property Reuse Act. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

The General Assembly of North Carolina enacts:

Section 1. Findings. -- The General Assembly makes the following findings:

(1) There are abandoned, idle, and underused properties in North Carolina, often referred to as "brownfields", that may have been or were contaminated by past industrial and commercial activities, but that are attractive locations for redevelopment.

(2) The reuse, development, redevelopment, transfer, financing, and other use of brownfields is impaired by the potential liability associated with the risk of contamination.

(3) The safe redevelopment of brownfields would benefit the citizens of North Carolina in many ways, including improving the tax base of local government and creating job opportunities for citizens in the vicinity of brownfields.

(4) Potential purchasers and developers of brownfields and other parties who have no connection with the contamination of the property, including redevelopment lenders, should be encouraged to provide capital and labor to improve brownfields without undue

risk of liability for problems they did not create, so long as the property can be and is made safe for appropriate future use.

(5) Public and local government involvement in commenting on the safe reuse of brownfields will improve the quality and acceptability of their redevelopment.

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Brownfields Property Reuse Act.

"§ 130A-310.30. Short title.

This Part may be cited as the Brownfields Property Reuse Act of 1997.

"§ 130A-310.31. Definitions.

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

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

(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(2) 'Brownfields agreement' means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.

(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21 of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

(4) 'Contaminant' means a regulated substance released into the environment.

(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation activities at the site comply with generally applicable standards, guidance, or established methods governing contaminants at the site that are adopted or published by the Commission, the Environmental Management Commission, or the Department.

(6) 'Environmental contamination' means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.

(7) 'Local government' means a town, city, or county.

(8) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(9) 'Potentially responsible party' means a person who is or may be liable for remediation under a remedial program.

(10) 'Prospective developer' means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property.

(11) '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.

(12) '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.

(13) '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.

(14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

"§ 130A-310.32. Brownfields agreement.

(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 public health and the environment instead of being remediated to current standards.

(3) There is a public benefit commensurate with the liability protection provided 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 complied with 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 contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the prospective developer will make available.

d. A schedule of remediation activities.

e. Applicable remediation standards.

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the brownfields property.

(3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer.

"§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who is complying 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 and the prospective developer is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under 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 and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

(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 provided under 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) If a land-use restriction set out in the Notice of Brownfields Property required under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the brownfields property in violation of a land-use restriction shall be liable for remediation to current standards. A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation at the brownfields property unless any of the following apply:

(1) The prospective developer knowingly or recklessly provides false information that forms a basis for the brownfields agreement or that is offered to demonstrate compliance with the brownfields agreement or fails to disclose relevant information about contamination at the brownfields property.

(2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the brownfields property that has not been remediated to current standards, unless the brownfields agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If the brownfields

agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the brownfields agreement.

(3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the brownfields property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the brownfields property or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfields property fully protective of public health and the environment as planned in the brownfields agreement.

(4) The Department obtains new information about a contaminant associated with the brownfields property or exposures at or around the brownfields property that raises the risk to public health or the environment associated with the brownfields property beyond an acceptable range and in a manner or to a degree not anticipated in the brownfields agreement. Any person whose use, including any change in use, of the brownfields property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.

(5) A prospective developer fails to file a timely and proper Notice of Brownfields Development under this Part.

"§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of

the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 30 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give

particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"**§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.

(3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

(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 land, and, if different, also under the name of the prospective developer conducting the redevelopment of the brownfields property.

(d) When a brownfields property 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 brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property 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 register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Brownfields Property and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part.

"§ 130A-310.36. Appeals.

A decision by the Department as to whether or not to enter into a brownfields agreement including the terms of any brownfields agreement is reviewable under Article 3 of Chapter 150B of the General Statutes.

"§ 130A-310.37. Construction of Part.

(a) This Part is not intended and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18

of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.

(5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the brownfields property to the remediation required under the brownfields agreement.

(6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically 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 remediation 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 and expenditures from the Brownfields Property Reuse Act Implementation Account."

Section 3. G.S. 130A-26.1(g) is amended by adding three new subdivisions to read:

"(5) Provides false information or fails to provide information relevant to a decision by the Department as to whether or not to enter into a brownfields agreement under Part 5 of Article 9 of this Chapter.

(6) Provides false information or fails to provide information required by a brownfields agreement under Part 5 of Article 9 of this Chapter.

(7) Provides false information relevant to a decision by the Department pursuant to:

a. G.S. 130A-308(b).

b. G.S. 130A-310.7(c).

c. G.S. 143-215.3(f).
d. G.S. 143-215.84(e)."

Section 4. G.S. 130A-308 reads as rewritten:

"**§ 130A-308. Continuing releases at permitted ~~facilities.~~ facilities; notification of completed corrective action.**

(a) Standards adopted under G.S. 130A-294(c) ~~shall require, and a permit issued after November 8, 1984,~~ and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S 130A-294(c) has been completed to current standards. A request for a determination that a corrective action at a facility has been completed to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the corrective action at a facility has been completed to current standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with current standards."

Section 5. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. Action for reimbursement; liability of responsible ~~parties.~~ parties; notification of completed remedial action.**

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or
(2) Contracts or arranges for any discharge or deposit; or
(3) Accepts for discharge or deposit; or

(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

(1) An act of God; or

(2) An act of war; or

(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or

(4) Any combination of the above causes.

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to current standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to current standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to current standards."

Section 6. G.S. 143-215.3 is amended by adding a new subsection to read:

"(f) Notification of Completed Remedial Action. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications."

Section 7. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) Notification of Completed Removal of Prohibited Discharges. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to current standards. A request for a determination that a discharge has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to current standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to current standards."

Section 8. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise available or appropriated to the Department.

Section 9. This act becomes effective 1 October 1997.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

July 1, 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George Givens, Staff Attorney
Jeff Hudson, Staff Attorney

SUBJECT: House Bill 1121 (Brownfields Property Reuse Act)

Section 1 sets out the findings of the General Assembly relating to the reuse of "brownfields property" (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 must 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 public 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.

The agreement must include: (1) a legal description of the property; (2) a description of any remediation to be conducted on the property; (3) any land use restrictions that will apply to the property; (4) the desired results of remediation; (5) the guidelines within which the desired results are to be accomplished; and (6) the consequences of achieving or not achieving those results. Failure to comply with an agreement will subject a developer to the enforcement provisions of this Part.

§130A-310.33. Liability protection.

A developer who enters into an agreement with DEHNR and is complying 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 and the developer is not required to undertake additional remediation pursuant to G.S. 130A-310.33(c) (*see paragraph below*). 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 assigns 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.

Pursuant to G.S. 130A-310.33(c), if a land-use restriction under the agreement is violated, the owner at the time of violation, the owners successors and assigns, and the owner's agents will be liable for remediation to current standards. A developer who completes the remediation required by an agreement 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. In the case of new information indicating the existence of unreported contamination (2), 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 a 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 the North Carolina Register. The developer will also conspicuously post a summary of the Notice on the property. The public and local governments will have 60 days within which to provide input into the cleanup and redevelopment plans. DEHNR will receive written request for a public meeting during a 30-day period and will hold a public meeting after giving 30 days notice if it determines that there is significant public interest. DEHNR will incorporate public comment into the agreement to the extent practicable and will give particular consideration to written comment that is supported by valid scientific information.

§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: (1) a survey plat prepared by a certified professional land surveyor of areas designated by DEHNR; (2) a legal description of the property; (3) the location and dimensions of areas of potential environmental concern; (4) the type, location, and quantity of contaminants on the property; and (5) 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 written 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, any unit of local government having jurisdiction over the property, or any person eligible for liability protection. A restriction will not be declared unenforceable due to: (1) lack of privity of estate or contract, (2) lack of benefit to particular land, or (3) lack of any property interest in particular land. Any person who owns or leases a property subject to a restriction will abide by the restriction.

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 an 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) prevent 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 in the Office of the State Treasurer and consists of fees collected under this Part, moneys appropriated 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 will be used to defray a portion of the costs of implementing this Part.

§130A-310.39. Fees.

DEHNR will collect the following fees: (1) $1,000.00 from a developer who submits a proposed agreement to DEHNR and (2) $500.00 from a developer who submits a final report certifying completion of remediation under an agreement. These fees will be credited to the Account.

§130A-310.40. Legislative reports.

DEHNR will report to the Environmental Review Commission on the Brownfields program concurrently with every report on the Inactive Waste Sites program (made on February 15 of each year). The report will evaluate the effectiveness of the Brownfields program in facilitating the remediation and reuse of existing industrial and commercial properties, include any recommendations for additional incentives or changes to improve effectiveness, and include information on receipts by and expenditures from the Account.

Section 3 makes it a Class I felony, which may include a fine of up to $100,000 per day of violation (not to exceed a cumulative total of $500,000 for each 30 day period of continuing violation), to provide false or incomplete information relevant to an agreement or relevant to a determination that remediation has been completed.

Sections 4 through 7 authorize DEHNR to issue a written notification that no further remediation will be required where clean up has been completed to current standards at permitted hazardous waste treatment, storage, and disposal facilities; inactive hazardous sites; groundwater remediation sites; and oil or hazardous substance discharge remediation sites.

Section 8 provides that the General Assembly is not obligated to appropriate funds to implement this act.

Section 9 makes this act effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1121 2nd Edition
SHORT TITLE: Brownfields Property Reuse Act
SPONSOR(S): Committee Substitute

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	**See assumptions and methodology**				
EXPENDITURES:	**Revenues from fees to be used to offset cost of administering program (See assumptions and methodology)**				
POSITIONS:	**None**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment Health and Natural Resources, Division of Waste Management

EFFECTIVE DATE: Effective July 1, 1997.

BILL SUMMARY:

Adds new Part 5 (the Brownfields Property Reuse Act) to Article 9 of G.S. Chapter 130A, relating to brownfields property or sites (defined as 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 state or federal remediation requirements). Provides for "brownfields agreements" between a prospective developer and the Department of Environment, Health, and Natural Resources, that (1) provide for cleanup, remediation, or other activities at brownfield property, (2) ensure the property is made and kept safe for its actual use, and (3) provide liability protection for persons consistent with the act. Developer that enters into and complies with such an agreement is not liable for remediation of areas of contaminants identified in the agreement except as specified in the agreement, as long as its activities conducted on the property do not increase the risk of harm to the public health or the environment. The protection also extends to persons under the developer's direction or control, any future owner, a person who develops or occupies the property, a successor or assign of any person with such protection, and any lender or fiduciary that provides financing for remediation or redevelopment of the property. Specifies that a person who conducts an environmental assessment or transaction screen on property is not a person responsible for remediation. Specifies exclusive circumstances under which a prospective

developer who complete requirements of an agreement may be required to undertake additional remediation.

Requires developer who desires to enter into a brownfields agreement to notify the public and the community in which the property is located of the planned remediation and redevelopment activities and to submit a notice of intent to redevelop brownfields property to the DEHNR. Specifies required content of the notice. If the DEHNR approves the notice, the developer must provide a copy to all local governments having jurisdiction over the property and publish a summary of it in a newspaper serving the area. DEHNR must publish notice of the approval in the North Carolina Register. After both publications, a public comment period of at least 60 days must follow. Requires DEHNR, before entering into an agreement, to take into account community and local government views and comments. A decision by DEHNR not to enter a brownfields agreement is reviewable under the contested case provisions of the Administrative Procedure Act.

Requires the preparation, approval by the DEHNR, and filing with the register of deeds of a "Notice of Brownfields Property" by a purchaser of a brownfields property that is not otherwise noted in the chain of title as a property on which contaminants are located. Requires register of deeds to record such notice and index it in the grantor index under names of owners and name of person conducting redevelopment of the property. Requires that any instrument of transfer contain in the description section a statement that the property has been classified and, if appropriate, cleaned up, as a brownfields property. Sets out procedure whereby Secretary of Environment, Health, and Natural Resources may cancel a notice of brownfields property.

Provides that a person who knowingly provides false information about a property's eligibility or omits or falsifies required information is guilty of a class I felony, which may include a fine of $50,000 per violation, each day a violation occurs being a separate violation.

Provides that use of brownfields property and any deed restrictions used as part of a redevelopment plan may not be inconsistent with local land development controls adopted under Article 19 of G.S. Chapter 160A or Article 18 of G.S. Chapter 153A. Specifies other laws and rights that the act is not intended to affect. Requires DEHNR, beginning Oct. 1, 1997, to conduct and submit to the Environmental Review Commission an evaluation of the effectiveness of the act concurrently with every report on the Inactive Waste Sites program.

Creates the Brownfields Study Commission, consisting of six members—three appointed by the Speaker and three by the President Pro Tempore — representing specified groups or communities. Directs Secretary of Environment, Health and Natural Resources to designate one employee of the department as an ex officio member. Requires the Commission to meet at least monthly and to report to the 1998 General Assembly and the Environmental Review Commission, no later than the first day the General Assembly convenes. Appropriates from General Fund to the General Assembly $50,000 for 1997-98 for costs of the Commission's work.[1]

House committee substitute makes the following changes to 1st edition. The committee substitute makes numerous clarifying changes and the following substantive changes: (1) deletes provisions making certain acts and omissions related to brownfields agreements a class I felony; (2) deletes provisions establishing the Brownfields Study Commission; (3) deletes appropriation provisions; (4) creates Brownfields Property Reuse Act Implementation Account as nonreverting, interest-bearing account in Office of State Treasurer (account will consist of fees, appropriations, and other revenues related to brownfields agreements and will be used to defray part of cost of implementing the act) and (5) makes act effective when it becomes law (was, July 1, 1997).[2]

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[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Volume 1997, Number 47, April 21, 1997.

[2] Daily Bulletin, Institute of Government, UNC-Chapel Hill, Volume 1997, Number 61, May 14, 1997.

ASSUMPTIONS AND METHODOLOGY:

Revenues

The amount of revenue collected from the fees imposed in this act is not known. It is expected that some revenue will be generated from the $1,000 proposal fee and the $500 final report fee, but the actual number of developers choosing to develop in a brownfield in a single year is not known.

Expenditures

Since the actual number of developers seeking an agreement with the Department of Environment, Health, and Natural Resources to develop a brownfield is unknown, the department is unable to estimate the cost of implementing this act. The legislation allows the use of receipts generated from the proposal and the final report fees to be used to offset any administrative costs incurred by the department. In addition, the bill requires the department to implement the requirements of this act from funds available to the department from General Fund appropriations or other sources.

Because the legislation is permissive with respect to departmental agreements with prospective developers, the department is not necessarily required to enter into an agreement, and therefore incur costs for which funds are not available. The first year the program is in effect, the department anticipates covering the costs of the brownfields property reuse program on a case by case basis, using any fees generated from development proposals and existing staff from the Inactive Hazardous Sites program in the Division of Waste Management.

After the initial year, the department expects to have a better idea of the total budget requirements for the program. If a large number of developers decide to seek brownfield agreements, then full-time program staff will be required, likely to include one or two technical staff persons (classified as environmental engineers, specialists or technicians) and an attorney to handle the negotiations and legal aspects of the agreements. Should additional staff be required, the department does not believe the receipts generated from proposal and final report fees will be sufficient to offset the total cost of the program.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk and Mona Moon

APPROVED BY: Tom Covington
DATE: June 2, 1997

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/3/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Morgan	NFIB
Tony Lieberman	S+ME, Inc
Ann Case	DEHNR
R. Rogers	DEHNR
Al Gore	Washington, DC
[illegible]	[illegible]
Sarah Fieler	DEHNR
Kim Smith	NCLM
Natalie Hopkins	Charlotte Chamber
Amy Henderson	Hunton & Williams
[illegible]	OSBM
Johnny Gray	OSBM
Gloria Nicholson	DEHNR

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Brown	N.C. State Ports
Bob Slocum	NC Forestry Assoc.
R. Paul Wilms	NCHBA
John B Saliba	N/A
Molly Diggins	NC Sierra Club
B. Holman	CENC / Sierra Club
Nancy Bradley	NCCBD
Arthur Mouberry	DENR - DWQ - Groundwater
Charlotte Jesneck	DENR - DWM
Don Carter	S&ME, Box 58069 Raleigh NC 27658

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bedsaul	NCCBI
Charles Case	Huntsm & Williams
Lou Bissette	Sen. Basnight's office
Tom Mundy	NC Assoc of Realtors

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 15, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 15, 1997, at 9:00 a.m., in Room 643 of the Legislative Office Building. Senator Albertson, chairman, presided and there were nineteen committee members present.

The following bill was discussed and all distributed material is attached:

HOUSE BILL 1097 - FISHERIES REFORM ACT-2 - Representative Jean Preston, sponsor. Senator Albertson said the committee would hear Representative Preston and Representative Redwine explain the bill at today's meeting, followed by comments from Franklin Freeman of the Governor's office and Sherri Evans-Stanton, Assistant Secretary, DEHNR. He said there would be another meeting on Thursday, July 17, to hear comments from the public.

There was a proposed committee substitute on the bill and Senator Conder moved that it be adopted for discussion purposes. Motion carried and Representatives Preston and Redwine began to explain the bill. Representative Preston said that many long hours had been spent to present this bill to the General Assembly. The moratorium was originally effective July 1, 1994-July 1,1996, but was extended to July 1, 1997. An extension has now been approved through September 1, 1997. Representative Redwine pointed out that this was a very controversial bill.

Franklin Freeman of the Governor's office was recognized to speak on behalf of Governor Hunt. He said the Governor's office was going to see that problems which had been pointed out in the audit were addressed in a satisfactory manner. Sherri Evans-Stanton, Assistant Secretary, DEHNR, pointed out the differences in items included in the bill; and introduced Preston Pate, the new Director of Marine Fisheries Commission, who made a few comments. Bob Lucas, Director, Marine Fisheries Division, asked for support on this bill.

Jeff Hudson of staff and Sherri Evans-Stanton of DEHNR answered questions from the committee members.

The meeting was adjourned, and Senator Albertson said that discussion would continue at a meeting on Thursday, July 17.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 15, 1997
9:00 a.m.
Room 643 - LOB

AGENDA

HB 1097 — FISHERIES REFORM ACT-2
Representative Preston

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Proposed Senate Committee Substitute H1097-PCS4136

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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.

"**§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
   a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
   b. Seasons for taking fish.
   c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate 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 as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"**§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.
(2) The frequency and gravity of the violation.
(3) The cost of rectifying the damage.
(4) Whether the violation was committed willfully or intentionally.
(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.
(6) 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.
(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 annual 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.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual 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.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income

from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other

affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall 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 financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. 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 Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair 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 four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 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 three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) 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 four regional committees.

(c) 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.

(d) 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) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.28. Marine Fisheries Endowment Fund.**

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) 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, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries

Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions 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 Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report 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 sub-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 will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-136(d1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, ~~a protector has~~ inspectors and protectors have the authority to enforce criminal laws under the following circumstances:

(1) When the inspector or protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the inspector or protector is engaged in the enforcement of laws otherwise within his ~~jurisdiction; or~~ jurisdiction.

(2) When the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, an inspector or a protector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to (2) of this subsection an inspector or a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of inspectors or protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

Section 4.2. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 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 A1 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.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor 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.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed 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 of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), 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 remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) 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 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, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. 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 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. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.4. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.5. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries

Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"§ 113-168. Definitions.

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all currently valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently

valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to the estate of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each

transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"§ 113-168.3. Retired Standard Commercial Fishing License.

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"§ 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 holding 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, 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) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(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 has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. 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 the required 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 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. 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 but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 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 Division 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 Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Other commercial licenses and permits authorized by the Commission.

The Commission may adopt rules to establish licenses or permits as set forth in this section. Licenses or permits shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission. The fee rate for licenses or permits authorized under this section shall, at a minimum, be adequate to compensate the Division for the actual and administrative cost associated with the conservation and management of the fishery.

(1) Crew licenses. -- The Commission may adopt rules to establish an individual crew license for persons working aboard a vessel

engaged in a commercial fishing operation at a rate not to exceed one hundred dollars ($100.00) per license.

(2) Permits. -- The Commission may adopt rules to establish permits for gear, equipment, and specialized activities at a rate not to exceed fifty dollars ($50.00) per permit. The Commission may require permits for commercial fishing operations that do not involve the use of a vessel. The Commission may require that a person obtain a special permit prior to transplanting oysters or clams.

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a North Carolina resident: Provided, that persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's, or guardian's shellfish license.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a

showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Limitation on Taking Shellfish Without a License. --

(1) A person who is not required to obtain a shellfish license under subsection (a) of this section shall not take more than:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

(2) Two or more persons who are not required to obtain a shellfish license under subsection (a) of this section and who are using a vessel to take shellfish shall not take more than:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is 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 taken 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;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) Every manager of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 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 not having its primary situs in North Carolina 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 accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional

information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of

suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under 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 Division. 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

agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not

refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws (1994 Regular Session), as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 6.1 of this act, to the licensing provisions of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish and Appeals Panel petition denials that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who held a valid endorsement to sell fish prior to 1 July 1999 is eligible to receive a SCFL. Any person who filed a petition with the Appeals Panel under 15A NCAC 3O.0303 for an endorsement to sell fish and whose petition was denied by the Appeals Panel prior to 1 May 1997 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division

shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

(b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as rewritten:

"(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The Secretary shall revoke a vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of the vessel or any other person using the owner's vessel is convicted of a violation under this ~~section, except for subsection (b).~~ section, other than conviction for a violation under subsection (b) of this section."

(c) All sections of Article 14 of Chapter 113 of the General Statutes other than G.S. 113-153.1 are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without being licensed under G.S. 113-168.9.

Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 7 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~July 31, 1997~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab license.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish. (With respect to nonvessel endorsements only)"

Section 6.2. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

~~(2)~~ G.S. ~~113-153.1.~~ 113-168.9, Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish. (With respect to nonvessel endorsements only)~~"

Section 6.3. (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 the Office of Marine Affairs.~~ 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 6.4. 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 6.3 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 6.5. 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. 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 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N -

76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.5, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.4 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Section 6.1 of this act becomes effective 31 July 1997. Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 15, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute for House Bill 1097, 5th edition - 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 February 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 6.3(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 4 regional advisory committees representing the different 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. A CHPP 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. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. The three commissions must report annually to Seafood and Aquaculture on progress and implementation of CHPPs.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Sections 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

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: July. 1, 1998.

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 and in the Director's sole discretion, 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: $200 for residents; $2,000 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; 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 1999-2000 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, 1999.

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: $35 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 July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999; effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 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 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 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 6.10 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 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

Proposed Changes to
HB 1097, 5th edition - Fisheries Reform Act-2

(Most changes as recommended by the Attorney General's Office)

The proposed committee substitute for HB 1097, 5th edition, Fisheries Reform Act-2, incorporates the following changes:

- Authorizes the State, upon the death of an SCFL license holder, to transfer the SCFL to the decedent's estate rather than to a surviving family member.

- Clarifies that unless otherwise provided, the MFC has the final agency decision making authority for contested cases within its jurisdiction.

- Clarifies that a crew member of a vessel engaged in a commercial fishing operation under the direction of a person holding an SCFL or RSCFL is not required to hold an SCFL or RSCFL.

- Clarifies that a vessel endorsement of a shellfish license only authorizes the use of the vessel for the purpose of taking shellfish.

- Clarifies the requirements for a vessel to have primary situs in NC for purposes of vessel endorsements.

- Clarifies that the MFC may adopt temporary rules to comply with fisheries management plans adopted by interstate fisheries management councils.

- Makes other technical and clarifying changes to Part II - Marine Fisheries Commission, Part V - Commercial Fishing Licenses; Transitional Provisions, and Part VI - Moratorium Extension; Miscellaneous Provisions; Effective Dates.

Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant
July 15, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1097 (Fourth Edition)
SHORT TITLE: Fisheries Reform Act - 2
SPONSOR(S): Representatives Preston & Redwine

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Departmental Receipts from Licensing Revenue			$355,151	$490,306	$623,927
EXPENDITURES					
Performance Audit	$25,000				
Marine Fisheries Commission	$114,384	$114,384	$114,384	$114,384	$114,384
Coastal Habitat Protection Plans		$294,847	$283,489	$290,028	$296,988
Fisheries Management Plans		$1,256,483	$1,082,770	$1,100,498	$1,116,298
Licensing Program Administration *		$542,491	$511,191	$521,632	$532,747
TOTAL EXPENDITURES	$139,384	$2,208,205	$1,991,834	$2,026,542	$2,060,417
NET GENERAL FUND	$139,384	$2,208,205	$1,636,683	$1,536,236	$1,436,490
POSITIONS:		34.25	34.25	34.25	34.25

****Licensing administration to be phased in during the 1998-99 fiscal year to have necessary equipment and personnel in place July 1, 1999.***

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources - Marine Fisheries Commission, Division of Marine Fisheries; Department of Correction; Judicial Department; Office of the State Auditor

EFFECTIVE DATE: Part I (performance audit) is effective retroactively to March 1, 1997. Part II (Marine Fisheries Commission) and Part IV (Marine Fisheries Law Enforcement) are effective September 1, 1997. Part III (Coastal Habitat Protection Plans and Fishery Management Plans) is effective July 1, 1998. Part V (Commercial Fishing Licenses) is effective July 1, 1999. Part VI, section 6.1 (extend moratorium on licenses) is effective June 30 ,1997. Sections 5.1 and 5.2 expire September 1, 2003. Section 5.6 (crab license) will expire July 1, 2000 and section 5.7 will become effective July 1, 2000. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.14 are effective when the act becomes law.

BILL SUMMARY: Part I of the bill directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries and to present the audit to the General Assembly by February 1, 1998. Part II of the bill reduces the membership of the Marine Fisheries Commission from 17 to 9 and changes the type of appointments to the Commission. Part III directs the Department of Environment, Health, and Natural Resources (DEHNR) to coordinate the preparation of draft Coastal Habitat Protection Plans and to prepare Fishery Management Plans for all commercially and recreationally significant fish species. Part IV increases the penalties for violating general fisheries laws and expands the powers of the marine patrol inspectors. Part V creates a Standard Commercial Fishing License (SCFL) priced at $200 for residents and $2000 for nonresidents. Owners of a SCFL must have a vessel endorsement whose price is based on vessel length. This part also creates a $35 Recreational Commercial Gear License (RCGL) for recreational fishermen who want to use commercial gear such as shrimp nets and crab pots. This part also makes changes in dealer licenses and other minor licenses. Part VI has miscellaneous provisions dealing with the moratorium on fishing licenses, the staggered terms of Marine Fisheries Commission members, and further legislative study of marine and estuarine fisheries habitats.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The differences in the current fishing licenses and the licenses proposed by HB 1097 are shown in the chart below and on page 3. The major change is the creation of the Standard Commercial Fishing License (SCFL) and the Recreational Commercial Gear License (RCGL), and the deletion of Endorsements to Sell.

LICENSE TYPE	CURRENT LAW	HB 1097
Standard Commercial Fishing Lic. (SCFL)		
Resident		$200
Nonresident		$2,000
Retired		$100
Replacement		$10
Vessel Endorsements	0-18 ft @ $1.00/ft	0-18 ft @ $1.00/ft
	18-38 ft @ $1.50/ft	18-38 ft @ $1.50/ft
	>38 ft @ $3.00/ft	38-50 ft @ $3.00/ft
		>50 ft @ $6.00/ft
	nonresident = $200	
Endorsement to Sell	0-18 ft @ $25	
	18-38 ft @ $35	
	>38 ft @ $45	
Fish Dealers		
Oysters	$50 stock shipper/$100 shucker	$50
Scallops	$50 stock shipper/$100 shucker	$50

Clams	$50 stock shipper/$100 shucker	$50
Crabs	$50 unprocessed/$100 processed	$50
Shrimp (incl. bait)	$50 unprocessed/$100 processed	$50
Finfish (incl. bait)	$50 unprocessed/$100 processed	$50
Dehydrating or oil-extracting plant	$50 fish dehydrating/$100 menhaden	$50
Consolidated		$300
Other		
Shellfish	$7.50	$25
Crab	$7.50	$7.50
Shellfish and crab	$15.00	
Vessel Crab	$22.50	
Menhaden	$2 per gross ton	$2 per gross ton
Spotter airplane	$100	$100
Toumament		$100
Ocean Fishing Pier	$0.50 per ft	$0.50 per ft
Crew Licenses	MFC authority to adopt	not to exceed $100
Permit for gear, equipment, special activity	MFC authority to adopt	not to exceed $50
Land or Sell License	$200	$200
Recreational Commercial Gear Lic. (RCGL)		Resident $35

The change in fishing licenses will increase revenue to the Division of Marine Fisheries beginning in FY 1999-00. In FY 1995-96, the primary revenue from fishing license receipts came from vessel endorsements ($700,137), endorsements to sell ($243,365), and dealers ($86,050). The revenue lost from reducing the number of ships needing vessel endorsements, abolishing the endorsement to sell, and reducing the dealer fees is replaced by the $200 SCFL and the $35 RCGL. When the new licenses become effective in FY 1999-00, the SCFL will yield $780,000 in revenue and the RCGL will earn $455,000 as shown below.

License Type	License Cost	Estimated Licenses	FY 1999-00	FY 2000-01	FY 2001-02
Standard Comm. Fishing Lic. (SCFL)					
Resident	$200	3900 (initial)	$780,000	$880,000	$980,000
Retired/Nonresident	$100/$2000	NA			
Vessel Endorsements	0-18 ft @ $1.00/ft	1,825	$29,383	$33,295	$37,078
	18-38 ft @ $1.50/ft	1,759	$64,643	$72,765	$81,034
	38-50 ft @ $3.00/ft	168	$22,025	$23,074	$25,696
	>50 ft @ $6.00/ft	148	$61,627	$73,286	$81,614
Fish Dealers					
Oysters	$50	57	$2,850	$2,936	$3,024
Scallops	$50	17	$850	$876	$902
Clams	$50	34	$1,700	$1,751	$1,804
Crabs	$50	114	$5,700	$5,871	$6,047
Shrimp (incl. bait)	$50	143	$7,150	$7,365	$7,585
Finfish (incl. bait)	$50	177	$8,850	$9,116	$9,389
Dehydrating or oil-extracting plant	$50	3	$150	$150	$150
Consolidated	$300	0	$0	$0	$0

Other					
Shellfish	$25	300	$7,500	$7,500	$7,500
Menhaden	$2 per gross ton	20	$25,000	$25,000	$25,000
Spotter airplane	$100	20	$2,000	$2,000	$2,000
Crab	$7.50	4,500	$33,750	$33,750	$33,750
Tournament	$100	20 (initial)	$2,000	$2,500	$3,000
Ocean Fishing Pier	$0.50 per ft	20	$6,000	$6,000	$6,000
Crew Licenses	$100	0			
Permit for gear,equipment,special activity	$50	0			
Recreational Comm. Gear Lic. (RCGL)	Resident $35	13,000	$455,000	$464,100	$473,382
	Non-Resident $250	NA			
Revenue from HB 1097			$1,516,178	$1,651,333	$1,784,954
FY 95-96 Revenue from Existing Fees			$1,161,027	$1,161,027	$1,161,027
Net revenue gain to Marine Fish. Div.			**$355,151**	**$490,306**	**$623,927**

The Division of Marine Fisheries estimates that 3,900 SCFLs will be purchased in FY1999-00. It assumes that only a portion of the fishermen now holding Endorsements-to-Sell (ETS) will buy the new license. In FY 1994-95 there were 6,539 individuals with ETS licenses. Of this number, 45% or 2,943 sold less than $1,000 worth of seafood. The Division assumes that the $200 license will discourage most of these low volume fishermen from obtaining a SCFL. The Division projects 3,780 individuals with a ETS license will apply for the SCFL. In addition, the Division assumes that the owners of 120 vessels that were granted vessel licenses through the appeals process in the last few years will also apply for a license. This brings the total to 3,900. This number will grow to 4,400 in FY 2000-01 and to 4,900 in FY 2001-02 when additional licenses are made available to new entrants into the market.

The owners of a SCFL must also buy a vessel endorsement. The cost of the endorsement is based on vessel length. The average length of the vessel and the percent of vessels in each category are shown below.

0-18 ft @ $1.00/ft	16.1 ft.	47%
18-38 ft @ $1.50/ft	24.5 ft	45%
38-50 ft @ $3.00/ft	43.7 ft.	4%
>50 ft @ $6.00/ft	69.4 ft.	4%

Of the 22,000 vessels that can now obtain vessel licenses and use commercial fishing gear in North Carolina, the Division estimates that 14,500 are owned by recreational fishermen. The Division believes 13,000 recreational fishermen will opt to buy the RCGL instead of the SCFL.

The number of dealers and other licenses shown in the chart are also estimates of the Division. The dealers licenses are grown by 3% a year.

EXPENDITURES

The Division of Marine Fisheries is currently authorized to use the proceeds from the sale of licenses and vessel endorsements to offset the operating costs of the License Administration Section, the Statistics and Information Management Section and the Marine Patrol Section. Although this legislation will increase license revenues beginning with the 1999-2000 fiscal year, the increased receipts will not be enough to offset the costs associated with implementing all the provisions of this act. Therefore , General Fund support will be required. However, revenues are projected to be sufficient to cover the increased costs associated with administering the licensing provisions by the 2001-2002 fiscal year.

- Marine Fisheries Commission *Effective September 1, 1997*

The bill reduces the membership of the Marine Fisheries Commission from seventeen to nine and establishes three technical advisory committees and four regional advisory committees.

The Division of Marine Fisheries estimates the annual operating costs of the reformed commission, exclusive of the advisory committees, to be $85,680. This estimate is based on a total travel ($178) and per diem ($100) rate of $278 per day for commission members in accordance with G.S. 138-6 and assumes the commission will meet up to eight times per year, for up to three days (9 members x $278/day x 8 meetings x 3 days/meeting = $60,048). In addition, the estimate includes allowed subsistence of $178 per day for two representatives from the Office of the Attorney General (2 representatives x $178/day x 8 meetings x 3 days/meeting = $8,544). Subsistence expenses for an ad hoc committee of twelve members are also included in the estimate, as the chair of the commission may appoint ad hoc committees to address special issues, (12 members x $178/day x 4 meetings x 2 days/meeting = $17,088).

The total annual cost of the seven technical and regional advisory committees is estimated to be $136,704, assuming there are twelve members on each committee, and six of the committees meet four times per year for two days (12 members x $178/day x 4 meetings x 2 days/meeting x 6 committees = $102,528), and the seventh committee meets 8 times per year for two days (12 members x $178/day x 8 meetings x 2 days/meeting $34,176).

The continuation budget for the Division of Marine Fisheries includes $108,000 to fund expenses incurred by the commission and should be used to offset any costs associated with modifying the present structure of the commission. Therefore, the net increase in expenditures for the Marine Fisheries Commission is $114,384 each year ($85,680 + $136,704 - $108,000).

- Coastal Habitat Protection Plans *Effective July 1, 1998*

According to the divison, four marine biologists and an office assistant will be required to develop habitat protection plans as required by the bill. The additional staff will be primarily responsible for preparing protection plans for critical fisheries habitats in cooperation with the Division of Water Quality and the Division of Coastal Management. The staff will also participate in the preparation of fisheries management plans with respect to habitat issues.

The total estimated budget requirements to implement the section on coastal habitat protection plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
(4) Marine Biologist II		165,380	170,767	176,501	182,605
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	189,347	195,489	202,028	208,988
Positions		5.0	5.0	5.0	5.0
Operating Expenses		105,500	88,000	88,000	88,000
Total Requirements	**$0**	**$294,847**	**$283,489**	**$290,028**	**$296,988**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Fisheries Management Plans *Effective July 1, 1998*

As written, the bill requires the Marine Fisheries Commission to establish a priority order and schedule for developing fisheries management plans (FMPs) for each of the state's commercially or recreationally significant coastal fisheries species or species groups. The division and the Moratorium Steering Committee, established by the General Assembly in 1994, have identified 31 species and species groups for which management plans are needed.

Staff for FMP Development

The estimated staff required to prepare and periodically update fisheries management plans for all 31 species or species groups, is based on the following assumptions (*italicized*) and information on the division's current workload capabilities:

1. *One full-time biologist is required to supervise on-going field data collection and analysis efforts to support the development of management plans for 4 species.* A total of 8 full-time biologists is required to prepare FMPs for 31 species and groups. Currently, the division has 7 full-time equivalent biologists assigned to the development of management plans; therefore, the division needs 1 additional biologist.
2. *Three full-time technicians are required to collect data to support 1 biologist.* A total of 24 technicians is needed to support 8 biologists. Currently, the division has 15 full-time equivalent technicians assigned to collect data for FMPs; therefore, the division needs 9 additional technicians.
3. *On average, at least three years of field data is necessary to develop a management plan for a single species or fisheries group.*
4. The division currently has sufficient data on 12 species groups to begin analyzing the information and writing management plans. The division also has sufficient baseline data on an additional 3 species groups to complete data collection, and begin data

analysis and plan writing within two years. The division does not have any data on the remaining 16 significant species.

5. *The division will complete an average of 5 initial FMPs per year during the first 3 years of the program and an average of 3 initial FMPs per year over the next five years of the program.* Based on this time line, initial management plans for all 31 species will be completed within 8 years (see table below for estimated plan development schedule).
6. *The division will revise each FMP every three years* (see table below for estimated revision schedule).
7. *The initial preparation of a fisheries management plan will take approximately six to seven months to complete. Revision of an existing plan will take approximately three months to complete.* Plans involving several species or multiple fisheries are expected to take longer.
8. *One full-time biologist is capable of performing statistical analyses and writing plans for 2 species groups.* Therefore, it will take 3 full-time biologists to write and periodically revise management plans for 31 species.
9. Two full-time population dynamicists are required to conduct modeling of fishery stocks to determine the status of the stocks to support the development of 31 FMPs. The division currently employs 1 full-time population dynamicist; therefore, 1 additional dynamicist will be required.

Advisory Councils

The bill requires the Chair of the Marine Fisheries Commission to appoint an advisory council for each FMP being developed. The division expects input from each council to be required only during the period of time when the plan is actually being written or revised. Each council will comprise up to twelve members, and will likely need to hold six meetings during the initial development of a plan and three meetings to revise an existing plan.

The table below indicates the **anticipated** schedule (**the Marine Fisheries Commission is responsible for adopting a formal schedule**) for the initial development and revision of fisheries management plans over the next ten years, as well as the cost of the required advisory councils.

FMP Development Schedule and Advisory Councils

	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
New FMP	5	5	5	3	3	3	3	4		
FMP Revision				5	5	5	8	8	8	11
Total Plans	5	5	5	8	8	8	11	12	8	11
Advisory Council Cost	$ 46,080	$ 46,080	$ 46,080	$ 43,008	$ 43,008	$ 43,008	$ 52,224	$ 61,440	$ 24,576	$ 33,792

Cost per Advisory Council		
New FMP (initial development)	$128/day x 12 members x 6 meetings/year	9,216
Revised FMP (3 year update)	$128/day x 12 members x 2 meetings/year	3,072

The total estimated budget requirements to implement the section on fisheries management plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Population Dynamicist		47,026	48,566	50,205	51,950
Marine Fisheries Biologist I		36,585	37,769	39,031	40,373
(3) Marine Fisheries Biologist II		124,035	128,075	132,376	136,954
(3) Marine Fisheries Technician II		80,355	82,910	85,630	88,525
(6) Marine Fisheries Technician III		179,826	185,586	191,717	198,244
Data Clerk Supervisor		25,830	26,649	27,521	28,450
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	517,623	534,278	552,006	570,878
Positions		16.0	16.0	16.0	16.0
Operating Expenses		692,780	502,412	502,412	502,412
Advisory Councils		46,080	46,080	46,080	43,008
Total Requirements	**$0**	**$1,256,483**	**$1,082,770**	**$1,100,498**	**$1,116,298**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Licensing Administration *Effective July 1, 1999*

The bill provides for the purchase and renewal of Standard Commercial Fishing Licenses, Recreational Commercial Gear Licenses, vessel endorsements, dealer and other licenses at the central and district offices of the Division of Marine Fisheries, by mail (applies to renewals only) or through designated license agents. Currently licenses are available only at the central office, located in Morehead City, and through authorized license agents. In addition to the office in Morehead City, the division maintains district offices in Wilmington, Washington, Columbia, Wanchese and Elizabeth City.

The division currently employs five full-time permanent and two part-time temporary staff persons to handle administration of the commercial licensing program. The current authorized budget of the Licensing Section is $208,649, of which $88,059 is from General Fund appropriations, and $120,590 is from license receipts.

According to the Division of Marine Fisheries, an additional 13.25 full-time equivalent positions are required to implement the licensing provisions of this act. The new positions include a processing unit supervisor to oversee the day-to-day operations of the new licensing program, and to investigate and resolve problems or questions concerning licenses. An office assistant position is needed to provide clerical support to the unit supervisor and licensing staff in the district offices. The division also anticipates the need for 10.25 full-time equivalent processing assistants to handle licensing transactions. This number includes seven full-time and two part-time (1.25 full-time equivalents) positions to manage sales in the division's five district offices

along the coast, one full-time position to process and track requests for renewals by mail, and one full-time position to oversee the newly created Recreational Commercial Gear License. The division plans to implement a more sophisticated licensing system by automating the current system, which relies heavily on hard copy paper flow and file maintenance, consolidating several existing data bases, and providing on-line access to historical license data and violation statistics. A computer services analyst position is proposed to maintain the new computer based licensing system.

Since the licensing requirements of this act are effective July 1, 1999, the division needs to complete the computer system and technology upgrades during the 1998-99 fiscal year to ensure the automated licensing system is in place and operational on July 1, 1999. The division also needs to phase in new staff during the 1998-99 fiscal year in order to have adequate time to hire and train personnel to be in place on July 1, 1999. The budget requirements reflected for licensing administration for the 1998-99 fiscal year assume funding for the positions will be effective January 1, 1998.

The total estimated budget requirements to implement the licensing section is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Processing Unit Supervisor V		25,244	26,043	26,894	27,799
Office Assistant IV		23,966	24,722	25,527	26,383
(7.25)Processing Assistant III		159,068	164,048	169,349	174,993
(3) Processing Assistant IV		70,271	72,483	74,838	77,345
Computer Services Analyst		32,965	34,027	35,157	36,360
Total Salaries & Benefits *	-	155,757	321,324	331,765	342,880
Positions		13.25	13.25	13.25	13.25
Operating Expenses		386,734	189,867	189,867	189,867
Total Requirements	**$0**	**$542,491**	**$511,191**	**$521,632**	**$532,747**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Department of Correction and Judicial Department (Criminal and Civil Penalties)

Currently, the Judicial Department does not have an offense code relating to offenses outlined in G.S. 113-187 and G.S. 113-190. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect the proposed changes to have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals are convicted of these offenses per year, approximately 1 or 2 additional inmates will be added to the prison population. If there are as many as 30 convictions, no more than 3 to 6 additional

inmates will be added to the prison system. These few potential additional inmates can be absorbed within existing Department of Correction resources.

Likewise, there will not be a significant fiscal impact on the Judicial Branch, as no major changes are expected in the time required to process or dispose of these cases. The Judicial Department can absorb these potential few new cases within existing resources.

- Office of the State Auditor

The State Auditor estimates the cost of conducting a detailed operational review and performance audit of the Division of Marine Fisheries by February 1, 1998 will be $25,000.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon, Richard Bostic and Charles Perusse

APPROVED BY: Tom Covington
DATE: May 29, 1997

DIVISION OF MARINE FISHERIES ORGANIZATIONAL IMPROVEMENT UPDATE
(July 7, 1997)

Division of Marine Fisheries leadership and staff are committed to a philosophy of continuous, measurable improvement with a vision of evolving into a model state agency. Although the achievement of this vision requires a tenacious, long-term effort, significant improvements have been made in recent months. The most significant improvements are:

LEADERSHIP AND MANAGEMENT:

♦ Customer Service. A new emphasis on high quality, customer friendly service can be seen through the following initiatives:

Licensing - a new licensing facility has opened in Morehead City to process license applicants efficiently in a pleasant, professional atmosphere.
- Additional parking has been created to ease public access and convenience.
- Mail-in license applications are being processed to a new Division standard of less than a 24-hour turn around time.
- A 31-day license "grace period" has been given to renew licenses.
- Customer friendly licensing is the designated #1 DMF priority for July.

Office Reorganization - office space has been completely reallocated to provide the easiest possible access by the public to key Division offices.

♦ Strategic Planning. A draft strategic planning document has been carefully crafted with total staff involvement to outline the following:
- The organization's MISSION
- VISION for its future
- VALUES to which it is committed
- KEY RESULT AREAS it has identified to achieve its vision, and
- IMPLEMENTING STRATEGIES to obtain the required key results.

This process continues with planning for restructuring to best accomplish its mission and toward detailed section to individual-level implementation plans.

♦ Manager and Supervisor Training. Supervisors have taken part in the following required supervisory training: Planning, Team Development, Conflict Resolution, Effective Communications, Problem Solving.

♦ Fiscal Management. Budget management computer software has been installed down to section manager level and required software use training conducted.

♦ Internal Staff Coordination. Weekly structured staff meetings are required of all staff.

♦ Policy and Procedures. DMF staff is developing a user friendly Division Policy and Procedures Manual for all employees. The draft manual deadline is August 1, 1997.

- Standards of Conduct . All employees have been briefed on DMF public service standards of conduct. By policy, all new employees are required to be briefed on the standards of conduct by the Deputy Director within 2 weeks of initial employment. Exit briefings by the Deputy Director for all departing employees are also mandated.

- Recruitment and Hiring. All new employees are hired strictly on the basis of the best qualifications.

PUBLIC INFORMATION & RELATIONS:

- Dialogue with Commerical Fishing Industry. DMF has established a "DMF page" in the NC Fisheries Association publication, *Tradewinds*, as a cooperative effort to open a new dialogue with the commercial fishing industry in NC.

- External Newsletter. DMF plans to publish a quarterly external newsletter beginning August 1997 to improve communications with all constituency groups and interested individuals.

- Internet Access. DMF now has an information and education Website which is drawing acclaim for its quality and educational value.

- Public Information Bulletin Board. A bulletin board has been established in the Morehead City facility to provide easy access by the public to all current fisheries proclamations and harvest information.

LAW ENFORCEMENT:

- Policy and Procedures. The Marine Patrol has implemented a Policy and Procedures Manual to standardize enforcement procedures and further professionalize the Marine Patrol officer force. All officers have been trained on this manual.

- Training. Marine Patrol officers have received more than two times the required annual training, including State Police Conflict Management training to improve interaction with the public and enhance officer safety.

- Reorganization. The Marine Patrol Headquarters section has been reorganized to eliminate an unnecessary supervisory level and to facilitate better operational coordination of air, ocean patrol and telecommunications units.

- Ocean Patrol. New, high speed patrol vessels are entering service in each district to improve enforcement of fisheries laws in the ocean and provide enhanced officer safety. DMF is pursuing oprtions to procure a large, high speed ocean patrol vessel for far off-shore and rough weather enforcement operations.

TECHNOLOGY:

- Information Technology and Assessment Plan. The Department developed a comprehensive information technology plan to integrate databases and improve customer service.

- Local Area Network (LAN). LAN access has been provided for all key supervisors and between all DMF offices to speed communications and reduce paperwork.

- Marine Patrol Communications. The Marine Patrol Communication system has been modernized to enhance law enforcement and officer safety.

- Biological Data. A Biological User's Group has been established to coordinate automated biological data sharing and improve user access to data. Key biological data is now available for access through the LAN by all users. Data entry errors have been reduced by a factor of 50 through training and rigid quality control.

- GIS Application. The GIS program has acquired access to the State GIS database and has incorporated GIS technologies into the Shellfish Mapping Program.

- GPS Training. Marine Patrol officers have been trained and certified in the Global Positioning System (GPS) to enhance data collection and enforcement.

RESOURCE MANAGEMENT:

- Resource Management Coordination. Bi-monthly resource manager's staff meetings have been established to plan and coordinate future fisheries management actions.

- Biological Review Team. This team has been established and given the authority for formally coordinating and conducting all DMF biological project reviews and recommending biological priorities.

- Aging Lab. Established a centralized laboratory to facilitate the rapid, standardized and quality controlled processing of all fisheries aging samples.

- Reorganization. Restructured the Resource Enhancement Section to eliminate unnecessary supervisory levels and better coordinate field operations.

- Vessel Overhaul. Made major structural repairs to Research Vessel LONG BAY for crew safety and operational flexibility.

- Rules Review. A rules review committee has been established and meets regularly to facilitate rules development and examine key regulatory issues.

WORK ENVIRONMENT: The most significant success of the Division has been its difficult but successful effort to overcome most of the damaged inter-personal relationships which were the most challenging obstacles to reform. Candid dialogue, professional standards of conduct and cooperation have established a more open, healthy working climate from which problem resolution, continuous improvement and accountability at all levels is developed. Significantly improved coordination, planning, public interaction and collaboration are evident.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/15/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Boehm	NC Wildlife Federation
Emily Saunders	NC Wildlife Federation
TANJA VUJIC	NC Environmental Defense Fund
DAVID HERZONG	State Planning
Dan Holman	CCNC / Sierra Club
Matthew J. Lane	Lt. Gov.
Larry D. Cobb	My Way Charters, Inc.
Nathaniel Reed	CCNC
Bryce A Hudson	DENR
Amy Gillespie	N.C. Attorney General's Office
Allen Jernigan	"

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Whittle	EHNR
Heather Jail	OSA
Richard B Hamilton	Wild life
Melvin M. Shepard, Jr	Fisheries Moratorium Steering Comm Home - P.O. Box 15, Sneads Ferry, N.C. 28460
Harold C. Knudsen	DMF - Marine Patrol
John A. Powell	EHNR - Div of Marine Fisheries
Janice M Fulcher	EHNR - Marine Fisheries
Louis Daniel	EHNR - Marine Fisheries
Preston Pate	EHNR - "
BOB LUCAS	MFC
Sherri Evans-Hart	DEHNR

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frankie Freeman	Gov.'s office
Ebeen Watson	Rep. Cindy Watson
Leon Salter	Commercial Fisherman
Paul Bierman	Commercial Fisherman
J. Robinson	Commercial fisherman
Jerry Schill	NC Fisheries Association
Daniel Styron	Commercial Fisherman
James M. Smith	James M. Smith, Jr. Farm
Sondra Gaskill	Commercial Fisherman
Tom D. Morris	Commercial Fisherman
Rod Simpkins	Individual Recreational Interest

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANNA TEFFT	OSBM
Curt Williams	Governor's Office
George Everett	MCIC
Ann Case	DEHNR
Norm BRADFORD	MFC
DAMON M. TATEM	MSC
Molly Diggins	NC Sierra Club
Twila Nelson	MFC
DICK BRAME	CCA-NC
[illegible]	WCSR/CCA-NC
Sandy Sands	WCSR/CCA-NC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Dowty	N. Carolina Cardiology
Jay Starkey	NCPC
Lana Christian	NCAWA
Kay Michaels	PPOD

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 17, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, July 17, 1997, at 9:00 a.m., in Room 643 of the Legislative Office Building. Senator Albertson, chairman, presided and there were eighteen committee members present.

The following bill was discussed and all distributed material is attached:

HOUSE BILL 1097 - FISHERIES REFORM ACT-2 - Representative Preston, sponsor. At the previous committee meeting, Representative Preston and Representative Redwine had begun to explain a proposed committee substitute for the bill (PCS 4136) which had been adopted for discussion purposes. Senator Albertson said at today's meeting the committee would hear from anyone wishing to make comments, but that comments would be limited to three minutes. The following made comments:

Tom Bean, N. C. Wildlife Federation
Dick Huffman, small commercial fisherman, Carteret County
Ron McPherson, recreational fisherman, Forsythe County
Dick Brame, Executive Director, Coastal Conservation Association of N. C., Wilmington, N. C.
Jerry Schill, President, N. C. Fisheries Association, New Bern, N. C.

Discussion continued on the proposed committee substitute. There were many questions from committee members. Senator Perdue sent forth an amendment and moved for its adoption. Motion carried. Senator McDaniel sent forth an amendment which Representative Redwine said he opposed and Senator Odom said he supported. No action was taken on Senator McDaniel's bill. Senator Horton sent forth an amendment and moved for its adoption. Motion carried. Senator Odom sent forth an amendment and moved for its adoption; however, no action was taken on the amendment as the bill sponsors had to leave the meeting to attend session of the House. The meeting continued and Al Jernigan of the Attorney General's Office and Sherri Evans-Stanton, Assistant Secretary, Natural Resources, DEHNR, answered questions from committee. There were many questions raised by members of the committee and Senator Albertson requested members to get their questions to staff to allow them time to prepare comments before the next meeting on this bill. He said discussion on the bill would continue at meeting on July 22.

Due to pending Senate session, meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, July 17, 1997
9:00 a.m.
Room 643 - LOB

AGENDA

HB 1097	FISHERIES REFORM ACT-2. Representative Preston

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Proposed Senate Committee Substitute H1097-PCS4136

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

H1097PCS4136-ART\SB-040.02

Date July 17 ,1997

Comm. Sub. [YES]
Amends Title [NO]
Fifth Edition PCS4136

Senator Perdue

moves to amend the bill on page 2, line 9,
by rewriting that line to read:

"Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit"; and

on page 2, line 11,
by rewriting that line to read:
"Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1097 DATE

S. B. No. Amendment No. 2 (to be filled in by Principal Clerk)

~~Rep.~~) Horton
Sen.)

moves to amend the bill on page 15 between lines 16 + 17

by inserting a new subsection denominated (3) TO read as follows:

"(3) Include conservation and management measures which prevent overfishing while achieving, on a continuing basis, the optimal yield from each fishery"

and on page 30 line 21 by deleting the date "1997" and inserting in lieu thereof the date "1997"

SIGNED

ADOPTED ✓ FAILED TABLED

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 17, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute for House Bill 1097, 5th edition - 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 February 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 6.3(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 4 regional advisory committees representing the different 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. A CHPP 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. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. The three commissions must report annually to Seafood and Aquaculture on progress and implementation of CHPPs.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Sections 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

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: July. 1, 1998.

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 and in the Director's sole discretion, 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: $200 for residents; $2,000 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; the SCFL holder's estate, a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; 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 1999-2000 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, 1999;
    - 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, 1999.

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: $35 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 July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999; effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 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 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 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 6.10 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 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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

Proposed Changes to HB 1097, 5th edition - Fisheries Reform Act-2

(Most changes as recommended by the Attorney General's Office)

The proposed committee substitute for HB 1097, 5th edition, Fisheries Reform Act-2, incorporates the following changes:

- Authorizes the State, upon the death of an SCFL license holder, to transfer the SCFL to the decedent's estate rather than to a surviving family member.

- Clarifies that unless otherwise provided, the MFC has the final agency decision making authority for contested cases within its jurisdiction.

- Clarifies that a crew member of a vessel engaged in a commercial fishing operation under the direction of a person holding an SCFL or RSCFL is not required to hold an SCFL or RSCFL.

- Clarifies that a vessel endorsement of a shellfish license only authorizes the use of the vessel for the purpose of taking shellfish.

- Clarifies the requirements for a vessel to have primary situs in NC for purposes of vessel endorsements.

- Clarifies that the MFC may adopt temporary rules to comply with fisheries management plans adopted by interstate fisheries management councils.

- Makes other technical and clarifying changes to Part II - Marine Fisheries Commission, Part V - Commercial Fishing Licenses; Transitional Provisions, and Part VI - Moratorium Extension; Miscellaneous Provisions; Effective Dates.

Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant
July 15, 1997

DIVISION OF MARINE FISHERIES ORGANIZATIONAL IMPROVEMENT UPDATE
(July 7, 1997)

Division of Marine Fisheries leadership and staff are committed to a philosophy of continuous, measurable improvement with a vision of evolving into a model state agency. Although the achievement of this vision requires a tenacious, long-term effort, significant improvements have been made in recent months. The most significant improvements are:

LEADERSHIP AND MANAGEMENT:

♦ Customer Service. A new emphasis on high quality, customer friendly service can be seen through the following initiatives:

Licensing - a new licensing facility has opened in Morehead City to process license applicants efficiently in a pleasant, professional atmosphere.
- Additional parking has been created to ease public access and convenience.
- Mail-in license applications are being processed to a new Division standard of less than a 24-hour turn around time.
- A 31-day license "grace period" has been given to renew licenses.
- Customer friendly licensing is the designated #1 DMF priority for July.

Office Reorganization - office space has been completely reallocated to provide the easiest possible access by the public to key Division offices.

♦ Strategic Planning. A draft strategic planning document has been carefully crafted with total staff involvement to outline the following:
- The organization's MISSION
- VISION for its future
- VALUES to which it is committed
- KEY RESULT AREAS it has identified to achieve its vision, and
- IMPLEMENTING STRATEGIES to obtain the required key results.

This process continues with planning for restructuring to best accomplish its mission and toward detailed section to individual-level implementation plans.

♦ Manager and Supervisor Training. Supervisors have taken part in the following required supervisory training: Planning, Team Development, Conflict Resolution, Effective Communications, Problem Solving.

♦ Fiscal Management. Budget management computer software has been installed down to section manager level and required software use training conducted.

♦ Internal Staff Coordination. Weekly structured staff meetings are required of all staff.

♦ Policy and Procedures. DMF staff is developing a user friendly Division Policy and Procedures Manual for all employees. The draft manual deadline is August 1, 1997.

- Standards of Conduct . All employees have been briefed on DMF public service standards of conduct. By policy, all new employees are required to be briefed on the standards of conduct by the Deputy Director within 2 weeks of initial employment. Exit briefings by the Deputy Director for all departing employees are also mandated.

- Recruitment and Hiring. All new employees are hired strictly on the basis of the best qualifications.

PUBLIC INFORMATION & RELATIONS:

- Dialogue with Commerical Fishing Industry. DMF has established a "DMF page" in the NC Fisheries Association publication, *Tradewinds*, as a cooperative effort to open a new dialogue with the commercial fishing industry in NC.

- External Newsletter. DMF plans to publish a quarterly external newsletter beginning August 1997 to improve communications with all constituency groups and interested individuals.

- Internet Access. DMF now has an information and education Website which is drawing acclaim for its quality and educational value.

- Public Information Bulletin Board. A bulletin board has been established in the Morehead City facility to provide easy access by the public to all current fisheries proclamations and harvest information.

LAW ENFORCEMENT:

- Policy and Procedures. The Marine Patrol has implemented a Policy and Procedures Manual to standardize enforcement procedures and further professionalize the Marine Patrol officer force. All officers have been trained on this manual.

- Training. Marine Patrol officers have received more than two times the required annual training, including State Police Conflict Management training to improve interaction with the public and enhance officer safety.

- Reorganization. The Marine Patrol Headquarters section has been reorganized to eliminate an unnecessary supervisory level and to facilitate better operational coordination of air, ocean patrol and telecommunications units.

- Ocean Patrol. New, high speed patrol vessels are entering service in each district to improve enforcement of fisheries laws in the ocean and provide enhanced officer safety. DMF is pursuing oprtions to procure a large, high speed ocean patrol vessel for far off-shore and rough weather enforcement operations.

TECHNOLOGY:

- Information Technology and Assessment Plan. The Department developed a comprehensive information technology plan to integrate databases and improve customer service.

- Local Area Network (LAN). LAN access has been provided for all key supervisors and between all DMF offices to speed communications and reduce paperwork.

- Marine Patrol Communications. The Marine Patrol Communication system has been modernized to enhance law enforcement and officer safety.

- Biological Data. A Biological User's Group has been established to coordinate automated biological data sharing and improve user access to data. Key biological data is now available for access through the LAN by all users. Data entry errors have been reduced by a factor of 50 through training and rigid quality control.

- GIS Application. The GIS program has acquired access to the State GIS database and has incorporated GIS technologies into the Shellfish Mapping Program.

- GPS Training. Marine Patrol officers have been trained and certified in the Global Positioning System (GPS) to enhance data collection and enforcement.

RESOURCE MANAGEMENT:

- Resource Management Coordination. Bi-monthly resource manager's staff meetings have been established to plan and coordinate future fisheries management actions.

- Biological Review Team. This team has been established and given the authority for formally coordinating and conducting all DMF biological project reviews and recommending biological priorities.

- Aging Lab. Established a centralized laboratory to facilitate the rapid, standardized and quality controlled processing of all fisheries aging samples.

- Reorganization. Restructured the Resource Enhancement Section to eliminate unnecessary supervisory levels and better coordinate field operations.

- Vessel Overhaul. Made major structural repairs to Research Vessel LONG BAY for crew safety and operational flexibility.

- Rules Review. A rules review committee has been established and meets regularly to facilitate rules development and examine key regulatory issues.

WORK ENVIRONMENT: The most significant success of the Division has been its difficult but successful effort to overcome most of the damaged inter-personal relationships which were the most challenging obstacles to reform. Candid dialogue, professional standards of conduct and cooperation have established a more open, healthy working climate from which problem resolution, continuous improvement and accountability at all levels is developed. Significantly improved coordination, planning, public interaction and collaboration are evident.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1097 (Fourth Edition)
SHORT TITLE: Fisheries Reform Act - 2
SPONSOR(S): Representatives Preston & Redwine

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Departmental Receipts from Licensing Revenue			$355,151	$490,306	$623,927
EXPENDITURES					
Performance Audit	$25,000				
Marine Fisheries Commission	$114,384	$114,384	$114,384	$114,384	$114,384
Coastal Habitat Protection Plans		$294,847	$283,489	$290,028	$296,988
Fisheries Management Plans		$1,256,483	$1,082,770	$1,100,498	$1,116,298
Licensing Program Administration *		$542,491	$511,191	$521,632	$532,747
TOTAL EXPENDITURES	$139,384	$2,208,205	$1,991,834	$2,026,542	$2,060,417
NET GENERAL FUND	$139,384	$2,208,205	$1,636,683	$1,536,236	$1,436,490
POSITIONS:		34.25	34.25	34.25	34.25

**Licensing administration to be phased in during the 1998-99 fiscal year to have necessary equipment and personnel in place July 1, 1999.*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources - Marine Fisheries Commission, Division of Marine Fisheries; Department of Correction; Judicial Department; Office of the State Auditor

EFFECTIVE DATE: Part I (performance audit) is effective retroactively to March 1, 1997. Part II (Marine Fisheries Commission) and Part IV (Marine Fisheries Law Enforcement) are effective September 1, 1997. Part III (Coastal Habitat Protection Plans and Fishery Management Plans) is effective July 1, 1998. Part V (Commercial Fishing Licenses) is effective July 1, 1999. Part VI, section 6.1 (extend moratorium on licenses) is effective June 30 ,1997. Sections 5.1 and 5.2 expire September 1, 2003. Section 5.6 (crab license) will expire July 1, 2000 and section 5.7 will become effective July 1, 2000. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.14 are effective when the act becomes law.

BILL SUMMARY: Part I of the bill directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries and to present the audit to the General Assembly by February 1, 1998. Part II of the bill reduces the membership of the Marine Fisheries Commission from 17 to 9 and changes the type of appointments to the Commission. Part III directs the Department of Environment, Health, and Natural Resources (DEHNR) to coordinate the preparation of draft Coastal Habitat Protection Plans and to prepare Fishery Management Plans for all commercially and recreationally significant fish species. Part IV increases the penalties for violating general fisheries laws and expands the powers of the marine patrol inspectors. Part V creates a Standard Commercial Fishing License (SCFL) priced at $200 for residents and $2000 for nonresidents. Owners of a SCFL must have a vessel endorsement whose price is based on vessel length. This part also creates a $35 Recreational Commercial Gear License (RCGL) for recreational fishermen who want to use commercial gear such as shrimp nets and crab pots. This part also makes changes in dealer licenses and other minor licenses. Part VI has miscellaneous provisions dealing with the moratorium on fishing licenses, the staggered terms of Marine Fisheries Commission members, and further legislative study of marine and estuarine fisheries habitats.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The differences in the current fishing licenses and the licenses proposed by HB 1097 are shown in the chart below and on page 3. The major change is the creation of the Standard Commercial Fishing License (SCFL) and the Recreational Commercial Gear License (RCGL), and the deletion of Endorsements to Sell.

LICENSE TYPE	CURRENT LAW	HB 1097
Standard Commercial Fishing Lic. (SCFL)		
Resident		$200
Nonresident		$2,000
Retired		$100
Replacement		$10
Vessel Endorsements	0-18 ft @ $1.00/ft	0-18 ft @ $1.00/ft
	18-38 ft @ $1.50/ft	18-38 ft @ $1.50/ft
	>38 ft @ $3.00/ft	38-50 ft @ $3.00/ft
		>50 ft @ $6.00/ft
	nonresident = $200	
Endorsement to Sell	0-18 ft @ $25	
	18-38 ft @ $35	
	>38 ft @ $45	
Fish Dealers		
Oysters	$50 stock shipper/$100 shucker	$50
Scallops	$50 stock shipper/$100 shucker	$50

Clams	$50 stock shipper/$100 shucker	$50
Crabs	$50 unprocessed/$100 processed	$50
Shrimp (incl. bait)	$50 unprocessed/$100 processed	$50
Finfish (incl. bait)	$50 unprocessed/$100 processed	$50
Dehydrating or oil-extracting plant	$50 fish dehydrating/$100 menhaden	$50
Consolidated		$300
Other		
Shellfish	$7.50	$25
Crab	$7.50	$7.50
Shellfish and crab	$15.00	
Vessel Crab	$22.50	
Menhaden	$2 per gross ton	$2 per gross ton
Spotter airplane	$100	$100
Tournament		$100
Ocean Fishing Pier	$0.50 per ft	$0.50 per ft
Crew Licenses	MFC authority to adopt	not to exceed $100
Permit for gear, equipment, special activity	MFC authority to adopt	not to exceed $50
Land or Sell License	$200	$200

Recreational Commercial Gear Lic. (RCGL) Resident $35

The change in fishing licenses will increase revenue to the Division of Marine Fisheries beginning in FY 1999-00. In FY 1995-96, the primary revenue from fishing license receipts came from vessel endorsements ($700,137), endorsements to sell ($243,365), and dealers ($86,050). The revenue lost from reducing the number of ships needing vessel endorsements, abolishing the endorsement to sell, and reducing the dealer fees is replaced by the $200 SCFL and the $35 RCGL. When the new licenses become effective in FY 1999-00, the SCFL will yield $780,000 in revenue and the RCGL will earn $455,000 as shown below.

License Type	License Cost	Estimated Licenses	FY 1999-00	FY 2000-01	FY 2001-02
Standard Comm. Fishing Lic. (SCFL)					
Resident	$200	3900 (initial)	$780,000	$880,000	$980,000
Retired/Nonresident	$100/$2000	NA			
Vessel Endorsements	0-18 ft @ $1.00/ft	1,825	$29,383	$33,295	$37,078
	18-38 ft @ $1.50/ft	1,759	$64,643	$72,765	$81,034
	38-50 ft @ $3.00/ft	168	$22,025	$23,074	$25,696
	>50 ft @ $6.00/ft	148	$61,627	$73,286	$81,614
Fish Dealers					
Oysters	$50	57	$2,850	$2,936	$3,024
Scallops	$50	17	$850	$876	$902
Clams	$50	34	$1,700	$1,751	$1,804
Crabs	$50	114	$5,700	$5,871	$6,047
Shrimp (incl. bait)	$50	143	$7,150	$7,365	$7,585
Finfish (incl. bait)	$50	177	$8,850	$9,116	$9,389
Dehydrating or oil-extracting plant	$50	3	$150	$150	$150
Consolidated	$300	0	$0	$0	$0

Other					
Shellfish	$25	300	$7,500	$7,500	$7,500
Menhaden	$2 per gross ton	20	$25,000	$25,000	$25,000
Spotter airplane	$100	20	$2,000	$2,000	$2,000
Crab	$7.50	4,500	$33,750	$33,750	$33,750
Tournament	$100	20 (initial)	$2,000	$2,500	$3,000
Ocean Fishing Pier	$0.50 per ft	20	$6,000	$6,000	$6,000
Crew Licenses	$100	0			
Permit for gear,equipment,special activity	$50	0			
Recreational Comm. Gear Lic. (RCGL)	Resident $35	13,000	$455,000	$464,100	$473,382
	Non-Resident $250	NA			
Revenue from HB 1097			$1,516,178	$1,651,333	$1,784,954
FY 95-96 Revenue from Existing Fees			$1,161,027	$1,161,027	$1,161,027
Net revenue gain to Marine Fish. Div.			**$355,151**	**$490,306**	**$623,927**

The Division of Marine Fisheries estimates that 3,900 SCFLs will be purchased in FY1999-00. It assumes that only a portion of the fishermen now holding Endorsements-to-Sell (ETS) will buy the new license. In FY 1994-95 there were 6,539 individuals with ETS licenses. Of this number, 45% or 2,943 sold less than $1,000 worth of seafood. The Division assumes that the $200 license will discourage most of these low volume fishermen from obtaining a SCFL. The Division projects 3,780 individuals with a ETS license will apply for the SCFL. In addition, the Division assumes that the owners of 120 vessels that were granted vessel licenses through the appeals process in the last few years will also apply for a license. This brings the total to 3,900. This number will grow to 4,400 in FY 2000-01 and to 4,900 in FY 2001-02 when additional licenses are made available to new entrants into the market.

The owners of a SCFL must also buy a vessel endorsement. The cost of the endorsement is based on vessel length. The average length of the vessel and the percent of vessels in each category are shown below.

0-18 ft @ $1.00/ft	16.1 ft.	47%
18-38 ft @ $1.50/ft	24.5 ft	45%
38-50 ft @ $3.00/ft	43.7 ft.	4%
>50 ft @ $6.00/ft	69.4 ft.	4%

Of the 22,000 vessels that can now obtain vessel licenses and use commercial fishing gear in North Carolina, the Division estimates that 14,500 are owned by recreational fishermen. The Division believes 13,000 recreational fishermen will opt to buy the RCGL instead of the SCFL.

The number of dealers and other licenses shown in the chart are also estimates of the Division. The dealers licenses are grown by 3% a year.

EXPENDITURES

The Division of Marine Fisheries is currently authorized to use the proceeds from the sale of licenses and vessel endorsements to offset the operating costs of the License Administration Section, the Statistics and Information Management Section and the Marine Patrol Section. Although this legislation will increase license revenues beginning with the 1999-2000 fiscal year, the increased receipts will not be enough to offset the costs associated with implementing all the provisions of this act. Therefore , General Fund support will be required. However, revenues are projected to be sufficient to cover the increased costs associated with administering the licensing provisions by the 2001-2002 fiscal year.

- Marine Fisheries Commission *Effective September 1, 1997*

The bill reduces the membership of the Marine Fisheries Commission from seventeen to nine and establishes three technical advisory committees and four regional advisory committees.

The Division of Marine Fisheries estimates the annual operating costs of the reformed commission, exclusive of the advisory committees, to be $85,680. This estimate is based on a total travel ($178) and per diem ($100) rate of $278 per day for commission members in accordance with G.S. 138-6 and assumes the commission will meet up to eight times per year, for up to three days (9 members x $278/day x 8 meetings x 3 days/meeting = $60,048). In addition, the estimate includes allowed subsistence of $178 per day for two representatives from the Office of the Attorney General (2 representatives x $178/day x 8 meetings x 3 days/meeting = $8,544). Subsistence expenses for an ad hoc committee of twelve members are also included in the estimate, as the chair of the commission may appoint ad hoc committees to address special issues, (12 members x $178/day x 4 meetings x 2 days/meeting = $17,088).

The total annual cost of the seven technical and regional advisory committees is estimated to be $136,704, assuming there are twelve members on each committee, and six of the committees meet four times per year for two days (12 members x $178/day x 4 meetings x 2 days/meeting x 6 committees = $102,528), and the seventh committee meets 8 times per year for two days (12 members x $178/day x 8 meetings x 2 days/meeting $34,176).

The continuation budget for the Division of Marine Fisheries includes $108,000 to fund expenses incurred by the commission and should be used to offset any costs associated with modifying the present structure of the commission. Therefore, the net increase in expenditures for the Marine Fisheries Commission is $114,384 each year ($85,680 + $136,704 - $108,000).

- Coastal Habitat Protection Plans *Effective July 1, 1998*

According to the divison, four marine biologists and an office assistant will be required to develop habitat protection plans as required by the bill. The additional staff will be primarily responsible for preparing protection plans for critical fisheries habitats in cooperation with the Division of Water Quality and the Division of Coastal Management. The staff will also participate in the preparation of fisheries management plans with respect to habitat issues.

The total estimated budget requirements to implement the section on coastal habitat protection plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
(4) Marine Biologist II		165,380	170,767	176,501	182,605
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	189,347	195,489	202,028	208,988
Positions		5.0	5.0	5.0	5.0
Operating Expenses		105,500	88,000	88,000	88,000
Total Requirements	**$0**	**$294,847**	**$283,489**	**$290,028**	**$296,988**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Fisheries Management Plans *Effective July 1, 1998*

As written, the bill requires the Marine Fisheries Commission to establish a priority order and schedule for developing fisheries management plans (FMPs) for each of the state's commercially or recreationally significant coastal fisheries species or species groups. The division and the Moratorium Steering Committee, established by the General Assembly in 1994, have identified 31 species and species groups for which management plans are needed.

Staff for FMP Development

The estimated staff required to prepare and periodically update fisheries management plans for all 31 species or species groups, is based on the following assumptions (*italicized*) and information on the division's current workload capabilities:

1. *One full-time biologist is required to supervise on-going field data collection and analysis efforts to support the development of management plans for 4 species.* A total of 8 full-time biologists is required to prepare FMPs for 31 species and groups. Currently, the division has 7 full-time equivalent biologists assigned to the development of management plans; therefore, the division needs 1 additional biologist.
2. *Three full-time technicians are required to collect data to support 1 biologist.* A total of 24 technicians is needed to support 8 biologists. Currently, the division has 15 full-time equivalent technicians assigned to collect data for FMPs; therefore, the division needs 9 additional technicians.
3. *On average, at least three years of field data is necessary to develop a management plan for a single species or fisheries group.*
4. The division currently has sufficient data on 12 species groups to begin analyzing the information and writing management plans. The division also has sufficient baseline data on an additional 3 species groups to complete data collection, and begin data

analysis and plan writing within two years. The division does not have any data on the remaining 16 significant species.

5. *The division will complete an average of 5 initial FMPs per year during the first 3 years of the program and an average of 3 initial FMPs per year over the next five years of the program.* Based on this time line, initial management plans for all 31 species will be completed within 8 years (see table below for estimated plan development schedule).
6. *The division will revise each FMP every three years* (see table below for estimated revision schedule).
7. *The initial preparation of a fisheries management plan will take approximately six to seven months to complete. Revision of an existing plan will take approximately three months to complete.* Plans involving several species or multiple fisheries are expected to take longer.
8. *One full-time biologist is capable of performing statistical analyses and writing plans for 2 species groups.* Therefore, it will take 3 full-time biologists to write and periodically revise management plans for 31 species.
9. Two full-time population dynamicists are required to conduct modeling of fishery stocks to determine the status of the stocks to support the development of 31 FMPs. The division currently employs 1 full-time population dynamicist; therefore, 1 additional dynamicist will be required.

Advisory Councils

The bill requires the Chair of the Marine Fisheries Commission to appoint an advisory council for each FMP being developed. The division expects input from each council to be required only during the period of time when the plan is actually being written or revised. Each council will comprise up to twelve members, and will likely need to hold six meetings during the initial development of a plan and three meetings to revise an existing plan.

The table below indicates the **anticipated** schedule (**the Marine Fisheries Commission is responsible for adopting a formal schedule**) for the initial development and revision of fisheries management plans over the next ten years, as well as the cost of the required advisory councils.

FMP Development Schedule and Advisory Councils

	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
New FMP	5	5	5	3	3	3	3	4		
FMP Revision				5	5	5	8	8	8	11
Total Plans	5	5	5	8	8	8	11	12	8	11
Advisory Council Cost	$ 46,080	$ 46,080	$ 46,080	$ 43,008	$ 43,008	$ 43,008	$ 52,224	$ 61,440	$ 24,576	$ 33,792

Cost per Advisory Council

New FMP (initial development)	$128/day x 12 members x 6 meetings/year	9,216
Revised FMP (3 year update)	$128/day x 12 members x 2 meetings/year	3,072

The total estimated budget requirements to implement the section on fisheries management plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Population Dynamicist		47,026	48,566	50,205	51,950
Marine Fisheries Biologist I		36,585	37,769	39,031	40,373
(3) Marine Fisheries Biologist II		124,035	128,075	132,376	136,954
(3) Marine Fisheries Technician II		80,355	82,910	85,630	88,525
(6) Marine Fisheries Technician III		179,826	185,586	191,717	198,244
Data Clerk Supervisor		25,830	26,649	27,521	28,450
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	517,623	534,278	552,006	570,878
Positions		16.0	16.0	16.0	16.0
Operating Expenses		692,780	502,412	502,412	502,412
Advisory Councils		46,080	46,080	46,080	43,008
Total Requirements	**$0**	**$1,256,483**	**$1,082,770**	**$1,100,498**	**$1,116,298**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Licensing Administration *Effective July 1, 1999*

The bill provides for the purchase and renewal of Standard Commercial Fishing Licenses, Recreational Commercial Gear Licenses, vessel endorsements, dealer and other licenses at the central and district offices of the Division of Marine Fisheries, by mail (applies to renewals only) or through designated license agents. Currently licenses are available only at the central office, located in Morehead City, and through authorized license agents. In addition to the office in Morehead City, the division maintains district offices in Wilmington, Washington, Columbia, Wanchese and Elizabeth City.

The division currently employs five full-time permanent and two part-time temporary staff persons to handle administration of the commercial licensing program. The current authorized budget of the Licensing Section is $208,649, of which $88,059 is from General Fund appropriations, and $120,590 is from license receipts.

According to the Division of Marine Fisheries, an additional 13.25 full-time equivalent positions are required to implement the licensing provisions of this act. The new positions include a processing unit supervisor to oversee the day-to-day operations of the new licensing program, and to investigate and resolve problems or questions concerning licenses. An office assistant position is needed to provide clerical support to the unit supervisor and licensing staff in the district offices. The division also anticipates the need for 10.25 full-time equivalent processing assistants to handle licensing transactions. This number includes seven full-time and two part-time (1.25 full-time equivalents) positions to manage sales in the division's five district offices

along the coast, one full-time position to process and track requests for renewals by mail, and one full-time position to oversee the newly created Recreational Commercial Gear License. The division plans to implement a more sophisticated licensing system by automating the current system, which relies heavily on hard copy paper flow and file maintenance, consolidating several existing data bases, and providing on-line access to historical license data and violation statistics. A computer services analyst position is proposed to maintain the new computer based licensing system.

Since the licensing requirements of this act are effective July 1, 1999, the division needs to complete the computer system and technology upgrades during the 1998-99 fiscal year to ensure the automated licensing system is in place and operational on July 1, 1999. The division also needs to phase in new staff during the 1998-99 fiscal year in order to have adequate time to hire and train personnel to be in place on July 1, 1999. The budget requirements reflected for licensing administration for the 1998-99 fiscal year assume funding for the positions will be effective January 1, 1998.

The total estimated budget requirements to implement the licensing section is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Processing Unit Supervisor V		25,244	26,043	26,894	27,799
Office Assistant IV		23,966	24,722	25,527	26,383
(7.25)Processing Assistant III		159,068	164,048	169,349	174,993
(3) Processing Assistant IV		70,271	72,483	74,838	77,345
Computer Services Analyst		32,965	34,027	35,157	36,360
Total Salaries & Benefits *	-	155,757	321,324	331,765	342,880
Positions		13.25	13.25	13.25	13.25
Operating Expenses		386,734	189,867	189,867	189,867
Total Requirements	**$0**	**$542,491**	**$511,191**	**$521,632**	**$532,747**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Department of Correction and Judicial Department (Criminal and Civil Penalties)

Currently, the Judicial Department does not have an offense code relating to offenses outlined in G.S. 113-187 and G.S. 113-190. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect the proposed changes to have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals are convicted of these offenses per year, approximately 1 or 2 additional inmates will be added to the prison population. If there are as many as 30 convictions, no more than 3 to 6 additional

inmates will be added to the prison system. These few potential additional inmates can be absorbed within existing Department of Correction resources.

Likewise, there will not be a significant fiscal impact on the Judicial Branch, as no major changes are expected in the time required to process or dispose of these cases. The Judicial Department can absorb these potential few new cases within existing resources.

- Office of the State Auditor

The State Auditor estimates the cost of conducting a detailed operational review and performance audit of the Division of Marine Fisheries by February 1, 1998 will be $25,000.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon, Richard Bostic and Charles Perusse

APPROVED BY: Tom Covington
DATE: May 29, 1997

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/17/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie D. Beavers	Womble Carlyle Sandridge & Rice, PLLC
Emily A. Moseley	Womble Carlyle Sandridge & Rice, PLLC
Bryan D. Graham	same
ANNE MORRISON	SAME
George Sistrunk	Same
Betty Gray	CCA-NC
Matthew J. Morse	Office of the Lt. Gov.
J. Holman	CCNC / Sierra Club
Jim Utsey	TTA
MELVIN SHEPARD, Jr.	MORATORIUM STEERING COMMITTEE
David Herzog	State Planning

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/17/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	DMF
Myron Smith	Family and Friend of PI 27615 Commercial Fisherman 1724 Briarforest
Twila Nelson	MFC
	NC DMF
Janice Gulick	DEHNR (DMF)
	NC Marine Fisheries Com. / NCPC
Heather Jail	OSA
Allen Jernigan	Attorney General's Off.
Amy Gillespie	Attorney General's Office
Dan McCanless	AG Office
Carol Oakley	Office of Gov

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/17/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J B Howes	NC DENR
Johnny Gray	OSBM
[illegible]	OSBM
R. Rogers	ENR
Frank Freeman	Gov.'s office
Curt Williams	Governor's Office
A. B. Swindell IV	BFI
Patsy Rowden	NCACC
R. Paul Wilms	NCMSA
Mike Carroll	NCMSA
Laura Hartsell	MCIC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/17/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Billie Simpkins	Integrity Development Systems 300 Northbrook Dr. Raleigh NC 27609
Lee Duncan	WCSR/CCANC
Dick Brame	CCA-NC
Mac Corrin	CCA-NC
Ron McPherson	Recreational fisherman 1448 Ehert St, Winston-Salem, NC 27103
[illegible]	NCADA
TANJA VUJIĆ	NC EDF
Nathaniel Mund	CCNC
Emily Saunders	NC Wildlife Federation
Michael G. Burdl	NC DMF
Lewis Daniel	NC DMF

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES 7/17/97

Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JERRY SCHILL	NC Fisheries Association

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 22, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 22, 1997, at 9:00 a.m., in Room 421 of the Legislative Office Building. Senator Albertson, chairman, presided and there were seventeen committee members present.

At the request of Senator Horton, Tom Earnhardt was invited to speak to the committee today on the decline of certain species of fish. Earnhardt is a Professor of Law at North Carolina Central University and a former Assistant Secretary of the N. C. Department of Administration.

The following bill was discussed and all distributed material is attached:

HOUSE BILL 1097 - FISHERIES REFORM ACT-2. - Representative Preston, sponsor, and Representative Redwine were recognized to continue explanation of the proposed committee substitute (PCS4136); however, staff said there was a new proposed committee substitute (PCS7355). Senator Odom moved that PCS7355 be adopted for discussion purposes. Motion carried. Jeff Hudson of staff explained the changes in the new proposed committee substitute (PCS7355), which included the adopted amendments that Senator Perdue and Senator Horton had presented at the last meeting. Senator McDaniel had sent forth an amendment at the last meeting but no action had been taken on it. Staff had worked with Senator McDaniel to make some minor changes in the new proposed committee substitute which were satisfactory to Senator McDaniel and he withdrew his amendment. Also pending from the last meeting was an amendment from Senator Odom which he had moved be adopted; however, no action had been taken on the amendment at the July 17 meeting because the sponsors had had to leave to attend a session of the House. His motion carried at today's meeting (see Amendment #3, dated July 17, 1997, attached) and it will be incorporated in the proposed committee substitute. Representative Redwine said he had a couple of concerns with the new proposed committee substitute. Senator Perdue made extensive comments on the new PCS. Senator Odom sent forth an amendment (Amendment #1, dated July 22, 1997) and moved for its adoption. Representative Preston spoke against the amendment. Also speaking against the amendment were Charles Fullwood, Executive Director, N. C. Wildlife Resources Commission; Senator Gulley; Senator Wellons; and Senator Jenkins who asked Senator Odom to withdraw his amendment. Senator Odom did not withdraw his amendment, and Senator Phillips asked for a division vote. The amendment failed. Senator Horton sent forth an amendment and moved for its adoption. Motion carried. Senator Wellons moved that the Senate proposed committee substitute be given a

favorable report, unfavorable as to House proposed committee substitute. Motion carried and the bill was sequentially referred to Finance, with a recommended referral to Appropriations.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 22, 1997
9:00 a.m.
Room 421 - LOB

AGENDA

HB 1097	FISHERIES REFORM ACT-2. Representative Preston

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Wednesday, July 23, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. #3,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #3)**1097** Fisheries Reform Act-2

Draft Number:	PCS7356
Sequential Referral:	Finance
Recommended Referral:	Appropriations
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Proposed Senate Committee Substitute H1097-PCS7356

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

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 and G.S. 113-130 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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097PCS7355-ART/SB-045.01 Page 1 of 1

Date July 22, 1997

Comm. Sub. [YES]
Amends Title [YES]
Fifth Edition PCS7355

Senator Odom

moves to amend the bill on page 1, line 4,
by rewriting that line to read:

"CAROLINA AND TO REPEAL THE REQUIREMENT THAT A LICENSE BE OBTAINED TO FISH IN THE INLAND FISHING WATERS OF THE STATE."; and

on page 44, line 19,
by rewriting that line to read:

"Section 6.15. Notwithstanding any other provision of law, no person shall be required to obtain a license to fish in the inland fishing waters of the State. All provisions of the Session Laws, the General Statutes, and the North Carolina Administrative Code that conflict with this section are, to the extent of the conflict, hereby repealed.

Section 6.16. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, 6.15, and 6.16 of this".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1097PCS7355-ART/SB-044.01

Date July 22, 1997

Comm. Sub. [YES]
Amends Title [NO]
Fifth Edition PCS7355

Senator Horton

moves to amend the bill on page 16, line 38,
by inserting:

"Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

'(12a) Optimal yield. -- The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1097PCS7355-ART/SB-044.01

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. #3
(to be filled in by
Principal Clerk)

H1097PCS4136-ART\SB-041.01 Page 1 of 1

Date July 17, 1997

Comm. Sub. [YES]
Amends Title [NO]
Fifth Edition PCS4136

Senator Perdue

moves to amend the bill on page 14, line 27,
by rewriting that line to read:

"Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and" and

on page 14, between lines 30 and 31,
by adding:

"(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted to the Environmental Review Commission. The Environmental Review Commission shall make any comments and recommendations on the draft Plan within 30 days of the date the draft Plan is submitted by the Secretary."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Proposed Senate Committee Substitute H1097-PCS7355

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

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Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

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 and G.S. 113-130 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

Summary of House Bill 1097
Fisheries Reform Act
Proposed Committee Substitute
July 22, 1997

Changes from original bill are underlined.

Part 1. Performance Audit

Directs the State Auditor to conduct a performance audit, including a detailed operational overview of the Division of Marine Fisheries and directs that the report be delivered to the Joint Legislative Commission on Seafood and Aquaculture by February 1, 1998. The auditor would be directed to make a specific finding as to the capability of the Division of Marine Fisheries to implement the licensing portion of the bill. Finally, the JLCSA will be required to make a specific recommendation to the 1998 General Assembly with respect to the ability to implement the licensing portion of the bill.

Part 2. Marine Fisheries Commission

- Section 2.1 rewrites the establishment of the Marine Fisheries Commission listing its creation, purposes, powers, and duties.
    - It reduces the number of members of the Commission from 17 to 9 members, all appointed by the Governor for three year terms. Appointments are designated and include two individuals (or the spouses of individuals) actively engaged in or recently retired from commercial fishing with at least a 50% income from fishing, one fish dealer or seafood processor deriving at least 50% of his income from dealing (or spouse), two individuals engaged in recreational sports fishing with less than 10% income from sports fishing activities, one individual engaged in the sports fishing industry that derives at least 50% of his income from sports fishing, two individuals having general knowledge and experience related fisheries, one fisheries scientist that receives less than 10% of his income from either sports or commercial fishing. Each coastal region must have at least one appointee representing their interests on the Commission.
    - Provides for additional ethical standards for members of the Commission.
    - Provides for four standing advisory committees (Finfish, Crustacean, Shellfish, and Habitat and Water Quality) and four regional advisory committees to assist the Commission in the performance of its duties.
    - Establishes the Marine Fisheries Endowment Fund with proceeds accruing from gifts, grants, and contributions specifically designated to the Fund. Authorizes the MFC to accept gifts and contributions to the Conservation Fund.

Part 3. Coastal Habitat Protection Plans and Fishery Management Plans

- Section 3.1 establishes the Coastal Habitat Protection Plan
    - Department to coordinate interdepartmental effort to prepare Coastal Habitat Protection Plans for critical fisheries habitats.
    - Plans must include (i) description and classification of biological systems in habitats; (ii) evaluation of function, value to coastal fisheries, status, and trends of habitats; (iii) identification of existing and potential threats to habitats and impact on coastal fishing; and (iv) recommendations to protect and restore critical fisheries habitats.
    - Marine Fisheries Commission, Environmental Management Commission, and Coastal Resources Commission must jointly approve plans.
- Provides for review and comment of plans by ERC.
- Any rules promulgated to enact plan are subject to the APA.
- Section 3.4 directs the Department to prepare Fishery Management Plans on a priority basis to ensure the long-term viability of all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources.
- Plans must incorporate fishery habitats and water quality considerations consistent with the Habitat Protection Plans
- Provides for review of plans by ERC.
- Any rules promulgated to enact the plan are subject to APA.
- Secretary may issue a proclamation prohibiting the taking of certain fisheries resources if the Division and the MFC fail to adopt plans in compliance with the schedule.

Part 4. Marine Fisheries Law Enforcement

- Section 4.1 is deleted.
- Sections 4.2 and 4.3 increase penalties for unlawful sale or purchase of fish, authorizes the Secretary of DEHNR to assess a civil penalty up to $10,000 for illegal sale or purchase of fish.
- Section 4.5 directs the Marine Fisheries Commission to develop a Violation Points System.

Part 5. Commercial Fishing Licenses

Section 5.1 establishes a system of commercial licenses and endorsements and requires anyone engaged in commercial fishing to obtain a license. The duration of the license is from July 1 to June 30 of the following year.

    - Establishes the Standard Commercial Fishing License (SCFL) at a fee of $200.00 for residents of the state or $2,000.00 for non-residents.
    - SCFL holders may assign their license to other individuals provided the assignee has not had a license revoked.
    - Provides for transferability of license from license holder to other individuals under certain circumstances.
    - Establishes a Retired Commercial Fishing License (RSCFL) for individuals over the age of 65 for a fee of $100.00, allows for the RSCFL to be transferable, but not assignable.
    - Vessel endorsement required.
- Other Licenses: The Commission has also been given the authority to establish other commercial licenses and gear permits including crew licenses.
    - Establishes licenses for fish dealers and appropriate fees for the license.
    - Establishes that there must be at least one license agent designated for each county.
- Establishes a Recreational Commercial Gear License (RCGL) for the purpose of taking fish but not for sale.
    - Authorizes the Commission to adopt rules as to the type of gear available for use under the RCGL
    - Sets fee at $35.00 for residents and $250.00 for non-residents
- Section 5.2 establishes a temporary cap on the SCFLs that the Division may issue equaling the total number of endorsements to sell (delete: and the Appeals Panel petition) plus a process for issuing additional licenses during each year.
- Section 5.5 directs the MFC to adopt a Fishery Management Plan for the Blue Crab fishery no later than January 1, 2000.
- Section 5.6 limits entry of individuals taking crabs to those persons in possession of crab license.
- Alters the moratorium on licenses to include Endorsements to Sell.
- Makes the endorsements to sell transferable with the sale of the vessel and transfer of the commercial vessel license.
- Makes eligibility for SCFL contingent on holding an Endorsement to Sell on July 1, 1999.

Part 6. Moratorium Extension; Miscellaneous Provisions; Effective Dates

- Section 6.1 extends Moratorium for consolidated licenses for vessels, equipment, and operations, crab licenses, shellfish licenses, and endorsements to sell to July 1, 1999.
- Section 6.2 extends Moratorium on crab licenses under G.S. 113-168.9 to July 1, 2000.
- Section 6.3 moves the Office of Marine Affairs from the Department of Administration to DEHNR.

- Section 6.8 requires that Habitat Protection Plans be completed by July 1, 2003. A progress report must be submitted September 1, 1999. A progress report on the development and implementation of Fishery Management Plans must be submitted by September 1, 1999.
- Joint Legislative Commission on Seafood and Aquaculture to study the establishment of a comprehensive state program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries and make recommendations to the 1998 Session.

Proposed Changes to HB 1097, 5th edition - Fisheries Reform Act-2

The proposed committee substitute for HB 1097, 5th edition, Fisheries Reform Act-2, incorporates the following changes. **(NOTE: The changes indicated in bold are <u>in addition</u> to those changes in the proposed Senate committee substitute for HB 1097 (PCS4136) that was presented to the Senate Agriculture, Environment, and Natural Resources Committee on July 15th and July 17th.)**

<u>PERFORMANCE AUDIT</u>

- **Directs the State Auditor to assess the capacity of the Division of Marine Fisheries to effectively implement the licensing provisions.**
- **Directs the Joint Legislative Commission on Seafood and Aquaculture to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether or not the provisions of this act should be implemented.**

<u>MARINE FISHERIES COMMISSION</u>

- **Eliminates the 3 standing advisory committees (Habitat/Water Quality; Fisheries Assessment; Fisheries Resources/Users) and replaces them with 4 standing advisory committees, comprised of commercial and recreational fishermen, scientists, and other experts, as follows:**
  1. **Finfish Committee**
  2. **Crustacean Committee**
  3. **Shellfish Committee**
  4. **Habitat and Water Quality Committee**
- *Clarifies that unless otherwise provided, the MFC has the final agency decision making authority for contested cases within its jurisdiction.*
- *Clarifies that the MFC may adopt temporary rules to comply with fisheries management plans adopted by interstate fisheries management councils.*

<u>COASTAL HABITAT PROTECTION PLANS (CHPPS)</u>

- **Requires the Coastal Resources Commission, Environmental Management Commission, and Marine Fisheries Commission to report to the Environmental Review Commission (ERC) (in addition to the Joint Legislative Commission on Seafood & Aquaculture) on the progress in developing and implementing the CHPPs.**
- **Requires that the Secretary of Environment, Health, and Natural Resources report to the ERC within 30 days of the completion, or substantial revision of CHPPs and gives the ERC 30 days to review and comment.**
- **Requires that any rules to implement Coastal Habitat Protection Plans must be adopted in accordance with the Administrative Procedure Act (G.S. 150B).**

Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant
Revised: 07/22/97/12:05 AM

FISHERY MANAGEMENT PLANS

- **Requires that the Secretary of Environment, Health, and Natural Resources report to the Environmental Review Commission (ERC) (in addition to the Joint Legislative Commission on Seafood & Aquaculture) on the progress in developing and implementing Fishery Management Plans.**
- **Requires that the Secretary of Environment, Health, and Natural Resources report to the Joint Legislative Commission on Seafood & Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and gives the ERC and the Joint Legislative Commission on Seafood & Aquaculture 30 days to review and comment.**
- **Requires that any rules to implement Fishery Management Plans must be adopted in accordance with the Administrative Procedure Act (G.S. 150B).**
- **Authorizes the Secretary to issue a proclamation prohibiting the taking of certain fisheries resources if there is a failure to complete the Fishery Management Plans according to the Marine Fisheries Commission Schedule.**
- **Requires the inclusion of conservation and management measures in Fishery Management Plans.**

MARINE FISHERIES LAW ENFORCEMENT

- **Removes the provision expanding jurisdiction of marine patrol inspectors.**

COMMERCIAL FISHING LICENSES

- **Alters moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel).**
- **Makes the Endorsements to Sell transferable to the purchaser of a vessel.**
- **Makes eligibility for SCFL contingent on holding an Endorsement to Sell on July 1, 1999.**
- **Removes eligibility for Appeals Panel denial**
- *Changes fee for SCFL for non-residents.*
- *Authorizes the State, upon the death of an SCFL license holder, to transfer the SCFL to the decedent's estate rather than to a surviving family member.*
- *Clarifies that a crew member of a vessel engaged in a commercial fishing operation under the direction of a person holding an SCFL or RSCFL is not required to hold an SCFL or RSCFL.*
- *Clarifies that a vessel endorsement of a shellfish license only authorizes the use of the vessel for the purpose of taking shellfish.*
- *Clarifies the requirements for a vessel to have primary situs in NC for purposes of vessel endorsements.*

MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

- **Makes technical changes to the moratorium and makes the moratorium apply to all Endorsements to Sell (vessel and non-vessel).**
- **Makes conforming changes to effective dates.**
- *Makes other technical and clarifying changes to Part II - Marine Fisheries Commission, Part V - Commercial Fishing Licenses; Transitional Provisions, and Part VI - Moratorium Extension; Miscellaneous Provisions; Effective Dates.*

Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant
Revised: 07/22/97/12:05 AM

North Carolina General Assembly
Legislative Services Office

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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 22, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute for House Bill 1097, 5th edition - Fisheries Reform Act-2**

NOTE: THIS SUMMARY WAS PREPARED FOR HB 1097-PCS4136 WHICH WAS PRESENTED TO THE COMMITTEE ON JULY 15th AND 17th. FOR ADDITIONAL CHANGES TO THIS BILL, PLEASE REFER TO THE DOCUMENT ENTITLED *"PROPOSED CHANGES TO HB 1097, 5TH EDITION - 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 February 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 6.3(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 4 regional advisory committees representing the different 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. A CHPP 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. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. The three commissions must report annually to Seafood and Aquaculture on progress and implementation of CHPPs.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Sections 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

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: July. 1, 1998.

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 and in the Director's sole discretion, 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: $200 for residents; $2,000 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; 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 1999-2000 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, 1999.

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: $35 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 July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999; effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 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 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 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 6.10 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 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Proposed Senate Committee Substitute H1097-PCS4136

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

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.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97

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Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

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 February 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 and G.S. 113-130 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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1097 (Fourth Edition)
SHORT TITLE: Fisheries Reform Act - 2
SPONSOR(S): Representatives Preston & Redwine

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Departmental Receipts from Licensing Revenue			$355,151	$490,306	$623,927
EXPENDITURES					
Performance Audit	$25,000				
Marine Fisheries Commission	$114,384	$114,384	$114,384	$114,384	$114,384
Coastal Habitat Protection Plans		$294,847	$283,489	$290,028	$296,988
Fisheries Management Plans		$1,256,483	$1,082,770	$1,100,498	$1,116,298
Licensing Program Administration *		$542,491	$511,191	$521,632	$532,747
TOTAL EXPENDITURES	$139,384	$2,208,205	$1,991,834	$2,026,542	$2,060,417
NET GENERAL FUND	$139,384	$2,208,205	$1,636,683	$1,536,236	$1,436,490
POSITIONS:		34.25	34.25	34.25	34.25

Licensing administration to be phased in during the 1998-99 fiscal year to have necessary equipment and personnel in place July 1, 1999.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources - Marine Fisheries Commission, Division of Marine Fisheries; Department of Correction; Judicial Department; Office of the State Auditor

EFFECTIVE DATE: Part I (performance audit) is effective retroactively to March 1, 1997. Part II (Marine Fisheries Commission) and Part IV (Marine Fisheries Law Enforcement) are effective September 1, 1997. Part III (Coastal Habitat Protection Plans and Fishery Management Plans) is effective July 1, 1998. Part V (Commercial Fishing Licenses) is effective July 1, 1999. Part VI, section 6.1 (extend moratorium on licenses) is effective June 30 ,1997. Sections 5.1 and 5.2 expire September 1, 2003. Section 5.6 (crab license) will expire July 1, 2000 and section 5.7 will become effective July 1, 2000. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.14 are effective when the act becomes law.

BILL SUMMARY: Part I of the bill directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries and to present the audit to the General Assembly by February 1, 1998. Part II of the bill reduces the membership of the Marine Fisheries Commission from 17 to 9 and changes the type of appointments to the Commission. Part III directs the Department of Environment, Health, and Natural Resources (DEHNR) to coordinate the preparation of draft Coastal Habitat Protection Plans and to prepare Fishery Management Plans for all commercially and recreationally significant fish species. Part IV increases the penalties for violating general fisheries laws and expands the powers of the marine patrol inspectors. Part V creates a Standard Commercial Fishing License (SCFL) priced at $200 for residents and $2000 for nonresidents. Owners of a SCFL must have a vessel endorsement whose price is based on vessel length. This part also creates a $35 Recreational Commercial Gear License (RCGL) for recreational fishermen who want to use commercial gear such as shrimp nets and crab pots. This part also makes changes in dealer licenses and other minor licenses. Part VI has miscellaneous provisions dealing with the moratorium on fishing licenses, the staggered terms of Marine Fisheries Commission members, and further legislative study of marine and estuarine fisheries habitats.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The differences in the current fishing licenses and the licenses proposed by HB 1097 are shown in the chart below and on page 3. The major change is the creation of the Standard Commercial Fishing License (SCFL) and the Recreational Commercial Gear License (RCGL), and the deletion of Endorsements to Sell.

LICENSE TYPE	CURRENT LAW	HB 1097
Standard Commercial Fishing Lic. (SCFL)		
Resident		$200
Nonresident		$2,000
Retired		$100
Replacement		$10
Vessel Endorsements	0-18 ft @ $1.00/ft	0-18 ft @ $1.00/ft
	18-38 ft @ $1.50/ft	18-38 ft @ $1.50/ft
	>38 ft @ $3.00/ft	38-50 ft @ $3.00/ft
		>50 ft @ $6.00/ft
	nonresident = $200	
Endorsement to Sell	0-18 ft @ $25	
	18-38 ft @ $35	
	>38 ft @ $45	
Fish Dealers		
Oysters	$50 stock shipper/$100 shucker	$50
Scallops	$50 stock shipper/$100 shucker	$50

Clams	$50 stock shipper/$100 shucker	$50
Crabs	$50 unprocessed/$100 processed	$50
Shrimp (incl. bait)	$50 unprocessed/$100 processed	$50
Finfish (incl. bait)	$50 unprocessed/$100 processed	$50
Dehydrating or oil-extracting plant	$50 fish dehydrating/$100 menhaden	$50
Consolidated		$300
Other		
Shellfish	$7.50	$25
Crab	$7.50	$7.50
Shellfish and crab	$15.00	
Vessel Crab	$22.50	
Menhaden	$2 per gross ton	$2 per gross ton
Spotter airplane	$100	$100
Tournament		$100
Ocean Fishing Pier	$0.50 per ft	$0.50 per ft
Crew Licenses	MFC authority to adopt	not to exceed $100
Permit for gear, equipment, special activity	MFC authority to adopt	not to exceed $50
Land or Sell License	$200	$200

Recreational Commercial Gear Lic. (RCGL) Resident $35

The change in fishing licenses will increase revenue to the Division of Marine Fisheries beginning in FY 1999-00. In FY 1995-96, the primary revenue from fishing license receipts came from vessel endorsements ($700,137), endorsements to sell ($243,365), and dealers ($86,050). The revenue lost from reducing the number of ships needing vessel endorsements, abolishing the endorsement to sell, and reducing the dealer fees is replaced by the $200 SCFL and the $35 RCGL. When the new licenses become effective in FY 1999-00, the SCFL will yield $780,000 in revenue and the RCGL will earn $455,000 as shown below.

License Type	License Cost	Estimated Licenses	FY 1999-00	FY 2000-01	FY 2001-02
Standard Comm. Fishing Lic. (SCFL)					
Resident	$200	3900 (initial)	$780,000	$880,000	$980,000
Retired/Nonresident	$100/$2000	NA			
Vessel Endorsements	0-18 ft @ $1.00/ft	1,825	$29,383	$33,295	$37,078
	18-38 ft @ $1.50/ft	1,759	$64,643	$72,765	$81,034
	38-50 ft @ $3.00/ft	168	$22,025	$23,074	$25,696
	>50 ft @ $6.00/ft	148	$61,627	$73,286	$81,614
Fish Dealers					
Oysters	$50	57	$2,850	$2,936	$3,024
Scallops	$50	17	$850	$876	$902
Clams	$50	34	$1,700	$1,751	$1,804
Crabs	$50	114	$5,700	$5,871	$6,047
Shrimp (incl. bait)	$50	143	$7,150	$7,365	$7,585
Finfish (incl. bait)	$50	177	$8,850	$9,116	$9,389
Dehydrating or oil-extracting plant	$50	3	$150	$150	$150
Consolidated	$300	0	$0	$0	$0

Other					
Shellfish	$25	300	$7,500	$7,500	$7,500
Menhaden	$2 per gross ton	20	$25,000	$25,000	$25,000
Spotter airplane	$100	20	$2,000	$2,000	$2,000
Crab	$7.50	4,500	$33,750	$33,750	$33,750
Tournament	$100	20 (initial)	$2,000	$2,500	$3,000
Ocean Fishing Pier	$0.50 per ft	20	$6,000	$6,000	$6,000
Crew Licenses	$100	0			
Permit for gear,equipment,special activity	$50	0			
Recreational Comm. Gear Lic. (RCGL)	Resident $35	13,000	$455,000	$464,100	$473,382
	Non-Resident $250	NA			
Revenue from HB 1097			$1,516,178	$1,651,333	$1,784,954
FY 95-96 Revenue from Existing Fees			$1,161,027	$1,161,027	$1,161,027
Net revenue gain to Marine Fish. Div.			**$355,151**	**$490,306**	**$623,927**

The Division of Marine Fisheries estimates that 3,900 SCFLs will be purchased in FY1999-00. It assumes that only a portion of the fishermen now holding Endorsements-to-Sell (ETS) will buy the new license. In FY 1994-95 there were 6,539 individuals with ETS licenses. Of this number, 45% or 2,943 sold less than $1,000 worth of seafood. The Division assumes that the $200 license will discourage most of these low volume fishermen from obtaining a SCFL. The Division projects 3,780 individuals with a ETS license will apply for the SCFL. In addition, the Division assumes that the owners of 120 vessels that were granted vessel licenses through the appeals process in the last few years will also apply for a license. This brings the total to 3,900. This number will grow to 4,400 in FY 2000-01 and to 4,900 in FY 2001-02 when additional licenses are made available to new entrants into the market.

The owners of a SCFL must also buy a vessel endorsement. The cost of the endorsement is based on vessel length. The average length of the vessel and the percent of vessels in each category are shown below.

0-18 ft @ $1.00/ft	16.1 ft.	47%
18-38 ft @ $1.50/ft	24.5 ft	45%
38-50 ft @ $3.00/ft	43.7 ft.	4%
>50 ft @ $6.00/ft	69.4 ft.	4%

Of the 22,000 vessels that can now obtain vessel licenses and use commercial fishing gear in North Carolina, the Division estimates that 14,500 are owned by recreational fishermen. The Division believes 13,000 recreational fishermen will opt to buy the RCGL instead of the SCFL.

The number of dealers and other licenses shown in the chart are also estimates of the Division. The dealers licenses are grown by 3% a year.

EXPENDITURES

The Division of Marine Fisheries is currently authorized to use the proceeds from the sale of licenses and vessel endorsements to offset the operating costs of the License Administration Section, the Statistics and Information Management Section and the Marine Patrol Section. Although this legislation will increase license revenues beginning with the 1999-2000 fiscal year, the increased receipts will not be enough to offset the costs associated with implementing all the provisions of this act. Therefore , General Fund support will be required. However, revenues are projected to be sufficient to cover the increased costs associated with administering the licensing provisions by the 2001-2002 fiscal year.

- Marine Fisheries Commission *Effective September 1, 1997*

The bill reduces the membership of the Marine Fisheries Commission from seventeen to nine and establishes three technical advisory committees and four regional advisory committees.

The Division of Marine Fisheries estimates the annual operating costs of the reformed commission, exclusive of the advisory committees, to be $85,680. This estimate is based on a total travel ($178) and per diem ($100) rate of $278 per day for commission members in accordance with G.S. 138-6 and assumes the commission will meet up to eight times per year, for up to three days (9 members x $278/day x 8 meetings x 3 days/meeting = $60,048). In addition, the estimate includes allowed subsistence of $178 per day for two representatives from the Office of the Attorney General (2 representatives x $178/day x 8 meetings x 3 days/meeting = $8,544). Subsistence expenses for an ad hoc committee of twelve members are also included in the estimate, as the chair of the commission may appoint ad hoc committees to address special issues, (12 members x $178/day x 4 meetings x 2 days/meeting = $17,088).

The total annual cost of the seven technical and regional advisory committees is estimated to be $136,704, assuming there are twelve members on each committee, and six of the committees meet four times per year for two days (12 members x $178/day x 4 meetings x 2 days/meeting x 6 committees = $102,528), and the seventh committee meets 8 times per year for two days (12 members x $178/day x 8 meetings x 2 days/meeting $34,176).

The continuation budget for the Division of Marine Fisheries includes $108,000 to fund expenses incurred by the commission and should be used to offset any costs associated with modifying the present structure of the commission. Therefore, the net increase in expenditures for the Marine Fisheries Commission is $114,384 each year ($85,680 + $136,704 - $108,000).

- Coastal Habitat Protection Plans *Effective July 1, 1998*

According to the divison, four marine biologists and an office assistant will be required to develop habitat protection plans as required by the bill. The additional staff will be primarily responsible for preparing protection plans for critical fisheries habitats in cooperation with the Division of Water Quality and the Division of Coastal Management. The staff will also participate in the preparation of fisheries management plans with respect to habitat issues.

The total estimated budget requirements to implement the section on coastal habitat protection plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
(4) Marine Biologist II		165,380	170,767	176,501	182,605
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	189,347	195,489	202,028	208,988
Positions		5.0	5.0	5.0	5.0
Operating Expenses		105,500	88,000	88,000	88,000
Total Requirements	**$0**	**$294,847**	**$283,489**	**$290,028**	**$296,988**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Fisheries Management Plans *Effective July 1, 1998*

As written, the bill requires the Marine Fisheries Commission to establish a priority order and schedule for developing fisheries management plans (FMPs) for each of the state's commercially or recreationally significant coastal fisheries species or species groups. The division and the Moratorium Steering Committee, established by the General Assembly in 1994, have identified 31 species and species groups for which management plans are needed.

Staff for FMP Development

The estimated staff required to prepare and periodically update fisheries management plans for all 31 species or species groups, is based on the following assumptions (*italicized*) and information on the division's current workload capabilities:

1. *One full-time biologist is required to supervise on-going field data collection and analysis efforts to support the development of management plans for 4 species.* A total of 8 full-time biologists is required to prepare FMPs for 31 species and groups. Currently, the division has 7 full-time equivalent biologists assigned to the development of management plans; therefore, the division needs 1 additional biologist.
2. *Three full-time technicians are required to collect data to support 1 biologist.* A total of 24 technicians is needed to support 8 biologists. Currently, the division has 15 full-time equivalent technicians assigned to collect data for FMPs; therefore, the division needs 9 additional technicians.
3. *On average, at least three years of field data is necessary to develop a management plan for a single species or fisheries group.*
4. The division currently has sufficient data on 12 species groups to begin analyzing the information and writing management plans. The division also has sufficient baseline data on an additional 3 species groups to complete data collection, and begin data

analysis and plan writing within two years. The division does not have any data on the remaining 16 significant species.

5. *The division will complete an average of 5 initial FMPs per year during the first 3 years of the program and an average of 3 initial FMPs per year over the next five years of the program.* Based on this time line, initial management plans for all 31 species will be completed within 8 years (see table below for estimated plan development schedule).
6. *The division will revise each FMP every three years* (see table below for estimated revision schedule).
7. *The initial preparation of a fisheries management plan will take approximately six to seven months to complete. Revision of an existing plan will take approximately three months to complete.* Plans involving several species or multiple fisheries are expected to take longer.
8. *One full-time biologist is capable of performing statistical analyses and writing plans for 2 species groups.* Therefore, it will take 3 full-time biologists to write and periodically revise management plans for 31 species.
9. Two full-time population dynamicists are required to conduct modeling of fishery stocks to determine the status of the stocks to support the development of 31 FMPs. The division currently employs 1 full-time population dynamicist; therefore, 1 additional dynamicist will be required.

Advisory Councils

The bill requires the Chair of the Marine Fisheries Commission to appoint an advisory council for each FMP being developed. The division expects input from each council to be required only during the period of time when the plan is actually being written or revised. Each council will comprise up to twelve members, and will likely need to hold six meetings during the initial development of a plan and three meetings to revise an existing plan.

The table below indicates the **anticipated** schedule (**the Marine Fisheries Commission is responsible for adopting a formal schedule**) for the initial development and revision of fisheries management plans over the next ten years, as well as the cost of the required advisory councils.

FMP Development Schedule and Advisory Councils

	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
New FMP	5	5	5	3	3	3	3	4		
FMP Revision				5	5	5	8	8	8	11
Total Plans	5	5	5	8	8	8	11	12	8	11
Advisory Council Cost	$ 46,080	$ 46,080	$ 46,080	$ 43,008	$ 43,008	$ 43,008	$ 52,224	$ 61,440	$ 24,576	$ 33,792

Cost per Advisory Council		
New FMP (initial development)	$128/day x 12 members x 6 meetings/year	9,216
Revised FMP (3 year update)	$128/day x 12 members x 2 meetings/year	3,072

The total estimated budget requirements to implement the section on fisheries management plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Population Dynamicist		47,026	48,566	50,205	51,950
Marine Fisheries Biologist I		36,585	37,769	39,031	40,373
(3) Marine Fisheries Biologist II		124,035	128,075	132,376	136,954
(3) Marine Fisheries Technician II		80,355	82,910	85,630	88,525
(6) Marine Fisheries Technician III		179,826	185,586	191,717	198,244
Data Clerk Supervisor		25,830	26,649	27,521	28,450
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	517,623	534,278	552,006	570,878
Positions		16.0	16.0	16.0	16.0
Operating Expenses		692,780	502,412	502,412	502,412
Advisory Councils		46,080	46,080	46,080	43,008
Total Requirements	**$0**	**$1,256,483**	**$1,082,770**	**$1,100,498**	**$1,116,298**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Licensing Administration *Effective July 1, 1999*

The bill provides for the purchase and renewal of Standard Commercial Fishing Licenses, Recreational Commercial Gear Licenses, vessel endorsements, dealer and other licenses at the central and district offices of the Division of Marine Fisheries, by mail (applies to renewals only) or through designated license agents. Currently licenses are available only at the central office, located in Morehead City, and through authorized license agents. In addition to the office in Morehead City, the division maintains district offices in Wilmington, Washington, Columbia, Wanchese and Elizabeth City.

The division currently employs five full-time permanent and two part-time temporary staff persons to handle administration of the commercial licensing program. The current authorized budget of the Licensing Section is $208,649, of which $88,059 is from General Fund appropriations, and $120,590 is from license receipts.

According to the Division of Marine Fisheries, an additional 13.25 full-time equivalent positions are required to implement the licensing provisions of this act. The new positions include a processing unit supervisor to oversee the day-to-day operations of the new licensing program, and to investigate and resolve problems or questions concerning licenses. An office assistant position is needed to provide clerical support to the unit supervisor and licensing staff in the district offices. The division also anticipates the need for 10.25 full-time equivalent processing assistants to handle licensing transactions. This number includes seven full-time and two part-time (1.25 full-time equivalents) positions to manage sales in the division's five district offices

along the coast, one full-time position to process and track requests for renewals by mail, and one full-time position to oversee the newly created Recreational Commercial Gear License. The division plans to implement a more sophisticated licensing system by automating the current system, which relies heavily on hard copy paper flow and file maintenance, consolidating several existing data bases, and providing on-line access to historical license data and violation statistics. A computer services analyst position is proposed to maintain the new computer based licensing system.

Since the licensing requirements of this act are effective July 1, 1999, the division needs to complete the computer system and technology upgrades during the 1998-99 fiscal year to ensure the automated licensing system is in place and operational on July 1, 1999. The division also needs to phase in new staff during the 1998-99 fiscal year in order to have adequate time to hire and train personnel to be in place on July 1, 1999. The budget requirements reflected for licensing administration for the 1998-99 fiscal year assume funding for the positions will be effective January 1, 1998.

The total estimated budget requirements to implement the licensing section is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Processing Unit Supervisor V		25,244	26,043	26,894	27,799
Office Assistant IV		23,966	24,722	25,527	26,383
(7.25)Processing Assistant III		159,068	164,048	169,349	174,993
(3) Processing Assistant IV		70,271	72,483	74,838	77,345
Computer Services Analyst		32,965	34,027	35,157	36,360
Total Salaries & Benefits *	-	155,757	321,324	331,765	342,880
Positions		13.25	13.25	13.25	13.25
Operating Expenses		386,734	189,867	189,867	189,867
Total Requirements	**$0**	**$542,491**	**$511,191**	**$521,632**	**$532,747**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in the manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Department of Correction and Judicial Department (Criminal and Civil Penalties)

Currently, the Judicial Department does not have an offense code relating to offenses outlined in G.S. 113-187 and G.S. 113-190. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect the proposed changes to have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals are convicted of these offenses per year, approximately 1 or 2 additional inmates will be added to the prison population. If there are as many as 30 convictions, no more than 3 to 6 additional

inmates will be added to the prison system. These few potential additional inmates can be absorbed within existing Department of Correction resources.

Likewise, there will not be a significant fiscal impact on the Judicial Branch, as no major changes are expected in the time required to process or dispose of these cases. The Judicial Department can absorb these potential few new cases within existing resources.

- Office of the State Auditor

The State Auditor estimates the cost of conducting a detailed operational review and performance audit of the Division of Marine Fisheries by February 1, 1998 will be $25,000.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon, Richard Bostic and Charles Perusse

APPROVED BY: Tom Covington
DATE: May 29, 1997

DIVISION OF MARINE FISHERIES ORGANIZATIONAL IMPROVEMENT UPDATE
(July 7, 1997)

Division of Marine Fisheries leadership and staff are committed to a philosophy of continuous, measurable improvement with a vision of evolving into a model state agency. Although the achievement of this vision requires a tenacious, long-term effort, significant improvements have been made in recent months. The most significant improvements are:

LEADERSHIP AND MANAGEMENT:

♦ Customer Service. A new emphasis on high quality, customer friendly service can be seen through the following initiatives:

Licensing - a new licensing facility has opened in Morehead City to process license applicants efficiently in a pleasant, professional atmosphere.
- Additional parking has been created to ease public access and convenience.
- Mail-in license applications are being processed to a new Division standard of less than a 24-hour turn around time.
- A 31-day license "grace period" has been given to renew licenses.
- Customer friendly licensing is the designated #1 DMF priority for July.

Office Reorganization - office space has been completely reallocated to provide the easiest possible access by the public to key Division offices.

♦ Strategic Planning. A draft strategic planning document has been carefully crafted with total staff involvement to outline the following:
- The organization's MISSION
- VISION for its future
- VALUES to which it is committed
- KEY RESULT AREAS it has identified to achieve its vision, and
- IMPLEMENTING STRATEGIES to obtain the required key results.

This process continues with planning for restructuring to best accomplish its mission and toward detailed section to individual-level implementation plans.

♦ Manager and Supervisor Training. Supervisors have taken part in the following required supervisory training: Planning, Team Development, Conflict Resolution, Effective Communications, Problem Solving.

♦ Fiscal Management. Budget management computer software has been installed down to section manager level and required software use training conducted.

♦ Internal Staff Coordination. Weekly structured staff meetings are required of all staff.

♦ Policy and Procedures. DMF staff is developing a user friendly Division Policy and Procedures Manual for all employees. The draft manual deadline is August 1, 1997.

- Standards of Conduct . All employees have been briefed on DMF public service standards of conduct. By policy, all new employees are required to be briefed on the standards of conduct by the Deputy Director within 2 weeks of initial employment. Exit briefings by the Deputy Director for all departing employees are also mandated.

- Recruitment and Hiring. All new employees are hired strictly on the basis of the best qualifications.

PUBLIC INFORMATION & RELATIONS:

- Dialogue with Commerical Fishing Industry. DMF has established a "DMF page" in the NC Fisheries Association publication, *Tradewinds*, as a cooperative effort to open a new dialogue with the commercial fishing industry in NC.

- External Newsletter. DMF plans to publish a quarterly external newsletter beginning August 1997 to improve communications with all constituency groups and interested individuals.

- Internet Access. DMF now has an information and education Website which is drawing acclaim for its quality and educational value.

- Public Information Bulletin Board. A bulletin board has been established in the Morehead City facility to provide easy access by the public to all current fisheries proclamations and harvest information.

LAW ENFORCEMENT:

- Policy and Procedures. The Marine Patrol has implemented a Policy and Procedures Manual to standardize enforcement procedures and further professionalize the Marine Patrol officer force. All officers have been trained on this manual.

- Training. Marine Patrol officers have received more than two times the required annual training, including State Police Conflict Management training to improve interaction with the public and enhance officer safety.

- Reorganization. The Marine Patrol Headquarters section has been reorganized to eliminate an unnecessary supervisory level and to facilitate better operational coordination of air, ocean patrol and telecommunications units.

- Ocean Patrol. New, high speed patrol vessels are entering service in each district to improve enforcement of fisheries laws in the ocean and provide enhanced officer safety. DMF is pursuing oprtions to procure a large, high speed ocean patrol vessel for far off-shore and rough weather enforcement operations.

TECHNOLOGY:

- Information Technology and Assessment Plan. The Department developed a comprehensive information technology plan to integrate databases and improve customer service.

- Local Area Network (LAN). LAN access has been provided for all key supervisors and between all DMF offices to speed communications and reduce paperwork.

- Marine Patrol Communications. The Marine Patrol Communication system has been modernized to enhance law enforcement and officer safety.

- Biological Data. A Biological User's Group has been established to coordinate automated biological data sharing and improve user access to data. Key biological data is now available for access through the LAN by all users. Data entry errors have been reduced by a factor of 50 through training and rigid quality control.

- GIS Application. The GIS program has acquired access to the State GIS database and has incorporated GIS technologies into the Shellfish Mapping Program.

- GPS Training. Marine Patrol officers have been trained and certified in the Global Positioning System (GPS) to enhance data collection and enforcement.

RESOURCE MANAGEMENT:

- Resource Management Coordination. Bi-monthly resource manager's staff meetings have been established to plan and coordinate future fisheries management actions.

- Biological Review Team. This team has been established and given the authority for formally coordinating and conducting all DMF biological project reviews and recommending biological priorities.

- Aging Lab. Established a centralized laboratory to facilitate the rapid, standardized and quality controlled processing of all fisheries aging samples.

- Reorganization. Restructured the Resource Enhancement Section to eliminate unnecessary supervisory levels and better coordinate field operations.

- Vessel Overhaul. Made major structural repairs to Research Vessel LONG BAY for crew safety and operational flexibility.

- Rules Review. A rules review committee has been established and meets regularly to facilitate rules development and examine key regulatory issues.

WORK ENVIRONMENT: The most significant success of the Division has been its difficult but successful effort to overcome most of the damaged inter-personal relationships which were the most challenging obstacles to reform. Candid dialogue, professional standards of conduct and cooperation have established a more open, healthy working climate from which problem resolution, continuous improvement and accountability at all levels is developed. Significantly improved coordination, planning, public interaction and collaboration are evident.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/22/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Fieler	DEHNR
Johnny Gray	OSBM
David Herlong	OSPL
Anna Tefft	OSBM
Charles Fullwood	Wildlife
John Power	Marine Fisheries
Janice Sutcher	DMF
Dan McLawhorn	AG Office
Dan Whitfield	EHNR
Lee Carpenter	MARINE FISHERIES
Pete Rimmer	Marine Patrol

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carrie Hartley	Office of Gov
Nathaniel Mund	CCNC
Mike Carpenter	NCHSA
R. Karl Wilcox	NCHSA
Barbara Rabe	Wildlife Resources Commission
Richard Hamilton	Wildlife
Kirsten Mitchell	NYSDEC
Sharon Trimble	DENR
Curt Williams	Gov's Office
Ann Duncan	WCSR/CCA
Sandy Sands	WCSR/CCA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Smith	Carteret Cty.
Pam Davis Morris	Commercial Fisherman Carteret Co.
Sandra Gastill	Commercial Fisherman Carteret Co H.I.
Janice M. Simms	Luther L. Simms, Jr. Son Carteret County
Matthew J. Moore	Office of the Lt. Gov.
Rod Simpkins	Very Interested individual
Emily Saunders	NC Wildlife Federation
Tom Bean	NC " "
Dick Brame	CCA-NC
Tom Earnhardt	Speaker-guest
Elaine Harris	Carteret County, N.C. - I

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Twila Nelson	MFC
TANJA VUJIĆ	NCEDF
Molly Diggins	NC Sierra Club
MELVIN SHEPARD	MORITORIUM STEERING COMMITTEE
Andy McCALL	DEHNR
Emory P. Dalton	The AT
Doyle N. Rodes	NCEOF
Dick Huffman	INDEPENDENT SMALL COMMERCIAL FISHERMAN
Theresa Kosty	SAGRO
A.B. Swindell IV	BFI
Paul F Dew	N.C. Agribusiness

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 29, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 29, 1997, at 10:00 a.m., in Room 421 of the Legislative Office Building. Senator Albertson, chairman, presided and there were thirteen committee members present.

The following bills were discussed and all distributed material is attached:

HOUSE BILL 211 - AMEND ENV. LAWS - Representative Culp, sponsor. There was a proposed committee substitute on the bill and Senator Odom moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the proposed committee substitute. Senator Odom moved that the Senate proposed committee substitute be given a favorable report, unfavorable as to House proposed committee substitute. Motion carried.

HOUSE BILL 239 - AMEND. ENV. MGT. COMM. MEMBERSHIP - Representative Mitchell, sponsor. George Givens of staff explained the bill. Senator East moved that the bill be given a favorable report. Motion carried.

HOUSE BILL 302 - WILDLIFE/RABIES EMERGENCY - Representative Howard Hunter, sponsor, said there was a rabies epidemic in North Carolina right now. There was a proposed committee substitute and Senator Phillips moved for its adoption for discussion purposes. Motion carried. George Givens of staff explained the proposed committee substitute. Dr. Lee Hunter, Public Health Veterinarian, commented on the bill and said that he supported it. Dick Hamilton, Assistant Director of the North Carolina Wildlife Resources Commission, said they supported the bill. Senator Horton sent forth a technical amendment and moved for its adoption. Motion carried. Senator Odom moved that the Senate proposed committee substitute be given a favorable report, unfavorable as to House proposed committee substitute. Motion carried.

HOUSE BILL 1011 - LOW PRESSURE PIPE SYSTEMS REPORT - Representative Capps, sponsor. George Givens of staff explained the bill for Representative Capps. Senator Jenkins moved that the bill be given a favorable report. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 29, 1997
10:00 a.m.
Room 421 - LOB

AGENDA

HB 211	AMEND ENV. LAWS Representative Culp
HB 239	AMEND. ENV. MGT. COMM. MEMBERSHIP Representative Mitchell
HB 302	WILDLIFE/RABIES EMERGENCY Representative Howard Hunter
HB 1011	LOW PRESSURE PIPE SYSTEMS REPORT Representative Capps

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT

Senator Albertson, Chairman

Tuesday, July 29, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **239** Amend. Env. Mgt. Comm. Membership
Sequential Referral: None
Recommended Referral: None

H.B.(CS#1)**1011** Low Pressure Pipe Systems Report
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**211** Amend Env. Laws
Draft Number: PCS1446
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B.(CS #1)**302** Wildlife/Rabies Emergency
Draft Number: PCS1447
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 211*
Committee Substitute Favorable 4/16/97
Proposed Senate Committee Substitute H211-PCS1446

Short Title: Amend Env. Laws/Env. Tech. Corr. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY; AND (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"**§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.**

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1), as amended by Section 2 of S.L. 1997-337, reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section or of G.S. 113A-120.2, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a

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

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR STAGGERED TERMS FOR THE MINING COMMISSION; AND (7) REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new section to read:

"§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with ~~State~~ state rules or local ordinances and regulations adopted pursuant to this Article or with other federal and ~~State~~ state laws, regulations, and rules for the protection of the environment."

Section 3. G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

El[illegible]V. 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 29, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping, Administrative Assistant
Jeff Hudson, Committee Counsel

Re: **Proposed Committee Substitute for House Bill 211 - Amend Environmental Laws/Environmental Technical Corrections**

This bill was recommended to the 1997 General Assembly by the Environmental Review Commission. The bill makes several amendments as well as clarifying, conforming, and technical changes to laws related to environment, health, and natural resources.

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. 143-215.3(a)(4) to allow the EMC to delegate its powers through resolution rather than through rule, as is the case for other Commissions.

Section 5 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 6 amends G.S. 143-215.112(d)(1a) to provide that if any action or failure to act that constitutes a violation of local air pollution control programs 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. 143-215.114A to provide that if any action or failure to act that constitutes a violation of statewide 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 8 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 9 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 8 of this bill. No current member will have his or her term shortened or extended under this provision.

Section 10 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 11 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 10 of this bill. No current member will have his or her term shortened or extended under this provision.

Section 12 amends §106-802(4) to remove an inadvertent reference to the Department of Environment, Health, and Natural Resources.

Section 13 amends G.S. 143-214.12(a) to correct the citation to basinwide restoration plans in the Wetlands Restoration Program.

Section 14 amends G.S. 143-215.10G to add the word "steady" so that the correct term, "steady state live weight," is used in the subdivision.

Section 15 amends §143-215.74(b)(3) to clarify that it is the Soil and Water Conservation Commission that has the authority to establish priority designations for inclusion in the agriculture cost share program.

Section 16 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 17 corrects a statutory citation referenced in Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session).

Section 18 corrects a statutory citation referenced in Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session).

Section 19 makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 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

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-283(a) reads as rewritten:

"(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have experience in health sciences;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;

(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;

(7) Three members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively ~~connected with~~ employed by, or recently retired from, an industrial ~~production or have had experience~~ manufacturing facility and knowledgeable in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;

(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and

(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences."

Section 2. This act is effective when it becomes law and applies to any appointment to the Environmental Management Commission pursuant to G.S. 143B-283(a)(8), as amended by Section 1 of this act, made on or after the date this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 302
Committee Substitute Favorable 4/30/97
Proposed Senate Committee Substitute H302-PCS1447

Short Title: Wildlife/Rabies Emergency. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES OR DISTRICTS WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 6 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-201. Rabies emergency.**

A local health director in whose county or district rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat, may petition the State Health Director to declare a rabies emergency in the county or district. In determining whether a rabies emergency exists, the State Health Director shall consult with the Public Health Veterinarian and the State Agriculture Veterinarian and may consult with any other source of veterinary expertise the State Health Director deems advisable. Upon finding that a rabies emergency exists in a county or district, the State Health Director shall petition the Executive Director of the Wildlife Resources Commission to develop a plan pursuant to G.S. 113-291.2(a1) to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. Upon determination by the State Health Director that the rabies emergency no longer exists for a county or district, the State Health Director

shall immediately notify the Executive Director of the Wildlife Resources Commission."

Section 2. G.S. 113-291.2 is amended by adding the following new subsection to read:

"(a1) When the Executive Director of the Wildlife Resources Commission receives a petition from the State Health Director declaring a rabies emergency for a particular county or district pursuant to G.S. 130A-201, the Executive Director of the Wildlife Resources Commission shall develop a plan to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. The plan shall be based upon the best veterinary and wildlife management information and techniques available. The plan may involve a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, except that the use of poisons, other than those used with dart guns, shall not be permitted under any circumstance. If the plan involves a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, the Executive Director of the Wildlife Resources Commission shall prepare and adopt temporary rules setting out the suspension or liberalization pursuant to G.S. 150B-21.1(a)(1). The Executive Director shall publicize the plan and the temporary rules 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. Upon notification by the State Health Director that the rabies emergency no longer exists, the Executive Director of the Wildlife Resources Commission shall cancel the plan and repeal any rules adopted to implement the plan. The Executive Director of the Wildlife Resources Commission shall publicize the cancellation of the plan and the repeal of any rules in the major news outlets that serve the county or district."

Section 3. 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

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES OR DISTRICTS WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.2 is amended by adding the following new subsection to read:

"(a1) A local health director in whose county or district rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat, may petition the Wildlife Resources Commission, through and with the concurrence of the State Health Director, for a suspension or liberalization of the statutory and regulatory restrictions on taking foxes, raccoons, skunks, or bobcats in that county or district. The State Health Director shall concur in the petition only if the State Health Director finds that a rabies emergency exists. In determining whether a rabies emergency exists, the State Health Director shall consult the Public Health Veterinarian and the State Agriculture Veterinarian, and may consult with any other source of veterinary expertise the State Health Director deems advisable. When the Executive Director of the Wildlife Resources Commission receives a petition from a local health director in which the State Health Director has concurred, the Executive Director shall develop a plan to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the affected area. The plan shall be based upon the best veterinary and 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.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

E[illegible]V. 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
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300 N. Salisbury St.
Raleigh, NC 27603-5925
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Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 29, 1997

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Mary Beach Shuping

Re: **Proposed Senate Committee Substitute for HB 302 - Wildlife/Rabies Emergency**

Section 1 adds a new section to Chapter 130A of the General Statutes under Article 6, Part 6, Rabies. This new section permits local health directors to petition the State Health Director to declare a rabies emergency in their county or district when rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat. The State Health Director, in consultation with the Public Health Veterinarian, State Agriculture Veterinarian, and others, will determine if a rabies emergency exists. If the State Health Director determines that a rabies emergency exists, the State Health Director will petition the Executive Director of the Wildlife Resources Commission to adopt a plan to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats. Finally, this section requires that the State Health Director immediately notify the Executive Director of the Wildlife Resources Commission as soon as it is determined that the rabies emergency no longer exists.

Section 2 directs the Executive Director of the Wildlife Resources Commission (Executive Director), upon petition by the State Health Director, to develop a plan to address the rabies emergency. The plan may involve the suspension or liberalization of any regulatory restrictions on the taking of foxes, raccoons, skunks, or bobcats, and directs that the Executive Director must adopt temporary rules pursuant to G.S. 150B-21.1(a)(1) (permits the adoption of temporary rules for a serious and unforeseen threat to the public health, safety, or welfare) for any suspension or liberalization of regulatory restrictions. This section also requires that the Executive Director notify all major news outlets in the affected area of the plan. Finally, this section directs the Executive Director, upon notification by the State Health Director that the rabies emergency no longer exists, to cancel the plan, repeal any rules, and notify the appropriate news outlets in the affected area.

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 302 DATE 7/29/97

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS7361

~~Rep.~~) Horton
Sen.)

moves to amend the bill on page 2, line 13

( ) WHICH CHANGES THE TITLE

by inserting, After the word "POISONS,"

the phrase:

", other than those used

with dart guns,"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1011
Committee Substitute Favorable 7/15/97

Short Title: Low Pressure Pipe Systems Report. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SUBMISSION OF A STATUS REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION REGARDING FAILING COMMUNITY LOW PRESSURE PIPE WASTEWATER SYSTEMS LOCATED IN WAKE COUNTY, TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO CONTINUE TO MONITOR THE CONVERSION OF THESE SYSTEMS, AND TO AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION TO MAKE RECOMMENDATIONS.

The General Assembly of North Carolina enacts:

Section 1. No later than October 15, 1997, the Department of Commerce, the Department of Environment, Health, and Natural Resources, and the North Carolina Utilities Commission shall submit a joint report to the Environmental Review Commission regarding the status of community low pressure pipe wastewater systems located in Wake County that are, as of the effective date of this act, experiencing failure. This report shall state what corrective actions have been taken for each of the failing systems. This report shall include which communities served by a failing community low pressure pipe wastewater system have been connected to a municipal wastewater system, which have been connected to a private wastewater system, and which have not obtained a permanent substitute wastewater system. The Environmental Review Commission shall continue to monitor the conversion of these systems and may make any recommendations or legislative proposals it deems necessary regarding this subject to the 1998 Regular Session of the 1997 General Assembly.

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 7/29/97
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LEE Hunter	DEHNR
Kim Smith	NCLM
Laura Hartzell	MCIC
Glenn Jernigan	Monsanto Corporation
Carol Hatley	Office of Gov
Sarah Gillen	DEHNR
Speed Whose Affairs	OSBM
R. Paul Williams	NCMBA
Lucius Pullen	Attorney
Leighton Roper	EDA, PA
AD Sinnidel	KFP

Mary Maupin Poyner + Spruill

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANNA TEFFT	OSBM
Ronald D Brown	NC Utilities Comm
DANNY STALLINGS	" " "
TONY WIKE	Public Staff
LAWRENCE DAVIS	WOMBLE CARLYLE
Richard Hamilton	Wildlife Com.
Joe Olinger	Sierra Club / CCNC
ROLF BIZZARD	SEN. BROWNIGHT'S OFFICE

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

August 14, 1997

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, August 14, 1997, at 9:00 a.m., in Room 423 of the Legislative Office Building. Senator Albertson, chairman, presided and there were ten committee members present.

The following bill was discussed and all distributed material is attached:

SENATE BILL 977 - SOUTHERN DAIRY COMPACT - Senator Albertson, sponsor, requested Senator Wellons, Vice Chairman, to take over chairmanship of the committee so that he could explain the bill. There was a proposed committee substitute and Senator Albertson moved for its adoption for discussion purposes. Motion carried. Senator Albertson explained the proposed committee substitute. Paula Gupton of the North Carolina Farm Bureau answered questions from committee members. Senator Phillips moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried and it was sequentially referred to Appropriations.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, August 14, 1997
9:00 a.m.
Room 423 - LOB

AGENDA

SB 977	SOUTHERN DAIRY COMPACT Senator Albertson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, August 14, 1997

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 977 SOUTHERN DAIRY COMPACT

Draft Number:	PCS2807
Sequential Referral:	APPROPRIATIONS
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 977*
Proposed Committee Substitute S977-PCS2807

Short Title: Southern Dairy Compact. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT INTO LAW THE SOUTHERN DAIRY COMPACT, TO DIRECT THE APPOINTMENT OF MEMBERS FROM NORTH CAROLINA TO THE SOUTHERN DAIRY COMPACT COMMISSION, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"Southern Dairy Compact.

"§ 106-810. Southern Dairy Compact entered into; form of Compact.

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

"§ 1. Statement of purpose, findings, and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers,

processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II. Definitions and Rules of Construction

"§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 977*

Short Title: Southern Dairy Compact. (Public)

Sponsors: Senators Albertson; Cochrane, Dannelly, East, Kerr, Ledbetter, Martin of Pitt, Page, and Warren.

Referred to: Agriculture/Environment/Natural Resources.

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North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elai[illegible]. 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
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

14 August 1997

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel
George F. Givens, Committee Counsel

RE: Proposed Committee Substitute for Senate Bill 977 (Southern Dairy Compact)

Senate Bill 997, introduced by Senator Albertson, enacts into North Carolina law the Southern Dairy Compact. The identical House companion bill, House Bill 998, by Representative Brown, was given a favorable report by this Committee on 26 June 1997.

The proposed committee substitute for Senate Bill 977 differs from the original bill only in that Section 3, which sets out the effective dates, has been updated.

The compact legislation was developed in meetings of 14 southern states in an effort to address the problems faced by the southern dairy industry. Its purpose is to regulate the price for milk received by the farmers by setting prices for milk above those set by federal marketing orders in order to assure a stable, local supply of milk and the continued viability of a dairy industry in the southern region.

The legislation establishes a Compact Commission, which would consist of a delegation of three to five members from each participating state. Each state would have one vote and Commission matters would be decided by majority vote, except for the establishment or termination of an "over-order" price or a commission marketing order, which would require a 2/3 vote of the Commission.

A compact "over-order" price will apply only to Class I milk and will not exceed $1.50 per gallon at Atlanta. This price may be adjusted to reflect differences in minimum federal order prices in the region. In the event the federal marketing orders are terminated, the Commission has the authority to establish commission marketing orders. A commission marketing order may apply to all classes and uses of milk.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The Commission would have the authority to adopt rules using the rule-making procedures of Section 4 of the Federal Administrative Procedure Act. In establishing an over-order pricing order or commission marketing order, the Commission will conduct a referendum among producers to determine their approval or disapproval of the proposed pricing order.

Costs of establishing the Commission may be covered by an assessment at a rate of $0.15 per hundred weight on milk handlers who purchase milk from producers in the region. The assessment is to be collected monthly for up to one year after the Commission convenes. In addition, the Commission has the authority to borrow funds. The Commission, however, may not pledge the credit of any participating state.

The Compact takes effect when three of the listed states have enacted its provisions into law and the consent of Congress has been obtained. To date, Louisiana and Arkansas have enacted this legislation.

The bill appropriates $25,000 for FY 1997-1998 and $25,000 for FY 1998-1999 to the Southern Dairy Compact Commission to be used by the Commission to conduct its activities under this Compact.

Section 1 of the act, which enacts the Southern Dairy Compact into law, will become effective when the act becomes law. Section 2, which appropriates funds for the Compact Commission, becomes effective 1 July 1997.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 8/14/97

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Blair Thompson	Senate Page 5910 Lead Mine Rd Raleigh, NC 27612
[signature]	OSBM
[signature]	NCDA
[signature]	Land & Sea Pasture
[signature]	NCFB
R. Paul Wilms	NCMBA
[signature]	NCDA
David McLeod	NCDA+CS
[signature]	NCSU - UNC-GA
Chester Lowder	NC Farm Bureau
G. A. Benson	Ag & Res. Econ, NCSU

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Meredith	NC State Grange
Jim Hobbs	NC Pork Council