2003-2004

HOUSE ENVIRONMENT & NATURAL RESOURCES

COMMITTEE MINUTES

2003-2004

HOUSE COMMITTEE ON

ENVIRONMENT & NATURAL RESOURCES

Chair

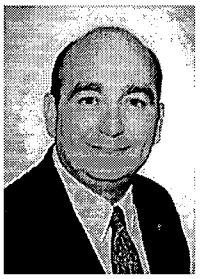
Representative Pryor Gibson

Committee Assistant

Shirlyn MacPherson

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE ENVIRONMENT & NATURAL RESOURCES COMMITTEE
2003 – 2004 SESSION



Rep. Gibson
Chair



Rep. Church
Vice Chair



Rep. Hackney
Vice Chair



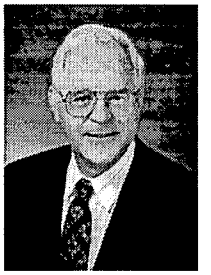
Rep. C. Johnson
Vice Chair



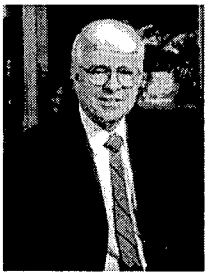
Rep. LaRoque
Vice Chair



Rep. L. Allen



Rep. Blackwood



Rep. Capps



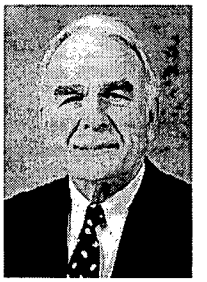
Rep. Carney



Rep. Gillespie



Rep. Gulley



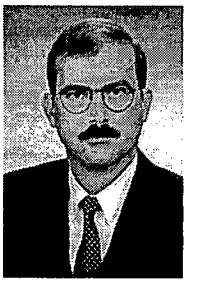
Rep. Haire



Rep. Insko



Rep. Luebke



Rep. McComas

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE ENVIRONMENT & NATURAL RESOURCES COMMITTEE
2003 – 2004 SESSION



Rep. McHenry



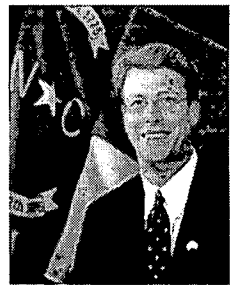
Rep. Owens



Rep. Preston



Rep. Rapp



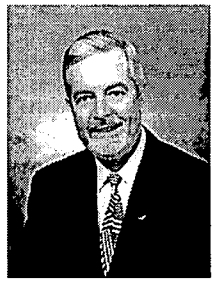
Rep. Rhodes



Rep. Steen



Rep. Stiller



Rep. Warner



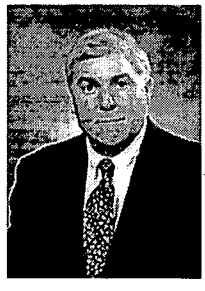
Rep. Weiss



Rep. Womble



Rep. Brubaker
Ex-Officio



Rep. Culpepper
Ex-Officio



Rep. Cunningham
Ex-Officio



Rep. Eddins
Ex-Officio

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

2003-2004

MEMBER	ASSISTANT	PHONE	OFFICE
Gibson, Pryor – Chair	Shirlyn MacPherson	715-3007	419A
Church, Walt -Vice Chair	Joyce Fuller	733-5805	1311
Hackney, Joe -Vice Chair	Emily Reynolds	733-5752	2207
Johnson, Charles, Vice Chair	Sally Gillis	715-3021	416B
LaRoque, Stephen- Vice Chair	Patricia Freije	715-3017	417B
Allen, Lucy	Melissa Riddle	733-5860	1307
Blackwood, Curtis	Betty Smith	733-2406	1317
Capps, Russell	Nancy Fox	733-5903	501
Carney, Becky	Joyce Langdon	733-5827	1221
Gillespie, Mitch	Cindy Hobbs	733-5862	1008
Gulley, Jim	Suzanne Gulley	733-5860	1319
Haire, Philip	Sara Jane Morris	715-3005	419B
Insko, Verla	Pam Evans	733-7208	2121
Luebke, Paul	Joyce Harris	733-7663	529
McComas, Danny	Judy Lowe	733-5786	506
McHenry, Patrick	Brett Keeter	733-5886	1015
Owens, Bill	Linda Johnson	733-0010	635
Preston, Jean	Suzanne Castleberry	733-5706	603
Rapp, Ray	Dot Barber	733-5732	2213
Rhodes, John	Lucille Carter	733-5530	1017

Steen, Fred	Suzanne Erskine	733-5881	514
Stiller, Bonner	Ferebee Stainback	733-5974	508
Warner, Alex	Ann Stancil	733-5853	1206
Weiss, Jennifer	Susan Doty	733-5781	2221
Womble, Larry	Dorothy McLean	733-5777	537

Committee Counsel 733-2578

George Givens
Jeff Hudson
Susan Iddings
Jennifer McGinnis
Tim Dodge, Research Assistant

ATTENDANCE

House Environment and Natural Resources Committee

DATES	6/1/04	6/15/04	6/29/04	7/7/04	7/13/04										
GIBSON, Pryor	✓	✓	✓	✓	✓										
CHURCH, Walt **VICE-CHAIR**	✓		✓	✓	✓										
HACKNEY, Joe **VICE-CHAIR**	✓		✓	✓											
JOHNSON, Charles **VICE-CHAIR**	✓		✓	✓	✓										
LAROQUE, Stephen **VICE-CHAIR**			✓												
ALLEN, Lucy	✓	EXC	✓	✓	✓										
BLACKWOOD, Curtis	✓	✓	✓	✓	✓										
CAPPS, Russell	✓		✓	✓											
CARNEY, Becky		✓	✓	✓	✓										
GILLESPIE, Mitch			✓	✓											
GULLEY, Jim	✓	✓	✓	✓	✓										
HAIRE, Phil	✓		✓	✓	✓										
INSKO, Verla		✓	✓	✓	✓										
LUEBKE, Paul			✓	✓	✓										
MCCOMAS, Danny			✓	✓	✓										
MCHENRY, Patrick			✓												
PRESTON, Jean		✓	✓	✓	✓										
RAPP, Ray	✓	✓	✓	✓	✓										
RHODES, John		✓	✓	✓											
STEEN, Fred		✓	✓	✓	✓										
STILLER, Bonner		✓	✓	✓	✓										
WARNER, Alex	✓	✓	✓	✓											
WEISS, Jennifer	✓	✓	✓	✓	✓										
WOMBLE, Larry			✓	✓	✓										

ATTENDANCE

Environment and Natural Resources Committee

DATES															
EX-OFFICIOS:															
BRUBAKER, Bru															
CULPEPPER, Bill															
CUNNINGHAM, Pete															
EDDINS, Rick															

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 1, 2004
12:00 noon

1. Call to Order

2. Bills:

   HB 1574 – LOWER HAW RIVER STATE NATURAL AREA
   Rep. Hackney and Rep. Insko

   HB 1607 – STATE NAT. & HIST. PRESERVE REMOVALS
   Rep. Weiss and Rep. Miner

3. Adjourn

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 1, 2004

MINUTES

The House Committee on Environment and Natural Resources met June 1, 2004, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church, Joe Hackney, and Charles Johnson, and Committee members Lucy Allen, Curtis Blackwood, Jim Gulley, Phil Haire, Ray Rapp, Alex Warner, and Jennifer Weiss. A Visitor Registration is attached and made part of these minutes. Chair Gibson recognized visitors from Anson and Union Leadership groups.

HB 1607 – State Nat. & Hist. Preserve Removals (Attachment 1) Representative Hackney moved to adopt H1062-PCS70467-RI-7 and be put before the Committee. (Attachments 2, 3, 4). Adopted. Representative Weiss said the bill removes a portion of two parcels at Hemlock Bluffs State Natural Area for an easement to the Town of Cary to widen Kildaire Farm Road. The Town plans to acquire additional property adjacent to the Park and replace 2.4 acres for the State Park next year. The Bill also removes a portion of Pilot Mountain State Park to reallocate to the Department of Cultural Resources.

Bruce Thompson, attorney-representing Cary, said those 1.2 acres from the Preserve -.6 acre for town's right-of-way and .6 acre for easements. The Town will give the State back double (2.4 acres) to preserve next year.

Chief Counsel George Givens clarified questions saying that House Bill 1607 makes deletions from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the North Carolina Constitution. Under the Constitution, additions to and deletions from the State Nature and Historic Preserve require a 3/5 vote of each house. Thus House Bill 1607 will need a 3/5 vote on 2d and 3d reading in the House. Although a 3/5 vote is required, the bill can have both readings in the House on the same day. Representative Johnson moved for a favorable report, unfavorable to the original bill. Passed.

HB 1574 – Lower Haw River State Natural Area (Attachment 5) Representative Johnson moved to adopt H1574-PCS70467-RI-7 and be put before the Committee (Attachment 6,7,8). Representative Hackney said that the bill authorizes DENR to add the Lower Haw River State Natural Area to the State Parks System and to study the establishment of the new State Recreation Area at Blewett Falls Lake. Lewis Ledford, State Parks Director, said the 900 acres was acquired last year for $2.5 million and is contiguous to the Jordan Lake State Recreation Area. Representative Haire moved for a favorable report, unfavorable to the original bill. Passed.

Richard Rogers, DENR, introduced new legislative liaison, Johanna Reese.

Chair Gibson adjourned the meeting at 12:24 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 1
6/1/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1607*

Short Title:	State Nat. & Hist. Preserve Removals.	(Public)
Sponsors:	Representatives Weiss and Miner (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE AND TO DELETE A PORTION OF A PARK FROM THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the Constitution of North Carolina; and

Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-260.10 reads as rewritten:

"**§ 143-260.10. Components of State Nature and Historic Preserve.**

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of 6 May 2003: Baldhead Island State Natural Area, Bay Tree Lake State Park, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Elk Knob State Natural Area, Fort Fisher State

Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Hammocks Beach State Park, ~~Hemlock Bluffs State Natural Area,~~ Jones Lake State Park, Lake James State Park, Lake Norman State Park, Lake Waccamaw State Park, Lea Island State Natural Area, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

...

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of May 6, 2003, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land."

SECTION 2. The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way

Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office.

SECTION 3. The following tract is removed from the State Parks System pursuant to G.S. 113-44.14: The portion of that certain tract or parcel of land at Pilot Mountain State Park in Surry County, Shoals Township, described in Plat Book 21, Page 76, containing 104.280 acres, and shown as the "Horne Creek Living Historical Park" on the drawing prepared by Joe L. Cooke, bearing the preparer's file name Dwg. 3/330, dated 23 March 2004, and filed with the State Property Office. This property may be reallocated to the Department of Cultural Resources for its use of the property as the Horne Creek Farm State Historic Site. This property will remain in the State Nature and Historic Preserve.

SECTION 4. In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this act to the register of deeds of each county in which any portion of the property removed by this act as part of the State Nature and Historic Preserve is located.

SECTION 5. This act is effective when it becomes law.

Att. #2,
6/1/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1607*
PROPOSED COMMITTEE SUBSTITUTE H1607-PCS70459-RI-6

Short Title: State Nat. & Hist. Preserve Removals. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO REMOVE A PORTION OF HEMLOCK BLUFFS STATE NATURAL AREA FROM THE STATE NATURE AND HISTORIC PRESERVE AND THE STATE PARKS SYSTEM TO PROVIDE A RIGHT-OF-WAY FOR THE WIDENING OF KILDAIRE FARM ROAD IN THE TOWN OF CARY, AND TO REMOVE THE HORNE CREEK LIVING HISTORICAL FARM LOCATED WITHIN PILOT MOUNTAIN STATE PARK FROM THE STATE PARKS SYSTEM IN ORDER TO ALLOW THE PROPERTY TO BE REALLOCATED TO THE DEPARTMENT OF CULTURAL RESOURCES FOR USE AS A STATE HISTORIC SITE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the Constitution of North Carolina; and

Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461,

Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office.

SECTION 2. G.S. 143-260.10 reads as rewritten:

"**§ 143-260.10. Components of State Nature and Historic Preserve.**

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of 6 May 2003: Baldhead Island State Natural Area, Bay Tree Lake State Park, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Elk Knob State Natural Area, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Hammocks Beach State Park, ~~Hemlock Bluffs State Natural Area,~~ Jones Lake State Park, Lake James State Park, Lake Norman State Park, Lake Waccamaw State Park, Lea Island State Natural Area, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

...

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of 6 May 2003, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road

(SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land."

SECTION 3. The following tract is removed from the State Parks System pursuant to G.S. 113-44.14: The portion of that certain tract or parcel of land at Pilot Mountain State Park in Surry County, Shoals Township, described in Plat Book 21, Page 76, containing 104.280 acres, and shown as the "Horne Creek Living Historical Park" on the drawing prepared by Joe L. Cooke, bearing the preparer's file name Dwg. 3/331, dated 23 March 2004, and filed with the State Property Office. This property may be reallocated to the Department of Cultural Resources for its use of the property as the Horne Creek Living Historical Farm State Historic Site. This property will remain in the State Nature and Historic Preserve.

SECTION 4. In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this act to the register of deeds of each county in which any portion of the property removed from the State Nature and Historic Preserve by this act is located.

SECTION 5. This act is effective when it becomes law.

ATT # 3
6/1/04

HOUSE BILL 1607:
State Nat. & Hist. Preserve Removals

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Weiss and Miner
Date:	1 June 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	First Edition and PCS (1607-PCS70459-RI-6)		

SUMMARY: ***House Bill 1607 removes a portion of Hemlock Bluffs State Natural Area from the State Nature and Historic Preserve and removes a portion of Pilot Mountain State Park from the State Parks System. The PCS makes technical and clarifying changes to the bill.***

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve (Preserve) by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 113-44.14 provides conditions and procedures for additions to, and deletions from, the State Parks System (System) that must be authorized by the General Assembly. G.S. 143-260.10 lists the current components of the Preserve.

BILL ANALYSIS: House Bill 1607 does the following:

- The bill removes the following property from inclusion in the Preserve:
  - A portion of two parcels at Hemlock Bluffs State Natural Area. The parcels to be removed contain approximately 26,117 square feet that will be needed by the Town of Cary for a right-of-way for the widening of Kildaire Farm Road. This property must be removed from the Preserve before the State can grant easements to the Town of Cary for the right-of-way. Federal Land and Water Conservation Fund restrictions cover the property and require that the property be replaced. The Town of Cary plans to acquire additional property that is adjacent to the existing Park, some of which will be used to replace the property used for the road right-of-way.

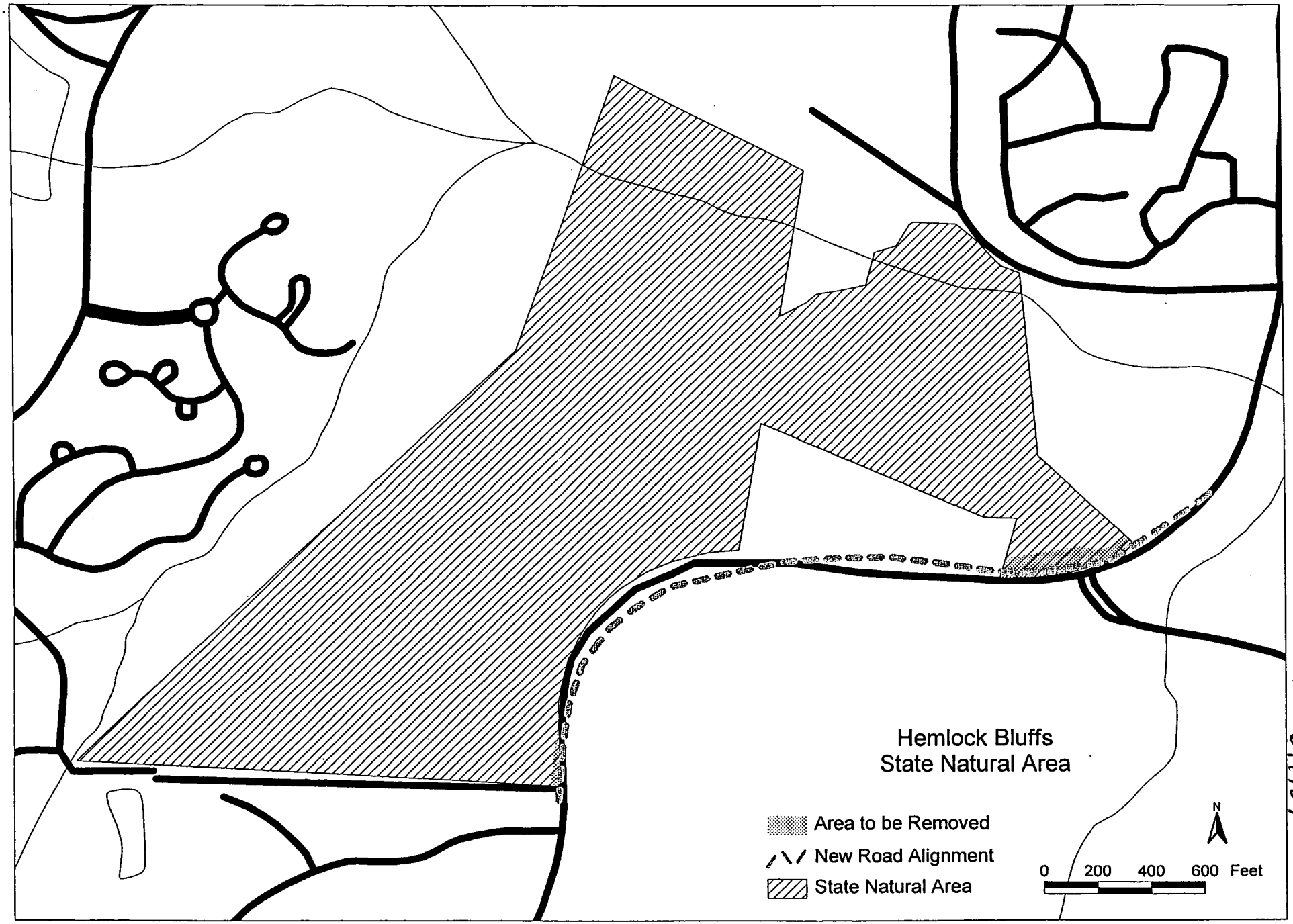
- The bill removes the following property from inclusion in the State Park System:
  - A portion of Pilot Mountain State Park (Park) from the System to allow the property to be reallocated to the Department of Cultural Resources. The property in question, the Horne Creek Living Historical Farm, was established as a State Historic Site in 1987 within the boundaries of the Park. Both the Department of Environment and Natural Resources and the Department of Cultural Resources agree that reallocation of the property to the Department of Cultural Resources would improve the management of the Historic Site and the Park, and executed a Memorandum of Agreement to that effect in August 2003. The Historic Site property must be removed from the System before it can be reallocated to the Department of Cultural Resources. The property will remain in the Preserve, however.

CHANGES MADE BY THE PCS:

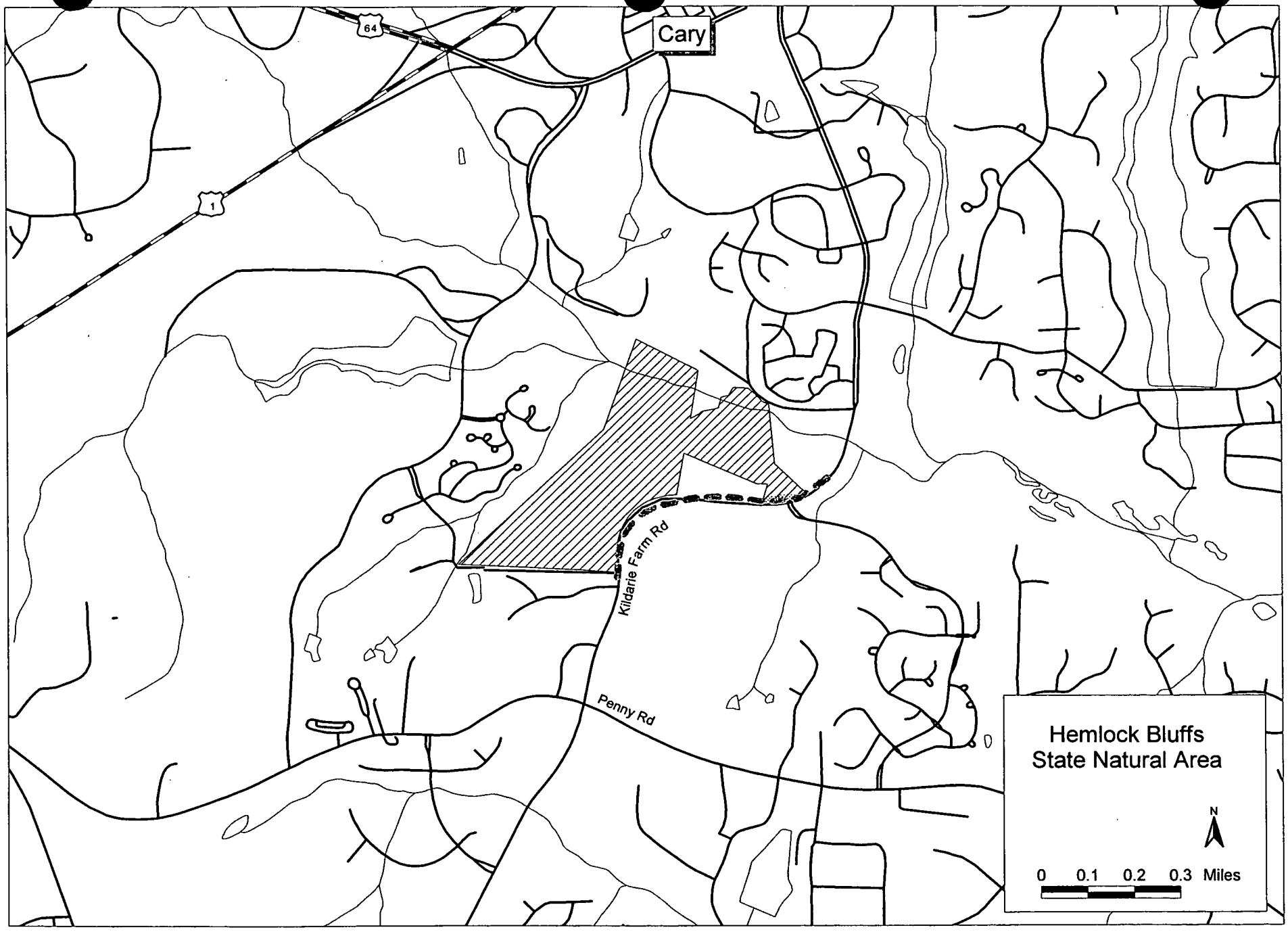
- Changes the title of the bill.
- Reverses the order of Section 1 and Section 2 of the bill.
- Makes several technical and clarifying changes to the bill, including: In Section 1, on Page 2, line 16, correction of a date format for consistency purposes throughout the bill; in Section 3, on Page 3, line 19, a change is made to correct a typo in the reference to a drawing number; in Section 3, on Page 3, line 25, a change is made to correct the name of the State Historic Site; in Section 4, Page 3, line 29, changes are made to clarify the language of the Section.

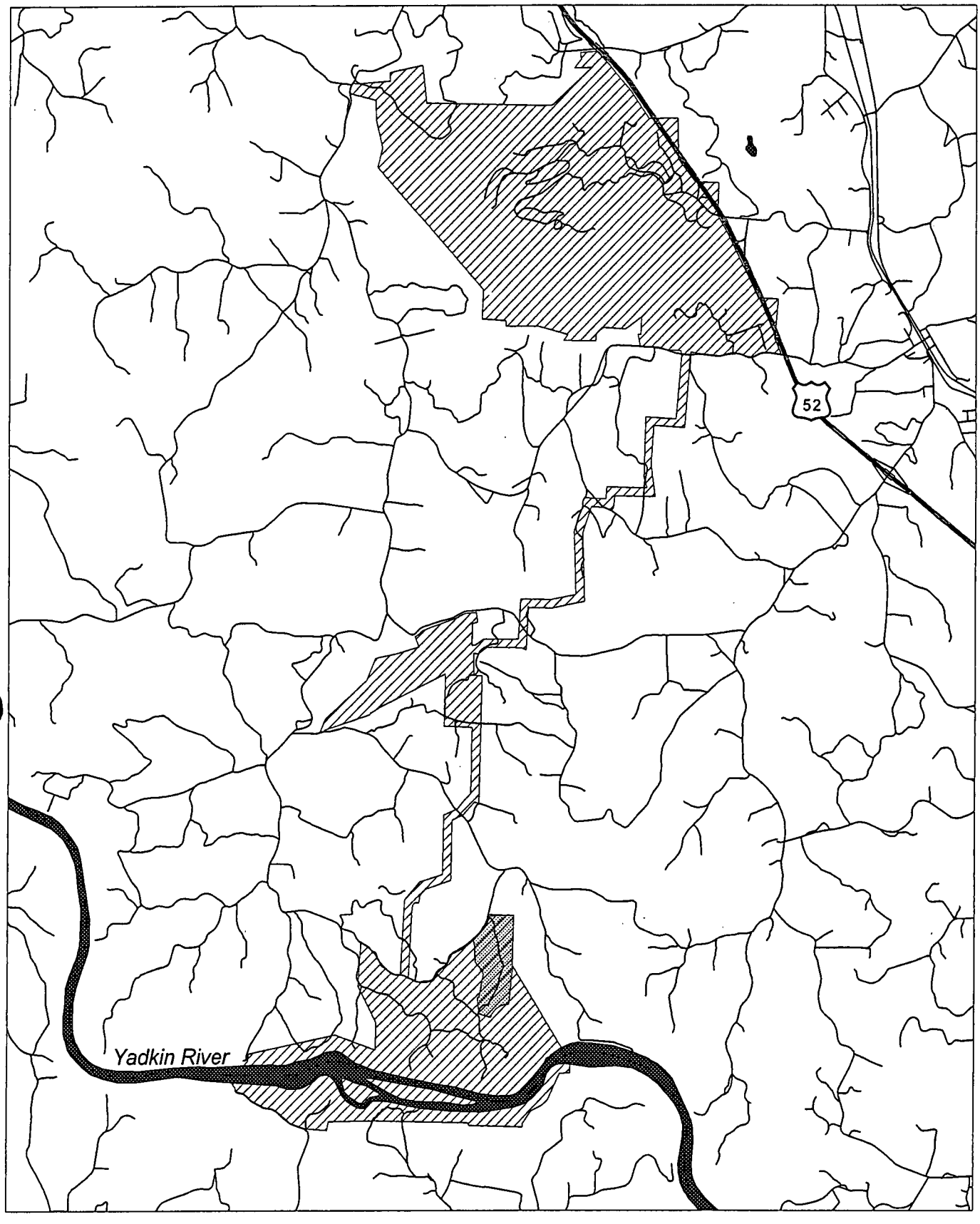
EFFECTIVE DATE: The bill would be effective when it becomes law.

H1607-SMRI-001


Hemlock Bluffs
State Natural Area
Area to be Removed
New Road Alignment
State Natural Area
N
0 200 400 600 Feet

ATT #4
6/1/04


64
Cary
1
Kildarie Farm Rd
Penny Rd
Hemlock Bluffs
State Natural Area
N
0 0.1 0.2 0.3 Miles



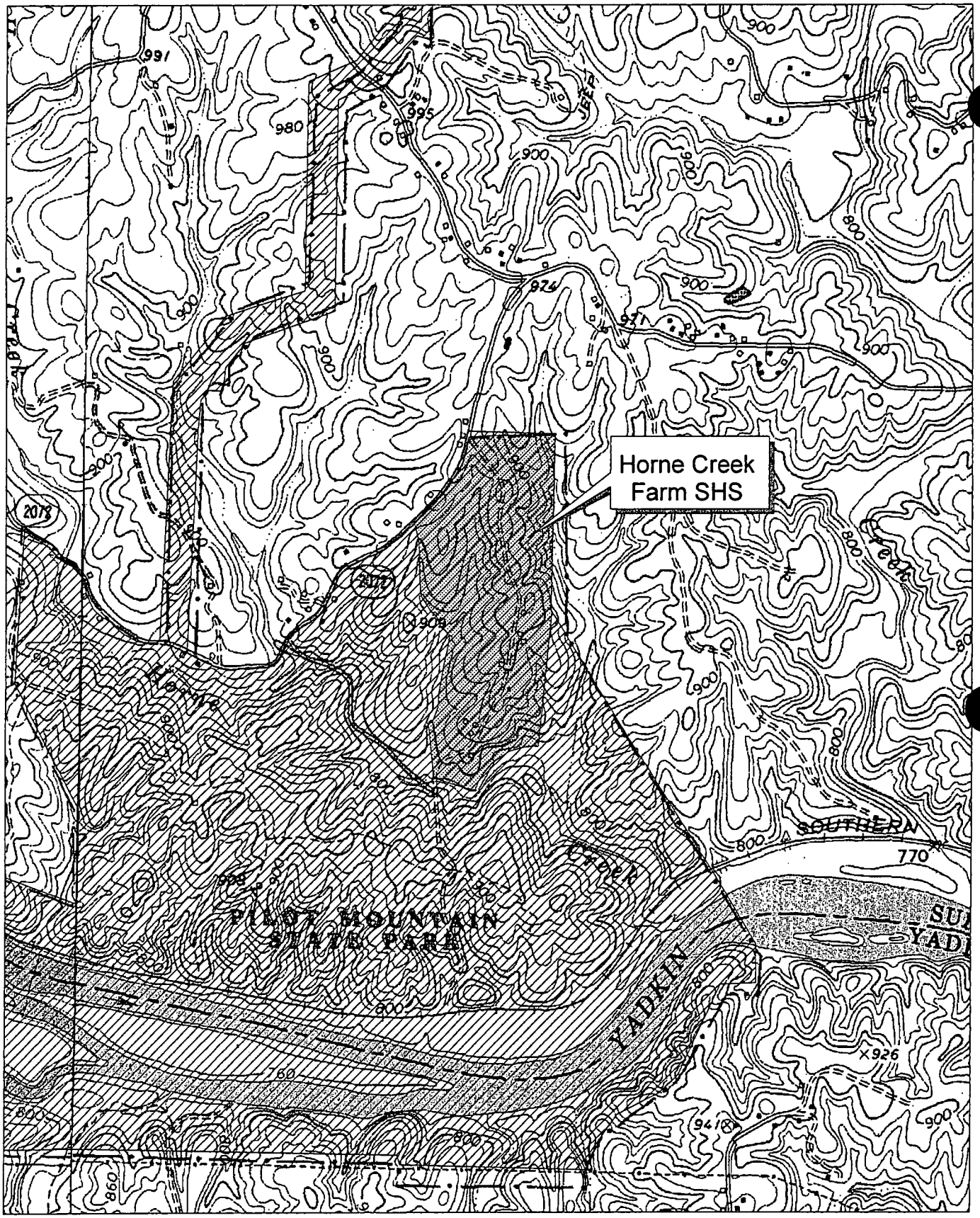
Pilot Mountain
State Park
Area

Horne Creek Farm SHS

State Park

N

0 3000 6000 Feet



Pilot Mountain
State Park

6/1/04

Shirlyn MacPherson (Rep. Gibson)

From: George Givens (Research)
Sent: Tuesday, June 01, 2004 12:59 PM
To: Denise Weeks (House Principal Clerk); Michelle Perry (HPC's Office)
Cc: Rep. Pryor Gibson; Rep. Jennifer Weiss; Rep. David Miner; Rep. Bill Culpepper; Shirlyn MacPherson (Rep. Gibson); Sabra Faires (Speaker Morgan's Office); Linda Attarian (Speaker Black's Office); Jennifer McGinnis (Research)
Subject: House Bill 1607 -- State Nature and Historic Preserve Removals.

The House Environment and Natural Resources Committee will report favorably a Proposed Committee Substitute for House Bill 1607 later today. House Bill 1607 makes deletions from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the North Carolina Constitution. Under the Constitution, additions to and deletions from the State Nature and Historic Preserve require a 3/5 vote of each house. Thus House Bill 1607 will need a 3/5 vote on 2d and 3d reading in the House. Although a 3/5 vote is required, the bill can have both readings in the House on the same day.

I hope that the above is helpful. Please call me at 733-2578 if you have any questions. Thanks.

ATT#5
6/1/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1574*

Short Title:	Lower Haw River State Natural Area.	(Public)
Sponsors:	Representatives Hackney; and Insko.	
Referred to:	Environment and Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF THE LOWER HAW RIVER STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

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 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

Whereas, the Lower Haw River in Chatham County is considered nationally significant for its biological resources including several rare species and possesses biological, scenic, and recreational resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add the Lower Haw River State Natural Area to the State Parks System as provided by G.S. 113-44.14(b).

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

ATT #6
6/1/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **D**

HOUSE BILL 1574*
PROPOSED COMMITTEE SUBSTITUTE H1574-PCS70467-RI-7

Short Title: State Parks System Adds. & Study. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF THE LOWER HAW RIVER STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, AND TO DIRECT THE DIVISION OF PARKS AND RECREATION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE FEASIBILITY AND DESIRABILITY OF ESTABLISHING A STATE RECREATION AREA AT BLEWETT FALLS 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 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

Whereas, the Lower Haw River in Chatham County is considered nationally significant for its biological resources, including several rare species and possesses biological, scenic, and recreational resources of statewide significance; and

Whereas, the Division of Parks and Recreation of the Department of Environment and Natural Resources has identified the Lower Pee Dee, which includes Blewett Falls Lake, as the highest ranked candidate for establishment of a State Recreation Area; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add the Lower Haw River State Natural Area to the State Parks System as provided by G.S. 113-44.14(b).

SECTION 2. The Division of Parks and Recreation of the Department of Environment and Natural Resources shall study the feasibility and the desirability of acquiring land and establishing a State Recreation Area at Blewett Falls Lake. The study shall include estimates of the cost of developing the proposed recreation area. The Division shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 December 2005.

SECTION 3. This act is effective when it becomes law.

ATT #7
6/1/04

HOUSE BILL 1574:
Lower Haw River State Natural Area

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Hackney and Insko
Date:	1 June 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	First Edition and PCS H1574-PCS70467-RI-7		

SUMMARY: ***House Bill 1574 authorizes the Department of Environment and Natural Resources to add the Lower Haw River State Natural Area to the State Parks System. The PCS adds a provision to direct the Division of Parks and Recreation of the Department of Environment and Natural Resources to study the establishment of a new State Recreation Area at Blewett Falls Lake. The bill would be effective when it becomes law.***

BACKGROUND: G.S. 113-44.14(b) provides that the Department of Environment and Natural Resources (DENR) may add a State park, State natural area, State recreation area, State trail, State river, or State lake to the State Parks System upon authorization by an act of the General Assembly.

The Proposed Lower Haw River State Natural Area

The proposed Lower Haw River State Natural Area would be located in Chatham County where the Haw River enters Jordan Lake. This stretch of the Haw River is considered nationally significant for its biological resources including, rare species of fish (Cape Fear Shiner), mussels (Brook Floater), and dragonflies (Septima's Clubtail). Along the river's edge, scenic bluffs and rock outcrops alternate with areas of high quality floodplain forests. In addition to its biological significance, the river is used extensively by canoeists and kayakers who value its rapids and rocky islands.

In December 2003, the State acquired land to be included in the proposed State Natural Area from Duke University. The university had managed the property as part of Duke Forest. Because of the distance of the property from campus, the site received little use from faculty or students, thus the university decided to sell the property. The university recognized the environmental significance of the land and contacted the Triangle Land Conservancy (TLC) to ask for help in finding a conservation buyer. TLC was aware that the State Parks System had included the site on a list of potential future parkland and they approached the State about receiving the land. TLC applied for a grant from the North Carolina Department of Transportation's (DOT) Ecosystem Enhancement Program, which funded the acquisition of the tract as mitigation for highway construction. Duke University wanted to complete the sale as quickly as possible, so with funding from DOT the State took title to the property. However, the site cannot become part of the State Parks System without authorization from the General Assembly pursuant to G.S. 113-44.14(b).

This property is contiguous with property of Jordan Lake State Recreation Area. The Division of Parks and Recreation (Division) proposes to manage the Lower Haw River State Natural Area as a satellite of Jordan Lake State Recreation Area, using staff from the Recreation Area. Recreational development of the proposed State Natural Area will be limited to trails, canoe access, and associated parking. The proposed State Natural Area is not suitable for campgrounds and other such intensive uses, which are available nearby at Jordan Lake State Recreation Area.

Study of new State Recreation Area at Blewett Falls Lake

The Division has identified the Lower Pee Dee, which includes Blewett Falls Lake, as the highest ranked candidate for establishment of a new State Recreation Area.

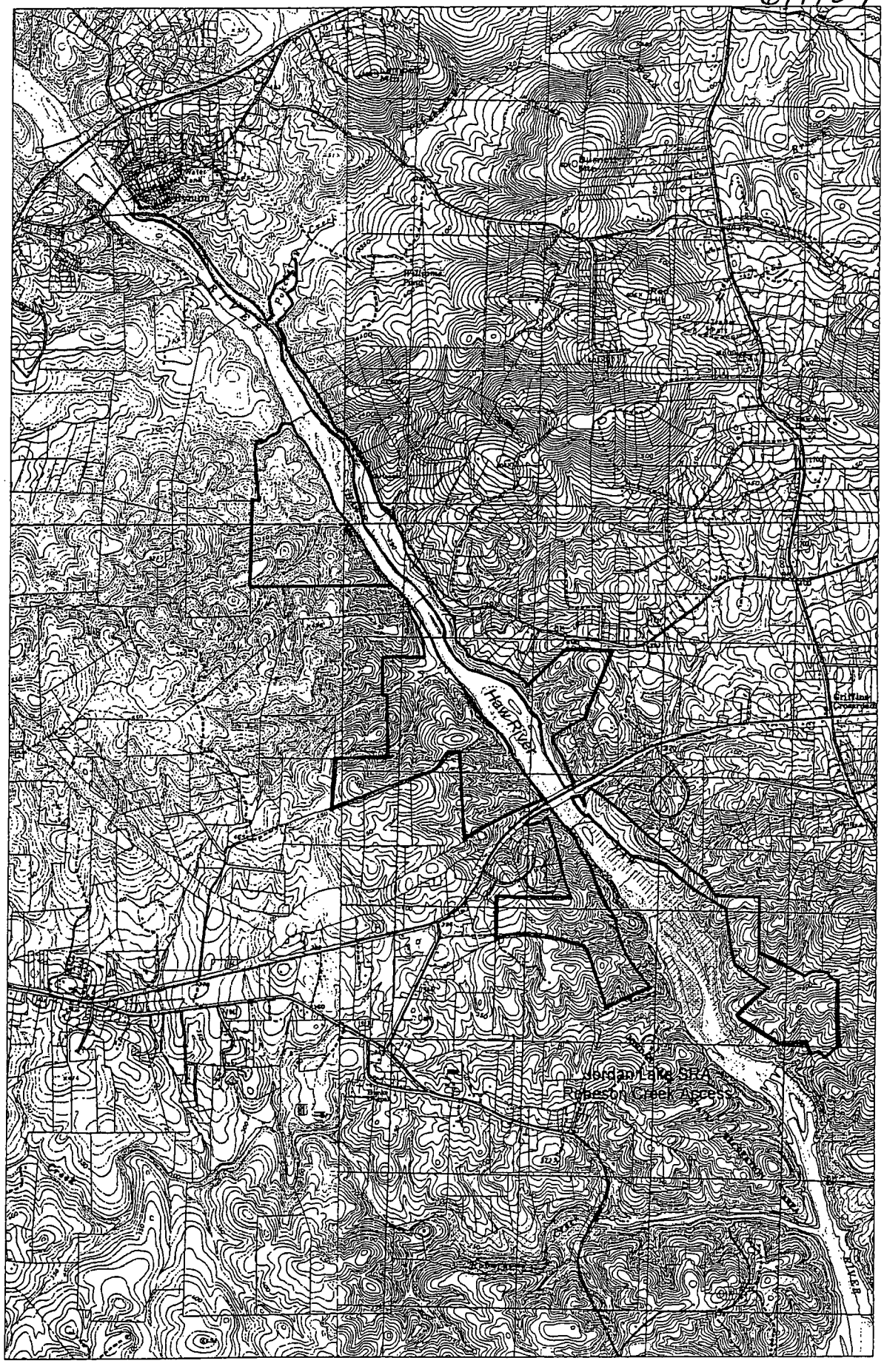
CHANGES MADE BY THE PCS:

- Changes the title of the bill.
- Adds a new Section 2 that directs the Division to study the feasibility and desirability of establishing a new State Recreation Area at Blewett Falls Lake.

BILL ANALYSIS: House Bill 1574 authorizes DENR to add the Lower Haw River State Natural Area to the State Parks System. The PCS adds a provision to direct the Division to study the establishment of a new State Recreation Area at Blewett Falls Lake. The bill would be effective when it becomes law.

H1574-SMRI-001

ATT # 8
6/1/04



Lower Haw River
State Natural Area

State Natural Area
State Recreation Area
Wildlife Resources Commision

0 2000 4000 Feet

N

April 2004

VISITOR REGISTRATION SHEET

Environment & Natural Resources 6/1/04

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Christine Wunsche	NCPIEA
Katie Hartman	"
Priam Harrison	Greensboro NC
Robin Smith	DENR
Michael Nelson	CCNC
Sara Brodnax	CCNC
John Holton	"
Donna Rosefield	DCR
Heyward McKinney	DCR
Jim McPherson	DCR
Sue Regier	DENR - DPR
Amy Lynch	CTNC
Erin Kimrey	NC. Con Net.
Adrienne Harris	NC Con. Net.
Pam Meyer	NC Assoc. City Comrs
Anita Watkins	NCLM
Kim Hibbard	" "
Amanda Maris	NC Sierra Club — intern to David Knight
William Moss	Sierra club
Melissa Hoke	NC sierra club - intern w/ David Knight
David Knight	"
Gary Harris	NC Petroleum Mkte. Assoc
Doug Mavity	"
Cindy Riddle	NC Cooperative Network
John Cyrus	NC State Grange
David Meredith	NC state Grange
Luke Conroy	Gov office

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 6/1/04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Joe Delk	Gov. Office
John Mattingly	Gov. office

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1607 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE AND TO DELETE A PORTION OF A PARK FROM THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1574 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ADDITION OF THE LOWER HAW RIVER STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 15, 2004
12:00 noon

1. Call to Order

2. Bills (not necessarily in this order and as time allows):

   SB 859 – CATAWBA RIVER BASIN BI-STATE ADVISORY COMM.
   Sen. Clodfelter

   SB 1219 – DRY CLEANING SOLVENT CLEANUP ACT AMENDMENTS
   Sen. Clodfelter

3. Adjourn

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 15, 2004

MINUTES

The House Committee on Environment and Natural Resources met June 15, 2004, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chair Charles Johnson, and Committee members Curtis Blackwood, Becky Carney, Jim Gulley, Verla Insko, Jean Preston, Ray Rapp, John Rhodes, Fred Steen, Bonner Stiller, Alex Warner, and Jennifer Weiss. Representative Lucy Allen had an excused absence. A Visitor Registration is attached and made part of these minutes.

SB 1219 – Dry Cleaning Solvent Cleanup Act Amendments (Attachments 1, 2, 3). Senator Clodfelter said the bill would increase the percentage of revenue credited to the Dry-Cleaning Solvent Cleanup Fund that may be used to pay the cost of assessment or remediation of dry-cleaning solvent contamination that occurred prior to July 1, 2001, from 10 percent to 25 percent of the revenues credited to the Fund in the preceding fiscal year. Representative Weiss moved for a favorable report. Passed.

SB 859 – Catawba River Basin Bi-State Advisory Comm. (Attachment 4) Representative Stiller moved to adopt S859-PCS35479-RI-9 and be put before the Committee (Attachments 5,6). Senator Clodfelter said that the bill establishes, with South Carolina, the Catawba/Wateree and Yadkin/Pee Dee River Basins Advisory Commissions, which would provide guidance and make recommendations to government bodies on the use, stewardship, and enhancement of water and natural resources in those river basins. After a few questions, Representative Carney moved for a favorable report, unfavorable to the original bill. Passed.

Chair Gibson adjourned the meeting at 12:19 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

#1
6/15/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 1219*

Short Title:	Dry Cleaning Solvent Cleanup Act Amendments.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Finance.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERCENTAGE OF REVENUE CREDITED TO THE DRY-CLEANING SOLVENT CLEANUP FUND THAT MAY BE USED TO PAY COSTS OF ASSESSMENT OR REMEDIATION OF DRY-CLEANING SOLVENT CONTAMINATION THAT OCCURRED PRIOR TO 1 JULY 2001, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.(c) of S.L. 2001-265 reads as rewritten:

"**SECTION 2.(c)** The total of all payments made pursuant to this section in a single fiscal year shall not exceed ~~ten percent (10%)~~twenty-five percent (25%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year."

SECTION 2. This act becomes effective 1 July 2004.

#2
6/15/04

SENATE BILL 1219:
Dry Cleaning Solvent Cleanup Act Amendments.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Clodfelter
Date:	June 15, 2004	**Summary by:**	Tim Dodge, Research Assistant for Environmental Issues
Version:	First Edition		

SUMMARY: ***Senate Bill 1219 would increase the percentage of revenue credited to the Dry-Cleaning Solvent Cleanup Fund that may be used to pay costs of assessment or remediation of dry-cleaning solvent contamination that occurred prior to 1 July 2001 from 10 percent to 25 percent of the revenues credited to the Fund in the preceding fiscal year. The bill would become effective 1 July 2004.***

BACKGROUND:

The Dry-Cleaning Solvent Cleanup Act of 1997 (S.L. 1997-392) was enacted to facilitate the cleanup of contamination at dry-cleaning facilities. The 1997 Act provides that owners of dry-cleaning facilities, after satisfying applicable deductibles and co-payments, may seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund (Fund) for costs associated with the cleanup of contaminated dry-cleaning sites. The Fund is currently funded by a tax on dry-cleaning solvent. Chlorine-based solvents are taxed at a rate of $10 per gallon of dry-cleaning solvent and hydrocarbon-based solvents are taxed at a rate of $1.35 per gallon of dry-cleaning solvent.

S.L. 2001-265 provided that any person who undertook cleanup of a dry-cleaning site pursuant to a notice of violation or enforcement action by the Department of Environment and Natural Resources between 1 October 1997 and 30 June 2001 may seek reimbursement from the Fund for any costs exceeding $50,000. In addition, any person who, as of 30 June 2001, was cleaning up a dry-cleaning site may seek reimbursement from the Fund and any costs expended on cleanup that are necessary and reasonable will be credited toward the applicable deductible. To protect the solvency of the Fund, the act specified that total payments made pursuant to these provisions in a fiscal year may not exceed 10 percent of the revenues credited to the Fund in the preceding fiscal year. For sites to be eligible under these provisions, they were required to seek reimbursement of the past costs prior to 1 July 2002. A total of approximately $2.6 million in eligible claims were submitted before the 1 July 2002 deadline.

BILL ANALYSIS:

Senate Bill 1219 would increase the percentage of revenue that may be used to pay costs of assessment or remediation of dry-cleaning solvent contamination that occurred prior to 1 July 2001 from 10 percent to 25 percent of the revenues credited to the Fund in the preceding fiscal year. This change would allow the remaining reimbursement claims to be paid in an expedited manner.

EFFECTIVE DATE:

The bill would become effective 1 July 2004.

#3
6/15/04

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

REVISED

BILL NUMBER: Senate Bill 1219 (First Edition)

SHORT TITLE: Dry Cleaning Solvent Cleanup Act Amendments.

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
REVENUES:					
EXPENDITURES:					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Waste Management

EFFECTIVE DATE: July 1, 2004

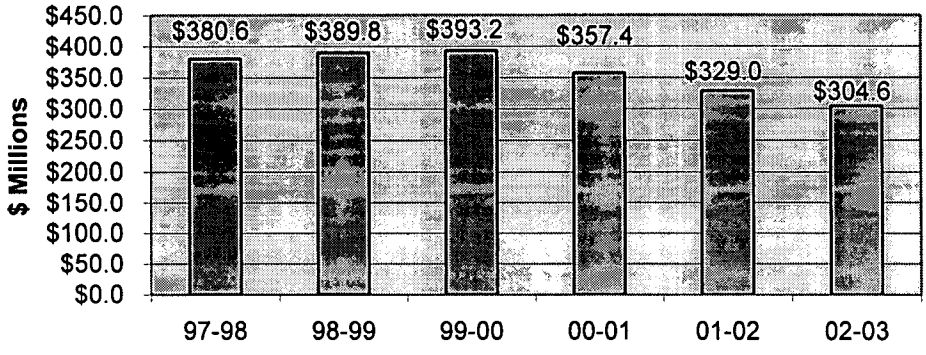
BILL SUMMARY: This proposal increases the annual cap on payments from the Dry-Cleaning Solvent Cleanup Fund for costs ("past costs") incurred in connection with dry-cleaning solvent assessment and remediation activities pursuant to a notice of violation or enforcement action during the period between October 1, 1997 and June 30, 2001. Current law provides that such payments shall not exceed 10% of revenues deposited to the fund in the previous fiscal year. This bill would raise the cap to 25% of the previous year's fund revenues.

ASSUMPTIONS AND METHODOLOGY: This bill has no fiscal impact since it does not impact the current funding streams for the Cleanup Fund; rather, the bill proposes changing how the monies within the fund may be spent. The following analysis explains how this bill would impact the amount of funding available to pay "past cost" claims.

Dry-Cleaning Solvent Cleanup Fund Revenue Sources

Sales Tax: Effective April 1, 2003, the Cleanup Fund receives 60% of the net State sales and use taxes collected on dry-cleaning and laundry services during the previous fiscal year. Taxable retail sales for laundries and dry cleaners increased nominally between FY 1997-98 and FY 1999-00 and have since declined.

Taxable Retail Sales For Laundries and Dry Cleaners

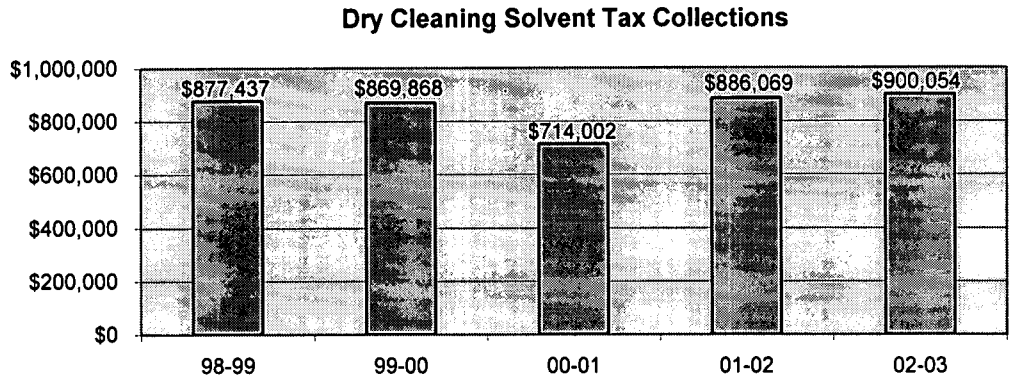


Taxable retail sales in the current fiscal year (FY 2003-04) are on pace to finish at $300 million. This fiscal note assumes a no growth scenario for the next five years and annual taxable retail sales of $300 million. Table A below summarizes the projected State sales tax collections on laundry and dry-cleaning services for FY 2002-03 through FY 2006-07.

Table A: State Sales Tax Collections on Laundry and Dry-Cleaning Services (in millions)

Fiscal Year	Taxable Sales	Sales Tax Rate	Sales Tax Collections
02-03 (act.)	$304.6	4.5%	**$13.7**
03-04 (est.)	$300.0	4.5%	**$13.5**
04-05 (est.)	$300.0	4.5%	**$13.5**
05-06 (est.)	$300.0	4.0%	**$12.0**
06-07 (est.)	$300.0	4.0%	**$12.0**

Privilege Tax on Dry-cleaning Solvents: The Cleanup Fund also receives the taxes collected on dry-cleaning solvents. There is a tax of $10 on each gallon of solvent purchased that is chlorine-based and $1.35 on each gallon of solvent that is hydrocarbon-based. For the past five years, annual revenues have fluctuated around an average of $850,000. This fiscal note assumes a no growth scenario and annual collections of $850,000.



Other Revenue Sources: G.S. 142-215.104C states the Cleanup Fund may also receive revenues from cost recovery, gifts and grants, and interest income earned on the cash balance. Due to the uncertain nature of these revenue sources, this fiscal note assumes that no revenues will be generated through these means.

Table B summarizes the projected annual revenues deposited into the Cleanup Fund.

Table B: Projected Fund Revenues (in millions)			
Fiscal Year	**Solvent Tax**	**Sales Tax**	**Total**
03-04	0.85	$8.2	**$9.07**
04-05	0.85	$8.1	**$8.95**
05-06	0.85	$8.1	**$8.95**
06-07	0.85	$7.2	**$8.05**
07-08	0.85	$7.2	**$8.05**

Funds Available to Reimburse Past Costs

A total of $2.6 million in eligible "past cost" claims were submitted to the Department of Environment and Natural Resources before the July 1, 2002 deadline. After excluding the $50,000 per site deductible, total reimbursements due are $1.9 million. The Cleanup Fund received revenues of $1.07 million in FY 2002-03; therefore, under current law approximately $107,000 in reimbursements are payable in FY 2003-04. Table B summarizes the amount of funds that would be available to pay pending claims in future years under the current 10% and proposed 25% caps.

Table C: Funds Available to Reimburse "Past Cost" Claims		
Fiscal Year	**Under 10% Cap**	**Under 25% Cap**
04-05	$907,420	$2,268,550
05-06	$895,000	$2,237,500
06-07	$895,000	$2,237,500
07-08	$805,000	$2,012,500
08-09	$805,000	$2,012,500

Under the current 10% cap, it would take until FY 2005-06 to pay all "past cost" claims; under the 25% cap, all pending claims otherwise reimbursable under the Dry Cleaning Solvent Cleanup Act

would be paid in FY 2004-05. As of May 28, 2004, the Cleanup Fund had a cash balance of $13.4 million.

SOURCES OF DATA: Department of Revenue; Department of Environment and Natural Resources; Dry-Cleaning Solvent Cleanup Act Program 2003 Annual Report

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jennifer Haygood

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: June 9, 2004

Signed Copy Located in the NCGA Principal Clerk's Offices

#4
6/15/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 859

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/12/03

Short Title: Catawba River Basin Bi-State Advisory Comm. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CATAWBA RIVER BASIN BI-STATE ADVISORY COMMISSION AND TO APPROPRIATE FUNDS TO ENABLE THE COMMISSION TO ACHIEVE ITS PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Catawba River Basin Bi-State Advisory Commission.

"**§ 77-110. Definitions.**

The following definitions apply in this Article:

(1) 'Commission' means the Catawba River Basin Bi-State Advisory Commission.

(2) 'Catawba River Basin' or 'Basin' means that land area designated as the Catawba River Basin pursuant to G.S. 143-215.22G and the land area designated as the Catawba River Basin by the South Carolina Department of Health and Environmental Control.

"**§ 77-111. Commission established; purposes.**

There is established the Catawba River Basin Bi-State Advisory Commission. The Commission shall be composed of members from the State of North Carolina and the State of South Carolina. The purposes of the Commission shall be to:

(1) Provide guidance and make recommendations to local, state, and federal legislative and administrative bodies and others for the use, stewardship, and enhancement of the water and other natural resources for all citizens within the Basin.

(2) Provide a forum for discussion of issues affecting the Basin's water quantity, water quality, and other natural resources.

(3) Promote communication, coordination, and education among stakeholders within the Basin.

(4) Undertake studies and prepare, publish, and disseminate information related to water quantity, water quality, and other natural resources of the Basin through reports and other means.

"**§ 77-112. Membership; terms of office; eligibility for appointment; meetings.**

(a) The Commission shall be composed of 14 members as follows:

(1) A member of the North Carolina House of Representatives whose district includes a part of the North Carolina portion of the Basin, appointed by the Speaker of the North Carolina House of Representatives.

(2) A member of the North Carolina House of Representatives whose district includes a part of the North Carolina portion of the Basin, appointed by the Speaker of the North Carolina House of Representatives.

(3) A member of the North Carolina Senate whose district includes a part of the North Carolina portion of the Basin, appointed by the President Pro Tempore of the North Carolina Senate.

(4) A member of the North Carolina Senate whose district includes a part of the North Carolina portion of the Basin, appointed by the President Pro Tempore of the North Carolina Senate.

(5) A member of the South Carolina House of Representatives whose district includes a part of the South Carolina portion of the Basin, appointed as provided by the General Assembly of South Carolina.

(6) A member of the South Carolina House of Representatives whose district includes a part of the South Carolina portion of the Basin, appointed as provided by the General Assembly of South Carolina.

(7) A member of the South Carolina Senate whose district includes a part of the South Carolina portion of the Basin, appointed as provided by the General Assembly of South Carolina.

(8) A member of the South Carolina Senate whose district includes a part of the South Carolina portion of the Basin, appointed as provided by the General Assembly of South Carolina.

(9) The President of Duke Power Company or the President's designee.

(10) The Chair of the Bi-State Catawba River Task Force or the Chair's designee.

(11) The chief executive officer of Carolina's Partnership, Inc., or the chief executive officer's designee.

(12) One person to represent the following commissions, appointed jointly by the three chief executive officers of the commissions: the Lake Wylie Marine Commission established pursuant to Article 4. of Chapter 77 of the General Statutes, the Mountain Island Lake Marine Commission established pursuant to Article 6 of Chapter 77 of the General Statutes, and the Lake Norman Marine Commission

established pursuant to Chapter 1089 of the 1969 Session Laws, appointed as provided in this subdivision.

(13) One person from a nonprofit land conservation trust operating within the North Carolina portion of the Basin, appointed by the Governor of North Carolina.

(14) One person currently employed by a municipal, county, or private water or sewer utility in the South Carolina portion of the Basin, appointed by the Governor of South Carolina.

(b) Each member appointed to the Commission pursuant to subdivisions (1) through (4) of subsection (a) of this section shall serve at the pleasure of the appointing authority so long as the member remains a Representative or Senator. Each member appointed to the Commission pursuant to subdivisions (5) through (8) of subsection (a) of this section shall serve as provided by the General Assembly of South Carolina. Each member appointed to the Commission pursuant to subdivisions (9) through (11) of subsection (a) of this section shall serve for so long as the member continues in the qualifying position or, if the member is a designee, at the pleasure of the designating authority. Each member appointed to the Commission pursuant to subdivisions (12) and (13) of subsection (a) of this section shall serve a term of two years and may be reappointed to serve no more than three consecutive full terms or 84 consecutive months, whichever is greater. The term of a person appointed to the Commission pursuant to subdivision (12) of subsection (a) of this section shall expire on 1 January of even-numbered years. The term of a person appointed to the Commission pursuant to subdivision (13) of subsection (a) of this section shall expire on 1 January of odd-numbered years. The term of a member who is appointed pursuant to subdivision (14) of subsection (a) of this section shall serve as provided by the General Assembly of South Carolina. An appointment to fill a vacancy on the Commission shall be for the unexpired balance of the term. A vacancy on the Commission shall be filled in the same manner as the original appointment. Members of the Commission who are appointed from or reside in North Carolina may be removed by the Governor of North Carolina for misfeasance, malfeasance, or nonfeasance, including failure to attend at least one-half of the meetings of the Commission, as provided in G.S. 143B-13.

(c) The Governor of North Carolina shall designate one of the members appointed pursuant to subdivisions (1) through (4) of subsection (a) of this section to serve as Cochair of the Commission. The Cochair appointed by the Governor of North Carolina shall serve a term of two years from the date of appointment so long as the member remains a Representative or Senator. The Governor of South Carolina shall designate one of the members appointed pursuant to subdivisions (5) through (8) of subsection (a) of this section to serve as Cochair of the Commission. The Cochair appointed by the Governor of South Carolina shall serve a term as provided by the General Assembly of South Carolina.

(d) The Commission shall meet upon the call of the Cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

(e) The legislative members of the Commission from each state may meet separately to discuss Basin-related issues affecting their state and may report their findings independently of the Commission.

"**§ 77-113. Powers and duties.**

(a) The Commission shall have no regulatory authority.

(b) To achieve its purposes, the Commission shall have all of the following powers and duties:

(1) To develop rules and procedures for the conduct of its business. Rules and procedures developed pursuant to this subdivision shall be effective upon an affirmative vote by a majority of the Commission members.

(2) To establish standing and ad hoc advisory committees, which shall be constituted in a manner to ensure a balance among recognized interests. The Commission shall determine the purpose of each advisory committee.

(3) To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The Commission may accept or expend funds only after an affirmative vote by a majority of the members of the Commission.

(4) To exercise the powers of a body corporate, including the power to sue and be sued, and to adopt and use a common seal and alter the same.

(5) To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the Commission.

(6) To designate a fiscal agent.

(7) To perform any lawful acts necessary or appropriate to achieve the purposes of the Commission.

(c) The Commission shall have no authority to obligate or otherwise bind the State of North Carolina, the State of South Carolina, or any agency or subdivision of either state.

"**§ 77-114. Staffing; meeting facilities; assistance by agencies.**

(a) The North Carolina Department of Environment and Natural Resources and the South Carolina Department of Health and Environmental Control shall provide staffing and meeting facilities for the Commission. Additional staff may be hired or contracted by the Commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by the Commission, within available resources.

(b) All agencies of the State of North Carolina and the State of South Carolina shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its responsibilities. The North Carolina Secretary of Environment and Natural Resources and the South Carolina Commissioner of Health and Environmental Control or their designees shall each serve as the liaison between their respective state agencies and the Commission.

"**§ 77-115. Funding.**

(a) The Commission shall annually adopt a budget that shall include the Commission's estimated expenses. Funding for the Commission shall be shared and apportioned between the State of North Carolina and the State of South Carolina. The appropriation of public funds to the Commission shall be provided through each state's regular process for appropriating public funds.

(b) The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in the form that the Auditor of North Carolina and the State Auditor of South Carolina prescribe. The accounts and records of the Commission shall be subject to an annual audit by the Auditor of North Carolina and the State Auditor of South Carolina or their legal representatives. The cost of the annual audits shall be borne by the Commission. The results of the audits shall be delivered to the Joint Legislative Commission on Governmental Operations of the General Assembly of North Carolina and to the General Assembly of South Carolina as the General Assembly of South Carolina shall provide.

"**§ 77-116. Compensation and expenses of Commission members.**

(a) Members of the Commission who are appointed from or reside in North Carolina shall receive no salary for their service on the Commission but shall be paid, within available resources, per diem, subsistence, and travel expenses as follows:

(1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1.

(2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6.

(3) All other Commission members at the rate established in G.S. 138-5.

(b) Members of the Commission who are appointed from or reside in South Carolina shall be compensated as provided by the General Assembly of South Carolina.

(c) All expenses shall be paid from funds appropriated or otherwise available to the Commission.

"**§ 77-117. Annual report.**

The Commission shall submit an annual report, including any recommendations, on or before 1 October of each year to the Governor of North Carolina, the Environmental Review Commission of the General Assembly of North Carolina, the Governor of South Carolina, and the General Assembly of South Carolina, as the General Assembly of South Carolina shall provide.

"**§ 77-118. Termination.**

The General Assembly of North Carolina may terminate the Commission by repealing this Article. The Commission shall terminate if the General Assembly of South Carolina repeals the provisions of the South Carolina Code of Laws that are comparable to this Article."

SECTION 2. Notwithstanding the provisions of G.S. 77-112(b), as enacted by Section 1 of this act, the initial term of the member of the Catawba River Basin Bi-State Advisory Commission appointed pursuant to G.S. 77-112(a)(12) shall expire 1 January 2006. Notwithstanding the provisions of G.S. 77-112(b), as enacted by Section 1 of this act, the initial term of the member of the Catawba River Basin Bi-State

Advisory Commission appointed pursuant to G.S. 77-112(a)(13) shall expire 1 January 2007. The Catawba River Basin Bi-State Advisory Commission shall submit the first report pursuant to G.S. 77-117, as enacted by Section 1 of this act, on or before 1 October 2004.

SECTION 3. There is appropriated from the General Fund to the Catawba River Basin Bi-State Advisory Commission the sum of twenty-five thousand dollars ($25,000) for the 2003-2004 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 2004-2005 fiscal year to implement the provisions of this act.

SECTION 4. This act becomes effective 1 July 2003.

H 5
6/15/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 859

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/12/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S859-PCS35479-RI-9

Short Title: River Basins Advisory Commissions. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CATAWBA/WATEREE RIVER BASIN ADVISORY COMMISSION AND THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"River Basins Advisory Commissions.

"**§ 77-110. Definitions.**

The following definitions apply in this Article:

(1) 'Commission' or 'commissions' means (i) the Catawba/Wateree River Basin Advisory Commission, (ii) the Yadkin/Pee Dee River Basin Advisory Commission, or (iii) both commissions, as required by the context.

(2) 'River basin' or 'river basins' means (i) that land area designated as the Catawba River Basin pursuant to G.S. 143-215.22G and that land area designated as the Catawba/Wateree River Basin by the South Carolina Department of Health and Environmental Control, (ii) that land area designated as the Yadkin (Yadkin-Pee Dee) River Basin pursuant to G.S. 143-215.22G and that land area designated as the Yadkin/Pee Dee River Basin by the South Carolina Department of Health and Environmental Control, or (iii) both river basins, as required by the context.

"**§ 77-111. Commissions established; purposes.**

There is established the Catawba/Wateree River Basin Advisory Commission and the Yadkin/Pee Dee River Basin Advisory Commission. The commissions shall be constituted as described in this Article and there shall be a separate commission for each river basin. The commissions shall be permanent bodies composed of members from the State of North Carolina and the State of South Carolina. The purpose of each commission shall be to:

(1) Provide guidance and make recommendations to local, state, and federal legislative and administrative bodies, and to others as it considers necessary and appropriate, for the use, stewardship, and enhancement of the water, and other natural resources, for all citizens within the river basins.

(2) Provide a forum for discussion of issues affecting the river basin's water quantity and water quality, and issues affecting other natural resources.

(3) Promote communication, coordination, and education among stakeholders within the river basins.

(4) Identify problems and recommend appropriate solutions.

(5) Undertake studies related to water quantity, water quality, and other natural resources in the river basin based on existing data available from agencies located in either state.

(6) Determine the optimum approach to comprehensively and collaboratively provide recommendations for integrated river management including, but not limited to, the total assimilative capacity of the river basin.

"**§ 77-112. Powers and duties.**

(a) The authority granted to each commission shall be advisory in nature and in no way shall either commission be construed to have any regulatory authority.

(b) Neither commission shall have any authority to obligate or otherwise bind the State of North Carolina, the State of South Carolina, or any agency or subdivision of either state.

(c) To achieve its purposes, each commission shall have all of the following powers and duties:

(1) To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives including, but not limited to, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this item shall be effective upon an affirmative vote by a majority of the commission members.

(2) To establish standing and ad hoc committees, which shall be constituted in a manner to ensure a balance between recognized interests and states. The commissions shall determine the purpose of each standing or ad hoc committee.

(3) To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The

commissions may accept or expend funds only after an affirmative vote by a majority of the members of the commissions.

(4) To exercise the powers of a body corporate, including the power to sue and be sued, and adopt and use a common seal and alter the same.

(5) To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the commissions.

(6) To designate a fiscal agent.

(7) To perform any lawful acts necessary or appropriate to achieve the purposes of the commissions.

"**§ 77-113. Membership; terms of office; eligibility for appointment; meetings.**

(a) The Catawba/Wateree River Basin Advisory Commission shall be composed of 15 members as follows:

(1) Two members of the North Carolina House of Representatives whose districts include a part of the North Carolina portion of the river basin, to be appointed by the Speaker of the North Carolina House of Representatives.

(2) Two members of the North Carolina Senate whose districts include a part of the North Carolina portion of the river basin, to be appointed by the President Pro Tempore of the North Carolina Senate.

(3) Two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives.

(4) Two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate.

(5) One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.

(6) One person from a nonprofit land conservation trust operating within the North Carolina portion of the river basin, appointed by the Governor of North Carolina.

(7) The President of Duke Power or the President's designee.

(8) The Chair of the Bi-State Catawba River Task Force or the Chair's designee.

(9) The Chief Executive Officer of Carolina's Partnership, Inc., or the Chief Executive Officer's designee.

(10) One person to represent the following commissions, appointed jointly by the three chief executive officers of the commissions: the Lake Wylie Marine Commission established pursuant to Article 4 of Chapter 77 of the General Statutes, the Mountain Island Lake Marine Commission established pursuant to Article 6 of Chapter 77 of the General Statutes, and the Lake Norman Marine Commission established pursuant to Chapter 1089 of the 1969 Session Laws.

(11) One member of a lake homeowner's association located on the Catawba/Wateree River whose members reside in South Carolina, to

be appointed by the President Pro Tempore of the South Carolina Senate.

(b) The Yadkin/Pee Dee River Basin Advisory Commission shall be composed of 15 members as follows:

(1) Two members of the North Carolina House of Representatives whose districts include a part of the North Carolina portion of the river basin, to be appointed by the Speaker of the North Carolina House of Representatives.

(2) Two members of the North Carolina Senate whose districts include a part of the North Carolina portion of the river basin, to be appointed by the President Pro Tempore of the North Carolina Senate.

(3) Two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives.

(4) Two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate.

(5) One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.

(6) One person from South Carolina representing the agricultural community to be appointed by the South Carolina legislative members of the Commission.

(7) One person from a water or sewer municipal authority, appointed by the Governor of North Carolina.

(8) The President of Progress Energy or the President's designee.

(9) The President of Alcoa Power Generating, Inc., (APGI) or the President's designee.

(10) The President of Weyerhaeuser or the President's designee.

(11) A representative of the land development industry, whose organization does business within the Yadkin/Pee Dee River Basin and who shall be appointed by the Chair of the Commission.

(c) Each member appointed to the commissions pursuant to subdivisions (1) and (2) of subsections (a) and (b) of this section shall serve at the pleasure of the appointing authority so long as the member remains a Representative or Senator. Each member appointed to the commissions pursuant to subdivisions (3) and (4) of subsections (a) and (b) of this section shall serve as provided by the General Assembly of South Carolina. Each member appointed to the commissions pursuant to subdivisions (7) through (9) of subsection (a) and subdivisions (8) through (10) of subsection (b) of this section shall serve for so long as the member continues in the qualifying position or, if the member is a designee, at the pleasure of the designating authority. Each member appointed to the commissions pursuant to subdivisions (6) and (10) of subsection (a) and subdivisions (7) and (11) of subsection (b) of this section shall serve a term of two years and may be reappointed to serve no more than three consecutive full terms or 84 consecutive months, whichever is greater. The term of a person appointed to the commission

pursuant to subdivision (10) of subsection (a) of this section shall expire on 1 January of even-numbered years. The term of a person appointed to the commission pursuant to subdivision (6) of subsection (a) of this section shall expire on 1 January of odd-numbered years. The term of a member who is appointed to the commissions pursuant to subdivisions (5) and (11) of subsection (a) and subdivisions (5) and (6) of subsection (b) of this section shall serve as provided by the General Assembly of South Carolina. An appointment to fill a vacancy on the commissions shall be for the unexpired portion of the term. A vacancy on the commissions shall be filled in the same manner as the original appointment. Members of the commissions who are appointed from or reside in North Carolina may be removed by the Governor of North Carolina for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(d) The legislative members of each commission may appoint additional members to the commission to serve as advisory members as the legislative members consider necessary.

(e) The members of each commission shall elect a Chair, Vice-Chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. The Chair and the Vice-Chair shall not be from the same state and the Chair shall be rotated between the State of North Carolina and the State of South Carolina.

(f) Each commission shall meet upon the call of the Chair. A majority of each commission shall constitute a quorum for the transaction of business.

(g) The legislative members of the commissions from each state may meet separately to discuss river basin-related issues affecting their state and may report their findings independently of the commissions.

"**§ 77-114. Staffing; meeting facilities; assistance by agencies.**

(a) The North Carolina Department of Environment and Natural Resources and the South Carolina Department of Health and Environmental Control shall provide staff support and facilities to each commission within the existing programs of the respective agencies. Additional staff may be hired or contracted by each commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by each commission, within available resources.

(b) All agencies of the State of North Carolina and the State of South Carolina shall cooperate with the commissions and, upon request, shall assist each commission in fulfilling its responsibilities. The North Carolina Secretary of Environment and Natural Resources and the Commissioner of the South Carolina Department of Health and Environmental Control or their designees shall each serve as the liaison between their respective state agencies and each commission.

(c) The commissions may obtain information and data upon request from all state officers, agents, agencies, and departments of the State of North Carolina and the State of South Carolina while in discharge of their duties.

"**§ 77-115. Funding.**

(a) Each commission shall annually adopt a budget that shall include the estimated income and expenses of each commission. Funding for the commissions shall

be shared and apportioned between the State of North Carolina and the State of South Carolina as each state may provide through its regular appropriations process.

(b) The accounts and records of each commission showing the receipt and disbursement of funds from whatever source derived shall be in the form that the Auditor of North Carolina and the State Auditor of South Carolina prescribe. The accounts and records of each commission shall be subject to an annual audit by the Auditor of North Carolina and the State Auditor of South Carolina or their legal representatives. The cost of the annual audits shall be borne by each commission. The results of the audits shall be delivered to the Joint Legislative Commission on Governmental Operations of the General Assembly of North Carolina and to the General Assembly of South Carolina as the General Assembly of South Carolina shall provide.

"**§ 77-116. Compensation and expenses of members of the commissions.**

(a) Members of the commissions who are appointed from or reside in North Carolina shall receive no salary for their service on the commissions but may be paid, within available resources, per diem, subsistence, and travel expenses as follows:

(1) Members of the commissions who are members of the General Assembly at the rate established in G.S. 120-3.1.

(2) Members of the commissions who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6.

(3) All other members of the commissions at the rate established in G.S. 138-5.

(b) Members of the commissions who are appointed from or reside in South Carolina shall be compensated as provided by the General Assembly of South Carolina.

(c) All expenses shall be paid from funds appropriated or otherwise available to the commissions.

"**§ 77-117. Annual report.**

The commissions shall submit annual reports, including any recommendations, on or before 1 October of each year to the Governor of North Carolina, the Environmental Review Commission of the General Assembly of North Carolina, the Governor of South Carolina, and the General Assembly of South Carolina, as the Governor, the General Assembly of South Carolina, or the Commissioner of the South Carolina Department of Health and Environmental Control shall provide.

"**§ 77-118. Termination.**

The General Assembly of North Carolina may terminate the commissions by repealing this Article. The commissions shall terminate if the General Assembly of South Carolina repeals the provisions of the South Carolina Code of Laws that are comparable to this Article."

SECTION 2. Notwithstanding the provisions of G.S. 77-113(c), as enacted by Section 1 of this act, the initial term of the member of the Catawba/Wateree River Basin Advisory Commission appointed pursuant to G.S. 77-113(a)(10) shall expire 1 January 2006. Notwithstanding the provisions of G.S. 77-113(c), as enacted by Section 1 of this act, the initial term of the member of the Catawba/Wateree River Basin

Advisory Commission appointed pursuant to G.S. 77-113(a)(6) shall expire 1 January 2007. The River Basin Advisory Commissions shall submit the first reports pursuant to G.S. 77-117, as enacted by Section 1 of this act, on or before 1 October 2005.

SECTION 3. This act shall not be construed to obligate the General Assembly of North Carolina or the General Assembly of South Carolina to appropriate any funds to implement the provisions of this act.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 859:
River Basins Advisory Commissions.

#16
6/15/04

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Clodfelter
Date:	15 June 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel and Tim Dodge, Research Assistant for Environmental Issues
Version:	Proposed House Committee Substitute (S859-PCS35479-RI-9)		

SUMMARY: ***The Proposed House Committee Substitute (PCS) for Senate Bill 859 establishes the Catawba/Wateree and Yadkin/Pee Dee River Basins Advisory Commissions. The commissions would provide guidance and make recommendations to various government bodies on the use, stewardship, and enhancement of water and other natural resources in the respective river basins. The bill would become effective when the act becomes law.***

PCS: The 2nd Edition of Senate Bill 859, as passed by the Senate during the 2003 Session of the North Carolina General Assembly, would have established only the Catawba River Basin Bi-State Advisory Commission. The PCS for Senate Bill 859 establishes the Catawba/Wateree and Yadkin/Pee Dee River Basins Advisory Commissions in response to similar legislation to establish both advisory commissions that was ratified by the General Assembly of South Carolina on 3 June 2004 (S. 720). Aside from technical changes, the purposes, powers, and duties of the commissions are identical in both states' legislation. The PCS for Senate Bill 859, however, does provide greater detail with regard to the appointment, terms of office, and compensation of the members from North Carolina. In addition, the North Carolina bill adds provisions pertaining to funding, reporting requirements, and termination, which are not included in the South Carolina legislation.

BILL ANALYSIS: The PCS for Senate Bill 859 establishes the Catawba/Wateree River Basin Advisory Commission and the Yadkin/Pee Dee River Basin Advisory Commission.

- Each commission is composed of 15 members. Each commission shall include the following persons:
  - Two members of the North Carolina Senate whose districts include a portion of the applicable river basin, appointed by the President Pro Tempore of the Senate.
  - Two members of the North Carolina House of Representatives whose districts include a portion of the applicable river basin, appointed by the Speaker of the House of Representatives.
  - Two members of the South Carolina Senate appointed as provided by the General Assembly of South Carolina.
  - Two members of the South Carolina House of Representatives appointed as provided by the General Assembly of South Carolina.
- The **Catawba/Wateree River Basin Advisory Commission** shall also include the following members:
  - One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.

- One person from a nonprofit land conservation trust operating within the North Carolina portion of the River Basin, appointed by the Governor of North Carolina.
- The President of Duke Power Company or the President's designee.
- The Chair of the Bi-State Catawba River Task Force or the Chair's designee.
- The Chief Executive Officer of Carolina's Partnership, Inc., or the Chief Executive Officer's designee.
- One person to represent the following marine commissions: the Lake Wylie Marine Commission, the Mountain Island Lake Marine Commission, and the Lake Norman Marine Commission.
- One member of a lake homeowner's association located on the Catawba/Wateree River whose members reside in South Carolina, appointed by the President Pro Tempore of the South Carolina Senate.

- The **Yadkin/Pee Dee River Basin Advisory Commission** shall also include the following members:
  - One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.
  - One person from South Carolina representing the agricultural community to be appointed by the South Carolina legislative members of the Commission.
  - One person from North Carolina from a water or sewer municipal utility to be appointed by the Governor of North Carolina.
  - The President of Progress Energy or the President's designee.
  - The President of Alcoa Power Generating, Inc., or the President's designee.
  - The President of Weyerhaeuser or the President's designee.
  - A representative of the land development industry, whose organization does business within the Yadkin/Pee Dee River Basin, to be appointed by the Chair of the Commission.

The commissions have no regulatory authority. Each commission's purposes are:

- To provide guidance and make recommendations to local, state, and federal legislative and administrative bodies on the use, stewardship, and enhancement of the water and other natural resources within the respective river basin.
- To provide a forum for discussion of issues affecting the river basin's water quality, water quantity, and natural resources.
- To promote communication, coordination, and education among stakeholders.
- To identify problems and recommend appropriate solutions.
- To undertake studies and publish reports related to water quantity, water quality and other natural resources of the river basin.
- To determine the optimum approach to comprehensively and collaboratively provide recommendations for integrated river management.

To achieve these purposes, each commission would have the power to: 1) develop rules and procedures for the conduct of its business; 2) establish standing and ad hoc advisory committees; 3) seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources; 4) exercise powers of a body corporate, including the power to sue and be sued; 5) enter into contracts; 6) designate a fiscal agent; and 7) perform other lawful acts necessary to achieve the purposes of the commissions.

The PCS provides that the Department of Environment and Natural Resources and the South Carolina Department of Health and Environmental Control shall provide staffing and meeting facilities to the commissions. The PCS also directs each commission to submit an annual report, including any recommendations, to the Governor of North Carolina, the Environmental Review Commission of North Carolina, the Governor of South Carolina, and the General Assembly of South Carolina.

EFFECTIVE DATE: The bill would become effective when the act becomes law.

S859-SMSY-003

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
John McAlister	Duke Energy
Lyn Pierce	Duke Energy
Michelle Coon	Weyerhaeuser Company
Kathy Hawkins	Progress Energy
Ken McHoal	D.O.R.
Tim Minton	NC Home Builders
Doug Lassiter	NC DOT
Preston Howard	NCIC
Nancy Thompson	NCIC
[illegible]	Atmos Energy
Chad Essick	Poyner & Spruill, LLP
[illegible]	Intern
Elizabeth Bakanic	NCGA intern
Amy Lynch	CTNC
Amanda Maris	intern to David Enright - NC Sierra Club, etc.
Melissa Hoter	[illegible]
William Moss	Sierra Club
Erin Kinsey	NC Conservation Network
Jeremy Hardesty	NC Park Council
David Meredith	NC State Grange
Jim Blackburn	Assoc. County Commissioners
Adrienne Harris	NC Conservation Network
County Affairs	NC Conservation Network
Mike Watson	CCNC
Jerry Schill	NC Fisheries Assoc.
Sonya Harden	NCCC
Johanna Reese	DENR
[illegible]	DENR

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
S.B.1219 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PERCENTAGE OF REVENUE CREDITED TO THE DRY-CLEANING SOLVENT CLEANUP FUND THAT MAY BE USED TO PAY COSTS OF ASSESSMENT OR REMEDIATION OF DRY-CLEANING SOLVENT CONTAMINATION THAT OCCURRED PRIOR TO 1 JULY 2001, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☒ Committee Substitute for
S.B. 859 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE CATAWBA RIVER BASIN BI-STATE ADVISORY COMMISSION AND TO APPROPRIATE FUNDS TO ENABLE THE COMMISSION TO ACHIEVE ITS PURPOSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 29, 2004
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order and as time allows):**

   HB 1393 – FEDERAL ENFORCEMENT BY MARINE INSPECTORS
   Rep. Wainwright
   HB 1582 – WATER CONSERVATION/SUBMETERS
   Rep. Gibson
   SB – 732 – NEW URBAN WATERFRONT DEVELOPMENT PILOT
   SB 1202 – SEPTIC SYSTEM SETBACKS FOR PRE 1977 LOTS
   Sen. Soles

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 29, 2004

MINUTES

The House Committee on Environment and Natural Resources met June 29, 2004, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, called the meeting to order at 12:12 pm. Other members attending were Vice Chairs Walt Church, Joe Hackney, Charles Johnson, and Stephen Laroque and Committee members Lucy Allen, Curtis Blackwood, Russell Capps, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Verla Insko, Paul Luebke, Danny McComas, Patrick McHenry, Jean Preston, Ray Rapp, John Rhodes, Fred Steen, Bonner Stiller, Alex Warner, Jennifer Weiss and Larry Womble. A Visitor Registration is attached and made part of these minutes.

SB 732 – NEW URBAN WATERFRONT DEVELOPMENT PILOT (Attachment 1) Representative Gillespie moved to adopt S732-PCS55309-RT-80 and be put before the Committee (Attachments 2, 3). Representative Culpepper said that the bill allowed for the establishment of a pilot program project for a new kind of development called "New Waterfront Area" (NUW). Urban waterfronts are areas that lie wholly within the corporate limits of a municipality; are in a central business district where there is minimal undeveloped land; mixed land uses; have urban services; and are recognized as having cultural, historical and economic significance. The current CAMA (Coastal Area Management Act of 1974) rules do not allow for the creation of new urban waterfronts because those areas are outside a municipality. This bill would allow for the development of a new urban waterfront area on a pilot basis and be open to the general public, but not allowed near nutritive sensitive waters. The same rules that apply to shoreline waterfront are applicable here, and the NUW shall comply with the 30-foot buffer requirement set out in 15ANCAC 7H.0209(d)(10) along all natural shorelines.

George Givens, Chief Counsel, said that the Chowan County Manager and Attorney, Coastal Federation, Developer, NCSU technical planner, and DENR support the bill.

Representative Gillespie moved, at the proper time, for a favorable report.

Following a short discussion, Representative Haire proposed an amendment (Attachment 4) on page 4, line 18 changing "2005" to "2010". Passed.

With continuing discussion, Representative Luebke proposed a second amendment (Attachment 5) on page 2; line 3 changing "shall" to "may". Failed, 8-14.

Jim Stevenson, NC Coastal Federation, was unsure about the wording. Pricey Harrison, Coastal Resources Commission, said the Commission prefers "may" rather than "shall".

Representative Luebke proposed a third amendment (Attachment 6) on page 4, line 10 inserting before the word "benefits" the words "costs and". Passed.

Representative Gillespie moved that the two adopted amendments be rolled into a new PCS, and the new PCS be given a favorable report. Passed.

SB 1202 – Septic Systems Setbacks for Pre-1977 Lots (Attachment 8). Representative Womble moved to adopt S1202-PCS65467-SY-15 (Attachments 9 and 10). Representative Hill spoke on the bill for Senator Soles. Counsel Givens said that the bill exception was to the setback requirement for certain tracts of land that were platted before July 1, 1977. The PCS would allow the installation and operation of a subsurface wastewater disposal system to be located ten (10) feet or more from any other subsurface wastewater disposal system if the tract meets the criteria in the Bill Analysis.

Don Youse, Health Inspector, Brunswick County, supported the bill.

Representative Stiller moved for a favorable report, unfavorable to the original bill.

Jim Stevenson, NC Coastal Federation, said the Federation supported the bill.

Representative Stiller's motion was brought forward for a favorable report, unfavorable to the original bill. Passed.

HB 1427 – Rec. Shellfish License/Amend Shellfish Laws (Attachment 11). Representative Gulley moved to adopt H1393-CSSB-54 [v.4] and be put before the Committee (Attachments 12, 13) Representative Wainwright states that the Division of Marine Fisheries in DENR wants to enter into a Joint Enforcement Agreement with the National Marine Fisheries Service in the US Department of Commerce (NMFS) in that Inspectors would be authorized to enforce federal marine resources laws and the federal government would provide funding to support these law enforcement efforts of $1.5 million.

Preston Pate, NC Division of Marine Fisheries, spoke in favor of the bill. Jerry Schill, President, NC Fisheries Association, opposed the bill. Doug Roberts, Eastern NC Fisherman' Club of New Bern, supported the bill. Tom Bean, NC Environmental Defense, supported the bill.

Representative Stiller's motion was brought forward for a favorable report, unfavorable to the original bill. Passed.

Chair Gibson adjourned the meeting at 1:40 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 1
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 732*

Short Title:	Underground Storage Tank Prgm. Amends 2003.	(Public)
Sponsors:	Senators Albertson; Bingham, Dorsett, Garrou, Garwood, Holloman, Horton, Hoyle, Jenkins, Kerr, Kinnaird, Lucas, Malone, Moore, Purcell, Rand, Sloan, Thomas, Tillman, and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE IMPROVEMENTS IN THE REGULATION OF PETROLEUM UNDERGROUND STORAGE TANKS AND TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. In order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from petroleum underground storage tanks, the Environmental Management Commission may adopt temporary and permanent rules to modify the testing requirement set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Prior to the adoption of temporary rules under this section, the Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

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

ATT # 2
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 732*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S732-PCS55309-RT-80

Short Title: New Urban Waterfront Development Pilot. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A PILOT PROGRAM UNDER WHICH A COUNTY MAY DESIGNATE AN AREA AS A NEW URBAN WATERFRONT UNDER THE COASTAL AREA MANAGEMENT ACT OF 1974.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that:

(1) Development in coastal areas should occur in a manner that will conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values.

(2) New urban waterfront development, which combines residential, commercial, and recreational uses in a publicly accessible, pedestrian-friendly traditional neighborhood community that preserves natural shorelines and other critical areas, has the potential to benefit the environment and quality of life in the area in which the development occurs.

(3) The greatest potential benefit of new urban waterfront development lies in coastal counties that do not border the Atlantic Ocean and that are less densely populated than counties that, because of their proximity to ocean beaches, have experienced greater economic development.

SECTION 2. For purposes of this act:

(1) "Commission" means the Coastal Resources Commission.

(2) "New urban waterfront area" means an area designated for development that includes a mixture of residential and commercial uses, recreational areas, and facilities for governmental or other civic purposes; provides for pedestrian access to residential, commercial,

civic and recreational areas; and incorporates open space for recreational and other public purposes.

SECTION 3.(a) The Commission shall implement a pilot program under which a county may designate an area as a new urban waterfront area under the Coastal Area Management Act of 1974. The purpose of the pilot is to determine the water quality and other environmental impacts from a new urban waterfront area development and to evaluate the benefits from the development to the area in which the development is located. To implement the pilot, the Commission shall consider and act on a request from a county to approve an amendment to its land-use plan that designates a new urban waterfront area outside the corporate limits of any municipality. For purposes of the pilot program, a request to approve an amendment to a land-use plan that designates a new urban waterfront area shall be approved by the Commission for only one county. The new urban waterfront area shall be located in a county that does not border the Atlantic Ocean and that has a population density of not more than 150 persons per square mile as determined by the 2000 census by the Bureau of the Census. The new urban waterfront area shall not exceed 500 acres and shall not include more than one mile of natural shoreline. The new urban waterfront area may be located in an area that drains to existing public trust waters or may be located in an area that drains to an artificially created body of water accessible to the public by navigation from public trust waters. The new urban waterfront area shall not be located in an area that, at the time that the Commission approves the amendment to the county land-use plan that designates the new urban waterfront area, drains directly to waters:

(1) Classified by the Environmental Management Commission as Outstanding Resource Waters, Nutrient Sensitive Waters, High Quality Waters, or SA Waters.

(2) Designated by the Marine Fisheries Commission as primary or secondary nursery areas.

(3) Designated by the Wildlife Resources Commission or the Department of Agriculture and Consumer Services as critical habitat areas.

SECTION 3.(b) A developer, pursuant to the Coastal Area Management Act of 1974 and rules adopted by the Commission to implement the Act, may submit an application for a major development permit for development in a new urban waterfront area. The new urban waterfront area development shall be subject to all of the following:

(1) The development shall be located in a new urban waterfront area designated in a county land-use plan approved by the Commission as provided in subsection (a) of this section.

(2) The new urban waterfront area development shall be accessible to the general public and shall provide for public access to the shoreline consistent with the county's public access plan.

(3) The new urban waterfront area development shall be served by centrally operated water, sewer, and stormwater management systems. Wastewater and stormwater management systems for the new urban

waterfront area development shall not discharge directly to estuarine or public trust waters.

(4) The new urban waterfront area development shall comply with all standards adopted by the Commission for development in coastal wetlands, public trust areas, and estuarine waters except as those standards are modified for urban waterfronts in rules adopted by the Commission. Development within a designated new urban waterfront area shall be authorized to the same extent and shall be subject to the same use standards and permitting requirements as development within areas designated as urban waterfronts under the rules of the Commission, except that the new urban waterfront area development shall comply with the 30-foot buffer requirement set out in 15A NCAC 7H.0209(d)(10) along all natural shorelines.

(5) The developer of the new urban waterfront area development shall submit an application for a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management and shall obtain the permit prior to commencement of any construction of a new urban waterfront area development. The National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall address the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall apply to the new urban waterfront area and to all other areas within the same common plan of development. The application for the National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall be reviewed by two independent experts approved by the Department. This review shall be conducted at the expense of the applicant. The permit shall require that the permittee establish and maintain water quality monitoring systems and conduct water quality monitoring at the locations and in the detail and frequency specified by the permit. The permittee shall submit the water quality samples collected pursuant to the permit to a laboratory certified by the Division of Water Quality of the Department of Environment and Natural Resources. The permittee shall report the data collected to the Division of Water Quality of the Department of Environment and Natural Resources.

(6) In addition to the requirements of subdivision (5) of this subsection, the developer shall comply with any other applicable requirements related to stormwater management.

(7) If the new urban waterfront area development authorized by this act as built within six years of the date of issuance of the major development permit fails to include commercial development, civic development, and open space substantially in accordance with the development

proposed in the application for the major development permit, the developer shall provide mitigation for encroachment into riparian buffers that would otherwise be required under standards adopted by the Commission for development on public trust and estuarine shorelines.

SECTION 4. In order to determine whether additional new urban waterfront area developments should be allowed, and whether rules governing the developments should be modified, the Coastal Resources Commission shall evaluate the impacts on water quality and other environmental impacts from the new urban waterfront area development authorized by this act and evaluate the benefits from the development to the area in which the development is located. The Coastal Resources Commission shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2005. The Coastal Resources Commission shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2010.

SECTION 5. This act is effective when it becomes law. Sections 1 through 3 of this act expire 1 July 2005.

ATT # 3
6/29/04

SENATE BILL 732:
New Urban Waterfront Development Pilot

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Rep. Culpepper
Date:	June 29, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel, George Givens, Senior Committee Counsel
Version:	PCS S732-PCS55309-RT-80 for First Edition		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 732 (PCS) would direct the Coastal Resources Commission (Commission) to implement a pilot under which one county may designate an area as a new urban waterfront. A new urban waterfront area (NUW Area) as defined by the act is an area designated for development that includes a mixture of residential and commercial uses, recreational areas, and facilities for governmental or other civic purposes; provides for pedestrian access to residential, commercial, civic and recreational areas; and incorporates open space for recreational and other public purposes. Under the pilot program, a developer could submit an application for a major development permit for development in the NUW Area subject to certain requirements. The purpose of the pilot is to evaluate the impacts on water quality and other environmental impacts from the development, and the benefits from the development, in order to determine whether additional developments within NUW areas should be allowed, and whether rules governing the developments should be modified.***

CURRENT LAW: The Coastal Area Management Act of 1974 (CAMA) authorizes the Commission to establish guidelines for development within areas of environmental concern (AECs). CAMA requires that every person obtain a development permit before undertaking any development in AECs. Under the rules adopted pursuant to CAMA, development within AECs is subject to requirements for riparian buffers along shorelines and limits on construction of impervious surfaces, as well as other requirements. Development within areas designated as urban waterfronts, however, is subject to special use standards under the rules adopted pursuant to CAMA. Urban waterfronts are areas that lie wholly within the corporate limits of a municipality; are in a central business district where there is minimal undeveloped land; mixed land uses; have urban services; and are recognized as having cultural, historical and economic significance. The current rules do not allow for the creation of new urban waterfronts. (outside a municipality)

BILL ANALYSIS: The PCS would allow for the development of a NUW Area on a pilot basis as provided in Section 3 of the PCS.

Section 1: Section 1 of the PCS contains legislative findings concerning the potential benefits of NUW Area development to certain coastal counties.

Section 2: Section 2 of the PCS contains relevant definitions.

Section 3: Section 3 of the Act would authorize the Commission to implement a pilot under which one county, which does not border the Atlantic Ocean and does not have a population density of more than 150 persons per square mile, may designate an area outside the corporate limits of any municipality as a NUW Area. The NUW Area shall not exceed 500 acres and shall not include more than one mile of natural shoreline. The NUW Area may drain to existing public trust waters or to an artificially created body of water accessible to the public by navigation from public trust waters. The NUW Area shall not drain directly to waters:

- Classified by the Environmental Management Commission as Outstanding Resource Waters, Nutrient Sensitive Waters, High Quality Waters, or SA Waters.
- Designated by the Marine Fisheries Commission as primary or secondary nursery areas.
- Designated by the Wildlife Resources Commission or the Department of Agriculture as critical habitat areas.

Under the pilot, a developer may submit an application for a major development permit for development in the NUW Area (Development) subject to the following requirements:

- The Development shall be located in an NUW Area designated in a county land-use plan approved by the Commission.
- The Development shall be accessible to the general public and shall provide for public access to the shoreline consistent with the county's public access plan.
- The Development shall be served by centrally operated water, sewer, and stormwater management systems. Wastewater and stormwater management systems for the development shall not discharge directly to estuarine or public trust waters.
- The Development shall comply with all standards adopted by the Commission for development in coastal wetlands, public trust areas, and estuarine waters except as those standards are modified for urban waterfronts in rules adopted by the Commission. The Development shall be authorized to the same extent and shall be subject to the same use standards and permitting requirements as development within areas designated as urban waterfronts under the rules of the Commission, except that the Development shall comply with the 30-foot buffer requirement set out in 15A NCAC 7H.0209(d)(10) along all natural shorelines.
- The developer of the NUW Area shall submit an application for a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management and shall obtain the permit prior to commencement of any construction of the Development. The application for the NPDES permit for stormwater management shall be reviewed by two independent experts approved by the Department. This review shall be conducted at the expense of the applicant. The NPDES permit for stormwater management shall:
    - Address the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition).
    - Apply to development within the NUW Area and to all other areas within the same common plan of development.
    - Require that the permittee establish and maintain water quality monitoring systems and conduct water quality monitoring as specified by the permit.
- The developer shall comply with any other applicable requirements related to stormwater management.
- If the Development as built within six years of the date of issuance of the major development permit fails to include commercial development, civic development, and open space substantially in accordance with the Development proposed in the application for the major development permit, the PCS provides that the developer shall provide mitigation for encroachment into riparian buffers that would otherwise be required under standards adopted by the Commission for development on public trust and estuarine shorelines.

Section 4: Section 4 of the PCS directs the Commission to evaluate the impacts on water quality and other environmental impacts from the Development, and the benefits from the Development, in order to determine whether additional developments within NUW areas should be allowed, and whether rules

governing the developments should be modified. The Commission is directed to annually report its interim findings and recommendations to the Environmental Review Commission beginning 1 October 2005, and to report its final findings and recommendations no later than 1 October 2010.

Section 5: Section 5 of the PCS provides that the bill would be effective when it becomes law. Sections 1 through 3 of the act would expire 1 July 2005.

S732-SMRT-002.doc

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATT #4
6/29/04

EDITION No. _____

H. B. No. _____ DATE 6/29/04

S. B. No. S732 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ S732-PCS55309-RT-80

Rep.) Haire
Sen.)

1 moves to amend the bill on page 4, line 18
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "2005" and substituting
4 the phrase "2010".
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SIGNED _____

ADOPTED Adopted 29 June 2004 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATT # 5
6/29/04

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/29/04

S. B. No. 732 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ S732-PCS55309-RT-80

Rep.) Luebke
Sen.)

moves to amend the bill on page 2, line 3

( ) WHICH CHANGES THE TITLE

by deleting the word "shall" and substituting the word "may".

SIGNED _____

ADOPTED _____ FAILED 29 June 2004 8-15 2 TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/29/04

S. B. No. 732 Amendment No. _____

COMMITTEE SUBSTITUTE ✓ S732-PCS35309-RT-80 (to be filled in by Principal Clerk)

Rep.) Luebke

Sen.)

moves to amend the bill on page 4, line 10

( ) WHICH CHANGES THE TITLE

by inserting ~~between [illegible]~~ before the word "benefits" the words "costs and".

VV

ADOPTED 29 June 2004 FAILED _____ TABLED _____

SIGNED _____

ATT. #7
6/29/04
BILL REPORTED OUT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 732*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S732-PCS35495-RT-82

Short Title: New Urban Waterfront Development Pilot. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A PILOT PROGRAM UNDER WHICH A COUNTY MAY DESIGNATE AN AREA AS A NEW URBAN WATERFRONT UNDER THE COASTAL AREA MANAGEMENT ACT OF 1974.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that:

(1) Development in coastal areas should occur in a manner that will conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values.

(2) New urban waterfront development, which combines residential, commercial, and recreational uses in a publicly accessible, pedestrian-friendly traditional neighborhood community that preserves natural shorelines and other critical areas, has the potential to benefit the environment and quality of life in the area in which the development occurs.

(3) The greatest potential benefit of new urban waterfront development lies in coastal counties that do not border the Atlantic Ocean and that are less densely populated than counties that, because of their proximity to ocean beaches, have experienced greater economic development.

SECTION 2. For purposes of this act:

(1) "Commission" means the Coastal Resources Commission.

(2) "New urban waterfront area" means an area designated for development that includes a mixture of residential and commercial uses, recreational areas, and facilities for governmental or other civic purposes; provides for pedestrian access to residential, commercial,

civic and recreational areas; and incorporates open space for recreational and other public purposes.

SECTION 3.(a) The Commission shall implement a pilot program under which a county may designate an area as a new urban waterfront area under the Coastal Area Management Act of 1974. The purpose of the pilot is to determine the water quality and other environmental impacts from a new urban waterfront area development and to evaluate the benefits from the development to the area in which the development is located. To implement the pilot, the Commission shall consider and act on a request from a county to approve an amendment to its land-use plan that designates a new urban waterfront area outside the corporate limits of any municipality. For purposes of the pilot program, a request to approve an amendment to a land-use plan that designates a new urban waterfront area shall be approved by the Commission for only one county. The new urban waterfront area shall be located in a county that does not border the Atlantic Ocean and that has a population density of not more than 150 persons per square mile as determined by the 2000 census by the Bureau of the Census. The new urban waterfront area shall not exceed 500 acres and shall not include more than one mile of natural shoreline. The new urban waterfront area may be located in an area that drains to existing public trust waters or may be located in an area that drains to an artificially created body of water accessible to the public by navigation from public trust waters. The new urban waterfront area shall not be located in an area that, at the time that the Commission approves the amendment to the county land-use plan that designates the new urban waterfront area, drains directly to waters:

(1) Classified by the Environmental Management Commission as Outstanding Resource Waters, Nutrient Sensitive Waters, High Quality Waters, or SA Waters.

(2) Designated by the Marine Fisheries Commission as primary or secondary nursery areas.

(3) Designated by the Wildlife Resources Commission or the Department of Agriculture and Consumer Services as critical habitat areas.

SECTION 3.(b) A developer, pursuant to the Coastal Area Management Act of 1974 and rules adopted by the Commission to implement the Act, may submit an application for a major development permit for development in a new urban waterfront area. The new urban waterfront area development shall be subject to all of the following:

(1) The development shall be located in a new urban waterfront area designated in a county land-use plan approved by the Commission as provided in subsection (a) of this section.

(2) The new urban waterfront area development shall be accessible to the general public and shall provide for public access to the shoreline consistent with the county's public access plan.

(3) The new urban waterfront area development shall be served by centrally operated water, sewer, and stormwater management systems. Wastewater and stormwater management systems for the new urban

waterfront area development shall not discharge directly to estuarine or public trust waters.

(4) The new urban waterfront area development shall comply with all standards adopted by the Commission for development in coastal wetlands, public trust areas, and estuarine waters except as those standards are modified for urban waterfronts in rules adopted by the Commission. Development within a designated new urban waterfront area shall be authorized to the same extent and shall be subject to the same use standards and permitting requirements as development within areas designated as urban waterfronts under the rules of the Commission, except that the new urban waterfront area development shall comply with the 30-foot buffer requirement set out in 15A NCAC 7H.0209(d)(10) along all natural shorelines.

(5) The developer of the new urban waterfront area development shall submit an application for a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management and shall obtain the permit prior to commencement of any construction of a new urban waterfront area development. The National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall address the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall apply to the new urban waterfront area and to all other areas within the same common plan of development. The application for the National Pollutant Discharge Elimination System (NPDES) permit for stormwater management shall be reviewed by two independent experts approved by the Department. This review shall be conducted at the expense of the applicant. The permit shall require that the permittee establish and maintain water quality monitoring systems and conduct water quality monitoring at the locations and in the detail and frequency specified by the permit. The permittee shall submit the water quality samples collected pursuant to the permit to a laboratory certified by the Division of Water Quality of the Department of Environment and Natural Resources. The permittee shall report the data collected to the Division of Water Quality of the Department of Environment and Natural Resources.

(6) In addition to the requirements of subdivision (5) of this subsection, the developer shall comply with any other applicable requirements related to stormwater management.

(7) If the new urban waterfront area development authorized by this act as built within six years of the date of issuance of the major development permit fails to include commercial development, civic development, and open space substantially in accordance with the development

proposed in the application for the major development permit, the developer shall provide mitigation for encroachment into riparian buffers that would otherwise be required under standards adopted by the Commission for development on public trust and estuarine shorelines.

SECTION 4. In order to determine whether additional new urban waterfront area developments should be allowed, and whether rules governing the developments should be modified, the Coastal Resources Commission shall evaluate the impacts on water quality and other environmental impacts from the new urban waterfront area development authorized by this act and evaluate the costs and benefits from the development to the area in which the development is located. The Coastal Resources Commission shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2005. The Coastal Resources Commission shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2010.

SECTION 5. This act is effective when it becomes law. Sections 1 through 3 of this act expire 1 July 2010.

8
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 1202*

Short Title:	Septic System Setbacks for Pre-1977 Lots.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A SEPTIC TANK SYSTEM THAT IS FOR A LOT PLATTED PRIOR TO JULY 1, 1977, AND THAT IS OPERATED IN SOILS THAT ARE IN SOIL GROUP 1 MAY BE LOCATED TEN FEET OR MORE FROM ANY OTHER SEPTIC TANK SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-335(e) reads as rewritten:

"(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption. This subsection is subject to subsection (e1) of this section."

SECTION 2. G.S. 130A-335 is amended by adding a new subsection to read:

"(e1) A septic tank system that is for a lot that was platted prior to July 1, 1977, and that is operated in soils that are classified as Soil Group 1 may be located 10 feet or more from any other septic tank system. Soils are classified as Soil Group 1 when the

local health department evaluates the soil texture and characterizes the soils in accordance with Commission rules as sandy texture soils."

SECTION 3. This act is effective when it becomes law and applies to applications for permits made on or after that date.

ATT# 9
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1202*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1202-PCS65467-SY-15

Short Title: Septic System Setbacks for Pre-1977 Lots. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE MINIMUM HORIZONTAL SEPARATION DISTANCES BETWEEN A SUBSURFACE WASTEWATER DISPOSAL SYSTEM TO BE LOCATED ON A LOT OR TRACT OF LAND PLATTED PRIOR TO 1 JULY 1977, THAT WILL BE OPERATED IN SAND OR LOAMY SAND SOILS, AND THAT MEETS CERTAIN OTHER REQUIREMENTS, AND ANY OTHER SUBSURFACE WASTEWATER DISPOSAL SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. A subsurface wastewater disposal system shall be located the maximum feasible horizontal distance, but not less than 10 feet from any other subsurface wastewater disposal system, when all of the following conditions are met:

(1) The lot or tract of land on which the system will be located is specifically described in a deed, other instrument conveying fee simple title, or on a plat recorded prior to 1 July 1977.

(2) The lot or tract of land is of insufficient size to allow the minimum horizontal separation distance for a conventional wastewater system required in 15A NCAC 18A .1950.

(3) The system will receive sewage from only one single-family residence not to exceed four bedrooms.

(4) The residence is not capable of being served by a public or community wastewater system at the time construction of the system commences.

(5) The system will be installed in sand or loamy sand soils as defined in 15A NCAC 18A .1935 and installed in accordance with rules adopted pursuant to Article 11 of Chapter 130A of the General Statutes.

SECTION 2. The Commission for Health Services may adopt rules that incorporate the provisions of Section 1 of this act. Except as provided by Section 1 of this act, this act does not limit the authority of the Commission for Health Services or the Environmental Management Commission to adopt rules governing the location,

construction, operation, maintenance, or repair of subsurface wastewater disposal systems pursuant to G.S. 130A-335 or other provisions of Article 11 of Chapter 130A of the General Statutes.

SECTION 3. This act is effective when it becomes law and applies to applications for permits made on or after that date. If the Commission for Health Services adopts a permanent rule to implement the provisions of Section 1 of this act, Section 1 of this act expires when the permanent rule becomes effective.

ATT #10
6/29/04

SENATE BILL 1202:
Septic System Setbacks for Pre-1977 Lots.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Soles
		Summary by:	Tim Dodge, Research Assistant for Environmental Issues
Date:	29 June 2004		
Version:	Proposed Committee Substitute (S1202-PCS65467-SY-15)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1202 would reduce from 20 feet to 10 feet the minimum horizontal separation distance between a subsurface wastewater disposal system to be located on a lot platted prior to 1 July 1977, that will be operated in Soil Group I (sandy texture) soils, and that meet certain other requirements and any other subsurface wastewater disposal system. The PCS would become effective when it becomes law.***

CURRENT LAW: Administrative rule 15A NCAC 18A .1950 (Location of Sanitary Sewage Systems) sets out the minimum horizontal separation distances required between subsurface wastewater disposal systems and certain other features, including wells, surface waters, building foundations, property lines, and nitrification fields from other subsurface wastewater disposal systems. The rule provides that the minimum horizontal separation distance required between two subsurface wastewater disposal systems is twenty (20) feet.

15A NCAC 18A .1951 (Applicability of Rules) provides reductions to the minimum horizontal separation distances between a subsurface wastewater disposal system designed to serve a single-family residence not to exceed four bedrooms and certain surface waters, basements, property lines, and embankments on a lot or tract of land that meets all of the following criteria:

- The lot was platted prior to 1 July 1977.
- The lot is of insufficient size to satisfy the minimum horizontal distance requirements in the rule.
- The lot is not capable of being served by a community or public sewerage system.

The rule does not currently provide for a reduction in the minimum horizontal separation distance between two subsurface wastewater disposal systems.

BILL ANALYSIS: The PCS for Senate Bill 1202 would allow the installation and operation of a subsurface wastewater disposal system to be located ten (10) feet or more from any other subsurface wastewater disposal system if the lot or tract of land meets the following criteria:

- The system will be located on a lot platted prior to 1 July 1977.
- The system will be operated in Soil Group I soils. Administrative rule 15A NCAC 18A .1941(a)(1)(A) characterizes Soil Group I as sandy texture soils, which are primarily found in the Coastal Plain and in the Sandhills area of the State.
- The lot is of insufficient size to allow the minimum horizontal separation distance for a conventional wastewater system required in 15A NCAC 18A .1950.

- The system will receive sewage from only one single-family residence not to exceed four bedrooms.
- The residence is not capable of being served by a public or community wastewater system at the time construction of the system commences.

EFFECTIVE DATE: The PCS would become effective when it becomes law and would apply to applications for permits made on or after that date. If the Commission for Health Services adopts a permanent rule to implement the provisions of the PCS, the PCS would expire when the permanent rule becomes effective.

S1202-SMSY-002

Att # 11
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1427*

Short Title:	Rec. Shellfish License/Amend Shellfish Laws.	(Public)
Sponsors:	Representative Wainwright.	
Referred to:	Finance.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A RECREATIONAL SHELLFISH LICENSE, TO AMEND THE STATUTES GOVERNING THE CULTIVATION OF SHELLFISH, AND TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO STUDY ISSUES RELATED TO THE CULTIVATION OF SHELLFISH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-168 is amended by adding a new subdivision to read:

"(7a) 'RSL' means Recreational Shellfish License."

SECTION 2. G.S. 113-168.1(a) reads as rewritten:

"(a) Duration, Fees. – Except as provided in ~~G.S. 113-173(f),~~G.S. 113-173(f) and G.S. 113-174(e), all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual fee at the time the applicant applies for the license or endorsement regardless of when application is made."

SECTION 3. G.S. 113-168.1(f) reads as rewritten:

"(f) License Issuance and Renewal. – Except as provided in ~~G.S. 113-173(d),~~G.S. 113-173(d) and G.S. 113-174(c), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL."

SECTION 4. G.S. 113-169.2 reads as rewritten:

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) ~~License or Endorsement Necessary to Take or Sell Shellfish.~~ Requirement. – It is unlawful for an individual to take shellfish from the public or private grounds of the State ~~by mechanical means or in quantities greater than the personal use limits set forth in subsection (i) of this section by any means~~ as part of a commercial fishing operation without holding either a shellfish license or a shellfish endorsement of a

SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(b) Repealed by Session Laws 1998-225, s. 4.17.

(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.

(d) License Available for Inspection. – It is unlawful for any individual to take shellfish ~~in quantities greater than the personal use limits set forth in subsection (i) of this section~~ from the public or private grounds of the State as part of a commercial fishing operation 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) Repealed by Session Laws 1998-225, s. 4.17.

(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) Exemption. – 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.

~~(i) Taking Shellfish Without a License for Personal Use.~~

~~(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

~~a. One bushel of oysters per day.~~

~~b. One-half bushel of scallops per day.~~

~~c. One hundred clams per day.~~

~~d. Ten conchs per day.~~

~~e. One hundred mussels per day.~~

~~(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

~~a. Two bushels of oysters per day.~~

~~b. One bushel of scallops per day.~~

~~c. Two hundred clams per day.~~

~~d. Twenty conchs per day.~~
~~e. Two hundred mussels per day.~~"

SECTION 5. G.S. 113-173(j)(4) is repealed.

SECTION 6. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-174. Recreational Shellfish License.**

(a) License Required. – Except as provided in subsection (i) of this section, it is unlawful for any person to take or attempt to take shellfish for personal use in coastal fishing waters without holding a RSL. As used in this section, shellfish are taken for personal use if the shellfish are not taken for the purpose of sale. The RSL entitles the licensee to take shellfish for personal use subject to the following possession limits:

(1) A person holding a RSL may take shellfish for personal use in quantities up to:
a. One bushel of oysters per day.
b. One-half bushel of scallops per day.
c. One hundred clams per day.
d. Ten conchs per day.
e. One hundred mussels per day.

(2) Two or more persons, one of whom holds a RSL, who are using a vessel to take shellfish for personal use may take shellfish for personal use in quantities up to:
a. Two bushels of oysters per day.
b. One bushel of scallops per day.
c. Two hundred clams per day.
d. Twenty conchs per day.
e. Two hundred mussels per day.

(b) Sale of Fish Prohibited. – It is unlawful for the holder of a RSL or for a person who is exempt under subsection (i) of this section to sell fish taken under the RSL or pursuant to the exemption.

(c) Purchase; Renewal. – A RSL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RSL may be renewed by mail.

(d) Replacement RSL. – The provisions of G.S. 113-168.1(h) apply to this section.

(e) Duration; Fees. – The RSL shall be valid for a one-year period from the date of purchase. The fee for a RSL shall be ten dollars ($10.00).

(f) RSL Available for Inspection. – It is unlawful for any person to take or attempt to take shellfish for personal use in coastal fishing waters without having ready at hand for inspection a valid RSL. A holder of a RSL shall not refuse to exhibit the RSL 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.

(g) Assignment and Transfer Prohibited. – A RSL is not transferable. Except as provided in subsection (i) of this section, it is unlawful to buy, sell, lend, borrow, assign,

or otherwise transfer a RSL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RSL.

(h) Reporting Requirements. – The holder of a RSL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(i) Exemption. – A person who is under 16 years of age may take shellfish for personal use in coastal fishing waters without holding a RSL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RSL or if the person has in the person's possession a valid RSL issued to the person's parent, grandparent, or guardian."

SECTION 7. G.S. 113-201 reads as rewritten:

"**§ 113-201. ~~Authority~~ Legislative findings and declaration of policy; authority of Marine Fisheries Commission.**

(a) The General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also finds that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation.

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds.

(c) The Marine Fisheries Commission shall adopt rules to establish training requirements for persons applying for new shellfish cultivation leases. These training requirements shall be designed to encourage the productive use of shellfish cultivation leases. Training requirements established pursuant to this subsection shall not apply to an applicant who applies for a new shellfish cultivation lease if, at the time of the application, the applicant holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission."

SECTION 8. G.S. 113-202(d) reads as rewritten:

"(d) Any person desiring to apply for a lease must make written application to the Secretary on forms prepared by the Department containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a map or diagram made at the expense of the applicant, showing the area proposed to be leased.

(d1) The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If on the basis of the application information and map or diagram the Secretary deems that granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in

subsection (a) of this section and any other applicable standards under this Article and the rules of the Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the applicable standards. In the event the Secretary authorizes amendment of the application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of ~~one hundred dollars ($100.00).~~two hundred dollars ($200.00)."

SECTION 9. G.S. 113-202(j) reads as rewritten:

"(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of ~~April~~ July following the ~~tenth~~ fifth anniversary of the granting of the lease. Renewal leases are issued for a period of ~~10~~ five years ~~effective~~ from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of ~~fifty dollars ($50.00).~~one hundred dollars ($100.00). The rental for initial leases is one dollar ($1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of ~~April~~ July following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after ~~said~~ that date, the rental is ~~five dollars ($5.00)~~ten dollars ($10.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of ~~April~~ July must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year."

SECTION 10. G.S. 113-202(l) reads as rewritten:

"(l) Upon receipt of notice by the Secretary of any of the following occurrences, he must commence action to terminate the leasehold:

(1) Failure to pay the annual rent in advance.

(2) Failure to file information required by the Secretary upon annual remittance of rental or filing false information on the form required to accompany the annual remittance of rental.

(3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.

(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.

(5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.

(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

(7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.

(8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

(11) The Marine Fisheries Commission is authorized to make rules defining commercial production of shellfish, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed shellfish, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of shellfish harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission under the provisions ~~of this paragraph~~ of this subsection, his leasehold shall not be terminated under subdivision (5) of ~~this subsection.~~subsection (l) of this section."

SECTION 11. G.S. 113-202.1(d) reads as rewritten:

"(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the remainder of the term of the lease, whichever is shorter. The annual rental for ~~an initial~~a new or renewal water column amendment is one hundred dollars ($100.00) an ~~acre for each of the first four years for which the amendment is issued and five hundred dollars ($500.00) an acre for the fifth year for which the amendment is issued. The annual rental for a renewed water column amendment is five hundred dollars ($500.00) an~~ acre. If ~~a year for which~~ a water column amendment is issued ~~is~~ for less than a 12-month period, the rental ~~for that year~~ shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202."

SECTION 12. The Marine Fisheries Commission may study whether and how to establish a process by which shellfish cultivation leases that are terminated pursuant to G.S. 113-202(l) may be leased to an applicant for a shellfish cultivation lease without the leasehold reverting to public bottom. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

SECTION 13. The Marine Fisheries Commission may study issues related to the corporate ownership of shellfish cultivation leases. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

SECTION 14. Sections 7, 10, 12, 13, and 14 of this act are effective when this act becomes law. Sections 8, 9, and 11 of this act become effective July 1, 2004. Sections 1 through 6 of this act become effective July 1, 2005, and expire July 1, 2008.

Att # 12
6/29/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1393*
PROPOSED COMMITTEE SUBSTITUTE H1393-CSSB-54 [v.4]

6/25/2004 10:08:27 AM

Short Title: Federal Enforcement by Marine Inspectors. (Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

AN ACT TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT ON THE PROVISIONS AND IMPLEMENTATION OF ANY JOINT ENFORCEMENT AGREEMENT WITH THE NATIONAL MARINE FISHERIES SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-134.1 reads as rewritten:

"**§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic ~~Ocean.~~Ocean; delegation of law enforcement powers from the National Marine Fisheries Service.**

(a) The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers.

(b) If authorized by the Fisheries Director or a designee of the Fisheries Director, an inspector may accept delegation of law enforcement powers from the National Marine Fisheries Service of the United States Department of Commerce over matters within the jurisdiction of the Service. For purposes of this subsection, the office of inspector may be held concurrently with any other elected or appointed office, as authorized by Section 9 of Article VI of the Constitution of North Carolina."

SECTION 2. If the Division of Marine Fisheries of the Department of Environment and Natural Resources enters into a Joint Enforcement Agreement with the National Marine Fisheries Service of the United States Department of Commerce, the Division shall, within six months of entering into the Agreement, report to the Joint

Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the provisions of the Agreement. The Division of Marine Fisheries shall also report on the implementation of the Agreement to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources no later than November 1 of each year.

SECTION 3. This act is effective when it becomes law.

ATT # 13
6/29/04

HOUSE BILL 1393:
Federal Enforcement by Marine Inspectors.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Wainwright
Date:	June 29, 2004	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed House Committee Substitute H1393-CSSB-54 [v.4]		

SUMMARY: ***House Bill 1393 would allow North Carolina marine fisheries law enforcement officers to accept delegation of law enforcement powers from the National Marine Fisheries Service. House Bill 1393 was recommended by the Joint Legislative Commission on Seafood and Aquaculture.***

CURRENT LAW:

Constitutional Prohibition on Dual Office Holding

Section 9 of Article VI of the Constitution of North Carolina states that, "it is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided." In furtherance of this policy, Section 9 explicitly provides that no person shall concurrently hold two or more appointive offices or places of trust or profit except as the General Assembly shall provide by general law.

Federal and State Jurisdiction over Enforcement of Marine Fisheries Laws

Under current law, State marine fisheries law enforcement officers (Inspectors) are authorized to enforce State marine and estuarine resources laws within State territorial waters (within 3 miles of the Atlantic seashore). Inspectors may also enforce State marine resources laws beyond State territorial waters in the Exclusive Economic Zone (EEZ) (from 3 to 200 miles of the Atlantic seashore) with respect to fishing vessels that are registered in the State if the State laws don't conflict with federal marine resources laws. Inspectors are not authorized to enforce federal marine resources laws in State territorial waters or the EEZ.

Authority to Enter into Cooperative Agreements

G.S. 113-224 authorizes the Department of Environment and Natural Resources (DENR) to enter into cooperative agreements with public and private agencies respecting the conservation of marine and estuarine resources. Under this provision, DENR is specifically authorized to expend funds, assign employees to additional duties inside or outside the State, assume additional responsibilities, and take other actions that may be required by a cooperative agreement that is in the overall best interest of the conservation of marine and estuarine resources.

BILL ANALYSIS: The Division of Marine Fisheries in DENR (Division) wants to enter into a Joint Enforcement Agreement with the National Marine Fisheries Service in the United States Department of Commerce (NMFS), whereby Inspectors would be authorized to enforce federal marine resources laws and the federal government would provide funding to support these law enforcement efforts. The Division believes that the constitutional prohibition against dual office holding would prevent Inspectors from accepting federal enforcement responsibilities without a specific authorization from the General Assembly.

House Bill 1393 would specifically authorize Inspectors to accept delegation of law enforcement powers from NMFS.

The Proposed Committee Substitute for House Bill 1393 would also provide that if the Division enters into a Joint Enforcement Agreement with NMFS, the Division will report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the substance and implementation of the Agreement.

BACKGROUND:

Joint Enforcement Agreements with Other States

NMFS has entered into a number of joint enforcement agreements with the marine fisheries resource agencies of other states. Of the 27 states and territories eligible to enter into a joint enforcement agreement, all have done so except for Delaware, North Carolina, Hawaii, and Puerto Rico.

Federal Funding of Joint Enforcement Agreements

Distribution of federal funding for the joint enforcement agreements began in 2002. The United States Congress has appropriated funds for distribution to states entering into joint enforcement agreements with NMFS as follows:

2002	2003	2004
$14,750,000	$7,350,000	$14,750,000

Under its Joint Enforcement Agreement, Virginia received six hundred thousand dollars ($600,000) during 2002 and two hundred fifty thousand dollars ($250,000) during 2003. Under its Joint Enforcement Agreement, South Carolina received one million dollars ($1,000,000) during 2002 and one million eight hundred fifty thousand dollars ($1,850,000) during 2003. NMFS has estimated that under a Joint Enforcement Agreement, North Carolina could receive between one million dollars ($1,000,000) and one million five hundred thousand dollars ($1,500,000) annually.

EFFECTIVE DATE: The proposed committee substitute for House Bill 1393 would become effective when it becomes law.

ATT# 14
6/29/04

BILL REPORTED OUT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1393*
PROPOSED COMMITTEE SUBSTITUTE H1393-PCS30567-SB-54

Short Title: Federal Enforcement by Marine Inspectors. (Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

AN ACT TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT ON THE PROVISIONS AND IMPLEMENTATION OF ANY JOINT ENFORCEMENT AGREEMENT WITH THE NATIONAL MARINE FISHERIES SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-134.1 reads as rewritten:

"**§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic ~~Ocean.~~Ocean; delegation of law enforcement powers from the National Marine Fisheries Service.**

(a) The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers.

(b) If authorized by the Fisheries Director or a designee of the Fisheries Director, an inspector may accept delegation of law enforcement powers from the National Marine Fisheries Service of the United States Department of Commerce over matters within the jurisdiction of the Service. For purposes of this subsection, the office of inspector may be held concurrently with any other elected or appointed office, as authorized by Section 9 of Article VI of the Constitution of North Carolina."

SECTION 2. If the Division of Marine Fisheries of the Department of Environment and Natural Resources enters into a Joint Enforcement Agreement with the National Marine Fisheries Service of the United States Department of Commerce, the Division shall, within six months of entering into the Agreement, report to the Joint

Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the provisions of the Agreement. The Division of Marine Fisheries shall also report on the implementation of the Agreement to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources no later than November 1 of each year.

SECTION 3. This act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
S.B. 732 A BILL TO BE ENTITLED AN ACT TO MAKE IMPROVEMENTS IN THE REGULATION OF PETROLEUM UNDERGREOUND STORAGE TANKS AND TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
S.B. 1202 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT A SEPTIC TANK SYSTEM THAT IS FOR A LOT PLATTED PRIOR TO JULY 1, 1977, AND THAT IS OPERATED IN SOILS THAT ARE IN SOIL GROUP 1 MAY BE LOCATED TEN FEET OR MORE FROM ANY OTHER SEPTIC TANK SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1393 A BILL TO BE ENTITLED AN ACT TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES — 6-29-04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
R W Kaylor	Kaylor Law Firm
Stephen Edwards	Granville Co. Teacher
Dixon Pruitt	Agriculture Teacher—Robeson
Tim Wilson	Teacher
Jason Davis	Sampson Co.
Jerry Schill	NC Fisheries Association
Terry Harbest	NCPC
Lou Nelson	NCALTCF
Adam Schafer	NCEL
Brad Thompson	OSA
John Cyrus	NC Triangle
Mary Katherine Hackney	Intern
Elizabeth Bakanic	Intern, Rep. Weiss
David Stanley III	Brunswick Co. Health Dept.
Don Yousey	Brunswick Co. Health Dept.
Fred Michael	Brunswick Co Health Dept.
Jim Stephenson	NC Coastal Federation
John McAuley	Growers
Sarah Meacham	Public Water Supply (DENR)
Bob Midgette	DENR, DEH Public Water Supply
Sam Young	The fund for Sandy Point North Carolina
Chris Rogers	NC Fisherman
Greg Bonifield	Summit Properties
Crystal Crosby	Summit Properties
Meg Piserik	Apartment Assc of North Carolina
Erin Ditto	Apartment Assoc. of North Carolina
Wes Wintersteen	Apt Assoc. of NC

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES — 6-29-04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Erin Kinney	NC Conservation Network
Grady McAllister	NC Conservation Network.
Kevin Oakley	hp
Ron Brown	Comm. Staff - NCUC
Sam J. Ervin, IV	N.C. Utilities Commission -
Coretz Foster	NCUC - Comm Staff
Len Green	NC Attorney General's Office
Joe Delk	Gov Office
Lula Country	Gov Off.
Johanna Reese	DENR
Terry L. Pierce	DENR - DEH
Preston Pate	NC DMF
Joe Lynch	NCDMF - Marine Patrol
David Hawkins	Coastal Conservation Assoc
HARRIS HUDDLE	CCA
R.B. Nowell	CCA, Raleigh Salt Water Spt. Fishing Club
Fred Broughton	CCA
BILL MANDULAK	CCA-NC
Will Morgan	CCA NC Coastal Conservation Association
Lawrence Davis	CCA-NC (" " " ")
MIKE WARD	CCA NC
Nicholas Blackerby	CCA-NC
William L Byrd Jr	CCANC
Roy W. Long	CCA NC - COASTAL CONSERVATION ASSOCIATION
Doug Roberts	CCA & Eastern NC Saltwater Fishing Club
Andy Cole	Agriculture Teacher - Harnett County
Allen West	Agriculture Teacher - Harnett County

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES — 6/29/04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Al Jones	Agriculture Teacher
Jerry Jurk	" Teacher
Mike Bartholomew	" "
Danielle Liddell	" "
Ricky E. Joyner	" "
Al Kelly	NC Justice Ctr
Rob Schofield	"
Ed Hanes	
Mark Benson	Capitol Broadcasting
Tom Boney	NC Environmental Defense
Katie Jackelen	Intern
John Holton	Intern
Nancy Thompson	MCIC
Preston Howard	MCIC
Stephanie Simpson	NCAR
Dean Mills	NC Metropolitan Coalition
Jim Holman	CWMTF
R. Paul Wilms	NCHBA

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

July 7, 2004
11:00 AM

1. **Call to Order**

2. **Bills (not necessarily in this order and as time allows):**

   SB 1210 – PHASE II STORMWATER MANAGEMENT-1
   Sen. Clodfelter

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

July 7, 2004

MINUTES

The House Committee on Environment and Natural Resources met July 7, 2004, in Room 643 of the Legislative Office Building at 11:00 am. Pryor Gibson, Chair, called the meeting to order at 11:13 am. Other members attending were Vice Chairs Walt Church, Joe Hackney, and Charles Johnson, and Committee members Lucy Allen, Curtis Blackwood, Russell Capps, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Verla Insko, Paul Luebke, Danny McComas, Jean Preston, Ray Rapp, John Rhodes, Fred Steen, Bonner Stiller, Alex Warner, Jennifer Weiss and Larry Womble. A Visitor Registration is attached and made part of these minutes.

SB 1210 – Phase II Stormwater Management-1 (Attachments 1, 2, 3, 4, 5, 6). Senator Clodfelter said that the bill attempts to put in place another piece of water quality protection strategies for North Carolina and do so in a way that represents competing and conflicting interests. The bill would provide for the temporary implementation of federal Phase II stormwater management requirements, pending unresolved litigation. The bill is only one piece of a much broader set of laws and regulations. The bill proposes that the123 municipalities already responsible by federal law must administer the Phase II regulations in their jurisdictions. In addition, the areas designated urbanized in the 1990-2000 census will have to have programs to administer the Phase II regulations. Build upon a concept based on North Carolina law already in place; under State Law, the unincorporated areas, which may be annexed, will be subject to the Phase II regulations. Build in are choices of how an area will administer the regulations. Model ordinances will assist local governments takes in account options, choices, variations in skill resources, population, terrain, type of development, etc.

During a lengthy discussion, the following persons spoke on the bill:

Kim Hibbert, League of Municipalities, supported the bill and said that municipalities need clear standards to mandated federal regulations to protect water quality.

Paul Myer, NC Association County Commissioners, said the bill provides options for counties and supported the bill.

Robin Smith, Assistant Secretary, DENR, said the Department supported the bill; it has a strong foundation to begin implementing this program.

David Knight, Environmental Community, did not support this version, as it does not protect the environment.

Elizabeth Ouzts, NCPURR, said this bill would do little to protect our environment.

Tim Minton, NC Home Builders Association, supported the bill's flexibility and that it implements other programs within the state.

Rick Zechini, Director of Regulatory Affairs, NC Association of Realtors, supported the bill.

Following additional lengthy discussion to include: included and not included areas, petitioning process for additional areas, definition and inclusion of areas under municipal separate storm sewer systems (MS4s), and various other stormwater issues.

Representative McComas moved for a favorable report.

Bradley Bennett, Division of Water Quality, Stormwater Unit, DENR, answered the question about the difference between 80% and 85% TSS (Total Suspended Solids); it varies on the management measure and design—85% is current with all North Carolina regulations.

Representative McComas' motion for a favorable report was brought forward. Passed.

Chair Gibson adjourned the meeting at 12:29 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT #1
7/7/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 1210*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/29/04

Third Edition Engrossed 6/30/04

Short Title: Phase II Stormwater Management-1. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TEMPORARY IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS BY PROVIDING: (1) THAT LOCAL GOVERNMENT APPLICATIONS FOR PHASE II STORMWATER PERMITS THAT WERE SUBMITTED IN ACCORDANCE WITH THE TEMPORARY STORMWATER RULE WILL BE DEEMED TIMELY RECEIVED; (2) STANDARDS FOR THE EVALUATION OF APPLICATIONS FOR PHASE II STORMWATER PERMITS; (3) AN EXEMPTION FROM PHASE II STORMWATER PERMIT REQUIREMENTS FOR CERTAIN SMALL MUNICIPALITIES; (4) THAT NEW DEVELOPMENT AND REDEVELOPMENT LOCATED IN A REGULATED COVERAGE AREA MUST COMPLY WITH THE STORMWATER MANAGEMENT RULE; (5) THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION WILL ADMINISTER AND ENFORCE THE STORMWATER MANAGEMENT RULE IN A REGULATED COVERAGE AREA UNLESS A COUNTY VOLUNTARILY UNDERTAKES TO IMPLEMENT A LOCAL STORMWATER MANAGEMENT PROGRAM; (6) FOR THE COORDINATION OF PHASE II STORMWATER MANAGEMENT PROGRAMS AND OTHER EXISTING STATE PROGRAMS THAT REGULATE STORMWATER IN ORDER TO AVOID CONFLICTING, DUPLICATIVE, OR INCONSISTENT STORMWATER MANAGEMENT REQUIREMENTS; (7) THAT A LOCAL GOVERNMENT MAY OPT TO BE COVERED UNDER A GENERAL STORMWATER PERMIT DEVELOPED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (8) DEADLINES FOR WHEN THE ENVIRONMENTAL MANAGEMENT COMMISSION MUST MAKE CERTAIN PHASE II STORMWATER PERMITTING DECISIONS; (9) DESIGNATION AND PETITION PROCESSES BY WHICH ADDITIONAL LOCAL GOVERNMENTS AND OTHER ENTITIES MAY BE REQUIRED TO

OBTAIN A PHASE II STORMWATER PERMIT; (10) FOR THE DEVELOPMENT OF A STORMWATER MODEL ORDINANCE AND STORMWATER DESIGN MANUAL; (11) FOR THE ROLES OF STATE AND LOCAL GOVERNMENTS IN REGULATING THE STORMWATER IMPACTS OF FEDERAL AND STATE PROJECTS; (12) DEFINITIONS OF TERMS TO BE USED IN THE IMPLEMENTATION OF THIS ACT; (13) THAT CERTAIN AGRICULTURE AND FORESTRY ACTIVITIES ARE EXEMPT FROM PHASE II STORMWATER PERMIT REQUIREMENTS; AND (14) HOW THE ACT SHALL BE CONSTRUED, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Phase II Stormwater Permit Application and Standards. – An application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 1990 or 2000 census by the Bureau of the Census shall be deemed timely received if the application was submitted to the Department in accordance with the application schedule set out in Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management under this section, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation of the postconstruction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as provided in the Stormwater Management Rule. A municipality with a population of less than 1,000, including a municipality designated by the 1990 or 2000 census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

SECTION 2. New Development and Redevelopment in Unincorporated Areas of Counties. –

(1) New development or redevelopment located in the unincorporated area of a county shall comply with the standards set forth in the Stormwater Management Rule beginning 1 July 2006 if the new development or redevelopment is located in:

a. An area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census.

b. The unincorporated area of a county outside of a municipality designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census that:

1. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
2. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
3. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

c. An area delineated pursuant to subdivision (2) of this section.

d. A county in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census; (ii) the area described in sub-subdivision b. of this subdivision; (iii) the area delineated pursuant to subdivision 2 of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 7 of this act; and (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 8 of this act equals or exceeds eighty-five percent (85%) of the total geographic area of the county.

(2) Delineation process. – The Commission shall delineate regulated coverage areas as provided in this subdivision.

a. Schedule. – The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

b. Potential candidate coverage areas. – A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 7 of this act that:

1. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
2. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
3. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

c. Identification of candidate coverage areas. – The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of this subdivision as a candidate coverage area if the discharge of stormwater within or

from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

d. Notice and comment on candidacy. – The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.

e. Delineation of regulated coverage areas. – After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:

1. Adversely impacts water quality.
2. Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

f. Notice of delineation. – The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

(3) Except as provided in this subdivision and Section 5 of this act, the Commission shall administer and enforce the standards for new development and redevelopment in the regulated coverage areas. To the extent that the new development or redevelopment is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the

Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 5 of this act.

SECTION 3. Coordination of Phase II and Other Stormwater Management Programs. – In any circumstance where any stormwater control requirement under a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply. The Secretary of Environment and Natural Resources or the Secretary's designee shall resolve any dispute as to whether there is a conflict or overlap between or among stormwater management requirements and shall determine which requirement shall be deemed the most stringent.

SECTION 4. General Permit. – The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for postconstruction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out in the Stormwater Management Rule but shall not impose any requirement on the permittee that exceeds the standards set out in the Stormwater Management Rule. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit under Section 1 of this act may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit under Section 1 of this act as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this section.

SECTION 5. Delegation. – A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Section 2 of this act may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of this act and the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or more public entities 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. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or

disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this act and the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

SECTION 6. Phase II Stormwater Implementation Deadlines. –

(1) For an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 1990 census by the Bureau of the Census, the Commission shall send a draft permit decision to public notice by 1 November 2004.

(2) For an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by an owner or operator of a small municipal separate storm sewer system (MS4) located in whole or in part within an urbanized area as designated by the 2000 census by the Bureau of the Census, the Commission shall send a draft permit decision to public notice by 1 May 2005.

(3) A public entity designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition) shall develop and implement postconstruction stormwater management measures within 24 months of the date on which its Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management is issued.

(4) A public entity designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 7 of this act shall develop and implement postconstruction stormwater management measures within 36 months of the date on which its Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management is issued.

SECTION 7. Designation of Regulated Entities. – A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

(1) Federal designation. – A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a

regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).

(2) State designation process. – The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in this subdivision.

a. Designation schedule. – The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

b. Identification of candidate regulated entities. – The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

1. Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
2. Serves a public entity that has not been designated pursuant to subdivision (1) of this section and that has a population of more than 10,000 and a population density of 1,000 people per square mile or more.

c. Notice and comment on candidacy. – The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.

d. Designation of regulated entities. – After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

1. The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
2. The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.

3. The public entity has an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.
4. The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
5. The municipal separate storm sewer system (MS4) either discharges stormwater that results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

e. Notice of designation. – The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

f. Application schedule. – A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(3) Designation under a total maximum daily load (TMDL) implementation plan. – The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity

that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

SECTION 8. Petition Process. – A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

(1) Connected discharge petition. – An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

(2) Adverse impact petition. – Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

a. Petition review. – The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

1. The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater to sensitive receiving waters in an area with: (i) an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years; (ii) a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years; or (iii) an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.

2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to sensitive receiving waters.
3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.

b. Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:
1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.
2. Scientific or technical literature that supports the sampling methods.
3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.
5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.
6. For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a

significant contributor of pollutants to the receiving waters.

c. Water quality protection program offset. – If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to insure compliance with a TMDL implementation plan.

(3) Petition administration. – The Commission shall process petitions in the following manner:

a. The Commission shall only accept petitions submitted on Department forms.

b. A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.

c. The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.

d. The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.

e. The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.

f. The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written

request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

g. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

1. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

2. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

h. The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES)

permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification. If the owner or operator of a municipal separate storm sewer system is a municipality with a population of less than 5,000, the municipality must submit an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 24 months of the date of notification.

SECTION 9. Model Ordinance. – Pursuant to G.S. 143-214.7(c), the Environmental Management Commission shall develop a model ordinance in cooperation with local governments and other interested parties that shall allow the use of both structural and nonstructural best management practices adequate to meet the standards. The model ordinance shall be completed by 1 July 2005. In the development of the model ordinance, the Commission shall provide for options that take into consideration differences among local governments in the State, including, but not limited to, population, financial resources, and human resources.

SECTION 10. Design Manual. – Consistent with G.S. 150B-2(8a)h., the Division, in consultation with the Division of Land Resources of the Department, the Division of Soil and Water Conservation of the Department, and North Carolina State University, shall develop or revise a design manual to provide assistance in determining which controls are best suited to the unique characteristics of the permittee, including, but not limited to, hydrology, topography, climate, soils, and receiving waters. The development or revision of the design manual shall be completed by 1 July 2005.

SECTION 11. Federal and State Development or Redevelopment Projects. – A federal or State agency may apply to the Commission for a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to a particular development or redevelopment project. The Commission shall have exclusive jurisdiction to establish stormwater management requirements with respect to a particular project that is not under the jurisdiction of a federal or State agency that holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to the particular development or redevelopment project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular development or redevelopment project, then the project is subject to the stormwater management requirements of this act as implemented by the Commission or by a local

government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this act.

SECTION 12. Definitions. – The following definitions apply to this act and its implementation:

(1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).

(2) The definitions set out in G.S. 143-212 and G.S. 143-213.

(3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).

(4) "1-year, 24-hour storm" means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(5) "Built-upon area" means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

(6) "Division" means the Division of Water Quality in the Department.

(7) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.

(8) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

(9) "Redevelopment" means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

(10) "Regulated coverage area" means an unincorporated area of a county to which the Stormwater Management Rule applies.

(11) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

(12) "Sensitive receiving waters" means any of the following:

a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with

subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).

b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.

c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.

(13) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

(14) "Stormwater Management Rule" means Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002, except that:

a. In subsection (a), the words "pursuant to Sub-Item (7)(a)(v) of this Rule." are deleted and replaced by the words "set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).".

b. Subsections (c) and (d) are deleted.

c. In the first sentence of subsection (e), the words "meets the following requirements:" is deleted and replaced by the words "manages stormwater and protects water quality. The program shall equal or exceed the stormwater management and water quality protection provided by the following model practices:".

d. In subdivision (i) of subsection (e), the words "Sub-Item (10)(B)" are deleted and replaced by the words "Sub-Item (10)(b)".

e. In subdivision (i) of subsection (h), the words "while still meeting the requirements of Sub-Item (10)(d) of this Rule" are deleted.

f. In subsection (i), the words "temperature, while still meeting the requirements of Sub-Item (10)(d) of this Rule." are deleted and replaced by the word "temperature.".

g. In subdivision (i) of subsection (j), the words "while still meeting the requirements of Sub-Item (10)(d) of this Rule" are deleted.

h. In subsection (k), the words "of Item (10)" are deleted.

i. A new subsection (n) is added to read:

"(n) A regulated entity may develop its own comprehensive watershed plan, may use the model ordinance developed by the Commission, may design its own postconstruction practices based on the Department's guidance and engineering standards for best management practices (BMPs), or it may incorporate the postconstruction model practices set out in this rule to fulfill the minimum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).".

(15) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

SECTION 13. Construction of Act. –

(1) Nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government to adopt stormwater management requirements that exceed the requirements of this act.

(2) This act shall not be construed to affect pending litigation.

(3) Except as specifically provided in this act, this act shall not be construed to give effect to any temporary or permanent rule related to Phase II stormwater management that has not become effective as provided in G.S. 150B-21.3.

(4) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.

(5) This act shall not be construed to affect any vested right to development under any provision of statutory or common law. To the extent that postconstruction measures are implemented by a zoning ordinance, vested rights shall be determined as provided in G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of statutory and common law. To the extent that postconstruction measures are implemented by means other than a zoning ordinance, vested rights shall be determined as provided by applicable statutory

and common law. The Commission, the Department, local governments, and other public entities shall implement this act in compliance with the applicable vested rights provisions of statutory and common law.

(6) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

SECTION 14. Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section 11 of this act, and the text of Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7.

SECTION 15. This act is effective when it becomes law and expires 1 October 2011.

Att # 2
7/7/04

SENATE BILL 1210:
Phase II Stormwater Management-1.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Clodfelter
		Summary by:	Jeff Hudson Committee Counsel
Date:	July 7, 2004		
Version:	3rd Edition		

SUMMARY: ***Senate Bill 1210 would provide for the temporary implementation of federal Phase II stormwater management requirements. Most of the act would become effective when the act becomes law and the entire act would sunset on 1 October 2011.***

CURRENT LAW AND BACKGROUND:

In the early 1990's, the United States Environmental Protection Agency (USEPA) adopted regulations to require large municipalities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges from municipal separate storm sewer systems (MS4s). In 1999, under "Phase II" of these regulations, USEPA extended the NPDES stormwater management permit requirements to small and medium sized communities.

Based on federal census data, the USEPA has identified 123 cities and 33 counties in North Carolina that would be required to obtain permits for stormwater management. In order to obtain a Phase II NPDES permit for stormwater management, the USEPA regulations require a local government to develop a stormwater management program that includes certain minimum stormwater management measures and that is sufficient to control stormwater pollution to the maximum extent practicable and to protect water quality standards.

The USEPA has delegated to the State the authority to issue federal NPDES permits for stormwater management. In 1999, the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources (DENR) and the Environmental Management Commission (EMC) initiated a rulemaking process in response to the Phase II regulations adopted by USEPA. On October 10, 2002, the EMC adopted temporary Phase II stormwater management rules that became effective November 1, 2002. On July 10, 2003, the EMC adopted two permanent Phase II stormwater management rules that would have become effective August 1, 2004. One of the permanent rules would have required municipalities to obtain a Phase II NPDES permit for stormwater management; the other would have required urbanized counties to obtain a comparable State stormwater management permit.

On January 15, 2004, the Rules Review Commission (RRC) reviewed the permanent Phase II stormwater management rules. The RRC returned the rules to the EMC for failure to comply with the Administrative Procedure Act and objected to the rules based on ambiguity and lack of statutory authority. Whether the RRC should have returned the permanent Phase II stormwater management rules is in dispute and is the subject of pending litigation. The RRC's return of the permanent Phase II stormwater management rules caused the temporary rules to expire and prevented the permanent rules from becoming effective. Currently, the State has no Phase II stormwater management program as required by the USEPA's Phase II stormwater management regulations.

BILL ANALYSIS:

Section 1. Phase II Stormwater Permit Application and Standards

Section 1 provides that:

- An application for a Phase II NPDES permit for stormwater management that was submitted to DENR in accordance with the application schedule set out in Section 6 of the temporary Phase II stormwater management rules will be deemed timely received. (Section 6 of the temporary Phase II stormwater management rules is attached to the end of this analysis at page 6.)
- A local government applicant for a Phase II NPDES permit for stormwater management must develop, implement, and enforce a stormwater management plan that is approved by DENR and that meets federal requirements. The evaluation of the permit applications by DENR will be conducted as provided in the Stormwater Management Rule. (Section 10 of the temporary Phase II stormwater management rules as modified is attached to the end of this analysis at page 7.)
- A municipality with a population of less than 1,000 is not required to obtain a Phase II NPDES permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters.

Section 2. New Development and Redevelopment in Unincorporated Areas of Counties

Section 2 provides that new development and redevelopment located in the unincorporated area of a county must comply with the stormwater management standards set forth in the Stormwater Management Rule beginning 1 July 2006 if the new development or redevelopment is located in:

- An area that is federally designated as an urbanized area.
- An unincorporated area of a county that is delineated as a regulated coverage area. An unincorporated area is delineated as a regulated coverage area based on its geographical proximity to a municipality and the environmental impact of stormwater discharges within or from the area.
- A county in which the unduplicated sum of: (i) the area that is federally designated urbanized area; (ii) the area delineated as a regulated coverage area; (iii) the jurisdiction of a regulated entity designated pursuant to Section 7 of the bill; and (iv) the area that is regulated by a Phase II NPDES permit for stormwater management required pursuant to Section 8 of the bill equals or exceeds eighty-five percent (85%) of the total geographic area of the county.

These are the same stormwater management standards that apply to stormwater management programs developed, implemented, and enforced by municipalities.

Section 3. Coordination of Phase II and Other Stormwater Management Programs

Section 3 provides for the coordination of Phase II stormwater management and other existing State programs that regulate stormwater in order to avoid conflicting, duplicative, or inconsistent stormwater management requirements. Under this provision, if there are conflicting or overlapping stormwater management requirements, the most stringent requirements will apply.

Section 4. General Permit

Section 4 directs DENR to develop and issue a Phase II NPDES general permit for stormwater management containing postconstruction stormwater management measures developed in accordance with the Stormwater Management Rule. (Section 10 of the temporary Phase II stormwater management rules as modified is attached to the end of this analysis at page 7.) A local government may opt to be covered under the Phase II NPDES general permit for stormwater management developed by DENR rather than developing its own individual permit.

Section 5. Delegation

Section 5 provides that a public entity that does not administer a Phase II NPDES permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area may voluntarily undertake the implementation of a local stormwater management program approved by DENR.

Section 6. Phase II Stormwater Implementation Deadlines

Section 6 provides deadlines for when DENR must make certain permitting decisions. Section 6 also provides that:

- A public entity federally designated as a regulated entity will develop and implement postconstruction stormwater management measures within 24 months of the issuance of its Phase II NPDES permit for stormwater management.
- A public entity designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 7 of the bill will develop and implement postconstruction stormwater management measures within 36 months of the issuance of its Phase II NPDES permit for stormwater management.

Section 7. Designation

Section 7 provides a designation process by which additional local governments and other entities may be required to obtain a Phase II NPDES permit for stormwater management. The USEPA's Phase II stormwater management regulations require that the State's Phase II stormwater management program provide a designation process.

Section 8. Petition Process

Section 8 provides a petition process by which additional local governments and other entities may be required to obtain a Phase II NPDES permit for stormwater management. The USEPA's Phase II stormwater management regulations require that the State's Phase II stormwater management program provide a petition process.

Section 9. Model Ordinance

Section 9 directs the EMC to develop a stormwater model ordinance to assist local governments and others in developing and implementing stormwater management programs and controls. In the development of the model ordinance, the EMC will provide for options that take into consideration differences among local governments in the State, including but not limited to population, financial resources, and human resources.

Section 10. Design Manual

Section 10 provides for the development of a stormwater design manual to assist local governments and others in determining which controls are best suited to their unique characteristics, including but not limited to hydrology, topography, climate, soils, and receiving waters.

Section 11. Federal and State Development or Redevelopment Projects

Section 12 provides that DENR will have exclusive jurisdiction to establish stormwater management requirements with respect to a particular project that is not under the jurisdiction of a federal or State agency that holds a Phase I or Phase II NPDES permit for stormwater management that applies to all of the agency's activities or that applies to the particular project.

Section 12. Definitions

Section 11 provides definitions for the act and its implementation.

Note that "Stormwater Management Rule" means Section 10 of the temporary rule adopted by the EMC on 10 October 2002 except as modified by the definition in the bill. (Section 10 of the temporary Phase II stormwater management rules as modified is attached to the end of this analysis at page 7.)

Section 13. Construction of Act

Section 13 provides that:

- Nothing in the act shall be construed to alter the authority of the EMC or a local government with regards to stormwater management.
- The act shall not be construed to affect pending litigation.
- Except as specifically provided by the act, the act shall not be construed to give effect to any Phase II stormwater management rules that have not become effective as provided in the Administrative Procedure Act.
- The federal exemptions from NPDES permit requirements for agriculture and silviculture apply to this act.
- The act shall not be construed to affect any vested right to development under any provision of statutory or common law.

The act shall not be construed to affect any delegation of power or duty to the Commission or the Department.

Section 14. Instructions to Revisor of Statutes

Section 14 directs the Revisor of Statutes not to codify any of the provisions of the act. The Revisor is further directed to set out the text of certain sections of the act as notes to certain statutes.

Section 15. Effective Dates and Sunset

The bill is effective when it becomes law and expires on 1 October 2011.

The Application Schedule of Section 6 of the Temporary Phase II Stormwater Management Rules

(6) Application schedule. Regulated public entities must submit applications on department approved forms. Designated small MS4 applications shall include program descriptions for the minimum measures identified in Item (7) of this Rule. The application for regulated public entities that do not own or operate a small MS4 shall certify the lack of ownership or operation of a small MS4. Regulated public entities that do not own or operate a small MS4 may elect to implement a stormwater management program pursuant the options available in this Rule.

(a) The application deadline will not be less than 18 months from the date of designation notification, except for:

(i) 1990 Decennial Census regulated public entities, which must apply by March 10, 2003.

(ii) Municipally operated industrial activities, which must apply by March 10, 2003.

(b) Regulated public entities that are newly identified based upon the 2000 Decennial Census, or a future decennial census, must apply for permit coverage within 18 months of State notification. The Department, within 3 months of federal verification of decennial census data, will notify in writing all the public entities identified.

Evaluation of Applications for Phase II NPDES Permits for Stormwater Management

(10) Post-construction stormwater management

(a) All regulated public entities, required to implement the post construction stormwater management minimum measure, must develop, implement and adopt by ordinance a post-construction stormwater management program for all new development and redevelopment as part of their plan to meet the minimum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition). These ordinances, and subsequent modifications, will be reviewed and approved by the Department prior to implementation. The approval process will establish subsequent timeframes when the Department will review performance under the ordinance (s). The reviews will occur, at a minimum, every five years. Regulated public entities without ordinance making powers, shall demonstrate similar actions taken in their post construction stormwater management program to meet the minimum measure requirements.

(b) The post-construction program shall apply to all new development projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale. The post-construction program shall apply to all redevelopment projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale.

(e) A post construction stormwater management program shall be developed and implemented that manages stormwater and protects water quality. The program shall equal or exceed the stormwater management and water quality protection provided by the following model practices:

(i) The program shall require all projects as defined in Sub-Item (10)(b) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:

(A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:

(I) No more than 2 dwelling units per acre or 24 percent built-upon area BUA for all residential and non-residential development;

(II) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable;

(III) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a); and

(IV) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans.

(B) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (10)(e)(i)(A) of this Rule shall implement stormwater control measures that:

(I) Control and treat the difference in stormwater runoff volume leaving the project site between the pre and post development conditions for the 1 year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;

(II) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have an 85% average annual removal for Total Suspended Solids;

(III) General Engineering Design Criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c);

(IV) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a); and

(V) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans;

(f) The program shall include an operation and maintenance component that ensures the adequate long- term operation of the structural BMP's required by the program. The program shall include a requirement that the owner of a permitted structural BMP, submit annually to the local program, a maintenance inspection report on each structural BMP. The inspection must be conducted by a qualified professional; and

(g) A program shall be developed to control, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department.

(h) For programs with development/redevelopment draining to SA waters, the following additional requirements must be incorporated into their program:

(i) A local ordinance shall be developed, adopted and implemented to ensure that the best practice for reducing fecal coliform loading is selected. The best practice shall be the practice that results in the highest degree of fecal die off and controls to the maximum extent practicable sources of fecal coliform. The local ordinance(s) shall incorporate a program to control the sources of fecal coliform to the maximum extent practical, including:

(A) Implementation of a pet waste management program. Appropriate revisions to an existing litter ordinance can be used to meet this requirement; and

(B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department; and

(ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance system, or constructed system of conveyances that discharge to SA waters, shall not be allowed. Expansion is defined as an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the 1 year 24 hour storm. Overland sheetflow of stormwater or stormwater discharge to a wetland, vegetated buffer or other natural area capable of providing treatment or absorption will not be considered a direct point of stormwater discharge for the purposes of this Rule.

(i) For programs with development/redevelopment draining to trout (Tr) waters, the following additional requirements must be incorporated into their program:
A local ordinance shall be developed, adopted and implemented to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature.

(j) For programs with development/redevelopment draining to Nutrient Sensitive waters, the following additional requirements must be incorporated into their program:
(i) A local ordinance shall be developed, adopted and implemented to ensure that the best management practice for reducing nutrient loading is selected. Where a Department approved NSW Urban Stormwater Management Program is in place, the provisions of that program fulfill this requirement; and
(ii) A nutrient application (both inorganic fertilizer and organic nutrients) management program shall be developed and included in the stormwater management program.

(k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of this Rule.

(l) The department may require more stringent stormwater management measures on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

(m) The Department may develop guidance on the scientific and engineering standards for best management practices that shall be used to meet the post construction elements of this Rule. Alternative design criteria may be approved by the Department where a demonstration is made that the alternative design will provide:
(i) Equal or better management of the stormwater;
(ii) Equal or better protection of the waters of the state; and
(iii) No increased potential for nuisance conditions.

(n) A regulated entity may develop its own comprehensive watershed plan, may use the model ordinance developed by the Commission, may design its own postconstruction practices based on the Department's guidance and engineering standards for best management practices (BMPs), or it may incorporate the postconstruction model practices set out in this rule to fulfill the minimum requirements set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

ATT # 3
7/7/04

North Carolina General Assembly
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July 7, 2004

MEMORANDUM

TO: House Committee on Environment and Natural Resources

FROM: Jeff Hudson, Committee Counsel
Jennifer McGinnis, Committee Counsel
George F. Givens, Committee Counsel

RE: Background Information on Phase II Stormwater Management

This memorandum provides background information on State efforts to comply with federal Phase II stormwater management requirements.

Federal Phase II Stormwater Management Requirements

In the early 1990's the United States Environmental Protection Agency (USEPA) adopted regulations to require large municipalities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges from municipal separate storm sewer systems (MS4s). The regulations state:

> Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

In 1999, under "Phase II" of these regulations, USEPA extended the NPDES stormwater management permit requirements to small and medium sized communities. The purpose of the federal Phase II regulations is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources. Based on federal census data, the USEPA has identified 123 cities and 33 counties in North Carolina that would be required to obtain permits for stormwater management. (A list of the 123 cities and a list of the 33 counties identified by USEPA are attached at the end of this memorandum on pages 5 and 6 respectively.)

In order to obtain a Phase II NPDES permit for stormwater management, the USEPA regulations require a local government to develop a stormwater management program that includes stormwater management measures for:

- Public education and outreach on stormwater impacts.
- Public participation in the development, implementation, and review of the stormwater management program.
- Detection and elimination of illegal discharges into the MS4.
- Reduction of pollutants in stormwater runoff from construction activities.
- Post-construction stormwater management for new development and redevelopment.
- Pollution prevention at local government operations.

These minimum measures must be sufficient to control stormwater pollution to the maximum extent practicable and to protect water quality standards.

Development of State Phase II Stormwater Management Rules

The USEPA has delegated to the State the authority to issue federal NPDES permits for stormwater management. In 1999, the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources (DENR) and the Environmental Management Commission (EMC) initiated a rulemaking process in response to the Phase II regulations adopted by USEPA. The rulemaking process included three rounds of stakeholder discussions, local government workshops, and five public hearings. (A detailed chronology of the rulemaking process is attached at the end of this memorandum on page 7.) On October 10, 2002, the EMC adopted temporary Phase II stormwater management rules that became effective November 1, 2002. On July 10, 2003, the EMC adopted two permanent Phase II stormwater management rules that would have become effective August 1, 2004. One of the permanent rules would have required municipalities to obtain a Phase II NPDES permit for stormwater management; the other would have required urbanized counties to obtain a comparable State stormwater management permit.

Rules Review Commission Action on Permanent Phase II Stormwater Management Rules

On October 16, 2003, the Rules Review Commission (RRC) objected to the permanent Phase II stormwater management rules based on ambiguity due to formatting and lack of statutory authority to require counties to develop and implement stormwater management programs. To address the ambiguity issue, the RRC recommended that the EMC separate the two lengthy permanent Phase II stormwater management rules into several shorter rules with fewer subparts. The EMC responded by reorganizing the two long permanent Phase II stormwater management rules into 14 shorter rules. Although the EMC did not agree with the RRC's conclusion as to lack of statutory authority to require counties to develop and implement stormwater management programs, the EMC removed the requirement and provided that DENR would implement a stormwater management program for the unincorporated areas of urbanized counties. The revised permanent Phase II stormwater management rules, however, did not change the stormwater standards that would be applied to evaluate stormwater management programs.

On January 15, 2004, the RRC reviewed the revised permanent Phase II stormwater management rules. Discussion at the RRC meeting focused on the concern that the revised rules would apply to parties not affected by the original permanent Phase II stormwater management rules adopted by the EMC and should therefore be the subject of a new public hearing. The RRC returned the entire 14-rule package to the EMC for failure to comply with the Administrative Procedure Act and also objected to the rules

based on ambiguity and lack of statutory authority. The RRC's return of the permanent Phase II stormwater management rules to the EMC caused the temporary rules to expire and prevented the permanent rules from becoming effective.

Issues Related to the Lack of a State Phase II Stormwater Management Program

Currently, the State has no Phase II stormwater management program as required by the USEPA's Phase II stormwater management regulations. The lack of a State program raises a number of issues:

Under the USEPA regulations, the local governments that were identified by the USEPA as needing to obtain Phase II NPDES permits for stormwater management based on data from the 2000 federal census were required to submit applications for those permits by March 10, 2003. As authorized by the USEPA Phase II stormwater management regulations, the EMC's temporary and permanent Phase II stormwater management rules would have extended this application deadline to May of 2004. A number of local governments relied on this extension and submitted applications for Phase II NPDES permits for stormwater management after the March 2003 deadline. Without the deadline extension, 63 municipalities and 8 counties are currently in violation of federal law.

The USEPA regulations provide only general guidance as to what constitutes an acceptable Phase II stormwater management program. The USEPA regulations provide that a Phase II stormwater management program must require at a minimum that the local government develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate requirements of the federal Clean Water Act. The stormwater management program must also include the six minimum stormwater management measures set out on page 2 of this memorandum. The permanent Phase II stormwater management rules adopted by the EMC provided specific guidance as to what would constitute an acceptable Phase II stormwater management program. Currently, the only guidance to local governments for the development of their Phase II stormwater management programs is the general guidance provided in the USEPA regulations.

Under USEPA regulations, the State is required to develop a process and criteria for the State designation of additional local governments that must obtain Phase II NPDES permits for stormwater management. The USEPA regulations specifically require the State to develop criteria to evaluate whether a stormwater discharge results in or has the potential to result in violations of water quality standards, impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The permanent Phase II stormwater management rules adopted by the EMC provided a State designation process and criteria. Currently, the State has no designation process or criteria.

The USEPA regulations provide that any person may petition the State to require a NPDES permit for stormwater management for specific stormwater discharges. The regulations also provide that the State must make a final determination on a petition within 180 days. The permanent Phase II stormwater management rules adopted by the EMC provided a State process for the submission and review of such petitions. Currently, the State has no procedures for the submission of these petitions and no criteria for granting or denying them.

Litigation Concerning the Permanent Phase II Stormwater Management Rules

On March 8, 2004, the EMC filed a lawsuit in Wake County Superior Court challenging the failure of the RRC to approve the permanent Phase II stormwater management rules adopted by the EMC and the return of those rules to the EMC. The EMC seeks declaratory judgments from the Court that the RRC lacked statutory authority to return the rules; the EMC has the statutory authority to adopt the rules; the rules are not ambiguous; and the RRC's decisions to the contrary are null, void and of no effect. The EMC requests that the Court declare that the EMC is entitled to have the rules approved by the RRC. In the alternative, the EMC requests that the Court issue an order ruling that the RRC's actions were in excess of the RRC's statutory authority; made upon unlawful procedure; affected by other error of law; unsupported by substantial evidence; and arbitrary, capricious, and an abuse of discretion; and issue an order staying the RRC's return of the rules pending resolution of the matter.

The Southern Environmental Law Center (SELC) also filed a lawsuit on March 8, 2004 in Wake County Superior Court alleging that the RRC acted improperly when it returned the EMC's permanent Phase II stormwater management rules and that the RRC itself is unconstitutional. The SELC requests that the Court compel the RRC to approve the final version of the rules and remedy the constitutional violations alleged in the lawsuit.

Development of Stormwater Legislation

During the interim between the 2003 Regular Session and the 2004 Short Session, the Environmental Review Commission (ERC) heard reports on the EMC's rulemaking efforts related to stormwater and considered potential legislative actions to address stormwater management in the State. The ERC recommended two pairs of companion bills dealing with stormwater regulation to the 2004 Session. The Senate Cochairs of the ERC, Senators Clodfelter and Albertson, introduced S1210 (Phase II Stormwater Management Amendments-1) and S1211 (Phase II Stormwater Management Amendments-2). The House Cochairs of the ERC, Representatives Gibson and McComas, introduced H1585 (Phase II Stormwater Management Amendments-1) and H1581 (Phase II Stormwater Management Amendments-2).

S1210 and its companion bill H1585 (Phase II Stormwater Management Amendments-1) are the more comprehensive Phase II Stormwater Management bills. At the direction of the bill sponsors, Senators Clodfelter and Albertson and Representatives Gibson and McComas, legislative staff has been working with interested parties to try to develop a consensus bill based on S1210/H1585 (the "long version") designed to satisfy federal stormwater management requirements. This "Phase II Stormwater Management Working Group" has met a number of times over the last few weeks to work on an evolving proposed committee substitute. The interested parties that have participated in the Working Group include: the League of Municipalities, the Association of County Commissioners, the Department of Transportation, the Department of Environment and Natural Resources (DENR), the Home Builders Association, the Association of Realtors, and representatives of the conservation and environmental community.

FEDERALLY DESIGNATED PHASE II CITIES IN NORTH CAROLINA
(Based on the 1990 and 2000 federal census)

Alamance
Apex
Archdale
Asheville
Ayden
Belmont
Belville
Bermuda Run
Bethania
Bessemer City
Biltmore Forest
Black Mountain
Brookford
Burlington
Carrboro
Cajah's Mountain
Canton
Carolina Beach
Carrboro
Cary
Chapel Hill
China Grove
Claremont
Clemmons
Clyde
Concord
Connelly Springs
Conover
Cornelius
Cramerton
Davidson
Dallas
Dortches
Drexel
Elon College
Flat Rock
Fletcher
Fuquay-Varina
Gamewell
Garner
Gastonia
Gibsonville
Glen Alpine
Goldsboro
Graham
Granite Falls
Greenville
Green Level
Harrisburg
Haw River
Hemby Bridge
Hendersonville
Hickory
High Point
Hillsborough
Hildebran
Holly Springs
Hope mills
Hudson
Huntersville
Indian Trail
Jacksonville
Jamestown
Kannapolis
Kernersville
King
Knightdale
Kure Beach
Lake Park
Landis
Laurel Park
Leland
Lewisville
Long View
Lenoir
Lowell
Maiden
Marvin
Matthews
McAdenville
Mebane
Mint Hill
Monroe
Montreat
Morganton
Morrisville
Mount Holly
Nashville
Newton
Navassa
Oak Ridge
Pineville
Pleasant Garden
Ranlo
Red Oak
Rhodhiss
Rolesville
Rocky Mount
Rural Hall
Rutherford College
Salisbury
Sawmills
Simpson
Spencer Mountain
Spring Lake
Stallings
Stanley
Summerfield
Swepsonville
Thomasville
Tobaccoville
Trinity
Valdese
Wake Forest
Walkertown
Waynesville Weaverville
Weddington
Wesley Chapel
Wilmington
Winterville
Woodfin
Wrightsville Beach
Youngsville

FEDERALLY DESIGNATED PHASE II COUNTIES IN NORTH CAROLINA
(Phase II NPDES permit for stormwater management required for MS4s
owned and operated by the county in an unincorporated area)

Alamance
Alexander
Brunswick
Buncombe
Burke
Cabarrus
Caldwell
Chatham
Catawba
Davidson
Davie
Durham
Edgecombe
Forsyth
Franklin
Gaston
Guilford
Harnett
Haywood
Henderson
Hoke
Mecklenburg
Nash
New Hanover
Onslow
Orange
Pitt
Randolph
Rowan
Stokes
Union
Wake
Wayne

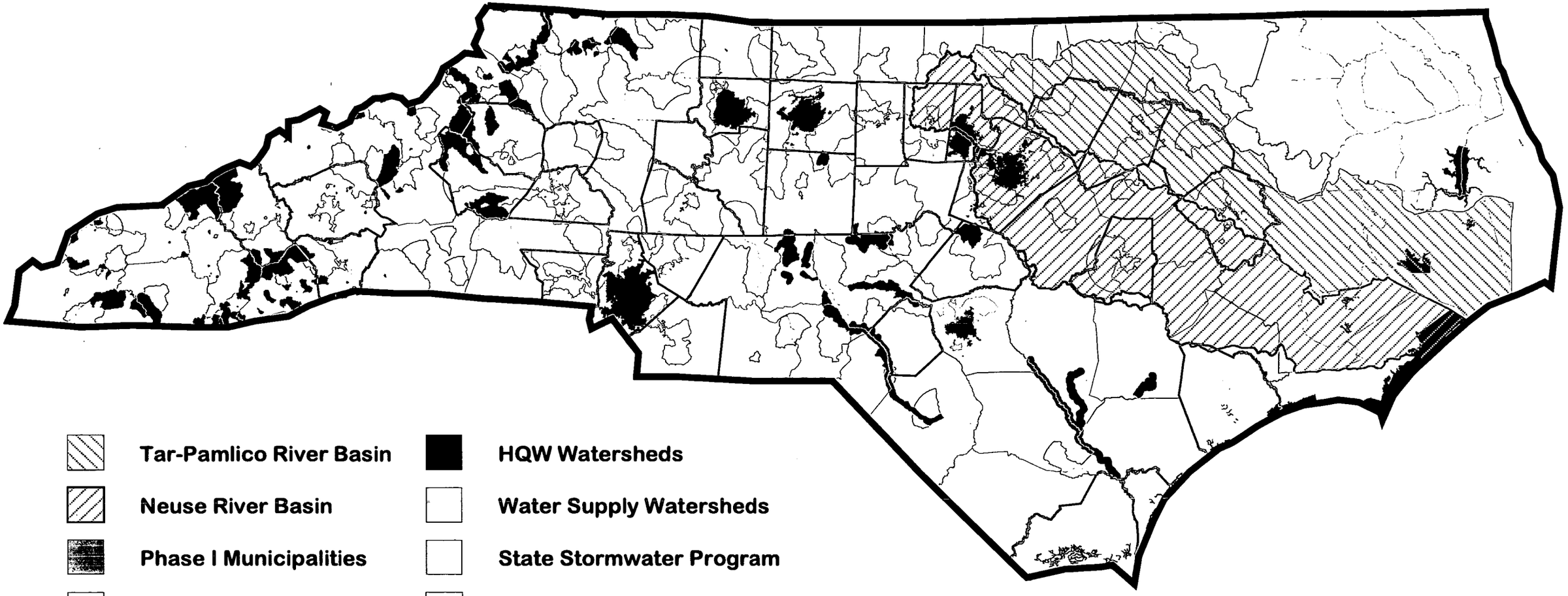
CHRONOLOGY OF PHASE II STORMWATER MANAGEMENT RULE DEVELOPMENT

EMC/DENR Action	Timeframe
Meetings with NCLM and APWA to develop workshop materials on draft federal regulations	Early 1999
Phase II site visits – Brunswick Co, Wrightsville Beach, Hickory, Boone, Woodfin	03/1999
APWA, NCLM, DWQ Phase II workshops – six total around the State	July – Sept. 1999
Presentation to WQC and EMC on proposed federal regulations	09/08/1999
Final federal regulations published	12/06/1999
Federal regulations become effective	02/07/2000
EMC begins statewide stormwater stakeholder process (lasts 6 months)	03/09/2000
Seven stakeholder education meetings around the State to prepare for stakeholder process – meetings for environmental groups, local governments and developers	March & April 2000
Stormwater stakeholder meetings (12 days of facilitated meetings)	April – Sept. 2000
Stakeholder Report	10/01/2000
Seven workshops on components of Phase II Program held for public input in developing concept for rules	Aug 2000 – March 2001
EMC approves Phase II Concept Document for statewide public meetings	04/12/2001
Seven Phase II Concept Workshops held around State	May 2001
Draft rules available for review and comment by EMC and interest groups – number of versions	Oct 2001 – March 2002
EMC reconvenes stakeholders group for work sessions on draft rules – EMC members participate these three days of meetings	Jan. 2002
EMC approves temporary rules for public notice	04/11/2002
Temporary rules appear in North Carolina Register	05/15/2002
Five public hearings around State on temporary rules	June 2002
EMC adopts temporary rules	10/10/2002
Temporary rules become effective	11/01/2002
Temporary rules in North Carolina Register	11/15/2002
EMC approves permanent rules for public notice	02/13/2003
Application deadline for federally designated MS4s	03/10/2003
Permanent rules noticed in North Carolina Register	03/17/2003
Five public hearings around State on permanent rules	April 2003
EMC adopts permanent rules approved	07/10/2003
RRC review of permanent rules – RRC objects to rules	08/21/2003
EMC amends rule in response to RRC objections	09/11/2003
RRC review of rule – RRC objects to rules	10/16/2003
EMC amends rule in response to RRC objections	12/11/2003
RRC review of rule – RRC returns permanent rules to EMC and temporary rules expire	1/15/2004

*DENR – Department of Environment and Natural Resources
*EMC – Environmental Management Commission
*RRC – Rules Review Commission
*NCLM – North Carolina League of Municipalities
*APWA - American Public Works Association
*DWQ – Division of Water Quality of the Department of Environment and Natural Resources
*WQC – Water Quality Committee of the Environmental Review Commission
*MS4 – Municipal Separate Storm Sewer System

ATT# 4
6/30/2004
7/7/04

North Carolina Water Quality Protection Strategies



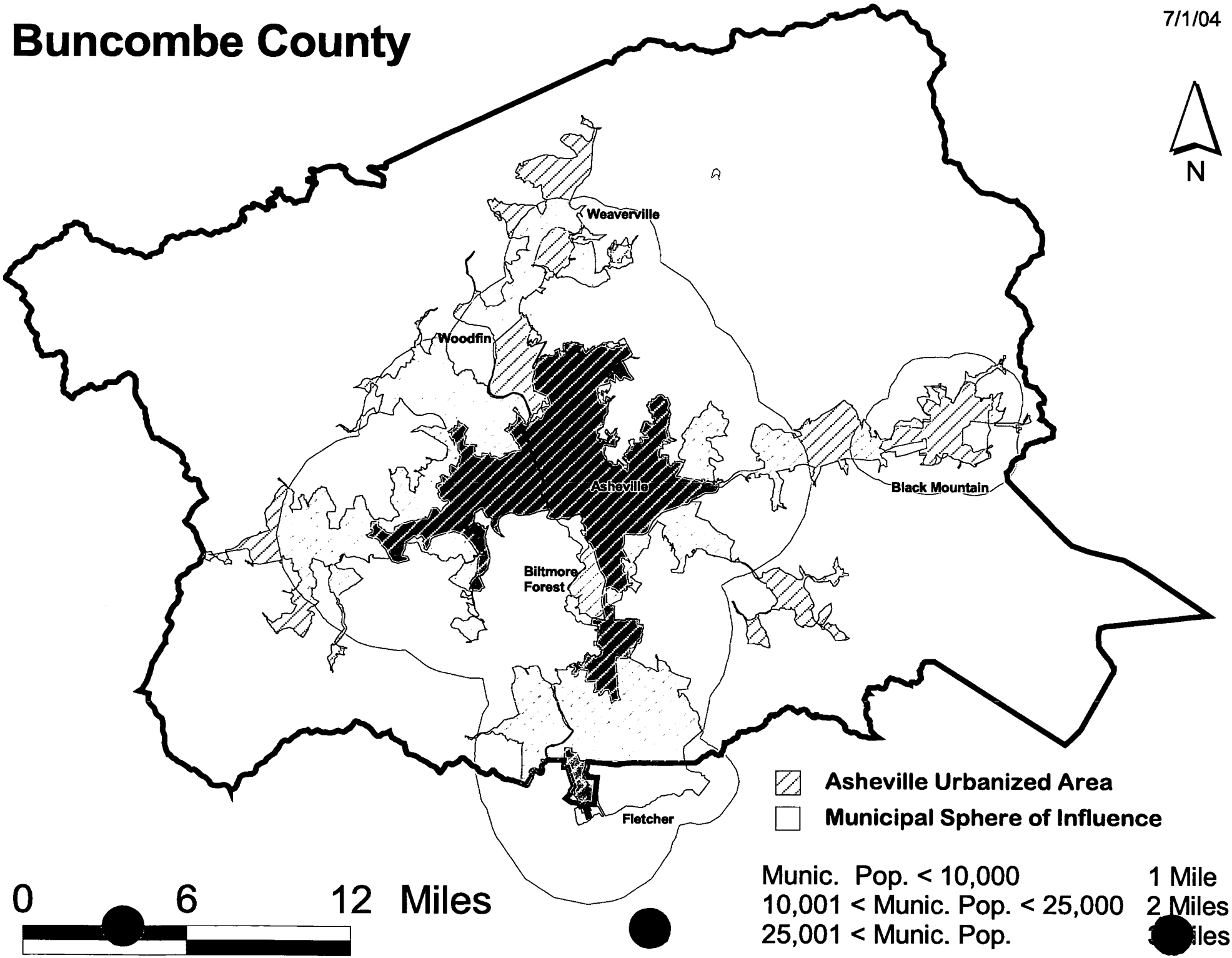
- Tar-Pamlico River Basin
- Neuse River Basin
- Phase I Municipalities
- Phase II Municipalities
- ORW Watersheds
- HQW Watersheds
- Water Supply Watersheds
- State Stormwater Program
- Phase I County
- Phase II Counties

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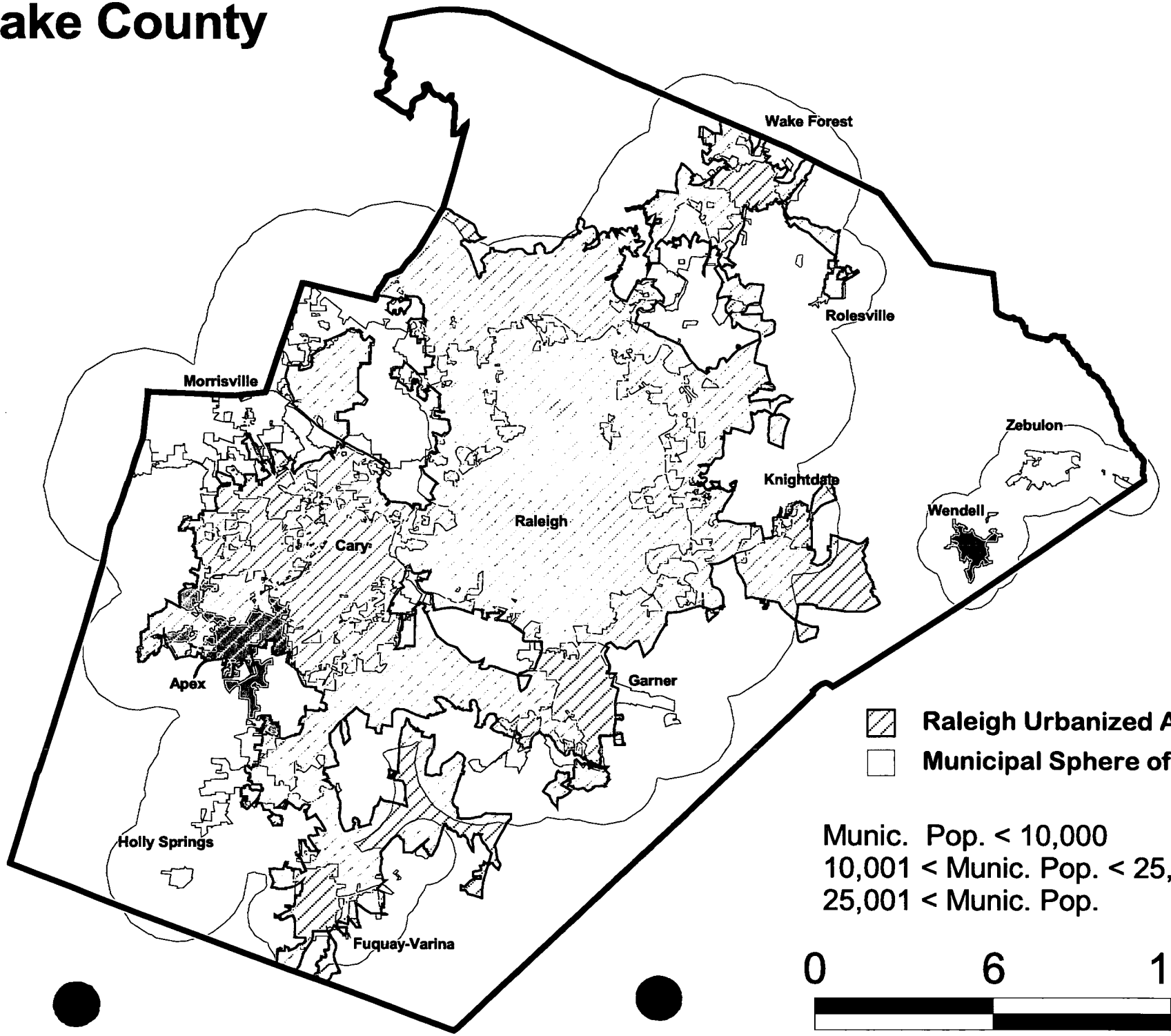
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Buncombe County



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7/7/04

Wake County



2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☒ Committee Substitute for
S.B. 1210 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE TEMPORARY IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS BY PROVIDING: (1) THAT LOCAL GOVERNMENT APPLICATIONS FOR PHASE II STORMWATER PERMITS THAT WERE SUBMITTED IN ACCORDANCE WITH THE TEMPORARY STORMWATER RULE WILL BE DEEMED TIMELY RECEIVED; (2) STANDARDS FOR THE EVALUATION OF APPLICATIONS FOR PHASE II STORMWATER PERMITS; (3) AN EXEMPTION FROM PHASE II STORMWATER PERMIT REQUIREMENTS FOR CERTAIN SMALL MUNICIPALITIES; (4) THAT NEW DEVELOPMENT AND REDEVELOPMENT LOCATED IN A REGULATED COVERAGE AREA MUST COMPLY WITH THE STORMWATER MANAGEMENT RULE; (5) THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION WILL ADMINISTER AND ENFORCE THE STROMWATER MANAGEMENT RULE IN A REGULATED COVERAGE AREA UNLESS A COUNTY VOLUNTARILY UNDERTAKES TO IMPLEMENT A LOCAL STORMWATER MANAGEMENT PROGRAM; (6) FOR THE COORDINATION OF PHASE II STORMWATER MANAGEMENT PROGRAMS AND OTHER EXISTING STATE PROGRAMS THAT REGULATE STORMWATER IN ORDER TO AVOID CONFLECTING, DUPLICATIVE, OR INCONSISTENT STORMWATER MANAGEMENT REQUIREMENTS; (7) THAT A LOCAL GOVERNMENT MAY OPT TO BE COVERED UNDER A GENERAL STORMWATER PERMIT DEVELOPED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (8) DEADLINES FOR WHEN THE ENVIRONMENTAL MANAGEMENT COMMISSION MUST MAKE CERTAIN PHASE II STORMWATER PERMITTING DECISIONS; (9) DESIGNATION AND PETITION PROCESSES BY WHICH ADDITIONAL LOCAL GOVERNMENTS AND OTHER ENTITIES MAY BE REQUIRED TO OBTAIN A PHASE II STORMWATER PERMIT; (10) FOR THE DEVELOPMENT OF A STORMWATER MODEL ORDINANCE AND STORMWATER DESIGN MANUAL; (11) FOR THE ROLES OF STATE AND LOCAL GOVERNMENTS IN REGULATING THE STORMWATER IMPACTS OF FEDERAL AND STATE PROJECTS; (12) DEFINITIONS OF TERMS TO BE USED IN THE IMPLEMENTATION OF THIS ACT; (13) THAT CERTAIN AGRICULTURE AND FORESTRY ACTIVITIES ARE EXEMPT FROM PHASE II STORMWATER PERMIT REQUIREMENTS; AND (14) HOW THE ACT SHALL BE CONSTRUED, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **July 7, 2004**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

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Pricey Harrison	
Jan Mellg	Gov Office
Joe Delk	Gov Office
MIKE RANDALL	DWQ
Bradley Bennett	NC DWQ
Katie Jackelen	Intern
Elizabeth Bakonic	NCGA intern
Benjamin Mount	NCGA intern
Mary Katherine Hackney	NCGA Intern
Robin Smith	DENR
[illegible]	NLJ Ctr
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	NC Justice Center
Claude Pfaffman	NC Justice Center
Mark Finlayson	Finlayson Consulting LLC
Elizabeth Dalton	[illegible]
Amanda Mann's	intern to David Knight, NC Sierra Club
[illegible]	NCBC
Beau Mills	NCAE
[illegible]	R. Clark & Associates
Leanne Winner	NCSBA
[illegible]	Parker Poe
[illegible]	Martin Tarlton
[illegible]	NCAITC 2

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House Committee on Environment & Natural Resources **July 7, 2004**

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VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

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Rick Zechini	NC Assoc. of REALTORS
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R. Paul Wilms	NCHBA
Steve Woodson	NC Farm Bureau
Charlie Diehl	NC Trucking Assn.
Bob Sloan	NC Forestry Assoc.
Richard Stradley	N+O
Lisa Glover	NCAGO | DOT
Paul Meyer	NCACC
Kim Hibbard	NCLM
ELVIS HANKINS	NCLM
Roger Bone	Bone Assoc.
Mack Paul	Helms Mullis Wicker
Angie McMillan	TNC
DAVID BARNES	Poynter Spruill LLP
Anita Watkins	NCLM
BRUCE THOMPSON	PARKER POE
John Gyves	N.C. Grange
Jonathan Fullbright	Hunton & Williams
Mike Regan	NC Sierra Club
Michael Nelson	CCNC
Elizabeth Ouzts	NCPIRG
Mary Penny Thompson	NC DENR

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House Committee on Environment & Natural Resources **July 7, 2004**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	CAA
[illegible]	Cargo
Carol Lauder	EGIS
Bob Hall	Democracy North Carolina

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

July 13, 2004
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order and as time allows):**

HB 1429 AMEND FISHERY MANAGEMENT PLAN REQUIREMENTS
Rep. Wainwright
SB 823 ENVIRONMENTAL TECHNICAL CORRECTION

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

July 13, 2004

MINUTES

The House Committee on Environment and Natural Resources met July 13, 2004, in Room 643 of the Legislative Office Building at noon. Pryor Gibson, Chair, called the meeting to order at 12:05 am. Other members attending were Vice Chairs Walt Church, and Charles Johnson, and Committee members Lucy Allen, Curtis Blackwood, Becky Carney, Jim Gulley, Phil Haire, Verla Insko, Paul Luebke, Danny McComas, Jean Preston, Ray Rapp, Fred Steen, Bonner Stiller, Jennifer Weiss and Larry Womble. A Visitor Registration is attached and made part of these minutes.

SB 823 – Environmental Technical Correction (Attachment 1). Representation Carney moved to adopt S823-PCS35506-SY-25 (Attachments 2, 3) and placed before the Committee. Chief Counsel George Givens explained that the bill makes technical corrections for various laws related to the environment and natural resources, other modifications, abolishment, extensions staggered terms of the members of the Agricultural Finance Authority and prohibit the sale or dispensing of raw milk and raw milk products (see Attachment 3 for details).

Susan Grayson, Head, Dairy and Food Protection Branch, DENR, said that in1938, prior to pasteurization being widely used, 25% of water and food outbreaks were attributable to milk; today less than 1% of outbreaks are attributable to milk which is mostly due to pasteurization. The bill prevents artificial sale of shares of animals, which prevents raw milk consumption.

Representation Blackwood presented an amendment (Attachment 4). The amendment failed.

Representation Haire presented an amendment (Attachment 5). The amendment passed.

Representation Womble moved to incorporate the Haire amendment into a new PCS for a favorable report as to the new PCS, unfavorable to the original bill. Passed

HB 1429 – Amend Fishery Management Plan Requirements (Attachment 6). Representation Stiller moved to adopt H1429-CSSB-55 [v.7] (Attachments 7, 8). Representation Wainwright said the bill amends the requirements for development of Fishery Management Plans (FMPs) to include conservation and management measures that would attain a "sustainable harvest" rather than an "optimal yield" and a specific time period for ending over fishing and achieving a sustainable harvest.

During a short discussion, Representation McComas asked for a definition of "optimal yield" and "sustainable harvest."

Jeff Hudson, Staff Counsel, clarified the language.

Dr. Louis Daniel, Assistant to the Director, Marine Fisheries, and "optimal yield" is anchored by the concept of maximum sustainable yield due to the lack of complete, long-term data for most species. The new concept is based on spawning stock biomass. It is a more definable benchmark to define and calculate by numbers of female fish catches.

Representation Stiller moved, at the proper time, for a favorable report.

Tom Bean, North Carolina Environmental Defense Fund, said the bill will manage fish stocks in a timely fashion and the Defense Fund supports the bill.

After a short discuss, Representation Stiller brought forth his motion for a favorable report, unfavorable to the original bill. Passed.

Chair Gibson adjourned the meeting at 12:36 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATTH 1
7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 823*

Short Title:	Environmental Technical Corrections.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-44.8(a) reads as rewritten:

"(a) The State of North Carolina offers unique archaeologic, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by ~~those~~ the people for their use and for the use of their visitors and descendants."

SECTION 2. G.S. 113-173(e) reads as rewritten:

"(e) Replacement RCGL. – The provisions of ~~G.S.~~ G.S. 113-168.1(h) apply to this section."

SECTION 3. G.S. 113A-232(a) reads as rewritten:

"(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by ~~that~~ the Department. The purpose of the Fund is to stimulate the use of conservation easements and conservation tax credits, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements."

SECTION 4. G.S. 130A-309.14(a1)(3) reads as rewritten:

"(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environment and Natural Resources a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information

provided by the Department of Administration and the Department of Transportation to the Department of Environment and Natural Resources shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 5. G.S. 143-215.107B reads as rewritten:

"**§ 143-215.107B. Statewide goals for reduction in emissions of ~~nitrogen oxides;~~ oxides of nitrogen; report.**

It shall be the goal of the State to reduce emissions of ~~nitrogen~~ oxides of nitrogen (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each ~~year beginning 1 October 2000.~~year."

SECTION 6. G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to cause air ~~pollution;~~pollution.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause ~~such~~ any air-cleaning device to be constructed, installed, or operated."

SECTION 7. G.S. 143-726(d)(4) reads as rewritten:

"(4) The Secretary of ~~the Department of~~ Environment and Natural Resources."

SECTION 8. This act is effective when it becomes law.

ATT #2
7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 823*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S823-PCS35506-SY-25

Short Title: Amend Environmental Laws-3. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES TO: (1) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS; (2) MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS; (3) ABOLISH OBSOLETE AND INACTIVE COUNCILS; (4) EXTEND BY ONE YEAR THE TIME FOR THE DEVELOPMENT OF PERMANENT RULES RELATED TO WATER CONSERVATION PURSUANT TO SECTION 3 OF S.L. 2002-167; (5) PROVIDE FOR STAGGERED TERMS OF THE MEMBERS OF THE AGRICULTURAL FINANCE AUTHORITY; AND (6) PROHIBIT THE SALE OR DISPENSING OF RAW MILK.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS

SECTION 1.1. G.S. 113-301.1 reads as rewritten:

"**§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and ~~regulations.~~rules.**

(a) The Wildlife Resources Commission must prepare and distribute to license agents informational materials relating to hunting, fishing, trapping, and boating laws and ~~regulations~~ rules administered by the Wildlife Resources Commission. The materials furnished an agent should be appropriate to the types of licenses ~~he~~ the agent customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the needs of licensees obtaining licenses from the agent.

(b) In issuing new licenses and permits from the Raleigh office by mail, the Wildlife Resources Commission must generally inform the licensee or permittee of governing provisions of law and ~~regulations~~ rules applicable to the type of license or permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources

Commission must inform the licensee or permittee of any substantial changes in the law or ~~regulations which~~ rules that may affect the activities of the licensee or permittee.

(c) After adopting ~~regulations which~~ rules that impose new restrictions upon the activities of members of the public who do not normally hold licenses or permits to engage in the activity in question, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions. These steps may include press releases to the media, informing local authorities, and other forms of communication that give promise of reaching the segment of the public affected.

(d) After adopting new restrictions on hunting, fishing, trapping, or boating at a time other than when usual annual changes in the ~~regulations~~ rules affecting those activities are adopted, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions in a manner designed to reach persons who may be affected.

(e) Repealed by Session Laws 1987, c. 827, s. 9."

SECTION 1.2. G.S. 113A-115.1(b) reads as rewritten:

"(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to (i) any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to 1 July 2003 or (ii) any permanent erosion control structure that was originally constructed prior to 1 July 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation. This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion ~~coastal~~ control structures in estuarine shorelines."

SECTION 1.3. G.S. 121-34 reads as rewritten:

"**§ 121-34. Short title.**

The title of this Article shall be known as the ~~"Historic~~'Conservation and Historic Preservation ~~and Conservation~~ Agreements Act.' "

SECTION 1.4. G.S. 121-42 reads as rewritten:

"**§ 121-42. Citation of Article.**

This Article shall be known and may be cited as ~~"Uniform Conservation~~the 'Conservation and Historic Preservation ~~Agreement~~ Agreements Act.' "

SECTION 1.5. G.S. 143-215.1 reads as rewritten:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission where ~~phosphorous~~phosphorus is designated by the Commission as a nutrient of concern shall not discharge more than an average annual mass load of total ~~phosphorous~~phosphorus than would result from a discharge of the permitted flow, determined at the time the Commission makes a finding that those waters are

experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total ~~phosphorous~~phosphorus concentration of two milligrams of ~~phosphorous~~phosphorus per liter (2.0 mg/l). The total ~~phosphorous~~phosphorus concentration of 2.0 mg/l for nutrient sensitive waters required by this subsection applies 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.

(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~~phosphorus that person discharges by the average annual mass load of total nitrogen and total ~~phosphorous~~phosphorus 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~~phosphorus shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and ~~phosphorous~~phosphorus discharge monitoring requirements established by the Commission. This average annual load of nitrogen or ~~phosphorous~~phosphorus 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~~phosphorus 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~~phosphorus 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~~phosphorus 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.

(c5) For surface waters to which the limits set out in subsection (c1) or (c2) of this section apply and for which a calibrated nutrient response model that meets the requirements of this subsection has been approved by the Commission, mass load limits for total nitrogen or total ~~phosphorous~~phosphorus shall be based on the results of the nutrient response model. A calibrated nutrient response model shall be developed and maintained with current data, be capable of predicting the impact of nitrogen or ~~phosphorous~~phosphorus in the surface waters, and incorporated into nutrient management plans by the Commission. The maximum mass load for total nitrogen or total ~~phosphorous~~phosphorus established by the Commission shall be substantiated by the model and may require individual discharges to be limited at concentrations that are different than those set out in subsection (c1) or (c2) of this section. A calibrated nutrient response model shall be developed by the Department in conjunction with the affected parties and is subject to approval by the Commission.

...."

SECTION 1.6. G.S. 143-215.1B reads as rewritten:

"**§ 143-215.1B. Extension of date for compliance with nitrogen and ~~phosphorous~~phosphorus discharge limits.**

...

(d) A permit holder who is granted an extended compliance date under this section shall:

(1) Develop a calibrated nutrient response model in conjunction with other affected parties and in accordance with a timetable for the development of the model that has been approved by the Commission. The model shall be based on current data, capable of predicting the impact of nitrogen and ~~phosphorous~~phosphorus in the surface waters, capable of being incorporated into any nutrient management plan developed by the Commission, and approved by the Commission.

...."

SECTION 1.7. G.S. 159G-3(18) reads as rewritten:

"(18) 'Wastewater treatment works' means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, ~~phosphorous~~phosphorus removal equipment, pumping, power and other equipment and their appurtenances."

SECTION 1.8. G.S. 159G-10(b)(5) reads as rewritten:

"(5) Wastewater Treatment Works Improvements to Meet Nitrogen and ~~Phosphorous~~ Phosphorus 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)."

PART II. MODIFY REPORTING REQUIREMENTS

SECTION 2.1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-67. Annual report.**

The Department shall report to the Environmental Review Commission on the implementation of this Article on or before 1 October of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs."

SECTION 2.2. G.S. 113A-235(c) reads as rewritten:

"(c) Report. – The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 ~~November~~ October of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection."

SECTION 2.3. G.S. 113A-241(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall report to the Governor and the Environmental Review Commission on or before 1 ~~September~~ October of each year on the State's progress towards attaining the goal established in this section."

SECTION 2.4. G.S. 143-215.107C(b) reads as rewritten:

"(b) It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. ~~The Department of Administration shall report on progress in developing and implementing this plan and achieving this goal to the Environmental Review Commission on 1 September of each year beginning 1 September 2000.~~ For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR)."

SECTION 2.5. G.S. 143-355.1 is amended by adding a new subsection to read:

"(g) The Council shall report on the implementation of this section to the Secretary, the Governor, and the Environmental Review Commission no later than 1 October of each year. The report shall include a review of drought advisories issued by the Council and any recommendations to improve coordination among local, State, and federal agencies; public water systems; and water users to improve the management and mitigation of the harmful effects of drought."

SECTION 2.6. The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 2.1 of this act,

to the Environmental Review Commission on or before 1 October 2005. The Drought Management Advisory Council shall submit the first report required by G.S. 143-355.1, as enacted by Section 2.5 of this act, to the Secretary of Environment and Natural Resources, the Governor, and the Environmental Review Commission on or before 1 October 2005.

PART III. ABOLISH INACTIVE COUNCILS

SECTION 3.1. G.S. 143-214.6 (Watershed Protection Advisory Council), G.S. 143-215.22J (Scientific Advisory Council on Water Resources and Coastal Fisheries Management established; membership, compensation), and G.S. 143-215.22K (Scientific Advisory Council on Water Resources and Coastal Fisheries Management; functions and responsibilities) are repealed.

SECTION 3.2. G.S. 143-215.8C reads as rewritten:

"**§ 143-215.8C. Neuse River Modeling and Monitoring Project reports.**

The Primary Investigator or Researcher receiving funding pursuant to Subsection 14.14(a) of S.L. 1998-212 shall provide progress reports to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, ~~the Scientific Advisory Council on Water Resources and Coastal Fisheries Management,~~ and the Fiscal Research Division on 1 January and 1 July of each year until the project or study is complete. Upon completion of the project or study, the Primary Investigator or Researcher shall provide a final report to the entities listed above."

SECTION 3.3. G.S. 143-215.8D(a) reads as rewritten:

"(a) The Department of Environment and Natural Resources and North Carolina State University shall jointly establish the North Carolina Water Quality Workgroup. The Workgroup shall work collaboratively with the appropriate divisions of the Department of Environment and Natural Resources and North Carolina State University, ~~the Scientific Advisory Council on Water Resources and Coastal Fisheries Management,~~ the Environmental Management Commission, and the Environmental Review Commission to identify the scientific and State agency databases that can be used to formulate public policy regarding the State's water quality, evaluate those databases to determine the information gaps in those databases, and establish the priorities for obtaining the information lacking in those databases. The Workgroup shall have the following duties:

(1) To address specifically the ongoing need of evaluation, synthesis, and presentation of current scientific knowledge that can be used to formulate public policy on water quality issues.

(2) To identify knowledge gaps in the current understanding of water quality problems and fill these gaps with appropriate research projects.

(3) To maintain a web-based water quality data distribution site.

(4) To organize and evaluate existing scientific and State agency water quality databases.

(5) To prioritize recognized knowledge gaps in water quality issues for immediate funding."

SECTION 3.4. G.S. 143-215.8D(e) reads as rewritten:

"(e) The Chair of the North Carolina Water Quality Workgroup shall report each year by January 30 to the ~~Scientific Advisory Council on Water Resources and Coastal Fisheries Management, to the~~ Environmental Review Commission, to the Cochairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and to the Chancellor of North Carolina State University or the Chancellor's designee on the previous year's activities, findings, and recommendations of the North Carolina Water Quality Workgroup."

PART IV. EXTEND THE TIME FOR DEVELOPMENT OF RULES RELATED TO WATER CONSERVATION

SECTION 4. Section 3(c) of S.L. 2002-167 reads as rewritten:

"**SECTION 3.(c)** Rules adopted pursuant to subsection (a) of this section shall not supercede or modify existing rules governing water used in the generation of electricity. This section shall not be construed to authorize the Commission to adopt temporary rules. The Commission shall adopt permanent rules so that the rules will become effective following legislative review pursuant to G.S. 150B-21.3(b) by the ~~2005~~ 2006 Regular Session of the 2005 General Assembly."

PART V. STAGGER TERMS OF AGRICULTURAL FINANCE AUTHORITY

SECTION 5.1. G.S. 122D-4 reads as rewritten:

"**§ 122D-4. North Carolina Agricultural Finance Authority.**

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture and Consumer Services. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of 10 ~~members.~~ members appointed to three-year terms as follows:

(1) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by three.

(3) One member appointed by the Governor to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(10) The Commissioner or the Commissioner's designee shall serve ex officio, with the same rights and privileges, including voting rights, as other members. ~~The other nine members shall be appointed in the following manner:~~

~~(1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;~~

~~(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121; and~~

~~(3) Three members appointed by the Governor.~~

(c) ~~Members shall serve for three-year terms. Initial terms shall commence July 1, 1986. Appointed members shall serve until their successors are appointed and qualify.~~ A member appointed under subdivisions (1) through (9) of subsection (b) of this section 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.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may ~~be reimbursed for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.~~ receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper."

SECTION 5.2. In order to alter the schedule of staggered terms of three years for the North Carolina Agricultural Finance Authority so that the same number of terms will expire each year and to provide for an orderly transition in membership of the Authority to the terms specified in G.S. 122D-4(b), as amended by Section 5.1 of this act, the following provisions shall apply:

(1) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(1) through 1 July 2006.

(2) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(2) through 1 July 2007.

(3) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(3) through 1 July 2008.

(4) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by G.S. 122D-4(b)(4) through 1 July 2006.

(5) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by G.S. 122D-4(b)(5) through 1 July 2007.

(6) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by 122D-4(b)(6) through 1 July 2008.

(7) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by 122D-4(b)(7) through 1 July 2006.

(8) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by 122D-4(b)(8) to serve through 1 July 2007.

(9) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by G.S. 122D-4(b)(9) through 1 July 2008.

PART VI. PROHIBIT SALE OR DISPENSING OF RAW MILK

SECTION 6.1. G.S. 130A-274(2) reads as rewritten:

"(2) 'Milk' means the lacteal secretion practically free from colostrum obtained by the ~~complete~~ milking of one or more ~~cows or goats.~~cows, goats, or other lactating animals."

SECTION 6.2. G.S. 130A-279 reads as rewritten:

"**§ 130A-279. Sale or dispensing of milk.**

Only milk which is Grade 'A' pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The Commission may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. 'Sale' or 'sold' shall mean any transaction

that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd."

PART VII. EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.

ATT#3
7/13/04

SENATE BILL 823:
Amend Environmental Laws-3.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Albertson
Date:	13 July 2004	**Summary by:**	Tim Dodge, Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (S823-PCS35506-SY-25)		

SUMMARY: ***The proposed committee substitute for Senate Bill 823 (PCS) would:***

- ***Make technical corrections to various laws related to the environment and natural resources.***
- ***Modify environmental reporting requirements.***
- ***Abolish the Watershed Protection Advisory Council and the Scientific Advisory Council on Water Resources and Coastal Fisheries Management.***
- ***Extend by one year the time for the development of permanent rules related to water conservation pursuant to Section 3 of S.L. 2002-167.***
- ***Provide for staggered terms of the members of the Agricultural Finance Authority.***
- ***Prohibit the sale or dispensing of raw milk and raw milk products.***

The PCS would become effective when it becomes law.

BILL ANALYSIS:

Section 1.1 replaces the word "regulations" with the word "rules" when referring to administrative actions taken by the Wildlife Resources Commission. In general, federal agencies adopt regulations and State agencies adopt rules.

Section 1.2 replaces the word "coastal" with the word "control" in G.S. 113A-115.1(b). The words were inadvertently switched in the statute (enacted last year as S.L. 2003-427) that prohibits the construction of a permanent erosion control structure in an ocean shoreline.

Sections 1.3 and 1.4 make conforming changes to the title of the "Conservation and Historic Preservation Agreements Act" to make all statutory references consistent.

Sections 1.5 through 1.8 replace the word "phosphorous" where it is used as a noun with the word "phosphorus."

Section 2.1 adds an annual reporting requirement to the Sedimentation Pollution Control Act of 1973. The Department of Environment and Natural Resources (DENR) would report to the Environmental Review Commission (ERC) on the implementation of the Act, including an analysis of how the implementation of the Act is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report would also include a review of the effectiveness of local erosion and sedimentation control programs.

Sections 2.2 and 2.3 change the reporting date of the annual report on the Conservation Easements Program from 1 November to 1 October and the reporting date of the annual report on the progress towards attaining the State's goal of protecting one million acres of farmland, open space, and

conservation lands from 1 September to 1 October. These changes would make the report submission dates conform with the majority of the reports related to parks and open space conservation that are scheduled to be received by the ERC.

Section 2.4 deletes the requirement that the Department of Administration report annually to the ERC on progress in developing and implementing a plan that on and after 1 January 2004 at least 75 percent of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. According to reports submitted by the Department of Administration, the plan was developed in 2000, implemented in 2001, and the State met the goal starting in 2002.

Section 2.5 directs the Drought Management Advisory Council to report to the Secretary of Environment and Natural Resources, the Governor, and the ERC no later than 1 October of each year. The report would include a review of drought advisories issued by the Council and any recommendations to improve coordination among various groups to improve the management and mitigation of the harmful effects of drought.

Section 2.6 makes the first report on the implementation of the Sedimentation Pollution Control Act of 1973 and the first report on the activities of the Drought Management Advisory Council due on or before 1 October 2005.

Section 3.1 abolishes the Watershed Protection Advisory Council and the Scientific Advisory Council on Water Resources and Coastal Fisheries Management. The Watershed Protection Advisory Council was established in 1989, but has not met in over 10 years. The Scientific Advisory Council on Water Resources and Coastal Fisheries Management was established in 1996, but members were never appointed and the Council has never met.

Sections 3.2 through 3.4 delete references to the Scientific Advisory Council on Water Resources and Coastal Fisheries Management in the General Statutes.

Section 4 extends by one year the time available to the Environmental Management Commission (EMC) to develop and adopt permanent rules governing water conservation and water reuse during drought and emergency water situations. The Division of Water Resources has been working with stakeholder groups to develop draft rules for consideration by the EMC, but the Division feels that the process may not be complete in time to make the rules eligible for legislative review by the 2005 Regular Session of the General Assembly. Section 4 would allow the rules to become effective following legislative review by the 2006 Regular Session of the 2005 General Assembly.

Sections 5.1 and 5.2 stagger the terms of the members of the Agricultural Finance Authority and make other clarifying changes to the statutes governing the Authority. This provision does not alter the number of members of the Authority (ten) or alter the length of the terms (three years). Under current law, the terms of nine of the ten members of the Authority expired on 1 July 2004.

Sections 6.1 and 6.2 amend the definition of milk and prohibit the sale or dispensation of raw milk to anyone other than a permitted milk hauler or a processing facility at which the processing of milk is permitted, graded, and regulated by a local, State, or federal agency. Section 6.2 defines the terms "sale"

or "sold" when used in context with the sale of milk to mean any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd. Section 6.2 also authorizes the Commission for Health Services to adopt rules to provide exceptions for dispensing raw milk and raw milk products for non-human consumption.

Section 7 makes the bill effective when it becomes law.

S823-SMSY-002

ATT #4
7/13/04

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/13/04

S. B. No. 823 Amendment No. _____

COMMITTEE SUBSTITUTE S823-PCS35506-SY-25 (to be filled in by Principal Clerk)

Rep.) Blackwood
Sen.)

moves to amend the bill on page 9, line 32
( ) WHICH CHANGES THE TITLE through page 10, line 4
by [redacted] deleting those lines and
renumbering the subsequent part and section
accordingly; and
On page 1, lines 10 and 11 by rewriting
those lines to read
"AGRICULTURAL FINANCE AUTHORITY."

SIGNED Curtis Blackwood

ADOPTED _____ FAILED Amendment failed TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Att #5
7/13/04

EDITION No. _____

H. B. No. _____ DATE 13 July 2004

S. B. No. 823 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS 35506-SY-25

(Rep.) Haire
Sen.)

1 moves to amend the bill on page 8, line 25
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 deleting the phrase "any number of" and
5 _____
6 replacing it with the phrase "no more than two".
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED 13 July 2004 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

REPORTED BILL
7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 823*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S823-PCS35507-SY-28

Short Title: Amend Environmental Laws-3. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES TO: (1) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS; (2) MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS; (3) ABOLISH OBSOLETE AND INACTIVE COUNCILS; (4) EXTEND BY ONE YEAR THE TIME FOR THE DEVELOPMENT OF PERMANENT RULES RELATED TO WATER CONSERVATION PURSUANT TO SECTION 3 OF S.L. 2002-167; (5) PROVIDE FOR STAGGERED TERMS OF THE MEMBERS OF THE AGRICULTURAL FINANCE AUTHORITY AND SPECIFY THE MAXIMUM NUMBER OF SUCCESSIVE TERMS THAT MEMBERS OF THE AUTHORITY MAY SERVE; AND (6) PROHIBIT THE SALE OR DISPENSING OF RAW MILK.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS

SECTION 1.1. G.S. 113-301.1 reads as rewritten:

"**§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and ~~regulations.~~rules.**

(a) The Wildlife Resources Commission must prepare and distribute to license agents informational materials relating to hunting, fishing, trapping, and boating laws and ~~regulations~~ rules administered by the Wildlife Resources Commission. The materials furnished an agent should be appropriate to the types of licenses ~~he~~ the agent customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the needs of licensees obtaining licenses from the agent.

(b) In issuing new licenses and permits from the Raleigh office by mail, the Wildlife Resources Commission must generally inform the licensee or permittee of governing provisions of law and ~~regulations~~ rules applicable to the type of license or

permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources Commission must inform the licensee or permittee of any substantial changes in the law or ~~regulations which~~ rules that may affect the activities of the licensee or permittee.

(c) After adopting ~~regulations which~~ rules that impose new restrictions upon the activities of members of the public who do not normally hold licenses or permits to engage in the activity in question, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions. These steps may include press releases to the media, informing local authorities, and other forms of communication that give promise of reaching the segment of the public affected.

(d) After adopting new restrictions on hunting, fishing, trapping, or boating at a time other than when usual annual changes in the ~~regulations~~ rules affecting those activities are adopted, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions in a manner designed to reach persons who may be affected.

(e) Repealed by Session Laws 1987, c. 827, s. 9."

SECTION 1.2. G.S. 113A-115.1(b) reads as rewritten:

"(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to (i) any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to 1 July 2003 or (ii) any permanent erosion control structure that was originally constructed prior to 1 July 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation. This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion ~~coastal~~ control structures in estuarine shorelines."

SECTION 1.3. G.S. 121-34 reads as rewritten:

"**§ 121-34. Short title.**

The title of this Article shall be known as the ~~"Historic~~'Conservation and Historic Preservation ~~and Conservation~~ Agreements Act.' "

SECTION 1.4. G.S. 121-42 reads as rewritten:

"**§ 121-42. Citation of Article.**

This Article shall be known and may be cited as ~~"Uniform Conservation~~the 'Conservation and Historic Preservation ~~Agreement~~ Agreements Act.' "

SECTION 1.5. G.S. 143-215.1 reads as rewritten:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(c2) Any person who is required to obtain an individual wastewater permit under this section for a facility discharging to the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission where ~~phosphorous~~phosphorus is designated by the Commission as a nutrient of concern shall not discharge more than an average annual mass load of total ~~phosphorous~~phosphorus than would result from a discharge of the permitted flow,

determined at the time the Commission makes a finding that those waters are experiencing or are subject to excessive growth of microscopic or macroscopic vegetation, having a total ~~phosphorous~~phosphorus concentration of two milligrams of ~~phosphorous~~phosphorus per liter (2.0 mg/l). The total ~~phosphorous~~phosphorus concentration of 2.0 mg/l for nutrient sensitive waters required by this subsection applies 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.

(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~~phosphorus that person discharges by the average annual mass load of total nitrogen and total ~~phosphorous~~phosphorus 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~~phosphorus shall be calculated from the most recent available data. A person to whom this subsection applies shall comply with nitrogen and ~~phosphorous~~phosphorus discharge monitoring requirements established by the Commission. This average annual load of nitrogen or ~~phosphorous~~phosphorus 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~~phosphorus 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~~phosphorus 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~~phosphorus 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.

(c5) For surface waters to which the limits set out in subsection (c1) or (c2) of this section apply and for which a calibrated nutrient response model that meets the requirements of this subsection has been approved by the Commission, mass load limits for total nitrogen or total ~~phosphorous~~phosphorus shall be based on the results of the nutrient response model. A calibrated nutrient response model shall be developed and maintained with current data, be capable of predicting the impact of nitrogen or ~~phosphorous~~phosphorus in the surface waters, and incorporated into nutrient management plans by the Commission. The maximum mass load for total nitrogen or total ~~phosphorous~~phosphorus established by the Commission shall be substantiated by the model and may require individual discharges to be limited at concentrations that are different than those set out in subsection (c1) or (c2) of this section. A calibrated nutrient response model shall be developed by the Department in conjunction with the affected parties and is subject to approval by the Commission.

...."

SECTION 1.6. G.S. 143-215.1B reads as rewritten:

"**§ 143-215.1B. Extension of date for compliance with nitrogen and ~~phosphorous~~phosphorus discharge limits.**

...

(d) A permit holder who is granted an extended compliance date under this section shall:

(1) Develop a calibrated nutrient response model in conjunction with other affected parties and in accordance with a timetable for the development of the model that has been approved by the Commission. The model shall be based on current data, capable of predicting the impact of nitrogen and ~~phosphorous~~phosphorus in the surface waters, capable of being incorporated into any nutrient management plan developed by the Commission, and approved by the Commission.

...."

SECTION 1.7. G.S. 159G-3(18) reads as rewritten:

"(18) 'Wastewater treatment works' means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, ~~phosphorous~~phosphorus removal equipment, pumping, power and other equipment and their appurtenances."

SECTION 1.8. G.S. 159G-10(b)(5) reads as rewritten:

"(5) Wastewater Treatment Works Improvements to Meet Nitrogen and ~~Phosphorous~~ Phosphorus 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)."

PART II. MODIFY REPORTING REQUIREMENTS

SECTION 2.1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-67. Annual report.**

The Department shall report to the Environmental Review Commission on the implementation of this Article on or before 1 October of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs."

SECTION 2.2. G.S. 113A-235(c) reads as rewritten:

"(c) Report. – The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 ~~November~~ October of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection."

SECTION 2.3. G.S. 113A-241(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall report to the Governor and the Environmental Review Commission on or before 1 ~~September~~ October of each year on the State's progress towards attaining the goal established in this section."

SECTION 2.4. G.S. 143-215.107C(b) reads as rewritten:

"(b) It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. ~~The Department of Administration shall report on progress in developing and implementing this plan and achieving this goal to the Environmental Review Commission on 1 September of each year beginning 1 September 2000.~~ For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR)."

SECTION 2.5. G.S. 143-355.1 is amended by adding a new subsection to read:

"(g) The Council shall report on the implementation of this section to the Secretary, the Governor, and the Environmental Review Commission no later than 1 October of each year. The report shall include a review of drought advisories issued by the Council and any recommendations to improve coordination among local, State, and federal agencies; public water systems; and water users to improve the management and mitigation of the harmful effects of drought."

SECTION 2.6. The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 2.1 of this act,

to the Environmental Review Commission on or before 1 October 2005. The Drought Management Advisory Council shall submit the first report required by G.S. 143-355.1, as enacted by Section 2.5 of this act, to the Secretary of Environment and Natural Resources, the Governor, and the Environmental Review Commission on or before 1 October 2005.

PART III. ABOLISH INACTIVE COUNCILS

SECTION 3.1. G.S. 143-214.6 (Watershed Protection Advisory Council), G.S. 143-215.22J (Scientific Advisory Council on Water Resources and Coastal Fisheries Management established; membership, compensation), and G.S. 143-215.22K (Scientific Advisory Council on Water Resources and Coastal Fisheries Management; functions and responsibilities) are repealed.

SECTION 3.2. G.S. 143-215.8C reads as rewritten:

"**§ 143-215.8C. Neuse River Modeling and Monitoring Project reports.**

The Primary Investigator or Researcher receiving funding pursuant to Subsection 14.14(a) of S.L. 1998-212 shall provide progress reports to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, ~~the Scientific Advisory Council on Water Resources and Coastal Fisheries Management,~~ and the Fiscal Research Division on 1 January and 1 July of each year until the project or study is complete. Upon completion of the project or study, the Primary Investigator or Researcher shall provide a final report to the entities listed above."

SECTION 3.3. G.S. 143-215.8D(a) reads as rewritten:

"(a) The Department of Environment and Natural Resources and North Carolina State University shall jointly establish the North Carolina Water Quality Workgroup. The Workgroup shall work collaboratively with the appropriate divisions of the Department of Environment and Natural Resources and North Carolina State University, ~~the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, the~~ Environmental Management Commission, and the Environmental Review Commission to identify the scientific and State agency databases that can be used to formulate public policy regarding the State's water quality, evaluate those databases to determine the information gaps in those databases, and establish the priorities for obtaining the information lacking in those databases. The Workgroup shall have the following duties:

(1) To address specifically the ongoing need of evaluation, synthesis, and presentation of current scientific knowledge that can be used to formulate public policy on water quality issues.

(2) To identify knowledge gaps in the current understanding of water quality problems and fill these gaps with appropriate research projects.

(3) To maintain a web-based water quality data distribution site.

(4) To organize and evaluate existing scientific and State agency water quality databases.

(5) To prioritize recognized knowledge gaps in water quality issues for immediate funding."

SECTION 3.4. G.S. 143-215.8D(e) reads as rewritten:

"(e) The Chair of the North Carolina Water Quality Workgroup shall report each year by January 30 to the ~~Scientific Advisory Council on Water Resources and Coastal Fisheries Management, to the~~ Environmental Review Commission, to the Cochairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and to the Chancellor of North Carolina State University or the Chancellor's designee on the previous year's activities, findings, and recommendations of the North Carolina Water Quality Workgroup."

PART IV. EXTEND THE TIME FOR DEVELOPMENT OF RULES RELATED TO WATER CONSERVATION

SECTION 4. Section 3(c) of S.L. 2002-167 reads as rewritten:

"**SECTION 3.(c)** Rules adopted pursuant to subsection (a) of this section shall not supercede or modify existing rules governing water used in the generation of electricity. This section shall not be construed to authorize the Commission to adopt temporary rules. The Commission shall adopt permanent rules so that the rules will become effective following legislative review pursuant to G.S. 150B-21.3(b) by the ~~2005~~ 2006 Regular Session of the 2005 General Assembly."

PART V. STAGGER TERMS OF AGRICULTURAL FINANCE AUTHORITY

SECTION 5.1. G.S. 122D-4 reads as rewritten:

"**§ 122D-4. North Carolina Agricultural Finance Authority.**

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture and Consumer Services. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of 10 ~~members.~~ members appointed to three-year terms as follows:

(1) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by three.

(3) One member appointed by the Governor to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(10) The Commissioner or the Commissioner's designee shall serve ex officio, with the same rights and privileges, including voting rights, as other members. ~~The other nine members shall be appointed in the following manner:~~

~~(1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;~~

~~(2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121; and~~

~~(3) Three members appointed by the Governor.~~

(c) ~~Members shall serve for three-year terms. Initial terms shall commence July 1, 1986. Appointed members shall serve until their successors are appointed and qualify.~~ A member appointed under subdivisions (1) through (9) of subsection (b) of this section may be reappointed to no more than two 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.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.

(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may ~~be reimbursed for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.~~receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper."

SECTION 5.2. In order to alter the schedule of staggered terms of three years for the North Carolina Agricultural Finance Authority so that the same number of terms will expire each year and to provide for an orderly transition in membership of the Authority to the terms specified in G.S. 122D-4(b), as amended by Section 5.1 of this act, the following provisions shall apply:

(1) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(1) through 1 July 2006.

(2) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(2) through 1 July 2007.

(3) The Governor shall appoint a member to serve in the position established by G.S. 122D-4(b)(3) through 1 July 2008.

(4) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by G.S. 122D-4(b)(4) through 1 July 2006.

(5) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by G.S. 122D-4(b)(5) through 1 July 2007.

(6) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a member to serve in the position established by 122D-4(b)(6) through 1 July 2008.

(7) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by 122D-4(b)(7) through 1 July 2006.

(8) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by 122D-4(b)(8) to serve through 1 July 2007.

(9) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member to serve in the position established by G.S. 122D-4(b)(9) through 1 July 2008.

PART VI. PROHIBIT SALE OR DISPENSING OF RAW MILK

SECTION 6.1. G.S. 130A-274(2) reads as rewritten:

"(2) 'Milk' means the lacteal secretion practically free from colostrum obtained by the ~~complete~~ milking of one or more ~~cows or goats.~~cows, goats, or other lactating animals."

SECTION 6.2. G.S. 130A-279 reads as rewritten:

"**§ 130A-279. Sale or dispensing of milk.**

Only milk which is Grade 'A' pasteurized milk may be sold or dispensed directly to consumers for human consumption. Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency. The Commission may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. 'Sale' or 'sold' shall mean any transaction

that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd."

PART VII. EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.

ATT #6

7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1429*

Short Title:	Amend Fishery Management Plan Requirements.	(Public)
Sponsors:	Representatives Wainwright; and Stiller.	
Referred to:	Environment and Natural Resources.	

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FISHERY MANAGEMENT PLANS TO ACHIEVE SUSTAINABLE HARVEST RATHER THAN OPTIMAL YIELD AND TO SPECIFY A TIME PERIOD FOR ENDING OVERFISHING AND REBUILDING THE FISHERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-129(12a) is repealed.

SECTION 2. G.S. 113-129(12b) reads as rewritten:

"(12b) Overfishing or overfished. – A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce ~~the maximum sustainable yield~~sustainable harvest on a continuing basis."

SECTION 3. G.S. 113-129 is amended by adding a new subdivision to read:

"(14a) Sustainable harvest. – 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 preventing recruitment overfishing and ensuring that the age structure of the population is maintained or, in the case of growth overfished stocks, rebuilt; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing sustainable harvest in the fishery."

SECTION 4. G.S. 113-182.1(b) reads as rewritten:

"(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.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, ~~the optimal yield~~sustainable harvest from each fishery.

(4) For a fishery that is overfished, specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and rebuilding the fishery, except in cases where the biology of the stock of fish or environmental conditions make the rebuilding of the fishery within 10 years impracticable."

SECTION 5. G.S. 113-182.1(g) reads as rewritten:

"(g) To achieve ~~optimal yield~~ sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that ~~optimal yield~~ sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.

(2) Past fishing practices in the fishery.

(3) Economics of the fishery.

(4) Capability of fishing vessels used in the fishery to engage in other fisheries.

(5) Cultural and social factors relevant to the fishery and any affected fishing communities.

(6) Capacity of the fishery to support biological parameters.

(7) Equitable resolution of competing social and economic interests.

(8) Any other relevant considerations."

SECTION 6. This act is effective when it becomes law.

Att 7

7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1429*
PROPOSED COMMITTEE SUBSTITUTE H1429-CSSB-55 [v.7]

7/12/2004 11:53:44 AM

Short Title: Amend Fishery Management Plan Requirements. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FISHERY MANAGEMENT PLANS TO ACHIEVE SUSTAINABLE HARVEST RATHER THAN OPTIMAL YIELD AND TO SPECIFY A TIME PERIOD FOR ENDING OVERFISHING AND REBUILDING A FISHERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-129(12a) and G.S. 113-129(12b) are repealed.

SECTION 2. G.S. 113-129 is amended by adding three new subdivisions to read:

"(12c) Overfished. – The condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level that is adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

(12d) Overfishing. – Fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.

. . .

(14a) Sustainable harvest. – The amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished."

SECTION 3. G.S. 113-182.1(b) reads as rewritten:

"(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.

(3) Include conservation and management measures ~~that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.~~that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.

(4) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable."

SECTION 4. G.S. 113-182.1(g) reads as rewritten:

"(g) To achieve ~~optimal yield~~ sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that ~~optimal yield~~ sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.

(2) Past fishing practices in the fishery.

(3) Economics of the fishery.

(4) Capability of fishing vessels used in the fishery to engage in other fisheries.

(5) Cultural and social factors relevant to the fishery and any affected fishing communities.

(6) Capacity of the fishery to support biological parameters.

(7) Equitable resolution of competing social and economic interests.

(8) Any other relevant considerations."

SECTION 5. This act is effective when it becomes law.

Att 8
7/13/04

HOUSE BILL 1429:
Amend Fishery Management Plan Requirements

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Wainwright
		Summary by:	Jeff Hudson Committee Counsel
Date:	July 13, 2004		
Version:	Proposed Committee Substitute H1429-CSSB-55 [v.7]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1429 (PCS) would amend the requirements for development of Fishery Management Plans (FMPs) so that each FMP would include: (1) conservation and management measures that would attain a "sustainable harvest" rather than an "optimal yield" and (2) a specific time period for ending overfishing and achieving a sustainable harvest. The PCS is effective when it becomes law.***

CURRENT LAW: In the Fisheries Reform Act of 1997, the General Assembly enacted G.S. 113-182.1 (Fishery Management Plans), which directs the Department of Environment and Natural Resources to prepare and the Marine Fisheries Commission (MFC) to adopt Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs must include management measures that prevent overfishing and achieve optimal yield.

G.S. 113-129(12a) defines "optimal yield" as 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.

G.S. 113-129(12b) defines "overfishing" or "overfished" as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

BACKGROUND: During the development of FMPs, the Division of Marine Fisheries (Division) in the Department of Environment and Natural Resources and the MFC discovered that accurately determining optimal yield based on maximum sustainable yield is often difficult if not impossible due to the lack of complete, long term data for most species. The Division and MFC recommended to the Joint Legislative Commission on Seafood and Aquaculture that the goal of FMPs should be changed to the more easily determined sustainable harvest. They also recommended that FMPs specify a time period by which sustainable harvest should be achieved. The Joint Legislative Commission on Seafood and Aquaculture reviewed these proposals and recommended them for consideration during the 2004 Regular Session.

BILL ANALYSIS: The PCS would amend the requirements for development of FMPs so that each FMP would include:

- Conservation and management measures that would attain a "sustainable harvest" rather than an "optimal yield". The PCS would define "sustainable harvest" as the amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished. The PCS would also redefine the terms "overfished" and "overfishing".
- A specific time period for ending overfishing and achieving a sustainable harvest. This provision only applies to fisheries that are overfished and does not apply to a fishery where the biology of the fish or the environmental conditions would make ending overfishing and achieving a sustainable harvest within 10 years impracticable.

EFFECTIVE DATE: The PCS is effective when it becomes law.

REPORTED BILL
7/13/04

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1429*
PROPOSED COMMITTEE SUBSTITUTE H1429-PCS70507-SB-55

Short Title: Amend Fishery Management Plan Requirements. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FISHERY MANAGEMENT PLANS TO ACHIEVE SUSTAINABLE HARVEST RATHER THAN OPTIMAL YIELD AND TO SPECIFY A TIME PERIOD FOR ENDING OVERFISHING AND REBUILDING A FISHERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-129(12a) and G.S. 113-129(12b) are repealed.

SECTION 2. G.S. 113-129 is amended by adding three new subdivisions to read:

"(12c) Overfished. – The condition of a fishery that occurs when the spawning stock biomass of the fishery is below the level that is adequate for the recruitment class of a fishery to replace the spawning class of the fishery.

(12d) Overfishing. – Fishing that causes a level of mortality that prevents a fishery from producing a sustainable harvest.

. . .

(14a) Sustainable harvest. – The amount of fish that can be taken from a fishery on a continuing basis without reducing the stock biomass of the fishery or causing the fishery to become overfished."

SECTION 3. G.S. 113-182.1(b) reads as rewritten:

"(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.

(3) Include conservation and management measures ~~that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery~~ that will provide the greatest overall benefit to the State, particularly with respect to food production, recreational opportunities, and the protection of marine ecosystems, and that will produce a sustainable harvest.

(4) Specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and achieving a sustainable harvest. This subdivision shall only apply to a plan for a fishery that is overfished. This subdivision shall not apply to a plan for a fishery where the biology of the fish or environmental conditions make ending overfishing and achieving a sustainable harvest within 10 years impracticable."

SECTION 4. G.S. 113-182.1(g) reads as rewritten:

"(g) To achieve ~~optimal yield~~ sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that ~~optimal yield~~ sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.

(2) Past fishing practices in the fishery.

(3) Economics of the fishery.

(4) Capability of fishing vessels used in the fishery to engage in other fisheries.

(5) Cultural and social factors relevant to the fishery and any affected fishing communities.

(6) Capacity of the fishery to support biological parameters.

(7) Equitable resolution of competing social and economic interests.

(8) Any other relevant considerations."

SECTION 5. This act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
S.B. 823 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1429 A BILL TO BE ENTITLED AN ACT TO REQUIRE FISHERY MANAGEMENT PLANS TO ACHIEVE SUSTAINABLE HARVEST RATHER THAN OPTIMAL YIELD AND TO SPECIFY A TIME PERIOD FOR ENDING OVERFISHING AND REBUILDING THE FISHERY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

13

House Committee on Environment & Natural Resources **July 13, 2004**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Susan Grayson	DENR 2728 Capitol Blvd, Raleigh
Johanna Reese	DENR
Steve Woodson	NC Farm Bureau
Doug Cassity	NCSTA
Jerry Schill	NC Fisheries Assoc.
K Boggs	DENR
Matt Leagen	Capitol Group
Elizabeth Bakanic	NCGA Intern
Mary K Hackney	NCGA Intern
[illegible]	DOJ
[illegible]	
Angie McMillan	TNC

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resource — **July 13, 2004**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Mans	Intern to David Knight, NC Sierra Club
Jan Nutt	Gov Office
TOM BEAN	NC ENVIRO DEFENSE
Adrienne Harris	NC Conservation Network
Erin Kinsey	NC Conservation Network
R.L. Schofield	NC Justice Center
Robin Smith	DENR
David Knight	NC Sierra Club
Terry L. Pierce	DEH - NC DENR
Sara Brodnax	CCNC

HOUSE PAGES ROCK

ATTENDANCE

House Environment and Natural Resources Committee

DATES	4/8/03	4/15/03	4/22/03	4/24/03	4/29/03	4/29/03 #2	5/13/03	5/20/03	5/27/03	6/03/03	6/10/03	6/17/03			
GIBSON, Pryor	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓			
CHURCH, Walt **VICE-CHAIR**	✓	EX.	✓				✓		✓	✓		✓			
HACKNEY, Joe **VICE-CHAIR**	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			
JOHNSON, Charles **VICE-CHAIR**	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓			
LAROQUE, Stephen **VICE-CHAIR**	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓			
ALLEN, Lucy	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
BLACKWOOD, Curtis		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓			
CAPPS, Russell	✓				✓										
CARNEY, Becky	✓	✓	✓		✓					✓		✓			
GILLESPIE, Mitch	✓	✓	✓		✓			✓			✓	✓			
GULLEY, Jim	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓			
HAIRE, Phil	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓			
INSKO, Verla					✓		✓	✓	✓						
LUEBKE, Paul	✓		✓	✓	✓			✓	✓	✓		✓			
MCCOMAS, Danny		✓	✓	✓	✓	✓		✓	✓	✓	✓				
MCCOMBS, Eugene	✓	✓	✓	✓	✓		✓		✓	✓	✓				
MCHENRY, Patrick		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓			
PRESTON, Jean		✓	✓	✓	✓	✓	✓	✓		✓		✓			
RAPP, Ray	✓	✓	✓		✓	✓	✓	✓	✓	EX	✓	✓			
RHODES, John	✓	✓	✓							✓	✓	✓			
STILLER, Bonner	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓			
WARNER, Alex		✓	EX.	✓	✓		✓	✓	EX.	✓	✓				
WEISS, Jennifer	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓			
WOMBLE, Larry	✓		✓	✓			✓	✓	✓	✓	✓	✓			

5 = quorum

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

April 8, 2003
12:00 noon

1. **Call to Order**

2. **Introduction of Staff**

3. **Phase II Stormwater Runoff Presentations (For Discussion Only):**
   (Speakers not necessarily in this order)

   - **Coleen Sullins, Chief**
     Water Quality Section, Division of Water Quality
     Department of Environment and Natural Resources

   - **Kimberly S. Hibbard, Associate General Counsel**
     North Carolina League of Municipalities

   - **Edmund P. Regan, Deputy Director**
     North Carolina Association of County Commissioners
     and
   - **S. C. "Chuck" Kitchen, County Attorney**
     Durham County

   - **S. Ansley Samson, Project Attorney**
     Southern Environmental Law Center

   - **Lisa D. Martin, Director of Regulatory Affairs**
     North Carolina Home Builders Association

   - **Robin W. Smith, Assistant Secretary for Policy and Planning**
     Department of Environment and Natural Resources

4. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 8, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 8, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church, Joe Hackney, Charles Johnson, and Steven Laroque, and Committee members Lucy Allen, Russell Capps, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Eugene McCombs, Ray Rapp, John Rhodes, Bonner Stiller, Jennifer Weiss, and Larry Womble. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:09 pm. He introduced the staff and instructed the committee in how materials will be maintained during the Session. Also, a notebook will be in each library for reference. The following presenters discussed Phase II Stormwater Runoff:

Before Stormwater discussion began, Richard Rogers, Director of Conservation and Community Affairs, DENR, invited the Committee to the Land and Water Conference on April 16-17 (Attachment 1).

Colleen Sullins, Chief, Water Quality Section, Division of Water Quality, DENR (Attachment 2A and B). Ms. Sullins discussed the Phase II regulations relegated from the Federal Government that must be implemented in North Carolina. The State has their own regulations. However, some areas of pollution continue to be an issue: storm runoff into rivers, agricultural and industrial constructions, sedimentation, growth and the impact of development activities. The required Federal Water Quality Report (305B) shows that North Carolina has 750 stream segments and over 3,500 miles of streams that are impaired. Of this total over 1,000 miles show that they are impacted by urban sources. Growth in population has had an increased impact. In addition, coastal water and aquatic life are highly impacted by runoff in the streams and rivers. This does not mean that there cannot be growth and construction; it just means that the water that gets into the streams and run-off pollutants must be managed. The National Pollutant Elimination System (NPDES) was discussed (see Attachment 2A). The Phase II program allows smaller communities to apply for permits based on certain criteria within the regulations of Phase II. The Environmental Management Commission (EMC) has passed temporary rules in November 2002, and hearings have been held. Proposed State Designation Process criteria screens designated, identified problem areas. Phase II requires that the State use Stormwater Management Programs in existing State programs dealing with erosion/sedimentation, illicit usages (storm drainage systems), fee and utility charges, statewide educational campaign, and post construction run-off control. The deadline is March 2005.

Kimberly S. Hibbard, Associate General Counsel, NC League of Municipalities, discussed the League's Position Paper (Attachment 3). Concern is for small municipalities who may not have a resources and expertise to adhere to stormwater management. 92% of North Carolina's municipalities maintain public roads and, thus, fall under the Federal minimum. The League suggestions are in Attachment 3.

Edmund P. Regan, Deputy Director, NC Association of County Commissioners (Attachments 4A, B, C) Mr. Regan stated that attachments explain the County Commissioners Associations' position related to stormwater management.

S.C. "Chuck" Kitchen, County Attorney, Durham County (Attachment 5) stated that Durham County has it own stormwater program, not mandated by the state, which creates an issue of adhering to the state mandated stormwater program. In order to maintain a state program, it would cost the county between $250,000 and $500,000 per year. Durham County's position is stated in Attachment 5.

S. Ansley Samson, Project Attorney, Southern Environmental Law Center (Attachment 6). Her organization supports the implementation of Phase II stormwater rules to make sure development happens now in a way that big problems are avoided tomorrow, and an economically sensible approach to stormwater control focuses on prevention and not just clean up. Prevention is the best policy for Phase II compliance.

Lisa D. Martin, Director of Regulatory Affairs, NC Home Builders Association (Attachment 7). Their position is stated in the attachment.

Robin W. Smith, Assistant Secretary Policy Program, DENR. She stated that this is a Federal mandated program and has been a long, complicated process. It states conditions which local governments now are required to obtain NPDES Federal Clean Water Act permits. The driving force for the temporary rules was to not put North Carolina communities at risk for the Federal permitting process. A motivating factor throughout this process in terms of timing was to be sure that DENR's process was in place as guidance by March 1, 2003, so that those communities were not at risk for Federal mandates. The larger North Carolina communities have been covered by the Phase I stormwater regulations for some time as has the NCDOT. Phase II reaches down to the next tier of communities and urbanized areas. Local governments will not have to "invent" a construction site management program in North Carolina; DENR already has that process in place. Educational materials have been developed for Phase II and the Clean Water Permitting Process. The temporary rules state that the counties are not required to get a Phase II NPDES permit except to the extent that they own and operate municipal storm sewer permits. The temporary rules allow them to "op in" and choose to apply for and receive a permit—some counties have already applied for Phase II permits—it is voluntary. The Environmental Management Commission realizes that this is a very difficult issue and is trying to implement the Federal mandate, have an effective stormwater management program, and be fair to all of the interested parties.

Chair Gibson adjourned the meeting at 1:45 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 2A
4/8/03

NPDES Phase II Stormwater

April 8, 2003

1. Federal program overview
2. North Carolina temporary rule overview
3. List of N.C. municipalities and counties possibly affected by Phase II program
4. Excerpt from *Rapid Watershed Planning Handbook* (Concepts of watershed protection)
5. Key findings from urban stream studies (Effects of imperviousness)

NPDES Phase II Overview

- The NPDES Phase II Final Rule, published in the Federal Register on December 8, 1999, requires NPDES permit coverage for storm water discharges from:
  - Certain regulated small municipal separate storm sewer systems (MS4s); and
  - Construction activity disturbing between 1 and 5 acres of land (i.e., small construction activities).
- In addition to expanding the NPDES Storm Water Program, the Phase II Final Rule revises the "no exposure" exclusion and the temporary exemption for certain industrial facilities under Phase I of the NPDES Storm Water Program.

Small MS4

What constitutes an MS4 is often misinterpreted and misunderstood. The term MS4 does not solely refer to municipally-owned storm sewer systems, but rather is a term of art with a much broader application that can include, in addition to local jurisdictions, State departments of transportation, universities, local sewer districts, hospitals, military bases, and prisons. An MS4 also is not always just a system of underground pipes – it can include roads with drainage systems, gutters, and ditches. According to 40 CFR 122.26(b)(8), the regulatory definition of an MS4 is:

"***Municipal separate storm sewer*** means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law)...including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States.

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2."

MS4s in Urbanized Areas

Storm water discharges from MS4s in urbanized areas are a concern because of the high concentration of pollutants found in these discharges. Concentrated development in urbanized areas substantially increases impervious surfaces, such as city streets, driveways, parking lots, and sidewalks, on which pollutants from concentrated human activities settle and remain until a storm event washes them into nearby storm drains. Common pollutants include pesticides, fertilizers, oils, salt, litter and other debris, and sediment. Another concern is the possible illicit connections of sanitary sewers, which can result in fecal coliform bacteria entering the storm sewer system. Storm water runoff picks up and transports these and other harmful pollutants then discharges them – untreated – to waterways via storm sewer systems. When left uncontrolled, these discharges can result in fish kills, the destruction of spawning and wildlife habitats, a loss in aesthetic value, and contamination of drinking water supplies and recreational waterways that can threaten public health.

Construction Activity

Uncontrolled runoff from construction sites is a water quality concern because of the devastating effects that sedimentation can have on local water bodies, particularly small streams. Numerous studies have shown that the amount of sediment transported by storm water runoff from construction sites with no controls is significantly greater than from sites with controls. In addition to sediment, construction activities yield pollutants such as pesticides, petroleum products, construction chemicals, solvents, asphalts, and acids that can contaminate storm water runoff. During storms, construction sites may be the source of sediment-laden runoff, which can overwhelm a small stream channel's capacity, resulting in streambed scour, stream bank erosion, and destruction of near stream vegetative cover. Where left uncontrolled,

sediment laden runoff has been shown to result in the loss of in-stream habitats for fish and other aquatic species, an increased difficulty in filtering drinking water, the loss of drinking water reservoir storage capacity, and negative impacts on the navigational capacity of waterways.

Municipally Operated Sources Exempted by the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 Provisions within ISTEA temporarily delayed the deadline for Phase I industrial activities (with the exception of power plants, airports, and uncontrolled sanitary landfills) operated by municipalities with populations of less than 100,000 people to obtain an NPDES storm water discharge permit. Congress delayed the permitting deadline for these facilities to allow small municipalities additional time to comply with NPDES requirements. The Phase II Final Rule ended this temporary exemption from permitting and set a deadline of no later than March 10, 2003 for all ISTEA exempted municipally operated industrial activities to obtain permit coverage.

Phase II Coverage

The final rule "automatically" covers two classes of storm water dischargers on a nationwide basis:

(1) Owners/Operators of small MS4s located in "urbanized areas" as delineated by the Bureau of the Census. A "small" MS4 is any MS4 not already covered by Phase I of the NPDES storm water program.

(2) Operators of small construction activities that disturb equal to or greater than 1 (one) and less than 5 (five) acres of land.

In addition, the federal Rule requires delegated states to develop state designation criteria for bringing entities outside the "urbanized area" into the program. Small MS4s located outside of urbanized areas, construction activity disturbing less than 1 acre, and any other storm water discharges can be designated for coverage if the NPDES permitting authority or EPA determines that storm water controls are necessary.

Petitioning

The federal Rule specifies a petitioning mechanism for inclusion of small MS4s and individual point source discharges into the Phase II program. Under this option, any person may petition the permitting authority to require an NPDES permit for a discharge composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States. Affected parties/communities are notified when a petition is received. The implementing authority has 180 days from receipt of the petition to determine whether a permit is required.

Phase II Final Rule Requirements

Operators of Phase II-designated small MS4s and small construction activity are required to apply for NPDES permit coverage and to implement storm water discharge management controls (known as "best management practices" (BMPs)). Specific requirements for each type of discharge are listed below.

Small MS4

- A regulated small MS4 operator must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from their MS4 to the "maximum extent practicable," to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. The rule assumes the use of narrative, rather than numeric, effluent limitations requiring implementation of BMPs.
- The small MS4 storm water management program must include the following six minimum control measures: public education and outreach; public participation/involvement; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping.

NPDES Phase II Overview

- A regulated small MS4 operator must identify its selection of BMPs and measurable goals for each minimum measure in the permit application. The evaluation and assessment of those chosen BMPs and measurable goals must be included in periodic reports to the NPDES permitting authority.

Construction Activities

- The specific requirements for storm water controls on small construction activity will be defined by the NPDES permitting authority on a State-by-State basis.
- EPA expects that the NPDES permitting authorities will use their existing Phase I general permits for large construction activity as a guide for their Phase II permits for small construction activity.

NC NPDES Phase II Implementation Temporary Rule Overview

Why temporary Rules? The federal regulations establish the minimum standards for the Phase II program. A number of items, including designation criteria, needed to be confirmed in state rules so that everyone would know what standard will be applied. Rulemaking also ensures that there was an opportunity for public input on the rule language. This is an important component of the process because DWQ has a limited number of staff to dedicate to Phase II. Public forums such as workshops, stakeholder meetings and comment periods increase the number of people working on the project. This brought a wealth of experience and different points of view to the table and results in a better program for everyone.

The North Carolina NPDES Phase II implementation Rule (15A NCAC 2H .0126) covers 5 basic areas:

Program Applicability

- Federal Design
  - The Federal intent is for a seamless program of coverage for urbanized areas
  - Federal specificity - Applies to small MS4's, owners and operators who would have control over the small MS4's
- State Design
  - Addresses NC's uniqueness while capturing the intent/specificity of the federal program and ease implementation. State program designed for differences in counties and municipalities, different approaches developed to account for these differences
  - Municipalities - straight forward permitting approach, where the permitted entity can take credit for existing programs to meet permit requirements in whole or in part.
  - Counties - Various voluntary options developed to address the unique situation in NC. Options developed through negotiations with affected parties.

Designation

- Auto Designation - Based on decennial census
- State Designation – Defined process is required by Federal rules.
  - Administered on Basinwide Schedule starting in 2004
  - Rule Sets Up A Two Step Process
    - Identification of entities for <u>potential</u> coverage
      - Municipalities
      - Counties
      - Other small MS4's
    - Evaluation against designation criteria
      - Discharge to sensitive waters
      - High growth / growth potential
      - Significant contributor of pollutants
      - Effectiveness of applicable existing programs

Petitioning

- Rule defines submittal requirements
- Specifies review and public involvement in process

Post-Construction Program

- Applies to new development and redevelopment
- Requires ordinance(s)
- Rule establishes program elements
  - 1 Year 24 Hour Storm Control
  - 85% Average Annual TSS Removal

NC NPDES Phase II Implementation Temporary Rule Overview

- Operation & Maintenance of BMPs
- Control / Oversight Programs
- Specific Requirements - SA, Tr and NSW

Program Administration

- Public Input / Notice
- Application / Implementation Schedules
- State Implementation Procedures Schedules

Municipalities
(Auto Designated and Possible State Designees)

Phase I Municipalities	Phase II Municipalities	Phase II Municipalities	Municipalities with >10K Total Perm & Season Population/ >1K density
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	Auto Designee	Auto Designee	Possible Designee
Charlotte	Apex	Alamance	Albemarle
Durham	Archdale	Ayden	Asheboro
Fayetteville	Asheville	Bermuda Run	Boone
Greensboro	Belmont	Bethania	Eden
Raleigh	Belville	Cajah's Mountain	Elizabeth City
Winston-Salem	Bessemer City	Canton	Emerald Esle
	Biltmore Forest	Carolina Beach	Havelock
	Black Mountain	Claremont	Henderson
	Brookford	Clyde	Kill Devil Hills
	Burlington	Connelly Springs	Kinston
	Carrboro	Cornelius	Laurinburg
	Cary	Davidson	Lexington
	Chapel Hill	Dortches	Lumberton
	China Grove	Drexel	Mooresville
	Clemmons	Flat Rock	Oak Island
	Concord	Fuquay-Varina	Reidsville
	Conover	Gamewell	Roanoke Rapids
	Cramerton	Glen Alpine	Shelby
	Dallas	Granite Falls	Smithfield
	Elon College	Green Level	Statesville
	Fletcher	Harrisburg	Tarboro
	Garner	Hemby Bridge	Wilson
	Gastonia	Hendersonville	
	Gibsonville	Hillsborough	
	Goldsboro	Holly Springs	
	Graham	Hudson	
	Greenville	Huntersville	
	Haw River	Kernersville	
	Hickory	King	
	High Point	Knightdale	
	Hildebran	Kure Beach	
	Hope Mills	Lake Park	
	Indian Trail	Laurel Park	
	Jacksonville	Lenoir	
	Jamestown	Lewisville	

Date: 01/07/2003

Data Source: U.S. Census Bureau Web Site
http://www.census.gov/geo/www/cob/ua2000.html

Municipalities
(Auto Designated and Possible State Designees)

Phase I Municipalities	Phase II Municipalities	Phase II Municipalities	Municipalities with >10K Total Perm & Season Population/ >1K density
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	Auto Designee	Auto Designee	Possible Designee
	Kannapolis	Maiden	
	Landis	Marvin	
	Leland	Monroe	
	Long View	Morganton	
	Lowell	Morrisville	
	Matthews	Nashville	
	McAdenville	Navassa	
	Mebane	Oak Ridge	
	Mint Hill	Pleasant Garden	
	Montreat	Red Oak	
	Mount Holly	Rhodhiss	
	Newton	Rolesville	
	Pineville	Rutherford College	
	Ranlo	Salisbury	
	Rocky Mount	Sawmills	
	Rural Hall	Simpson	
	Spring Lake	Spencer Mountain	
	Stallings	Stanley	
	Thomasville	Summerfield	
	Wakertown	Swepsonville	
	Weaverville	Tobaccoville	
	Wilmington	Trinity	
	Winterville	Valdese	
	Woodfin	Wake Forest	
	Wrightsville Beach	Waynesville	
		Weddington	
		Wesley Chapel	
		Youngsville	

Date: 01/07/2003

Data Source: U.S. Census Bureau Web Site
http://www.census.gov/geo/www/cob/ua2000.html

Counties
(Auto Designated and Possible State Designees)

Phase I Counties	Phase II Counties	Phase II Counties	Counties with >45K Total Perm & Season Population
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	**Auto Designee**	**Auto Designee**	**Possible Designee**
Cumberland	Alamance	Alexander	Beaufort
	Brunswick	Caldwell	Carteret
	Buncombe	Chatham	Cleveland
	Burke	Davie	Columbus
	Cabarrus	Franklin	Craven
	Catawba	Haywood	Dare
	Davidson	Hoke	Duplin
	Durham	Stokes	Granville
	Edgecombe		Halifax
	Forsyth		Iredell
	Gaston		Johnston
	Guilford		Lee
	Harnett		Lenoir
	Henderson		Lincoln
	Mecklenburg		Moore
	Nash		Pender
	New Hanover		Richmond
	Onslow		Robeson
	Orange		Rockingham
	Pitt		Rutherford
	Randolph		Sampson
	Rowan		Stanly
	Union		Surry
	Wake		Watuaga
	Wayne		Wilkes
			Wilson

Date:01/07/2003

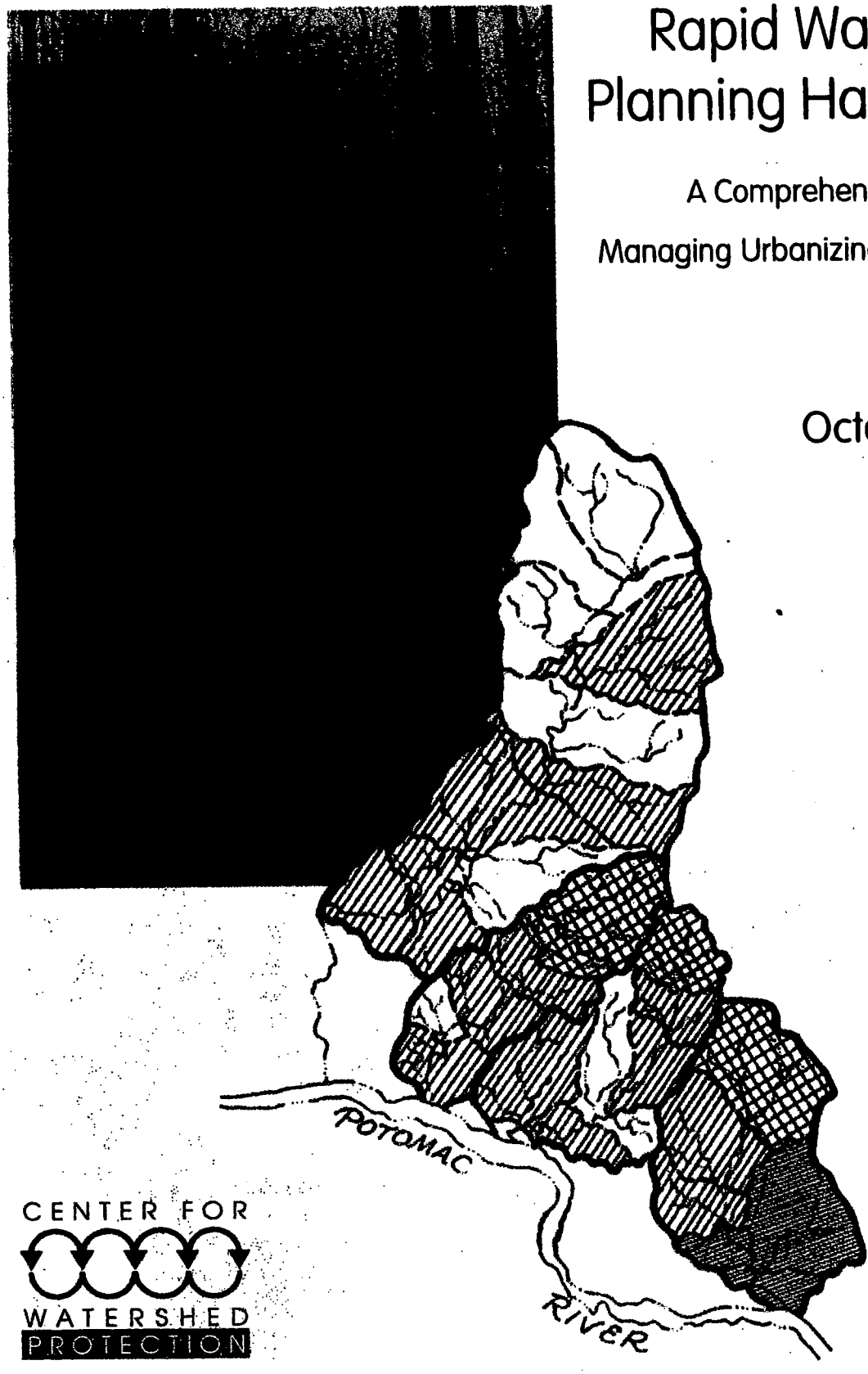
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http://www.census.gov/geo/www/cob/ua2000.html

Rapid Watershed Planning Handbook

A Comprehensive Guide for Managing Urbanizing Watersheds

October 1998

(Reprinted 1999)



CENTER FOR WATERSHED PROTECTION

Ellicott City, Maryland

CHAPTER 1
BASIC CONCEPTS OF WATERSHED PROTECTION

1.1 Introduction

This chapter introduces some of the basic watershed concepts that are at the heart of the rapid watershed planning approach. It is helpful to fully understand these concepts before embarking on a local watershed plan.

> ***Concept No. 1.*** **There are many different watershed management units.** Watershed and subwatershed units are most practical for local plans. Each watershed is composed of many individual subwatersheds that can have their own unique water resource objectives. A watershed plan is a comprehensive framework for applying management tools within each subwatershed in a manner that also achieves the water resources goals for the watershed as a whole.

In developing a watershed plan, it is useful to consider how watersheds are configured. The term **management unit** is used to describe watersheds and their smaller segments. The two management units that will be focused upon in this handbook are the **watershed** and the **subwatershed**. A **watershed** can be defined as the land area that contributes runoff to a particular point along a waterway. A typical watershed can cover tens to hundreds of square miles and several jurisdictions.

Watersheds are broken down into smaller geographic units called **subwatersheds**. Subwatersheds typically have a drainage area of 2 to 15 square miles with boundaries that include the land area draining to a point at or below the confluence of two second order streams and almost always within the limits of a third order stream. While management unit size will vary among geographic regions and also as a function of slope, soils and degree of urbanization, this general definition provides a consistent and uniform basis for defining individual subwatershed boundaries within a larger watershed.

The terms "watershed" and "subwatershed" are *not* inter-changeable. Readers will observe that throughout this handbook, the term **watershed** is used when referring to broader management issues across an entire watershed, while the term **subwatershed** is used to refer assessment level studies and specific projects within the smaller subwatershed units.

There are other important management units to consider when developing a watershed plan. The largest watershed management unit is the basin. A **basin** drains to a major receiving water such as a large river, estuary or lake. Basin drainage areas typically exceed several thousand square miles and often include major portions of a single state or even a group of states. Within each basin are a group of **subbasins** that extend over several hundred square miles. Subbasins are a mosaic of many diverse land uses, including forest, agriculture, range, and urban areas. Subbasins are composed of a group of watersheds, which, in turn, are composed of a group of subwatersheds. Within subwatersheds are **catchments**, which are the smallest units in a watershed. A **catchment** is defined as the area that drains an individual development site to its first intersection with a stream. Table 1.1 describes the various management units and provides a comparison of impervious cover influences and possible management measures. Figure 1.1 illustrates how watershed management units nest together within the drainage system.

Table 1.1 Description of the Various Watershed Management Units

Watershed Management Unit	*Typical Area (square miles)*	*Influence of Impervious Cover*	*Sample Management Measures*
Catchment	0.05 to 0.50	very strong	· BMP and site design
Subwatershed	1 to 10	strong	stream classification and management
Watershed	10 to 100	moderate	watershed-based zoning
Subbasin	100 to 1,000	weak	basin planning
Basin	1,000 to 10,000	very weak	basin planning

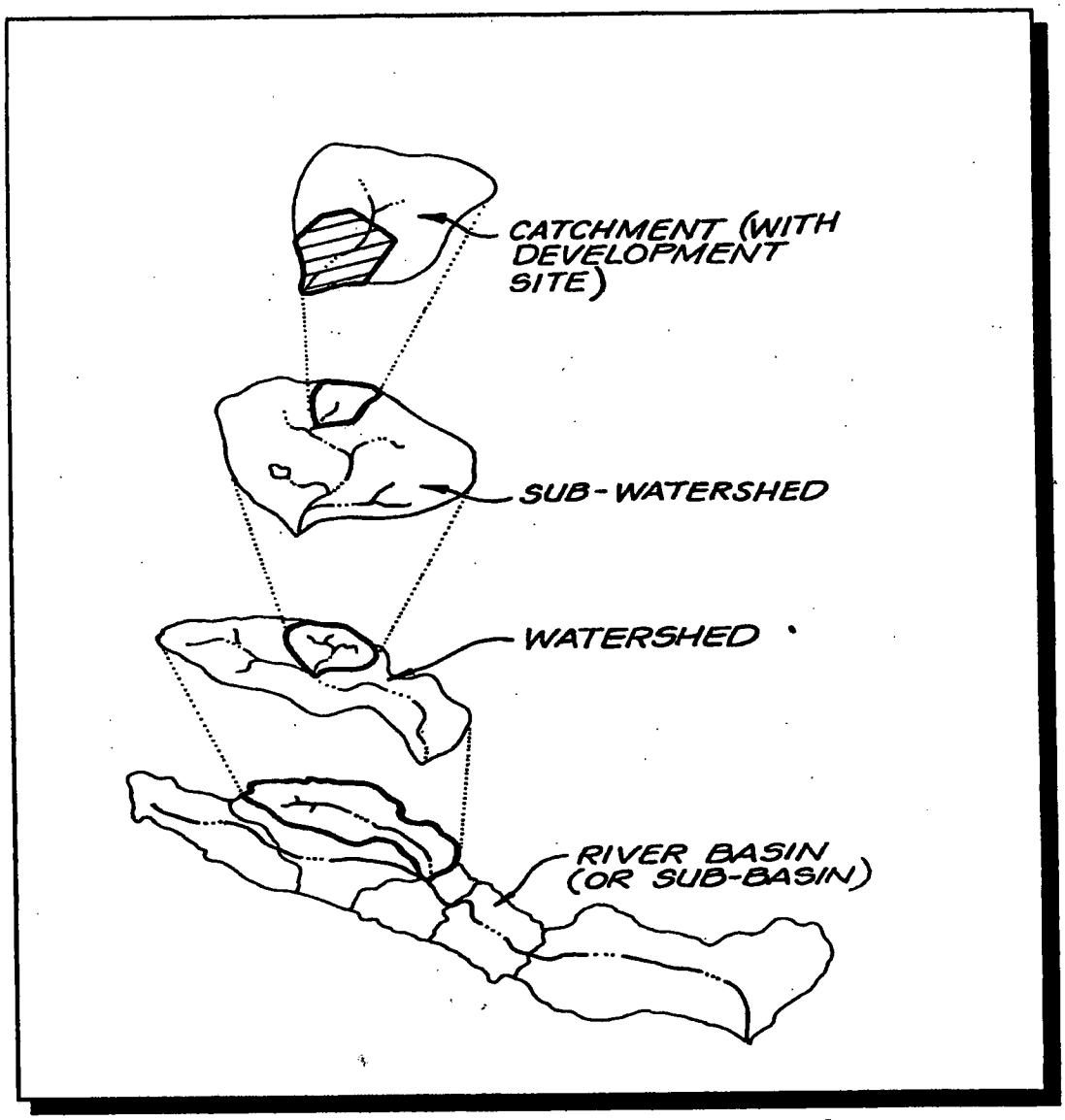


Figure 1.1 The Watershed Management Units
(Adapted from Clements, et al., 1996)

A local watershed may have dozens of individual subwatersheds within its boundaries. A watershed plan tracks the planning and management within individual subwatersheds. Figure 1.2 illustrates this concept of multiple subwatersheds within a larger watershed.

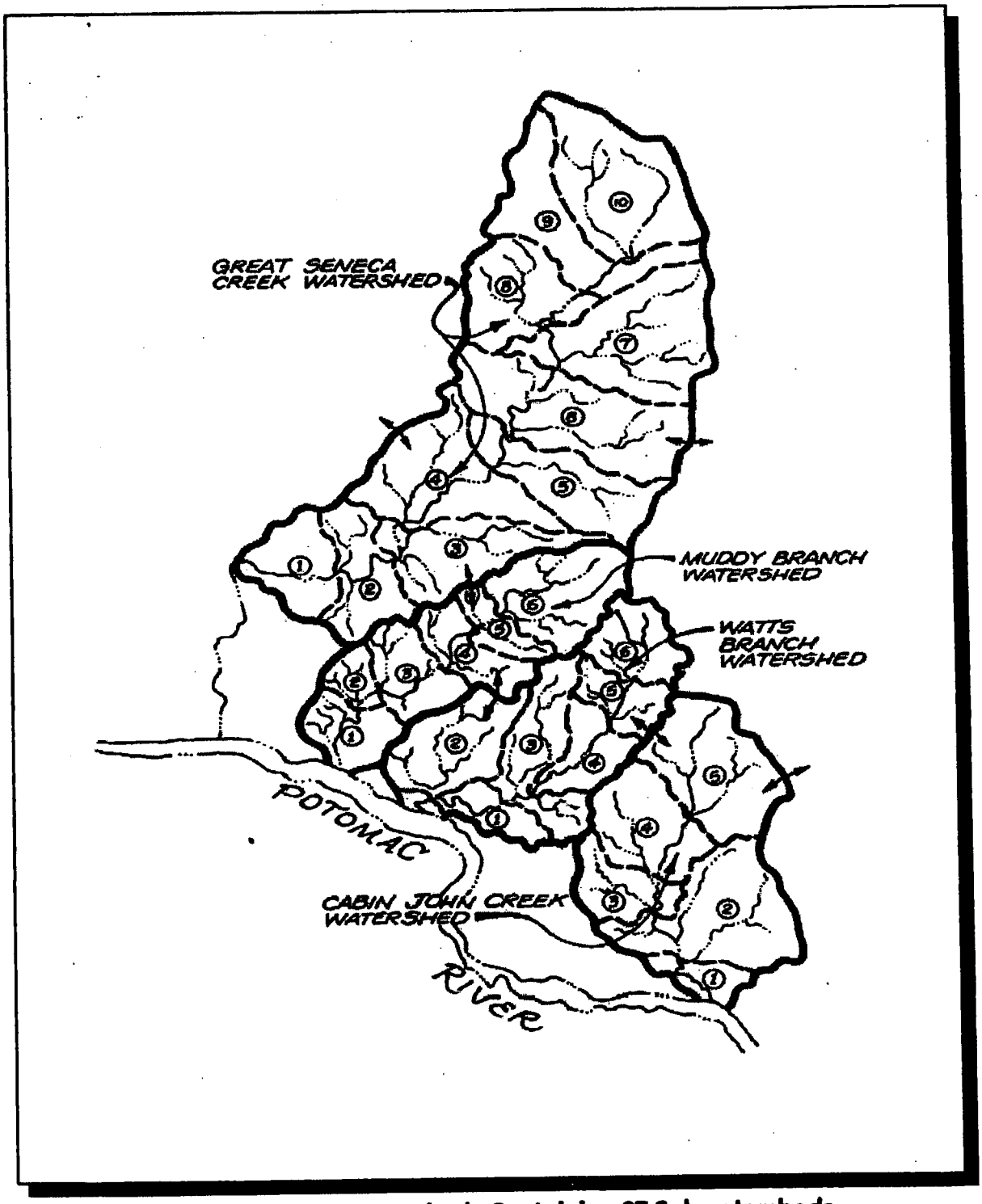


Figure 1.2 Four Watersheds Containing 27 Subwatersheds
(Modified from MCDEP Countywide Stream Protection Strategy, 1998)

This handbook focuses on the subwatershed as the primary planning unit for several reasons:

- The influence of impervious cover on hydrology, water quality, and biodiversity is most evident at the subwatershed level where the influences of individual development projects are easily recognizable.
- Subwatersheds are small enough to be within just a few political jurisdictions where it is easier to establish a clear regulatory authority and incorporate the smaller number of stakeholders into the management process.
- Subwatersheds are limited so that few confounding pollutant sources (e.g., agricultural runoff, point sources, etc.) are present that confuse management decisions.
- A map of a subwatershed can usually fit on a standard 24" by 36" sheet with sufficient detail to provide useful management information.
- Locally, managers may prefer the subwatershed as a planning unit because it is small enough to perform monitoring, mapping, and other watershed assessment tasks in a rapid time frame. A subwatershed plan can generally be completed within a year's time and still allow ample time for goal development, agency coordination, and stakeholder involvement. This shorter time span enables planners to generate many subwatershed plans in a consistent and coordinated cycle.

***Concept No. 2.* Each subwatershed contains a network of small streams channels that are known as headwater streams.** While each headwater stream is short and narrow, they collectively represent a majority of the drainage network of any watershed management unit. In addition, headwater streams are exceptionally vulnerable to watershed development. Consequently, it makes sense to focus on headwater streams in any watershed plan.

Stream classification is important in watershed management. It is also important to understand the spatial connections between the stream and its watershed. A network of streams drain each watershed. Streams can be classified according to their order in that network. A stream that has no tributaries or branches is defined as a first-order stream. When two first-order streams combine, a second-order stream is created, and so on. **Headwater streams** are defined as first- and second-order streams. Figure 1.3 illustrates the stream order concept.

Headwater streams are the smallest streams but they are crucial in watershed management because they dominate the landscape through their shear number and cumulative length. Figure 1.4 illustrates the significance of a headwater stream network in a local landscape.

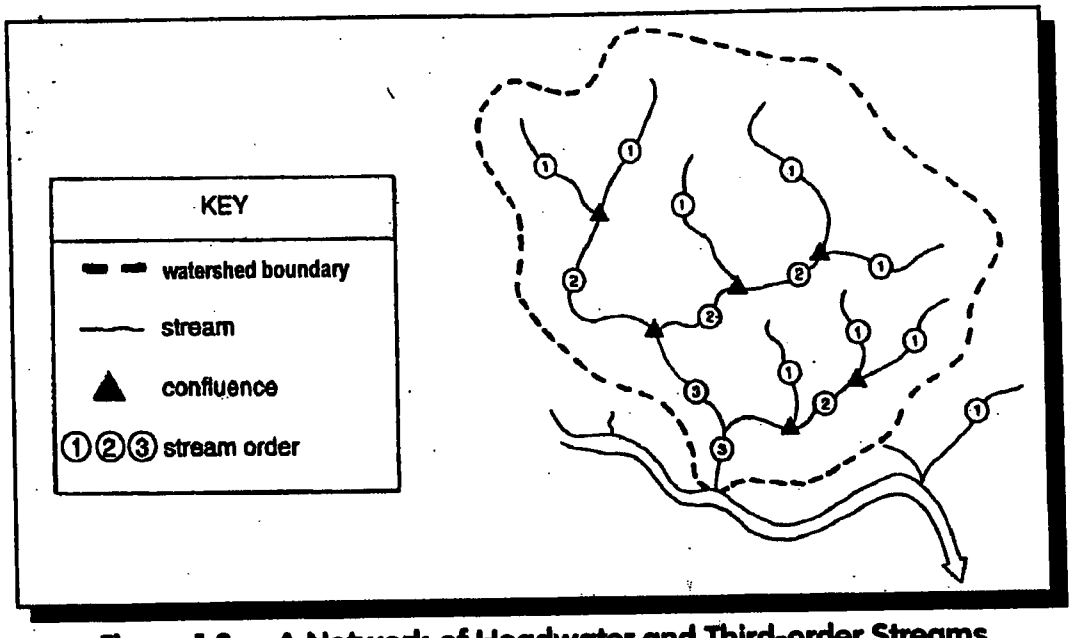


Figure 1.3 A Network of Headwater and Third-order Streams
(Source: Schueler, 1995b)

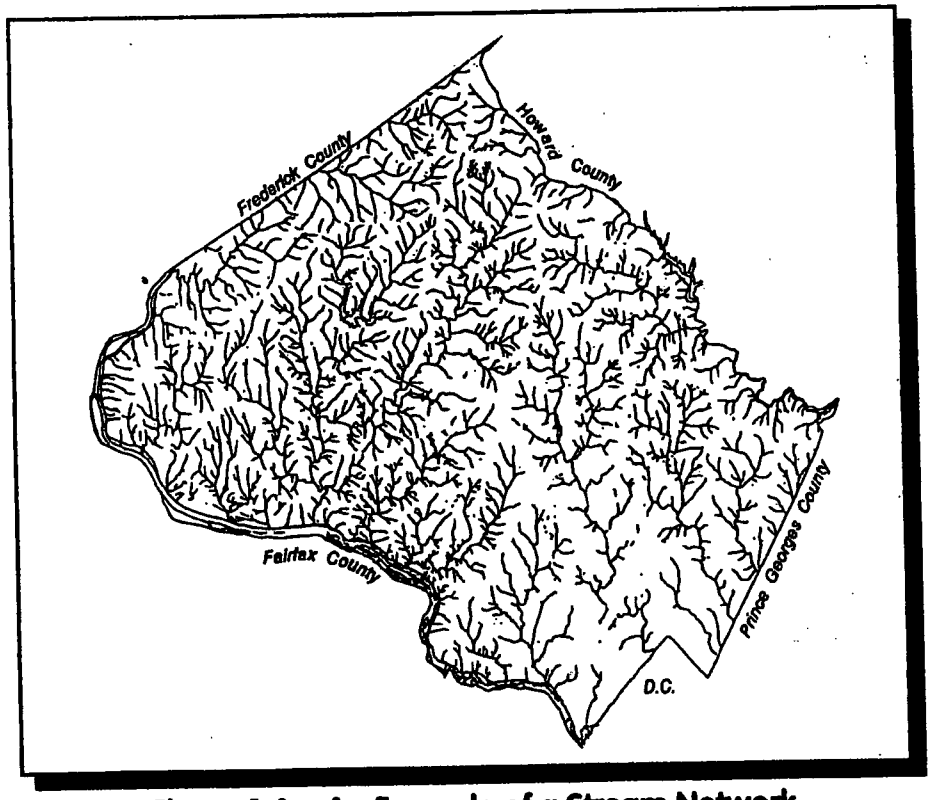


Figure 1.4 An Example of a Stream Network
(Source: Montgomery County DEP)

Headwater streams are typically short in length and drain relatively small areas, but are important because they comprise roughly 75% of the total stream and river mileage in the United States. Table 1.2 illustrates the proportion of smaller streams to larger streams in the United States.

What happens in the local landscape is directly translated to headwater streams and major receiving waters are affected in turn. As urbanization increases, streams handle increasing amounts of runoff which degrades headwater streams as well as major tributaries.

Focusing on the headwater stream level is important in watershed management for several reasons:

- streams are exceptionally vulnerable to watershed changes
- streams are on the same scale as development
- the public intuitively understands streams and strongly supports their protection
- streams are the "narrowest door" for water resource protection
- streams are good indicators of watershed quality

Table 1.2 Proportion of National Stream and River Mileage in Headwater Streams (Leopold, Wolman, Miller, 1964)

Stream Order*	Number of Streams	Total Length of Stream (miles)	Mean Drainage Area (square miles)**
1	1,570,000	1,570,000	1.0
2	350,000	810,000	4.7
3	80,000	420,000	23
4	18,000	220,000	109
5	4,200	116,000	518
6	950	61,000	2,460
7	200	30,000	11,700
8	41	14,000	55,600
9	8	6,200	264,000
10	1	1,800	1,250,000
Total	2,023,400	3,250,000	N/A

* stream order based on Strahler (1957) method, analyzing maps at a scale of 1:24,000

** cumulative drainage area, including tributaries

The watersheds and subwatersheds that drain to these streams are "readily identifiable landscape units that integrate terrestrial, aquatic, geologic, and atmospheric processes" (Clements et al., 1996). They are the most appropriate geographic unit to protect water resources.

Concept No. 3. Recent research has shown that the amount of **impervious cover in a subwatershed can be used to project the current and future quality of many headwater streams.** There are also strong lines of evidence that suggest that impervious cover is linked to the quality of other subwatershed resources such as lakes, reservoirs, estuaries and aquifers.

The influence of impervious cover on stream quality

The conversion of farmland, forests, wetlands, and meadows to rooftops, roads, and lawns creates a layer of impervious surface in the urban landscape. Impervious cover is a very useful indicator with which to measure the impacts of land development on aquatic systems. The process of urbanization has a profound influence on the hydrology, morphology, water quality, and ecology of surface waters (Horner, et al, 1996). Recent research has shown that streams in urban watersheds possess a fundamentally different character than streams in forested, rural, or even agricultural watersheds. The amount of impervious cover in the watershed can be used as an indicator to predict how severe these differences can be. In many regions of the country, as little as ten percent watershed impervious cover has been linked to stream degradation, with the degradation becoming more severe as impervious cover increases (Schueler, 1994).

Impervious cover directly influences urban streams by dramatically increasing surface runoff during storm events. Depending on the degree of impervious cover, the annual volume of stormwater runoff can increase by two to 16 times its predevelopment rate, with proportional reductions in groundwater recharge (Schueler, 1994). Figure 1.5 illustrates the influence of impervious cover on the hydrologic cycle and the amount of infiltration which occurs. In natural settings, very little annual rainfall is converted to runoff and about half is infiltrated into the underlying soils and the water table. This water is filtered by the soils, supplies deep water aquifers, and helps support adjacent surface waters with clean water during dry periods. In urbanized areas, less and less annual rainfall is infiltrated and more and more volume is converted to runoff. Not only is this runoff volume greater, it also occurs more frequently and at higher magnitudes. As a result, less water is available to streams and waterways during dry periods and more flow occurs during storms.

Other key changes in urban streams due to increases in impervious cover levels are detailed below:

Bankfull and sub-bankfull floods increase in magnitude and frequency. The peak discharge associated with the bankfull flow (i.e., the 1.5 to 2 year return storm) increases sharply in magnitude in urban streams. In addition, channels experience more bankfull and sub-bankfull flood events each year, and are exposed to critical erosive velocities for longer intervals (Hollis, 1975; Booth, et al, 1996; and MacRae, 1996).

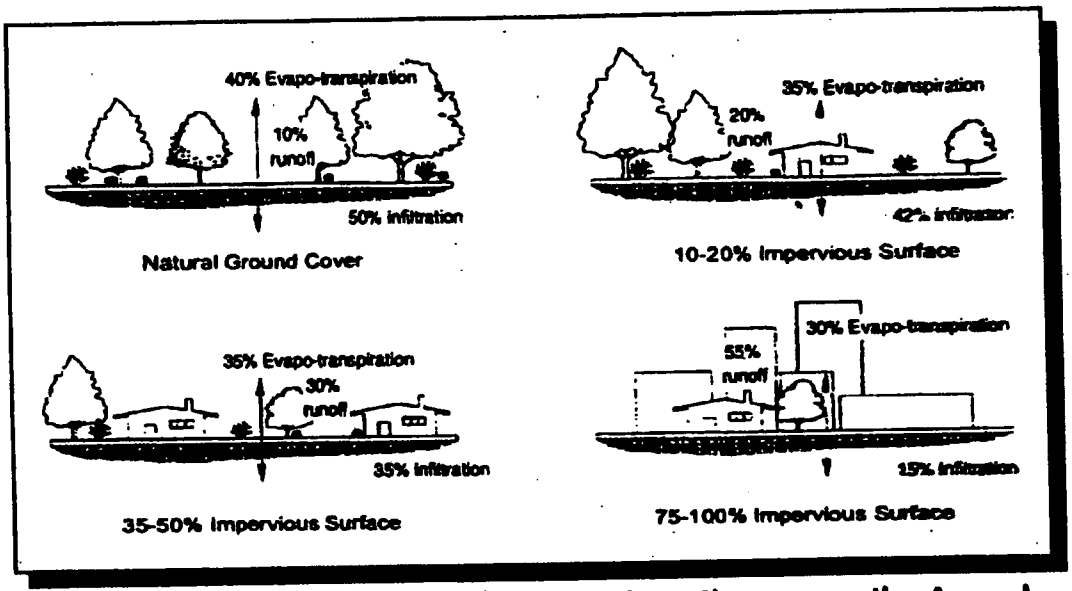


Figure 1.5 The Impact of Impervious Surface Changes on the Annual Water Balance (Source: PGDER, No Date)

Dimensions of the stream channel are no longer in equilibrium with its hydrologic regime. The hydrologic regime that had defined the geometry of the pre-development stream channel irreversibly changes and the channel faces higher flow rates on a more frequent basis. The higher flow events of the urban stream are capable of performing more "effective work" in moving sediment than they had done before (Wolman, 1954).

Channels enlarge. The customary response by an urban stream is to increase its cross-sectional area to accommodate the higher flows. This is done by stream bed down-cutting, stream bank widening, or a combination of both. Urban stream channels often enlarge their cross-sectional area by a factor of 2 to 5, depending on the degree of impervious cover and the age of

development in the upland watershed (Arnold, et al, 1982; Gregory ,et al, 1992;and MacRae, 1996).

Stream channels are highly modified by human activity. Urban stream channels are extensively modified in an effort to protect adjacent property from streambank erosion or flooding. Headwater streams are frequently enclosed within storm drains, while others are channelized, lined, and or "armored" by heavy stone. Another modification that is unique to urban streams is the installation of sanitary sewers underneath or parallel to the stream channel. According to May, et al (1997), 20 to 30% of natural stream channels are modified in typical urban watersheds.

Upstream channel erosion contributes greater sediment load to the stream. The prodigious rate of channel erosion in urban streams, coupled with sediment erosion from active construction sites, increases sediment discharge to urban streams. Researchers have documented that channel erosion constitutes as much as 75% of the total sediment budget of urban streams (Crawford and Lenat, 1989 and Trimble, 1997). Urban streams also tend to have a higher sediment discharge than non-urban streams during the active channel enlargement stage.

Dry weather flow in the stream declines. Since impervious cover prevents rainfall from infiltrating into the soil, less flow is available to recharge groundwater. Consequently, during extended periods without rainfall, baseflow levels are often reduced in urban streams (Simmons and Reynolds, 1982).

Wetted perimeter of the stream during low flow declines. The wetted perimeter of a stream is the fraction of the total cross-sectional area of the channel that is covered by flowing water during dry-weather periods, and is an important indicator of habitat degradation in urban streams. Given that urban streams develop a larger channel cross-section while their baseflow rates decline, it follows that the wetted perimeter becomes smaller. Thus, for many urban streams, this results in a very shallow low flow channel that "wanders" across a very wide stream bed, often changing its lateral position in response to storms.

Instream habitat structure degrades. Urban streams are routinely scored as having poor instream habitat quality, regardless of the specific metric or method employed. Habitat degradation is often exemplified by a loss of pool and riffle structure, embedding of stream bed sediments, shallow depths of flow, eroding and unstable banks, and frequent stream bed turnover.

Large woody debris is reduced (LWD). Large woody debris is an important structural component of many low order streams systems, creating complex habitat structure and generally making

the stream more retentive. In urban streams, the quantity of LWD found in stream channel declines sharply, due to the loss of riparian forest cover, storm washout, and channel maintenance practices (Booth, et al, 1996; May, et al, 1997).

Stream crossings and potential fish barriers increase. Many forms of urban development are linear in nature (e.g., roads, sewers, and pipelines) and cross stream channels. The number of stream crossings increases directly in proportion to impervious cover (May, et al 1997), and many crossings can become partial or total barriers to upstream fish migration, particularly if the stream bed erodes below the fixed elevation of a culvert or a pipeline.

Riparian forests become fragmented, narrower and less diverse. The important role that riparian forests play in stream ecology is often diminished in urban watersheds, as tree cover is often partially or totally removed along the stream as a consequence of development (May, et al 1997). Even when stream buffers are reserved, encroachment often reduces their effective width, and native species are supplanted by exotic trees, vines and ground covers.

Water quality declines. The water quality of urban streams during storm events is consistently poor. Urban stormwater runoff contains moderate to high concentrations of sediment, carbon, nutrients, trace metals, hydrocarbons, chlorides and bacteria (Schueler, 1987). While considerable debate exists as to whether stormwater pollutant concentrations are actually toxic to aquatic organisms, researchers agree that pollutants deposited in the stream bed exert an undesirable impact on the stream community.

Summer stream temperatures increase. The impervious surfaces, ponds, and poor riparian cover found in urban watersheds can increase mean summer stream temperatures by 2 to 10 degrees Fahrenheit (Galli, 1991). Since temperature plays a central role in the rate and timing of biotic and abiotic reactions in streams, even moderate increases can have an adverse impact on streams. In some regions, summer stream warming can irreversibly shift a cold-water stream to a cool-water or even warm-water stream, with deleterious effects on salmonoids and other temperature sensitive organisms.

Reduced aquatic diversity. Urban streams are typified by fair to poor fish and macro invertebrate diversity, even at relatively low levels of watershed impervious cover or population density (see Table 1.3). The ability to restore pre-development fish assemblages or aquatic diversity is constrained by a host of factors: irreversible changes in carbon supply, temperature, hydrology, lack of instream habitat structure, and barriers that limit natural recolonization.

A typical relationship between impervious cover and the presence of sensitive aquatic insects from the Delaware Piedmont region is illustrated in Figure 1.6. As the level of impervious cover in the watershed increases, the amount of sensitive species declines. Beyond watershed imperviousness levels of 10 to 15%, about 90% of the sensitive organisms are lost from the stream (Maxted and Shaver, 1996).

In recent years, many studies have begun to quantify the relationship between development and the health of the receiving waters. Some key findings of this research are summarized in Table 1.3. In general, the studies point to a decrease in stream quality with increasing urbanization. Other measures may also have predictable relationships to stream quality, such as the quantity and quality of riparian cover, or the amount of compacted urban turf (Schueler, 1995a).

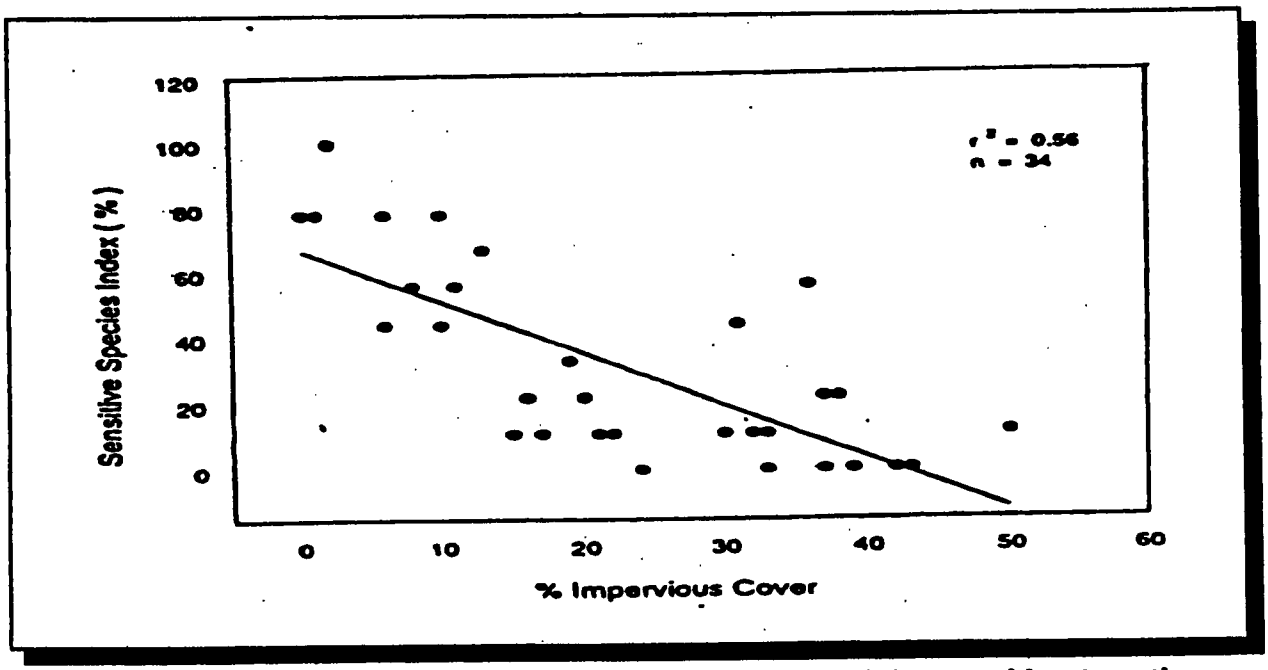


Figure 1.6 Relationship Between Impervious Cover and the Sensitive Aquatic Insect Index in Delaware's Northern Piedmont Streams.
(Source: Adapted from Maxted and Shaver, 1996)

Table 1.3 Review of Key Findings of Recent Research Examining the Relationship of Urbanization on Aquatic Systems

Watershed Indicator	*Key Finding*	*Reference*	*Year*	*Location*
Aquatic insects	Negative relationship between number of insect species and urbanization in 21 streams.	Benke, et al.	1981	Atlanta
Aquatic habitat	There is a decrease in the quantity of large woody debris (LWD) found in urban streams at around 10% impervious cover.	Booth, et al.	1996	Washington
Fish, habitat & channel stability	Channel stability and fish habitat quality declined rapidly after 10% impervious area.	Booth	1991	Seattle
Fish, habitat	As watershed population density increased, there was a negative impact on urban fish and habitat	Couch, et al.	1997	Atlanta
Aquatic insects and fish	A comparison of three stream types found urban streams had lowest diversity and richness	Crawford & Lenat	1989	North Carolina
Stream temperature	Stream temperature increased directly with subwatershed impervious cover.	Galli	1991	Maryland
Aquatic insects	A significant decline in various indicators of wetland aquatic macroinvertebrate community health was observed as impervious cover increased to levels of 8-9%.	Hicks & Larson	1997	Connecticut
Insects, fish, habitat water quality, riparian zone	Steepest decline of biological functioning after 6% imperviousness. There was a steady decline, with approx 50% of initial biotic integrity at 45% impervious area.	Horner, et al.	1996	Puget Sound Washington
Aquatic insects and fish	Unable to show improvements at 8 sites downstream of BMPs as compared to reference conditions.	Jones, et al.	1996	Northern Virginia
Aquatic insects	Urban streams had sharply lower insect diversity with human population above 4/acre. (About 10%)	Jones & Clark	1987	Northern Virginia
Aquatic insects & fish	Macroinvertebrate and fish diversity decline significantly beyond 10-12% impervious area.	Klein	1979	Maryland
Aquatic insects	Drop in insect taxa from 13 to 4 noted in urban streams.	Garie and McIntosh	1986	New Jersey

Table 1.3 Review of Key Findings of Recent Research Examining the Relationship of Urbanization on Aquatic Systems

Watershed Indicator	*Key Finding*	*Reference*	*Year*	*Location*
Fish spawning	Resident and anadromous fish eggs & larvae declined in 16 streams with > 10% impervious area.	Limburg & Schmidt	1990	New York
Fish	Shift from less tolerant coho salmon to more tolerant cutthroat trout pop.-between 10-15% impervious area at 9 sites.	Luchetti & Fuersteburg	1993	Seattle
Stream channel stability	Urban stream channels often enlarge their cross-sectional area by a factor of 2 to 5. Enlargement begins at relatively low levels of impervious cover.	MacRae	1996	British Columbia
Aquatic insects & stream habitat	No significant difference in biological and physical metrics for 8 BMP sites versus 31 sites without BMPs (with varying impervious area).	Maxted and Shaver	1996	Delaware
Insects, fish, habitat, water quality, riparian zone	Physical and biological stream indicators declined most rapidly during the initial phase of the urbanization process as the percentage of total impervious area exceeded the 5-10% range.	May, et al.	1997	Washington
Aquatic insects and fish	There was significant decline in the diversity of aquatic insects and fish at 10% impervious cover.	MWCOG	1992	Washington, DC
Aquatic insects	As watershed development levels increased, the macroinvertebrate community diversity decreased.	Richards, et al.	1993	Minnesota
Aquatic insects	Biotic integrity decreases with increasing urbanization in study involving 209 sites, with a sharp decline at 10% I. Riparian condition helps mitigate effects.	Steedmen	1988	Ontario
Wetland plants, amphibians	Mean annual water fluctuation inversely correlated to plant & amphibian density in urban wetlands. Declines noted beyond 10% impervious area.	Taylor	1993	Seattle
Wetland water quality	There is a significant increase in water level fluctuation, conductivity, fecal coliform bacteria, and total phosphorus in urban wetlands as impervious cover exceeds 3.5%.	Taylor, et al.	1995	Washington
Sediment loads	About 2/3 of sediment delivered into urban streams comes from channel erosion.	Trimble	1997	California

Table 1.3 Review of Key Findings of Recent Research Examining the Relationship of Urbanization on Aquatic Systems

Watershed Indicator	*Key Finding*	*Reference*	*Year*	*Location*
Water quality-pollutant conc.	Annual P, N, COD, & metal loads increased in direct proportion with increasing impervious area.	US EPA	1983	National
Fish	As watershed development increased to about 10%, fish communities simplified to more habitat and trophic generalists.	Weaver	1991	Virginia
Aquatic insects & fish	All 40 urban sites sampled had fair to very poor index of biotic integrity (IBI) scores, compared to undeveloped reference sites.	Yoder	1991	Ohio

The influence of impervious cover on other aquatic systems

The impact of impervious cover on the quality of lakes, water supply reservoirs, aquifers, or coastal areas has not been as well investigated as it has for urban streams. Although research is scarce, there is some evidence that impervious cover does have a similar impact on these aquatic systems. The impacts to these systems are manifested in different ways and may occur at different levels of impervious cover than are often seen for urban streams.

Even small increases in impervious cover change stream morphology and degradation of aquatic habitat. By contrast, aquatic systems such as lakes, water supply reservoirs, aquifers, and coastal areas tend to be impacted more by a decline in water quality due to non-point source pollutants. Research has shown that stormwater pollutant loads increase when the percentage of impervious cover in a watershed increases.



Urban Lakes

For urban lakes, the major water quality impacts are caused by higher stormwater pollutant loads. Elevations in total phosphorus and chlorophyll *a* are often associated with the impervious cover generated in developing areas. These factors can negatively affect the quality of the lake for activities such as fishing, swimming, or other water contact recreation. Sediment inputs may also be heightened with additional development in the watershed, which can often affect water clarity. In addition, the natural level of the lake may also be affected by the increased stormwater runoff which occurs with changes in impervious cover levels in the watershed.

Table 2: Review of Key Findings of Urban Stream Studies Examining the Relationship of Urbanization to Stream Quality

Ref.	Year	Location	Biological Parameter	Key Finding
Booth	1991	Seattle	Fish habitat/ channel stability	Channel stability and fish habitat quality declined rapidly after 10% imperv.
Galli	1994	Maryland	Brown trout	Abundance and recruitment of brown trout declines sharply at 10-15% imperv.
Benke *et al.*	1981	Atlanta	Aquatic insects	Negative relationship between number of insect species and urbanization in 21 streams
Jones and Clark	1987	Northern Virginia	Aquatic insects	Urban streams had sharply lower diversity of aquatic insects when human population density exceeded 4 persons/acre. (estimated 15-25% imperv. cover)
Limburg and Schimdt	1990	New York	Fish spawning	Resident and anadromous fish eggs and larvae declined sharply in 16 tributary streams greater than 10% imperv.
Shaver *et al.*	1994	Delaware	Aquatic insects	Insect diversity at 19 stream sites dropped sharply at 8 to 15% imperv.
Shaver *et al.*	1994	Delaware	Habitat quality	Strong relationship between insect diversity and habitat quality; majority of 53 urban streams had poor habitat
Schueler and Galli	1992	Maryland	Fish	Fish diversity declined sharply with increasing imperv., loss in diversity began at 10-12% imperv.
Schueler and Galli	1992	Maryland	Aquatic insects	Insect diversity metrics in 24 subwatersheds shifted from good to poor over 15% imperv.
Black and Veatch	1994	Maryland	Fish/insects	Fish, insect and habitat scores were all ranked as poor in 5 subwatersheds that were greater than 30% imperv.
Klein	1979	Maryland	Aquatic insects/fish	Macroinvertebrate and fish diversity declines rapidly after 10% imperv.
Luchetti and Fuersteburg	1993	Seattle	Fish	Marked shift from less tolerant coho salmon to more tolerant cutthroat trout populations noted at 10-15% imperv. at 9 sites
Steedman	1988	Ontario	Aquatic insects	Strong negative relationship between biotic integrity and increasing urban land use/ riparian condition at 209 stream sites. Degradation begins at about 10% imperv.
Pedersen and Perkins	1986	Seattle	Aquatic insects	Macroinvertebrate community shifted to chironomid, oligochaetes and amphipod species tolerant of unstable conditions.
Steward	1983	Seattle	Salmon	Marked reduction in coho salmon populations noted at 10-15% imperv. at 9 sites
Taylor	1993	Seattle	Wetland plants/ amphibians	Mean annual water fluctuation was inversely correlated to plant and amphibian density in urban wetlands. Sharp declines noted over 10% imperv.
Garie and McIntosh	1986	NewJersey	Aquatic insects	Drop in insect taxa from 13 to 4 noted in urban streams
Yoder	1991	Ohio	Aquatic insects/ fish	100% of 40 urban sites sampled had fair to very poor index of biotic integrity scores

Source: *The Practice of Watershed Protection,* Schueler and Holland, 2000

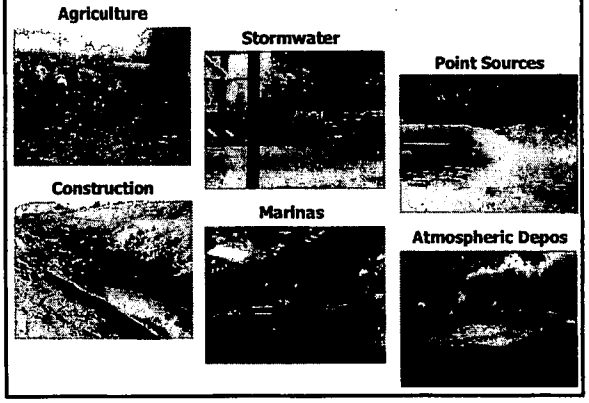
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NC Phase II Stormwater Regulations

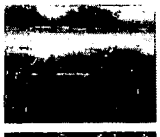
- Why be concerned about stormwater?
- What is the NPDES Phase II Program?
- Who is covered by these rules?
- What is required by these rules?
- Where can you find more information?




Sources of Pollution



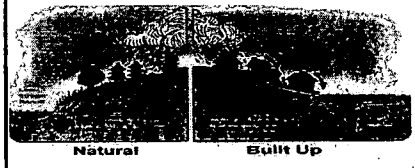
Why be Concerned about Stormwater?





- Declining water quality
- Increasing demand for clean water
- *Urbanization:*
  - Population doubling every 50 years
  - 88% increase in urban area from 1982-1997 (USDA-NRCS)

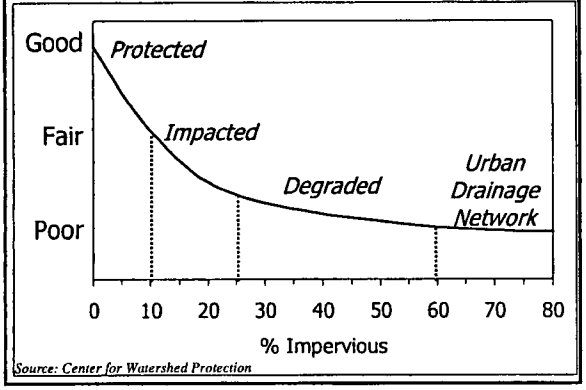
Land Development Impacts



- Increased Imperviousness
- Increased Runoff
- Increased Pollutants
- Impacts to Streambanks
- Erosion/Sedimentation




Stream Condition Related to Impervious Surface



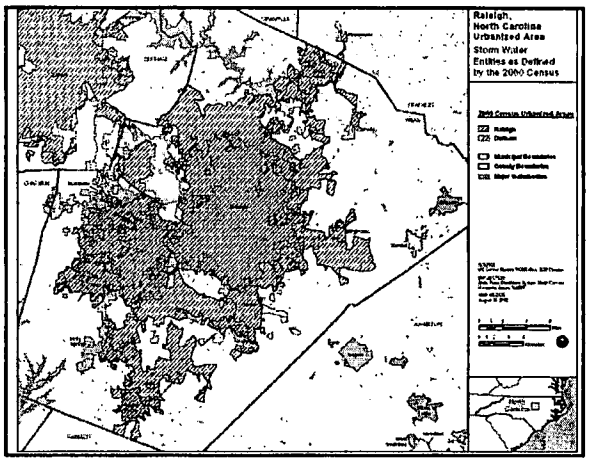
Source: Center for Watershed Protection

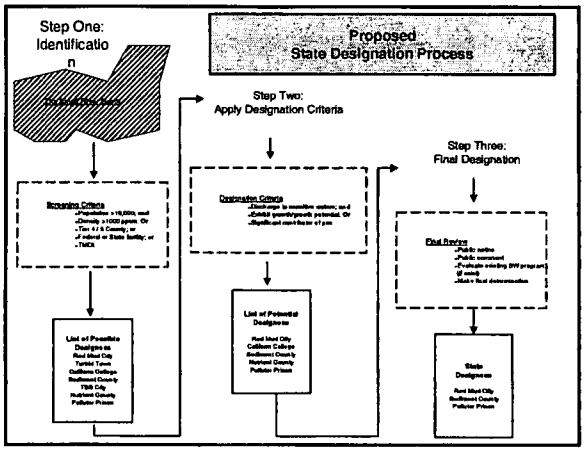
What is NPDES Phase II?

- Phase II of the NPDES Stormwater Program was signed into law in December, 1999
- Requires smaller communities to apply for a permit by March 2003
- Permitted communities must implement a comprehensive program including 6 minimum measures

Who is Covered by Phase II?

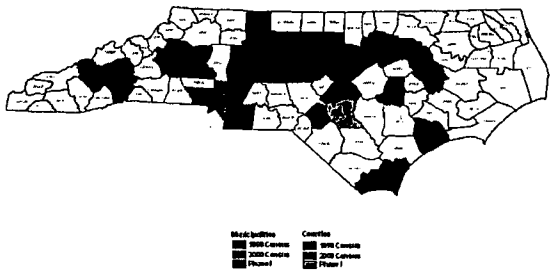
- Automatically Designated - *Urbanized Areas*
- State Designated Public Entities
- Petitioned Entities





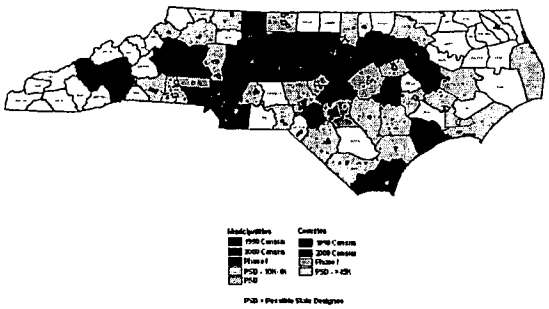
North Carolina NPDES Stormwater Program

Automatic Coverage



North Carolina NPDES Stormwater Program

Automatic & Possible State Designation

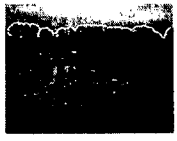


What is Required by Phase II?

- Public education & outreach
- Public involvement & participation
- Illicit discharge detection & elimination
- Construction site stormwater runoff control
- Post-construction stormwater management for new development & redevelopment
- Pollution prevention/good housekeeping for municipal operations

Post Construction Runoff Control

- New development and redevelopment
- 1-year / 24-hour storm control
- 85% average annual TSS removal
- Operation & maintenance of BMPs
- Specific requirements for Class SA, Tr, NSW





NC Rulemaking Process

- Temporary Rules Approved By EMC - Oct 2002
- Temporary Rules Effective Nov. 1, 2002
- Permanent Rules to WQC/EMC - Feb 2003
- Notice & Public Hearings - April 2003

Information Sources

Division of Water Quality
Stormwater and General Permits Unit
http://h2o.enr.state.nc.us/su/stormwater.html

Environmental Protection Agency
http://cfpub.epa.gov/npdes/

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Summary of Position on Stormwater Rules

State Rules Should Not be Limited to Federal Minimum

The League supports stormwater regulations that address all major sources of stormwater pollution, including contributions from unincorporated areas of counties. In order to achieve the purposes of stormwater programs, the state's rules must apply throughout the identified "urbanized areas" and not just in the isolated portions of those areas where small municipalities happen to be located. Limiting the EMC's rules to the federal minimum would in effect prevent the application of stormwater regulations to most counties, while requiring their application to small municipalities. We have serious concerns of equity and effectiveness in doing so. Such an approach would place the regulatory burden disproportionately on municipalities; create a preference for economic development outside the municipal jurisdiction, encouraging sprawl; and severely impair the ability to achieve water quality protection goals. Instead, we support working toward changes that will make the rules more reasonable and feasible for all local governments. Some of those changes are highlighted below.

Flexibility Needed on Post-Construction Requirements

The EMC's draft permanent rules lack flexibility by requiring local governments to choose between a low-density and a high-density option that rely on one-size-fits-all numerical standards (such as a set percentage for built-upon area). The post-construction requirements should be revised to focus on performance-based standards. We recommend development of a menu of options that would allow local governments the flexibility to choose among various best management practices to achieve desired results in the most reasonable and cost-effective manner.

Unreasonable Timeline for Implementing Post-Construction

The EMC's draft permanent rules shorten the deadline for compliance with post-construction requirements to one year, while retaining the federal five-year compliance time for the other five minimum measures. The post-construction control measures are by far the most complicated, controversial, and costly to implement. We believe the focus should be on the public education and community involvement measures before implementation of the most substantial part of the program. A one-year timeline for post-construction implementation is unreasonable.

Waiver for Small Communities Unclear

The federal rules provide two sets of criteria for small communities to request waiver—one for jurisdictions under 1,000 and one for those under 10,000. The EMC's draft permanent rules merely incorporate federal law by reference. Municipalities need a better sense of how the state will interpret and apply the waiver options, and this should be spelled out in the rules.

Authority for Extraterritorial Coverage Uncertain

There are gaps in the statutory authority to implement all of the measures required by the state rules within the municipal extraterritorial jurisdiction (ETJ). Statutory clarification is needed with regard to detection and elimination of illicit connections in the ETJ and as to the financing of required programs with stormwater fees.

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POSITION PAPER
Stormwater Rules

Background

Storm drainage has become a major issue in recent years. Rainwater and snowmelt that cannot penetrate paved or other impervious surfaces runs off and may cause flooding or other detrimental effects if not properly controlled. A storm drainage system is designed to collect and divert this water (generally to a creek or stream), and may be as simple as a series of ditches or as complex as a system of pipes, storm drains, culverts, and similar infrastructure. While commonly referred to as a storm "sewer" system, stormwater drainage systems should not be confused with the sanitary sewer, which is designed to collect and transport sewage and wastewater from residences, businesses and industries to a treatment plant. These two systems are entirely separate and distinct and are not interconnected.

Traditionally storm drainage systems were intended to control the quantity of stormwater in order to prevent flooding. But in the late 1980's federal law began to recognize that water quality issues were also involved, as stormwater can transport a number of pollutants. Following amendments to the federal Clean Water Act, Phase I stormwater regulations were implemented for large and medium-sized communities, requiring that cities of 100,000 or more obtain a National Pollution Discharge Elimination System (NPDES) Permit in order to discharge stormwater from their municipal stormwater systems into the nation's waters. Permittees were required to develop, adopt, and enforce a comprehensive stormwater management program designed to protect water quality by preventing pollutants (such as oil, chemicals, fertilizers, pesticides, and litter) from being washed into the storm sewer system and thereafter into rivers and streams. There are six Phase I communities in North Carolina.

Federal rules for Phase II of the stormwater regulations were adopted in 1999 to address certain smaller stormwater systems. There are several different methods for determining which counties and municipalities are covered. Entities are *automatically* designated if they are located within an "urbanized area" based on

the latest decennial census. An urbanized area is a land area comprised of one or more places that together have a residential population of at least 50,000 and a population density of at least 1,000 people per square mile. The list of automatic federal designees includes 123 N.C. municipalities and 33 N.C. counties. Some very small municipalities are automatically designated because they are located in counties that meet the population density thresholds.

The federal rules also require the state to develop criteria for designation and petitioning, two additional ways that local governments can be included in Phase II coverage. Designation is the process by which the state analyzes the potential regulated entities that are *outside* of urbanized areas to determine whether to bring them into the program. At a minimum, the state is required to consider jurisdictions with a population of at least 10,000 and a density of at least 1,000 people per square mile. There are 22 municipalities and 26 counties on the list for possible state designation under this criteria. Petitioning is the process by which any third party can ask the state to require an entity to be brought in under the Phase II program.

Under federal Phase II, owners and operators of small MS4s (municipal separate storm sewer systems) must obtain an NPDES permit to control stormwater discharges. Municipal separate storm sewer means a conveyance or system of conveyances designed or used for collecting or conveying stormwater (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a state, municipality, county, or other public body.

Permit holders must implement a storm water management program that includes the six minimum control measures. These are:

- Public education and outreach on stormwater;
- Public involvement/participation in the development of the stormwater management program;
- Illicit discharge detection and elimination;
- Construction site stormwater runoff control from land activity disturbing less than one acre;
- Post-construction stormwater management in new development and redevelopment;
- Pollution prevention/good housekeeping for municipal operations.

All MS4s designated in 1999 (under the 1990 census figures) were required to submit a permit application by March 10, 2003. All MS4s designated under the 2000 census must submit a permit application within 18 months of notification

by DENR. DENR notified these communities in November of 2002, therefore permit applications must be submitted by May 2004.

EMC's Draft Rules

North Carolina is in a unique position among the states because our counties do not maintain roads. For that reason, counties do not fit neatly into the regulatory scheme under federal Phase II stormwater rules. The Environmental Management Commission sought to address that gap by adopting two sets of rules.

One rule applies the six minimum requirements under Phase II to entities that own or operate municipal separate storm sewer systems (MS4s). These are primarily municipalities, since the vast majority of municipalities in North Carolina—even very small ones—have responsibility for maintaining some public streets, and streets are by definition considered to be MS4s. The other rule applies the same six minimum measures to local governments that do not own or operate MS4s, thereby extending regulatory coverage to counties and the few municipalities that do not maintain roads. It is our understanding that the first rule would be implemented under authority granted the state pursuant to federal Phase II, while the second rule would be implemented using the state's own authority.

State Rules Should Not Be Limited to Federal Minimum

There has been some discussion at to whether legislation should limit the state's stormwater regulations to the minimum required under federal Phase II. Presumably this would be accomplished by disapproving the EMC's proposed rule applicable to local governments that do not own or operate MS4s. Because there are serious issues of equity and effectiveness in doing so, the League cannot support such an approach at this time.

Limiting the EMC's rules to the federal minimum would in effect prevent the application of stormwater regulations to most counties, while requiring their application to small municipalities. In order to achieve the purposes of stormwater programs, the state's rules must apply throughout the identified "urbanized areas" and not just in the isolated portions of those areas where small municipalities happen to be located.

Concentrating solely on those entities with MS4s would place the regulatory burden disproportionately on municipalities. Some 92% of North Carolina's municipalities maintain public roads and therefore would fall under the definition of owners/operators of MS4s. Many of these are small towns

designated under Phase II only because they are located in a county that meets the "urbanized" threshold. It makes little sense to cover small municipalities that are designated by virtue of their location within an urbanized county (simply because they maintain some portion of public street and therefore operate an MS4), while allowing the greater portion of the urbanized area in the unincorporated part of the county to escape regulation.

Removing counties from coverage creates a scattershot approach in which large portions of the urbanized areas are effectively exempted from regulation. Islands of regulation will exist wherever small towns are located within an urbanized county. Water quality protection goals cannot be realized if only part of the problem is addressed.

Regulating only the areas within municipalities and their ETJs will also set up a preference for economic development outside the municipal jurisdiction. Developers will prefer the unregulated areas rather than undertake the costs and obligations that may be required where regulations apply. By encouraging growth to take place in unregulated areas, sprawl proliferates, water quality objectives are undermined, and the regulated areas are placed at a competitive disadvantage.

Instead of seeking to disapprove the rule adopted under the state's authority, we support working toward changes that will clarify the rules and make them more reasonable and feasible for all local governments. We have highlighted some of the issues that we would like to see addressed below.

League's General Policy

Municipalities recognize their role in protecting water quality and stand ready to do their part. The League has been a willing participant and contributor in the discussion and development of the stormwater rules, and has developed a permit application and implementation tool (Storm 2003 CD package) for our membership that will also assist state regulators in reviewing permit applications.

The League supports legislation and administrative rules that more effectively regulate non-point sources of water pollution. Our position remains that in order to achieve water quality goals, stormwater regulations should address all major sources of stormwater pollution, including contributions from non-urban sources and unincorporated areas of counties.

Flexibility Needed on Post-Construction Requirements

Of the six minimum measures required for stormwater programs, the post-construction requirements have been the most controversial. The post-construction measure requires a program to address stormwater runoff from new development and redevelopment projects that disturb more than one acre. The League staff has had productive discussions with DENR staff in recent weeks regarding our concerns on the proposed post-construction requirements, and we have reached consensus on the concept of providing more flexibility to local governments to address the stormwater issues associated with new development.

The federal rules contemplate flexibility in post-construction strategies, indicating that they can include a combination of structural and non-structural best management practices appropriate for the individual community. The proposed permanent rules appear to lack this flexibility by requiring a choice between a low-density and a high-density option. The League believes that the draft post-construction requirements should be revised to focus on performance-based standards rather than one-size-fits-all numerical standards.

Specifically, the *temporary* rules provide for low-density development of 24% built-upon area or two residential units per acre. The proposed *permanent* rules have left the built-upon area percentage blank. Based on comments by some EMC members, however, there is a desire to lower the built-upon area to 12%. Under the high-density option, the rules would require control of a one year, 24-hour storm and removal of 85% of Total Suspended Solids. Our discussions with biological and agricultural engineers at NCSU indicate that this may not be a realistic target and that 85% removal can only be achieved under ideal circumstances.

Due to the cost and technical difficulties associated with implementing the high-density option, we believe that most municipalities, particularly those with limited staff, resources and technical expertise, are likely to choose the low-density approach. We saw such a trend among local governments when the water supply watershed regulations were implemented in the 1990s. For that reason, we are concerned that the proposed rules could create inconsistencies with other environmental efforts of the state. If most local governments choose the low-density option, the rules will have the effect of encouraging suburban sprawl, which will in turn have a negative impact on air and water quality.

A one-size fits all approach is not practical given the diverse geography, geology, and development patterns across the state. Instead, local governments need a toolbox that will enable them to choose among a range of options to meet

reasonable performance standards. We recommend development of a menu of options that would allow flexibility to use various BMPs to achieve desired results.

Based on our discussions with DENR staff, we believe that a few minor revisions to the current language of the draft permanent rule would allow local governments to adopt innovative best management practices to comply with the post construction provisions. We have offered to work with the Division of Water Quality to develop a range of BMP options that comply with the post construction requirements as part of a model ordinance.

Unreasonable Timeline for Implementing Post-Construction

We also have concern about the expedited implementation schedule for post construction stormwater management. The federal rules would allow communities a full five years for implementation. However, the EMC's draft permanent rules would shorten the deadline for compliance with post-construction measures to twelve months from permit issuance, while retaining the federal five-year compliance time for the other measures.

While post construction control measures are arguably the most important tool to protect water quality, they are also the most complicated and costly to implement. The League believes that public education and participation must occur prior to the implementation of the post construction control measures to ensure that the public is aware of the importance of this tool and prepared for the associated additional costs. In some communities implementing the post-construction requirements will not be a small and inconsequential endeavor. It is, therefore, imperative that members of the community be brought along such that implementing this measure will result in the kind of improvements that are envisioned. It seems unreasonable that public education and community involvement measures that allow a full public discussion of the issues would be the focus after implementing the meat of the program.

Waiver for Small Communities Unclear

The federal regulations contemplate a waiver process for small communities. Some very small towns have been automatically designated because they are located within larger urbanized areas. These towns will have a difficult time developing stormwater management programs and will place a great financial burden on their residents, with potentially little impact on water quality. The federal rules provide possibilities for waiver under two sets of criteria: one for jurisdictions under 1,000 and one for those under 10,000. We recommend that the waiver provisions be spelled out in the state's rules rather than simply

making reference to the Code of Federal Regulations. Such reference does not provide adequate guidance as to the particulars of the waiver process considering that the state will be the permitting agency. Municipalities need a better sense of how the state will interpret and apply the waiver options.

DENR officials have indicated their willingness to review the federal waiver provision and look for ways to further clarify the requirements for local governments seeking a waiver to the NPDES permit requirements.

Authority for Extraterritorial Coverage Uncertain

The draft permanent rules require municipalities to implement all six of the minimum measures within their city limits and also within their extraterritorial jurisdiction. As mentioned above, the League generally supports addressing stormwater in unincorporated areas, since that is where much of the growth is occurring. However, there appear to be some gaps in the municipal statutory authority to implement all of the measures contemplated by the rules within the ETJ.

Illicit Connections

Municipalities do not have broad regulatory or enforcement powers outside of their city limits. Extraterritorial authority currently exists only with respect to certain land-use activities such as planning, zoning, subdivision control, and enforcing the state building code. Aside from these subject areas, municipalities have no authority to adopt or enforce ordinances in the ETJ.

This does not pose a problem as to those aspects of a stormwater program that are closely tied to land use. At least one of the measures, however, relies on the general municipal ordinance-making power (the "police power") rather than land-use authority. For example, one of the Phase II minimum measures will require municipalities to implement a program to detect and eliminate illicit connections to the stormwater system. This measure includes mapping of stormwater outfalls, prohibiting non-stormwater discharges into the storm sewer system, and developing a plan to detect and eliminate non-storm discharges and illegal dumping.

If municipalities are to fully implement the minimum measures in their ETJs, statutory clarification of their authority with regard to illicit connections may be necessary.

Inspection Authority

Authority granting a "right of entry" to private property is critical to allowing inspectors to identify and take corrective action on the sources of illegal discharges to the stormwater system. There does not appear to be any express statutory authority to enter property to inspect for illicit stormwater connections. Those municipalities with existing programs have tended to rely on a broad construction of the city's general police power. If the general police power is in fact the source of inspection authority, that power only exists within town limits. Local government officials could not enter property in the ETJ for the purpose of detecting illicit stormwater discharges.

We recommend a statutory clarification of inspection authority for stormwater purposes both within municipal limits and in the ETJ. Explicit right of entry already exists for some types of environmental and health inspections; perhaps municipal authority could be patterned after those statutes. See G.S. 130A-17 (public health); G.S. 143-215.19 (regulation of water use/capacity use area); G.S. 143-215.37 (dam safety); G.S. 143-215.79 (oil pollution and hazardous substances); G.S. 143-466 (pesticides).

Fee Authority

We are of course concerned about the costs to municipalities of implementing required stormwater programs--the stormwater mandate is unfunded and potentially very expensive. The legislature has already assisted local governments by authorizing a funding mechanism to comply with stormwater regulations. During the period of 1989-1991, the General Assembly amended state statutes to include stormwater utilities within the definition of a "public enterprise" and to authorize local governments to charge a utility fee for stormwater services. In the 2000 Session, the General Assembly amended those provisions to clarify that fees could be used to pay not only the expenses related to the planning, maintenance, and construction of the physical components of a stormwater system, but also the expenses for federally mandated nonstructural stormwater pollution control programs. We believe many municipalities will have to rely heavily on the fee option to finance Phase II stormwater programs.

But the issue is somewhat more complicated if municipalities are required to regulate stormwater in the ETJ. Municipalities cannot charge property taxes in their ETJs because these areas are outside city limits and are therefore only subject to county taxation. However, it is not abundantly clear that municipalities have statutory authority to charge a stormwater fee in the ETJ. Although the public enterprise statutes clearly allow the operation of such enterprises outside city limits, the specific language on stormwater fees indicates

that such fees must be made applicable "throughout the area *of the city*." This could raise some questions about applicability in the ETJ and the statute may need clarification on this point. Without fee authority in the ETJ, the costs associated with stormwater regulations in the ETJ must be shifted to the taxpayers within the town limits.

Conclusion

We look forward to working with the General Assembly, EMC, DENR, and other interested parties throughout the process of developing reasonable permanent rules that will positively impact environmental quality in North Carolina. Please do not hesitate to contact us if we may provide additional information.

Municipalities
(Auto Designated and Possible State Designees)

Phase I Municipalities	Phase II Municipalities	Phase II Municipalities	Municipalities with >10K Total Perm & Season Population/ >1K density
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	**Auto Designee**	**Auto Designee**	**Possible Designee**
Charlotte	Apex	Alamance	Albemarle
Durham	Archdale	Ayden	Asheboro
Fayetteville	Asheville	Bermuda Run	Boone
Greensboro	Belmont	Bethania	Eden
Raleigh	Belville	Cajah's Mountain	Elizabeth City
Winston-Salem	Bessemer City	Canton	Emerald Esle
	Biltmore Forest	Carolina Beach	Havelock
	Black Mountain	Claremont	Henderson
	Brookford	Clyde	Kill Devil Hills
	Burlington	Connelly Springs	Kinston
	Carrboro	Cornelius	Laurinburg
	Cary	Davidson	Lexington
	Chapel Hill	Dortches	Lumberton
	China Grove	Drexel	Mooresville
	Clemmons	Flat Rock	Oak Island
	Concord	Fuquay-Varina	Reidsville
	Conover	Gamewell	Roanoke Rapids
	Cramerton	Glen Alpine	Shelby
	Dallas	Granite Falls	Smithfield
	Elon College	Green Level	Statesville
	Fletcher	Harrisburg	Tarboro
	Garner	Hemby Bridge	Wilson
	Gastonia	Hendersonville	
	Gibsonville	Hillsborough	
	Goldsboro	Holly Springs	
	Graham	Hudson	
	Greenville	Huntersville	
	Haw River	Kernersville	
	Hickory	King	
	High Point	Knightdale	
	Hildebran	Kure Beach	
	Hope Mills	Lake Park	
	Indian Trail	Laurel Park	
	Jacksonville	Lenoir	
	Jamestown	Lewisville	

Date: 01/07/2003

Data Source: U.S. Census Bureau Web Site
http://www.census.gov/geo/www/cob/ua2000.html

Municipalities
(Auto Designated and Possible State Designees)

Phase I Municipalities	Phase II Municipalities	Phase II Municipalities	Municipalities with >10K Total Perm & Season Population/ >1K density
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	Auto Designee	Auto Designee	Possible Designee
	Kannapolis	Maiden	
	Landis	Marvin	
	Leland	Monroe	
	Long View	Morganton	
	Lowell	Morrisville	
	Matthews	Nashville	
	McAdenville	Navassa	
	Mebane	Oak Ridge	
	Mint Hill	Pleasant Garden	
	Montreat	Red Oak	
	Mount Holly	Rhodhiss	
	Newton	Rolesville	
	Pineville	Rutherford College	
	Ranlo	Salisbury	
	Rocky Mount	Sawmills	
	Rural Hall	Simpson	
	Spring Lake	Spencer Mountain	
	Stallings	Stanley	
	Thomasville	Summerfield	
	Wakertown	Swepsonville	
	Weaverville	Tobaccoville	
	Wilmington	Trinity	
	Winterville	Valdese	
	Woodfin	Wake Forest	
	Wrightsville Beach	Waynesville	
		Weddington	
		Wesley Chapel	
		Youngsville	

Date: 01/07/2003

Data Source: U.S. Census Bureau Web Site
http://www.census.gov/geo/www/cob/ua2000.html

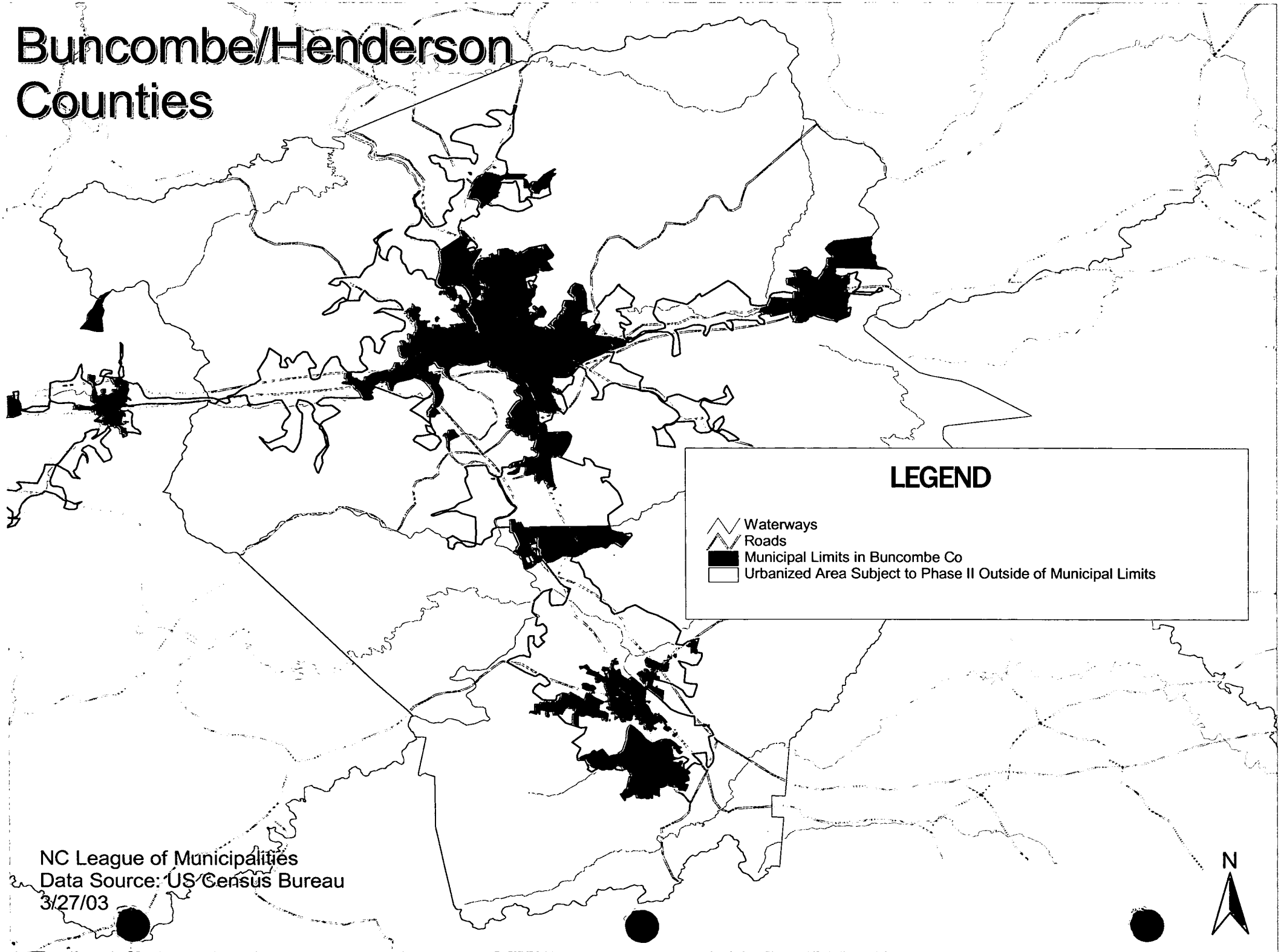
Counties
(Auto Designated and Possible State Designees)

Phase I Counties	Phase II Counties	Phase II Counties	Counties with >45K Total Perm & Season Population
(1990 US Census)	(1990 US Census)	(2000 US Census)	(Not 1990 or 2000 Census listed)
Auto Designee	**Auto Designee**	**Auto Designee**	**Possible Designee**
Cumberland	Alamance	Alexander	Beaufort
	Brunswick	Caldwell	Carteret
	Buncombe	Chatham	Cleveland
	Burke	Davie	Columbus
	Cabarrus	Franklin	Craven
	Catawba	Haywood	Dare
	Davidson	Hoke	Duplin
	Durham	Stokes	Granville
	Edgecombe		Halifax
	Forsyth		Iredell
	Gaston		Johnston
	Guilford		Lee
	Harnett		Lenoir
	Henderson		Lincoln
	Mecklenburg		Moore
	Nash		Pender
	New Hanover		Richmond
	Onslow		Robeson
	Orange		Rockingham
	Pitt		Rutherford
	Randolph		Sampson
	Rowan		Stanly
	Union		Surry
	Wake		Watuaga
	Wayne		Wilkes
			Wilson

Date:01/07/2003

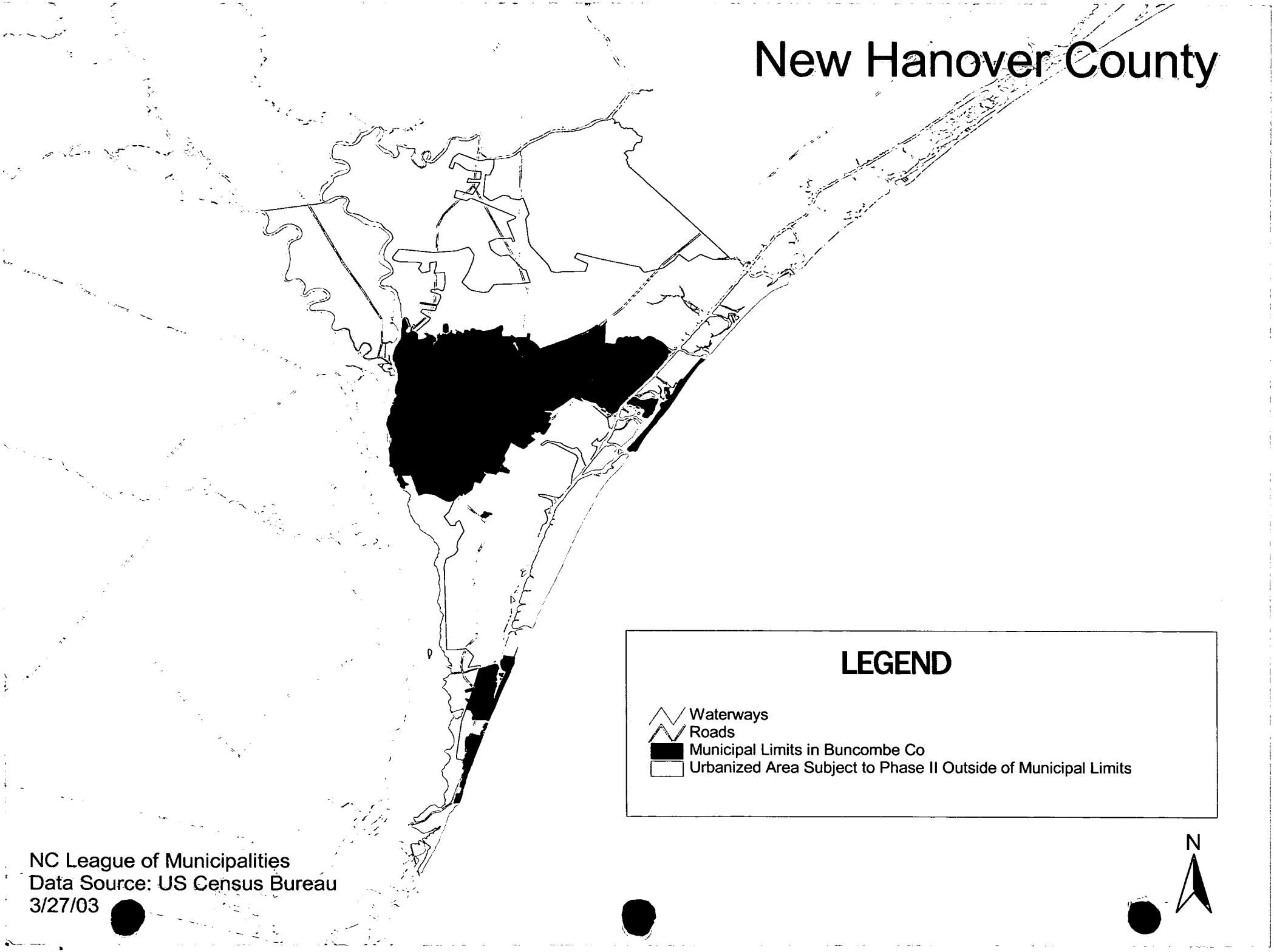
Data Source: U.S. Census Bureau Web Site
http://www.census.gov/geo/www/cob/ua2000.html

Buncombe/Henderson Counties



NC League of Municipalities
Data Source: US Census Bureau
3/27/03

New Hanover County



NC League of Municipalities
Data Source: US Census Bureau
3/27/03

North Carolina Association of County Commissioners
Mailing Address: P. O. Box 1488, Raleigh, NC 27602-1488
Street Address: Albert Coates Local Government Center, 215 N. Dawson Street, Raleigh, NC 27603
Telephone: 919-715-2893 • *Fax:* 919-733-1065 • *Email:* ncacc@ncacc.org
Home Page Address: http://www.ncacc.org

COPY ATT. #4a 4/8/03

September 27, 2000

Mr. Bradley Bennett
Department of Environment and Natural Resources
Division of Water Quality
512 N. Salisbury St.
Raleigh, NC 27604-1148

Dear Bradley:

A number of counties have raised an issue regarding the responsibilities of the counties that were listed by EPA in the Phase II Stormwater rules. It appears that EPA listed twenty-four North Carolina counties because these units contain urbanized areas that potentially would be subject to the requirements of the Phase II regulations. The assumption is that these counties would be automatically subject to all of the Phase II requirements and would be required to implement the six stormwater program components. The EPA regulations are intended to apply automatically in local government jurisdictions that include defined urbanized areas and where the local government units own or operate municipal storm sewer systems (MS4s).

The issue raised by our member counties is this: county government in North Carolina should not be automatically required to implement all components of the Phase II program since our county governments do not own or operate storm sewer systems. Furthermore, North Carolina counties do not own or operate road or street systems with their extensive stormwater drainage systems.

This issue was raised earlier by Forsyth County. We have attached a copy of a letter dated December 16, 1999 written by Mr. Ragland, Forsyth County Water Quality Program Manager to you. Mr. Ragland made the point that the EPA regulations contemplated that units of local governments which own or operate MS4s in designated urbanized areas would be automatically required to implement the full-fledged stormwater management program. However, Forsyth County did not own or operate such systems nor did the county have any control or jurisdiction over the most extensive stormwater control systems within the county, namely, the drainage systems owned and operated by the State Department of Transportation.

Again, we contend that the EPA regulations do not automatically require any county in North Carolina to implement the Phase II program. We fully understand that the EPA regulations

authorize the states to designate additional units of local governments to be covered by the Phase II requirements. There may be a number of situations where requiring some level of participation by county governments in urbanizing areas would be both beneficial in carrying out state and Federal policy on stormwater management and appropriate in terms of county local authority and responsibility.

Let us suggest that your division pursue the following course of action.

1.) Seek a definitive ruling from the U.S. Environmental Protection Agency regarding the automatic applicability of the Phase II requirements to North Carolina counties containing urbanized areas.
2.) Initiate a dialogue with representatives of our metropolitan counties to determine what roles can reasonably be assumed by county governments to implement the Phase II requirements.

We would be happy to assist in setting up a meeting with the appropriate counties. We look forward to your response.

Sincerely,

Ed Regan, Deputy Director

enclosures

cc: Bill Holman, Secretary, DENR
Richard Rogers, Legislative Liaison, DENR
John Thuss, Caldwell County Commissioner
Delilah Blanks, NCACC President
Graham Pervier, Forsyth County Manager
Bob Ragland, Forsyth County Environmental Affairs Department
Mike Ruffin, Durham County Manager
Chuck Armbrust, Durham County Planning Department
David Cooke, Wake County Manager
Rick Rowe, Wake County Director of Environmental Services
Harry Jones, Mecklenburg County Manager
Jeanette Powell, Division of Water Quality, DENR
Jerry Meyers, Rockingham County Manager
Joe Lesch, Union County Planning Director
David Cheek, Alamance County Manager
Jimmy Varner, Brunswick County Manager
Wanda Greene, Buncombe County Manager
Ron George, Burke County Manager
Frank Clifton, Cabarrus County Manager
J. Thomas Lundy, Catawba County Manager
Gerald Hege, Davidson County Manager
Joseph Durham, Edgecombe County Manager
Philip Hinely, Gaston County Manager
Roger Cotten, Guilford County Manager
Neil Emory, Harnett County Manager
David Nicholson, Henderson County Manager
Jimmy Grimes, Nash County Manager
Allen O'Neal, New Hanover County Manager
Ronald Lewis, Onslow County Manager
John Link, Orange County Manager
Tom Robinson, Pitt County Manager
Frank Willis, Randolph County Manager
Tim Russell, Rowan County Manager
Gary Smoak, Union County Manager
Will Sullivan, Wayne County Manager
Ron Aycock, Executive Director, NCACC
Jim Blackburn, General Counsel, NCACC
Paul Meyer, Assistant General Counsel, NCACC
Paula Thomas, NCLM
Henry Lancaster, NCLM
Ellis Hankins, NCLM

ATT # 4b
4/8/03

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 9 2002

Honorable David Price
House of Representatives
Washington, DC 20515

Dear Congressman Price:

Thank you for your inquiry of March 15, 2002, on behalf of the North Carolina Association of County Commissioners, regarding its request for clarification of the applicability of the Phase II storm water regulations to county governments within the State of North Carolina. On December 9, 1999, the United States Environmental Protection Agency (EPA) promulgated the National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water regulations. In short, the regulations set out to address operators of small municipal separate storm sewer systems (MS4s), industrial facilities that discharge storm water associated with industrial activity, and construction activity disturbing one to five acres.

The Association has expressed three major concerns with regard to the potential impact of the Phase II rule on the counties in North Carolina. In the first issue of concern, the Association asks, "What is the responsibility of the counties containing urbanized areas that were named on the initial list if the county governments do not own or operate the separate storm sewer systems or road/street systems?" The intent of the rule is to clearly address the owner/operator of the MS4 system, and hold that party responsible for applying for the permit. However, the State of North Carolina presents a unique situation where unincorporated counties neither own nor operate the road systems in their jurisdictional area. These systems represent a large portion of the MS4s that have direct discharges to waters of the U.S. in unincorporated county areas. Therefore, even though a county may be listed in Appendix 6, if that county does not own or operate the MS4, it does not have to submit an application or develop a storm water management plan, in accordance with NPDES regulations. If another entity does own or operate an MS4 within the county (e.g., town, department of transportation, regional utility district), that other entity will need to submit an application and develop the program. Please note that the federal NPDES regulations require delegated states to establish authorities for administering the federal requirements, including the development and implementation of their own designation and petition criteria which may expand storm water permit coverage by state law rather than by federal law.

The second concern expressed by the Association concerns the responsibilities of the counties with regard to the rule if they own public facilities such as parks, office parks, courthouses, landfills, and water supply systems. In 40 Code of Federal Regulations (C.F.R.) §122.26(a)(16)(iii) of the Phase II rule, EPA clarifies that the definition of a small MS4 does not include individual buildings, such as post offices, courthouses or urban buildings. These buildings may have a municipal separate storm sewer, but not have a "system" of conveyances. The State

Apr-08-02 08:16am From-USEPA Office of Public Affairs 4045628335 T-610 P.002/003 F-117

will have to employ some discretion in deciding as to the nature of the building (or complex of buildings) and its storm water conveyance system.

Finally, the Association wants clarification regarding facilities requiring discharge permits. Specifically, would the six minimum measures apply only to the specific facilities or across the entire jurisdiction of the local governments that own/operate these facilities? As noted above, these facilities may not be required to obtain NPDES permit coverage according to the federal Phase I or Phase II storm water regulations. However, the State may use the authority under the Clean Water Act, Section 402(p)(2)(E), to designate an individual storm water discharge as a source of significant pollutants or one that contributes to a violation of a water quality standard within waters of the U.S. Under State designation authority, the State would determine the extent of the six minimum measures application.

The specific situations in North Carolina are unique and complex. The EPA Region 4 staff will continue to work with the North Carolina permitting staff in addressing these issues in the most effective manner possible. If EPA Region 4 can be of further assistance, please contact me or the Office of Congressional and Intergovernmental Relations at (404)562-8327.

Sincerely,

for J. I. Palmer, Jr.
Regional Administrator

cc: Greg Thorpe, NCDENR

ATT # 4C
4/8/03

Tuesday, April 1, 2003

Comments by the
NC Association of County Commissioners
on Proposed Permanent State
Stormwater Rules 15A NCAC 2H.1014

INTRODUCTION

Last year, the NC Association of County Commissioners organized a special focus group to examine the proposed Phase II Stormwater rules. This group consists of attorneys, planners, public works professionals, and managers from county governments across North Carolina.

Initially, our focus group examined the proposed temporary rules to implement the required Federal Phase II Stormwater program in North Carolina. The Federal rules were designed to regulate municipal separate storm sewer systems (MS4s) in urbanized areas. While the preliminary list of local governments containing urbanized areas included 25 of our Metropolitan counties, only two of these counties own or operate MS4s. Therefore, it was evident that 23 of the counties listed in the Federal EPA rules would NOT be subject to the Phase II stormwater requirements.

Our focus group concluded that, if the Department of Environment and Natural Resources intended to develop stormwater rules to apply to all counties containing urbanized areas, this could be accomplished by:

1. Initiating a separate process for developing state stormwater rules that would involve affected counties and municipalities.
2. Allowing sufficient time (12 to 18 months) for careful consideration of existing state and local regulatory measures that are currently in place to protect surface water quality.
3. Seeking additional statutory authority from the General Assembly (if necessary) to carry out a state stormwater program.

GENERAL COMMENTS ON THE PROPOSED RULES

Frankly, we are disappointed that the Environmental Management Commission has chosen to move ahead with these proposed rules without allowing sufficient time for development of a state program attuned to the realities of county government powers and responsibilities. Also, we are disappointed that the proposed state rules are simply a re-iteration of the Federal requirements designed for governments that own or operate MS4s. The fact remains that, although there are extensive storm water drainage systems in urbanized areas beyond the corporate limits of our municipalities, the majority of these drainage systems are either privately owned or are the responsibility of public entities other than county governments. The most extensive publicly owned stormwater drainage system in unincorporated areas of our state is under the ownership of the State Department of Transportation. Yet these proposed rules are silent on the role and responsibilities of the DOT.

We would urge the Environmental Management Commission to withdraw these rules and to direct the staff of DENR to institute a deliberative process of developing a more appropriate state stormwater program. We have two reasons for making this request.

First, there is no compelling reason to implement such rules in the near term. The staff of the Department has stated in the fiscal impact analysis for these rules that: "In most cases, counties do not own or operate the storm sewer systems... However, the intent of the Federal rules was clearly to cover counties. This is evidenced by the Federal automatic designation of 25 counties in North Carolina, as published in the December 8, 1999 Federal Register."

However, there is a direct statement from EPA to the contrary. In his letter of April 9, 2002, Mr. J. I. Palmer, Jr., Administrator of EPA Region IV, stated to Congressman David Price that, "even though a county may be listed in Appendix 6 (the list of local governments containing urbanized areas per the 1990 Census), if that county does not

own or operate the MS4, it does not have to submit an application or develop a stormwater management plan, in accordance with NPDES regulations."

Second, the proposed rules go well beyond existing state statutory authority regarding stormwater management. Three sections of state law (G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1)) are cited as the statutory authority for the proposed rules. However, G.S. 143-214.7 describes a disretionary, rather than a mandatory, program:

"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 MAY adopt rules, and units of local government ARE AUTHORIZED to adopt ordinances and regulations necessary to establish and enforce stormwater control programs." (Emphasis added.) If the General Assembly had intended that the Commission dictate to the counties that they must pass ordinances, it would have used "shall" rather than "may" to describe its duties. Clearly, in passing this statute, the General Assembly gave both counties and state agencies the option of adopting or rejecting this model ordinance.

We intend to submit more extensive comments for the record at a later date. Again, we would urge the Commission to withdraw these rules for the reasons cited above.

Thank you for your consideration.

ATT. # 5
4/8/03

COUNTY OF DURHAM
OFFICE OF THE COUNTY ATTORNEY

S.C. KITCHEN
COUNTY ATTORNEY

THOMAS W. JORDAN, JR.
LOWELL L. SILER
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P.O. Box 3508
Courthouse, 200 E. Main Street
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ASSISTANT COUNTY ATTORNEYS
CATHY L. MOORE
CURTIS MASSEY
LUCY CHAVIS
CAROL W. HAMMETT
GERI MAULTSBY

Comments Regarding Proposed Permanent Phase II Stormwater Rules
State RPE Stormwater Management Program
Proposed 15A NCAC 2H .1014

1) DENR Lacks Statutory Authority for the Proposed Rules.

G.S. § 143-214.7 provides for a voluntary program of stormwater control based on a model program developed by the State. Instead of a voluntary program, DENR is trying to mandate its program. Specifically, paragraph "c" of this statute reads in pertinent part:

> 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 may adopt rules, and units of local government **are authorized to adopt** ordinances and regulations necessary to establish and enforce stormwater control programs.

Where as here, a statute is clear and unambiguous, there is no room for interpretation, and the ordinary meaning of the words control. *See, Smith Chapel Baptist Church v. City of Durham,* 350 N.C. 805, 517 S.E.2d 874 (1999). The statute provides for a voluntary program in which the State is mandated to develop a model stormwater management program which may be implemented by units of local government if they so desire. This statute acts as a limitation on the power of DENR to do no more than is expressly authorized by this statute, and the EMC is without authority to do these proposed rules.

2) The Rules Violate the Separation of Powers Clause of the North Carolina Constitution.

The regulations require counties to adopt certain specified ordinances which require the approval of DENR. This presents a serious separation of powers issue under the North Carolina Constitution. Article I, § 6 of the North Carolina Constitution provides as follows:

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Here an appointed administrative body is requiring an elected legislative body to enact certain laws over which it holds a veto. One of these ordinances includes a requirement to enact an ordinance to regulate the application of fertilizer. This apparently would regulate both farmers and homeowners. The legislature has previously indicated that the policy of the legislature is to prevent counties from regulating farming. This has been done explicitly in preventing county zoning ordinances from regulating farm activities. This attempted usurpation of the legislative power is not only violative of the Constitution, but directly contradicts the public policy of the State in attempting to regulate farming.

3) The Rules Violate the Prohibition on Having local acts Relating to Health and Sanitation.

Article II, § 24 of the North Carolina Constitution prohibits the enactment of a local or special act which relates to health or sanitation. To the extent that the proposed rules mandate a "Pet Waste Program" be enacted in certain counties, the rules violate this prohibition. It is not a defense to claim that the rules themselves are not legislative acts, or that they only mandate that counties enact the programs. The Supreme Court in *McIntyre v. Clarkson*, 254 N.C. 510, 119 S.E.2d 888 (1961) found invalid a statute which authorized one county to act on a prohibited subject. The Court rejected the argument that the statute itself did not act on the prohibited subject, but only authorized a county to regulate the subject. Here an administrative agency is attempting to enact rules under a delegation of power by the Legislature. However, if the Legislature itself could not enact the regulation, it cannot delegate the authority to an administrative agency to have it enact the regulation. The attempt to regulate sanitation by the proposed rules must fail as being in violation of the North Carolina Constitution.

4) The Legislature creates Counties, and the Environmental Management Commission Cannot Require a Permit for Counties to Exist.

G.S. § 153A-10 creates the one hundred counties in North Carolina. The proposed rules would require any county with an urbanized area in it to apparently get a permit. This would not be a permit for any activity or because the county owns and operates a stormwater system as in the Federal rules, but solely because the county exists. The decision on whether or not to create a county rests solely with the Legislature. The EMC does not have any authority to require a permit of a county based solely on the existence of the county.

5) The Proposed Rules are Arbitrary and Capricious.

The proposed rules are arbitrary, capricious, and fail to state any scientific or other necessity for the rules. The rules state that the Federal intent was to regulate all counties, and since North Carolina counties were not regulated by the Federal rules, that these rules are being proposed. This assertion is patently false. J.I. Palmer, Jr., Regional Administrator of the United State Environmental Protection Agency, (attached) stated in his letter to the Honorable David Price that "The intent of the rule is to clearly address the owner/operator of the MS4 system, and

hold that party responsible for applying for the permit". Further, EPA has addressed Federal and State Operated MS4s, and clearly indicated that it was the Federal or State operator of the MS4 which had to get a permit, and not the county which did not operate an MS4 (attached). As it was not the intent of EPA to regulate counties in the absence of an MS4, there is no justification for these rules, and the enactment would be arbitrary and capricious.

Respectfully submitted, this the 8th day of April, 2003.

S. C. Kitchen
County Attorney

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 9 2002

Honorable David Price
House of Representatives
Washington, DC 20515

Dear Congressman Price:

Thank you for your inquiry of March 15, 2002, on behalf of the North Carolina Association of County Commissioners, regarding its request for clarification of the applicability of the Phase II storm water regulations to county governments within the State of North Carolina. On December 9, 1999, the United States Environmental Protection Agency (EPA) promulgated the National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water regulations. In short, the regulations set out to address operators of small municipal separate storm sewer systems (MS4s), industrial facilities that discharge storm water associated with industrial activity, and construction activity disturbing one to five acres.

The Association has expressed three major concerns with regard to the potential impact of the Phase II rule on the counties in North Carolina. In the first issue of concern, the Association asks, "What is the responsibility of the counties containing urbanized areas that were named on the initial list if the county governments do not own or operate the separate storm sewer systems or road/street systems?" The intent of the rule is to clearly address the owner/operator of the MS4 system, and hold that party responsible for applying for the permit. However, the State of North Carolina presents a unique situation where unincorporated counties neither own nor operate the road systems in their jurisdictional area. These systems represent a large portion of the MS4s that have direct discharges to waters of the U.S. in unincorporated county areas. Therefore, even though a county may be listed in Appendix 6, if that county does not own or operate the MS4, it does not have to submit an application or develop a storm water management plan, in accordance with NPDES regulations. If another entity does own or operate an MS4 within the county (e.g., town, department of transportation, regional utility district), that other entity will need to submit an application and develop the program. Please note that the federal NPDES regulations require delegated states to establish authorities for administering the federal requirements, including the development and implementation of their own designation and petition criteria which may expand storm water permit coverage by state law rather than by federal law.

The second concern expressed by the Association concerns the responsibilities of the counties with regard to the rule if they own public facilities such as parks, office parks, courthouses, landfills, and water supply systems. In 40 Code of Federal Regulations (C.F.R.) §122.26(a)(16)(iii) of the Phase II rule, EPA clarifies that the definition of a small MS4 does not include individual buildings, such as post offices, courthouses or urban buildings. These buildings may have a municipal separate storm sewer, but not have a "system" of conveyances. The State

Apr-09-02 08:18am From-USEPA Office of Public Affairs 4045628335 T-610 P.002/003 F-117

will have to employ some discretion in deciding as to the nature of the building (or complex of buildings) and its storm water conveyance system.

Finally, the Association wants clarification regarding facilities requiring discharge permits. Specifically, would the six minimum measures apply only to the specific facilities or across the entire jurisdiction of the local governments that own/operate these facilities? As noted above, these facilities may not be required to obtain NPDES permit coverage according to the federal Phase I or Phase II storm water regulations. However, the State may use the authority under the Clean Water Act, Section 402(p)(2)(E), to designate an individual storm water discharge as a source of significant pollutants or one that contributes to a violation of a water quality standard within waters of the U.S. Under State designation authority, the State would determine the extent of the six minimum measures application.

The specific situations in North Carolina are unique and complex. The EPA Region 4 staff will continue to work with the North Carolina permitting staff in addressing these issues in the most effective manner possible. If EPA Region 4 can be of further assistance, please contact me or the Office of Congressional and Intergovernmental Relations at (404)562-8327.

Sincerely,

J. I. Palmer, Jr.
Regional Administrator

cc: Greg Thorpe, NCDENR

United States Environmental Protection Agency | Office of Water (4203) | EPA 833-F-00-012 January 2000 Fact Sheet 2.10

EPA

Storm Water Phase II Final Rule

Federal and State-Operated MS4s: Program Implementation

Storm Water Phase II Final Rule Fact Sheet Series

Overview

1.0 – Storm Water Phase II Final Rule: An Overview

Small MS4 Program

2.0 – Small MS4 Storm Water Program Overview

2.1 – Who's Covered? Designation and Waivers of Regulated Small MS4s

2.2 – Urbanized Areas: Definition and Description

Minimum Control Measures

2.3 – Public Education and Outreach

2.4 – Public Participation/ Involvement

2.5 – Illicit Discharge Detection and Elimination

2.6 – Construction Site Runoff Control

2.7 – Post-Construction Runoff Control

2.8 – Pollution Prevention/ Good Housekeeping

2.9 – Permitting and Reporting: The Process and Requirements

2.10 – Federal and State-Operated MS4s: Program Implementation

Construction Program

3.0 – Construction Program Overview

3.1 – Construction Rainfall Erosivity Waiver

Industrial "No Exposure"

4.0 – Conditional No Exposure Exclusion for Industrial Activity

The program for small municipal separate storm sewer systems (MS4s) under the Storm Water Phase II Final Rule includes, in addition to local government jurisdictions, certain Federal and State-operated small MS4s. Federal facilities were not designated for regulation by the NPDES Phase I storm water program for MS4s. The Phase II Final Rule, however, includes the "United States" in the definition of a small MS4, thereby including Federal MS4 operators in the NPDES Phase II storm water program. Federal and State-operated small MS4s can include universities, prisons, hospitals, roads (i.e., departments of transportation), military bases (e.g., State Army National Guard barracks), parks, and office buildings/complexes.

The small MS4 program, largely designed with municipally-operated small MS4s in mind, raises a number of implementation issues for Federal and State operators of regulated small MS4s who must obtain an NPDES permit that requires the development and implementation of a storm water management program that includes the following six minimum control measures: public education and outreach, public participation/involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff control, and good housekeeping/pollution prevention for municipal operations (for more information on each measure, see Fact Sheets 2.3 through 2.8). This fact sheet highlights potential implementation issues related to the minimum control measures, then discusses the implementation options included in the rule that may resolve these issues.

What Are Some Implementation Concerns?

This section profiles the three most common implementation issues raised in the public comments submitted regarding Federal/State implementation of the small MS4 program.

How Does the Final Rule Account for Unique Characteristics?

Federal and State small MS4s possess a number of characteristics that set them apart from their municipal counterparts. For example, whereas municipally-operated MS4s largely serve resident populations, many Federal or State-operated MS4s, such as medical clinics and departments of transportation (DOTs), do not. Other types of Federal and State MS4s, such as military bases, prisons, and State universities, serve populations that are different from a typical municipal population. Their unique characteristics might lead Federal or State MS4 operators to question either the need to implement the entire suite of minimum control measures or their ability to comply fully with their Phase II storm water permit. Responsibility for developing a storm water program that comprises the minimum measures lies with the operator of the Federal or State MS4.

What If the Operator Lacks Legal Authority?

Three of the minimum control measures (illicit discharge detection and elimination, and the two construction-related measures) require enforceable controls on third party activities to ensure successful implementation of the measure. Some Federal and State operators, however, may not have the necessary legal regulatory authority to adopt these enforceable controls in the same manner as do local governments.

For example, a State DOT that is responsible for the portions of its roads running through urbanized areas may not have the legal authority to impose restrictions on, and penalties against, illicit (i.e., non-storm water) discharges into its MS4 if the source of the discharge is outside the DOT's right-of-way or jurisdiction. As in the case of local governments that lack such authority, State and Federal MS4s are expected to utilize the authority they do possess and to seek cooperative arrangements.

How Can the Program Be Implemented in Areas Where There Are Multiple Regulated Entities?

Since the final rule provides automatic coverage of all small MS4s within an urbanized area, regardless of political boundaries, coverage of multiple governments and agencies in a single area is likely. For example, a city government that operates a small MS4 within an urbanized area must obtain permit coverage alongside the county, State, and Federal DOTs if they all operate a portion of the roads (i.e., MS4s) in the city. All four entities are responsible for developing a storm water management program for their MS4s (or portions thereof) within the urbanized area. EPA encourages State and Federal small MS4 operators to establish cooperative agreements with cities and counties in implementing their storm water programs.

Are There Implementation Strategies that Help Facilitate Program Implementation?

This section offers two hypothetical strategies for resolving the implementation issues raised above. The best solution may include a creative combination of strategies.

STRATEGY #1
A Focus on Choosing Appropriate BMPs

The final rule requires the permittee to choose *appropriate* best management practices (BMPs) for each minimum control measure. In other words, EPA expects Phase II permittees to tailor their storm water management plans and their BMPs to fit the particular characteristics and needs of the permittee and the area served by its MS4. Therefore, the Federal or State operator of a regulated storm sewer system can take advantage of the flexibility provided by the rule to utilize the most suitable minimum control measures for its MS4. Below is an example of tailored activities and BMPs that Federal or State operators can implement for each measure:

- **Public Education and Outreach.** Distribute brochures and post fliers to educate employees of a Federal hospital about the problems associated with storm water runoff and the steps they can take to reduce pollutants in storm water discharges. For example, employees could be advised against carelessly discarding trash on the ground or allowing their cars to leak oil/fluids in the parking lot.

- **Public Participation/Involvement.** Provide notice of storm water management plan development and hold meetings at which employees of a Federal office complex are encouraged to voice their ideas and opinions about the effort. Request volunteers to help develop the plan.

- **Illicit Discharge Detection and Elimination.** Develop a map of the storm sewer system on a military base. Perform visual dry weather monitoring of any outfalls to determine whether the storm sewer system is receiving any non-storm water discharges from the base. If a dry weather flow is found, trace it back to the source and stop the discharge. Should a Federal military base identify an illicit discharge, the source of which is traced to the boundary of its system, the Federal operator should refer the discharge to the adjoining regulated MS4 for further action.

- **Construction Site Runoff Control.** Require the implementation of erosion and sediment controls, and control of waste, for any Federal or State DOT road construction. The DOT would review site plans for proper controls, perform inspections, and establish penalties in the construction contract if controls are not implemented. If construction is done directly by the regulated DOT instead of a private contractor, the DOT could be penalized by the NPDES permitting authority for non-compliance with its small MS4 permit in the event that controls are not properly implemented.

- **Post-Construction Runoff Control.** Require the implementation of post-construction storm water controls for any new construction on the grounds of a prison. This can be required as part of a construction contract, instituted as internal policy, and considered during site plan review.

- **Pollution Prevention/Good Housekeeping for Municipal Operations.** Train maintenance staff at a State university to employ pollution prevention techniques whenever possible. For example, routinely pick up trash/litter from the university grounds, use less salt on the parking lots and access roads in the winter, perform any maintenance of university vehicles under shelter only, limit pesticide use to the minimum needed, use vegetative buffer strips in the parking lots to filter runoff, and keep dumpster lids closed.

STRATEGY #2
Working with Other Entities

There may be instances when the Federal or State permittee has limited capabilities to satisfy one or more of the minimum control measures. As discussed above, the permittee may lack the proper legal authority to enforce controls (although it should try to obtain the necessary legal authority if at all possible).

In the case of limited capabilities, the permittee can work with neighboring operators of regulated small MS4s, preferably on a watershed basis, to form a shared storm water management program in which each permittee is responsible for activities that are within individual legal authorities and abilities. The final rule allows the permittee to rely on other entities, with their permission, to implement those minimum measures that the permittee is otherwise unable to implement. Three examples are:

- A State DOT with limited regulatory legal authority can reference a local sewer district's illicit detection and elimination program in its permit application, provided the program sufficiently addresses illicit discharges into the DOT's storm sewer system.
- The permittee or NPDES permitting authority can reference such programs as coastal nonpoint pollution control programs, State or local watershed programs, State or local construction programs, and environmental education efforts by public or private entities.
- The permittee can become a co-permittee with a neighboring Phase I MS4 through a modification of the Phase I MS4's individual permit. This may be the most logical and preferable option for those Federal and State entities located in close proximity to Phase I MS4s.

Choosing to work with other governmental entities as a co-permittee, or referencing parts of each other's plans, can help resolve issues that may arise where multiple regulated jurisdictions exist in the same area. Permittees can avoid duplicative efforts, as well as territorial or regulatory disputes, by working together to implement the storm water program. See Fact Sheet 2.9 for more information on permitting options for regulated small MS4s.

Suggested Steps for Working with Other Entities

(1) Identify the boundaries of the urbanized area (see Fact Sheet 2.2 for more information on urbanized areas)

(2) Identify the operators of storm sewer systems or portions of the systems within the urbanized area such as local, State, Tribal or Federal governments or other entities.

(3) In seeking permit coverage:

(A) Identify where another entity's program may satisfy one or more minimum control measure. If a program has requirements that are equivalent to a minimum control measure's required elements, the operator of the regulated small MS4 may reference the program in its permit application, provided the other entity gives it permission to do so. While such an arrangement relieves the operator from performing the minimum measure itself, the operator remains ultimately responsible for the measure's effective implementation (see Fact Sheet 2.9 for more information on this option)

OR

(B) Team with an operator of a Phase I MS4 and become a co-permittee on its existing Phase I individual permit (see Fact Sheet 2.9 for more information on this option)

For Additional Information

Contact

☞ U.S. EPA Office of Wastewater Management
- Phone: 202 260-5816
- E-mail: SW2@epa.gov
- Internet: www.epa.gov/owm/sw/phase2

Reference Documents

☞ Storm Water Phase II Final Rule Fact Sheet Series
- Internet: www.epa.gov/owm/sw/phase2

☞ Storm Water Phase II Final Rule (64 *FR* 68722)
- Internet: www.epa.gov/owm/sw/phase2
- Contact the U.S. EPA Water Resource Center
  - Phone: 202 260-7786
  - E-mail: center.water-resource@epa.gov

ATT # 6
4/8/03

Comments of Southern Environmental Law Center ("SELC")

Ansley Samson, SELC
April 8, 2003

I. North Carolina will benefit as a result of implementation of Phase II stormwater rules

- Contaminated surface runoff is the number one cause of impaired surface water quality in North Carolina.

- The North Carolina Division of Water Quality has determined that more than 2,000 stream miles have impaired water quality and that surface runoff from cities, construction sites, and other land uses accounts for nearly two-thirds of that pollution – with about half coming from urban runoff and construction. Polluted runoff also causes significant amounts of water pollution in estuaries and the ocean.

- Another devastating impact of poor storm water controls is that some neighborhoods flood during heavy rains because existing stormwater controls are not effective.

- DENR Secretary Bill Ross has determined that nonpoint source runoff is a major concern and has directed most agencies within DENR to conduct efforts to educate the public about the connection between polluted runoff and impaired streams.

- Prevention is the least cost method to handle stormwater. Builders throughout the country are designing developments that make a strong profit and prevent the degradation of streams. The Phase II rules are designed to lead North Carolina is this direction.

- The cost of retrofits to remediate flooding and to restore impaired waters is extremely high. A study conducted for the City of Wilmington determined the cost of remediating flooding after developments had been built on Page's Creek watershed was $7,500 per acre.

- The Town of Washington spent over $4 million to redirect stormwater from the downtown area away from the Pamilco River and onto a stormwater wetland. The Town of Emerald Isle is also spending about $5 million to pump out Coast Guard Road on to wetland, which floods due to overdevelopment during heavy rains.

- Protected uses of waters, such as shellfishing and recreational swimming, are being lost in violation of the federal Clean Water Act. Due to stormwater runoff, most shellfish beds from Cedar Island to the South Carolina line are closed regularly as a result of fecal coliform bacteria contamination after 1.5 or 2 inches of rain. Recreational swimming is also curtailed whenever stormwater is pumped into the ocean.

- Protecting water quality from surface runoff means protecting the uses of those waters – including drinking water uses and multi-million, even billion, dollar fishing uses.

II. The Phase II program is both federally required and consistent with state law.

- Federal law requires implementation, in two phases, of a comprehensive program for addressing stormwater discharges through mandatory National Pollution Elimination Discharge System (NPDES) permits.

- Phase II of that program addresses, among other things, stormwater pollution from smaller municipal separate storm sewer systems (MS4s). Federal rules require states choosing to implement the program to develop a permitting program that meets federal criteria. If the states do not implement the program, the federal government does.

- A variety of groups (including the National Association of Home Builders) challenged these "Phase II" rules. On January 14, 2003, a federal appellate court upheld the rules in almost all respects. The court did agree with conservation groups that certain aspects of the rule were not protective enough.

- In addition to the federal stormwater requirements, in the late 1980s, the General Assembly directed the EMC 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. . . . [and to] implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis." N.C. Gen. Stat. § 143-214.7(a)-(b).

- The General Assembly directed the EMC first to consider standards for classified shellfish waters, water supply watersheds, outstanding resource waters (ORWs), and high quality waters (HQWs). After developing standards for those specific waters, the EMC was to consider standards and best management practices to control runoff to "[a]ll other waters of the State to the extent that the [EMC] finds control of stormwater is needed to meet the purposes of Article 21 [the State law providing for the protection of air and water resources]." N.C. Gen. Stat. § 143-214.7(b).

III. We recommend strengthening North Carolina's Phase II rules to protect state waters.

- The rules should include science-based best management practices that will protect water quality. For example, especially where urban runoff is draining to shellfishing waters, science does not support the conclusion that development with less than 24 percent built upon area addresses water quality problems related to urban runoff. Scientific studies suggest that waters are impaired where built upon area (impervious surface) within a watershed is 10 percent or higher.

- The rules should ensure seamless coverage so that potential gaps in coverage are eliminated. Moreover, counties and municipalities should have similar criteria for stormwater management programs.

- The final rules should be written so that they can be carried out effectively taking into account staff constraints within the Division of Water Quality.

A# # 7
4/8/03

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The Honorable Pryor A. Gibson, III
Chair, House Environment Committee
North Carolina House of Representatives
419 A Legislative Office Building
Raleigh, NC 27601-1096

Dear Representative Gibson,

On behalf of the 15 thousand plus member firms of the North Carolina Home Builders Association (NCHBA), I offer the following comments regarding DENR's implementation of the NPDES Phase II stormwater program.

The state's NPDES Phase II stormwater program should not exceed the requirements in the federal rule because,

It is not justified

According to the state's own data, water quality is better today than in past years. A significant expansion beyond what is mandated under the federal rules is not warranted. Nor is a "one-size fits all" approach to addressing the Phase II mandate. While localized water quality problems do need to be addressed, it is ludicrous to slap down one prescription for small, large, rural and urban cities and counties. We are unequivocally opposed to the use of the federal program as pseudo enabling legislation for a statewide stormwater program. According to US EPA, the federal program does not apply to counties in North Carolina, except for the specific area where that county owns or operates a stormwater facility. Previous efforts by the Department to implement a statewide stormwater program, including the 2000 Stormwater Management Stakeholder Initiative (SMSI), have failed and the Department has never shown that a statewide stormwater program is necessary or feasible.

The state is exceeding their authority

The only authority the state has to limit development density is under specific authority given by the General Assembly in the Water Supply Watershed Protection Act. The EMC lacks the statutory authority to limit development density outside of water supply watersheds for the purpose of managing stormwater runoff. In addition, mandating low-density development could have serious adverse economic and environmental consequences such as accelerated urban sprawl; high infrastructure costs; exclusion of low- and middle-income families; greater commuting distances; more air pollution and less open space and wildlife habitat.

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The low-density requirements proposed in the permanent rule (regardless of the value chosen by the EMC) are not scientifically justified for statewide application.

The requirements are arbitrary

The 30-foot buffer requirement is arbitrary. Even if water quality indicators point to urban sources of impairment, those indicators are not delineated specifically by urban source. There is no scientific basis for a statewide 30-foot buffer requirement. Further, the requirement for use of soil survey maps in determining surface waters is wrong. Soil survey maps were never intended to delineate streams, only drainage for use in agricultural applications. Stream buffers can be effective for pollutant removal, but should be one of many tools offered to local governments to use in meeting the Phase II requirements.

The rules are unnecessarily burdensome

Requirements for removal of fecal coliform in coastal areas and for nutrient removal in other areas are burdensome and unjustified. The rules require selection of the best practice for reducing fecal coliform or nutrients without consideration of the contribution of existing sources or upstream agricultural activities, or without a cost/benefit analysis of pollutant removal and overall water quality benefit. Prohibition of direct points of discharge or of expansions to existing discharges on the coast will prevent existing projects from being completed.

The Department abused temporary rules

Even though the federal rule was finalized in 1999, the Department intended to use temporary rules and, to that end, appears to have deliberately delayed rulemaking to implement NPDES Phase II. The use of temporary rules allowed the EMC to avoid scrutiny by the Rules Review Commission and, at least initially, by the Legislature. To their credit, the EMC did conduct a series of public hearings for the temporary rules. However, following the close of the public comment period and without any notice, the EMC added a requirement, without any justification, to expedite the implementation of the post-construction requirements by two years. By contrast, the federal rule allows five years for regulated entities to implement their entire program. Clearly, the intent of the federal rule is to tailor each program specifically to the conditions at the local level. The EMC is acting arbitrarily in requiring that post-construction requirements be implemented prior to the public education or any other component of the program.

NCHBA participated in the NPDES Phase II stakeholder group, sent representatives to public hearings and commented extensively throughout the rulemaking process. We understand the need to meet the federal deadlines and offered constructive suggestions on how that could be accomplished. Our members understand the need to protect water quality and will do what is reasonably

necessary to prevent degradation. The rules proposed by the EMC and the temporary rulemaking process followed are arbitrary, unjustified and unreasonable.

Thank you for the opportunity to present our position. If you have questions, or if we can assist you in any way, please do not hesitate to contact Paul Wilms (pwilms@nchba.org), Tim Minton (tminton@nchba.org) or me (lmartin@nchba.org). You may reach us by phone at 919-676-9090.

Sincerely,

Lisa D. Martin, AICP
Director of Regulatory Affairs

CC Members, House Environment Committee

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources , 2003

Name of Committee Date

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House Committee on Environment & Natural Resources **, 2003**

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ROBERT INGRAHAM (1995)
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DANNY ADAMS (2000)
JONATHAN ELLIOT (2001)
DON CROOM (2002)

The low-density requirements proposed in the permanent rule (regardless of the value chosen by the EMC) are not scientifically justified for statewide application.

The requirements are arbitrary

The 30-foot buffer requirement is arbitrary. Even if water quality indicators point to urban sources of impairment, those indicators are not delineated specifically by urban source. There is no scientific basis for a statewide 30-foot buffer requirement. Further, the requirement for use of soil survey maps in determining surface waters is wrong. Soil survey maps were never intended to delineate streams, only drainage for use in agricultural applications. Stream buffers can be effective for pollutant removal, but should be one of many tools offered to local governments to use in meeting the Phase II requirements.

The rules are unnecessarily burdensome

Requirements for removal of fecal coliform in coastal areas and for nutrient removal in other areas are burdensome and unjustified. The rules require selection of the best practice for reducing fecal coliform or nutrients without consideration of the contribution of existing sources or upstream agricultural activities, or without a cost/benefit analysis of pollutant removal and overall water quality benefit. Prohibition of direct points of discharge or of expansions to existing discharges on the coast will prevent existing projects from being completed.

The Department abused temporary rules

Even though the federal rule was finalized in 1999, the Department intended to use temporary rules and, to that end, appears to have deliberately delayed rulemaking to implement NPDES Phase II. The use of temporary rules allowed the EMC to avoid scrutiny by the Rules Review Commission and, at least initially, by the Legislature. To their credit, the EMC did conduct a series of public hearings for the temporary rules. However, following the close of the public comment period and without any notice, the EMC added a requirement, without any justification, to expedite the implementation of the post-construction requirements by two years. By contrast, the federal rule allows five years for regulated entities to implement their entire program. Clearly, the intent of the federal rule is to tailor each program specifically to the conditions at the local level. The EMC is acting arbitrarily in requiring that post-construction requirements be implemented prior to the public education or any other component of the program.

NCHBA participated in the NPDES Phase II stakeholder group, sent representatives to public hearings and commented extensively throughout the rulemaking process. We understand the need to meet the federal deadlines and offered constructive suggestions on how that could be accomplished. Our members understand the need to protect water quality and will do what is reasonably

necessary to prevent degradation. The rules proposed by the EMC and the temporary rulemaking process followed are arbitrary, unjustified and unreasonable.

Thank you for the opportunity to present our position. If you have questions, or if we can assist you in any way, please do not hesitate to contact Paul Wilms (pwilms@nchba.org), Tim Minton (tminton@nchba.org) or me (lmartin@nchba.org). You may reach us by phone at 919-676-9090.

Sincerely,

Lisa D. Martin, AICP
Director of Regulatory Affairs

CC Members, House Environment Committee

NORTH CAROLINA HOME BUILDERS ASSOCIATION
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PHONE (919) 676-9090 • TOLL FREE 1-800-662-7129 • FAX (919) 676-0402
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17 April 2003

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MIKE CARPENTER

The Honorable Pryor A. Gibson, III
Chair, House Environment Committee
North Carolina House of Representatives
419 A Legislative Office Building
Raleigh, NC 27601-1096

Dear Representative Gibson,

In response to your request at the April 8, 2003 meeting of the House Environment Committee, enclosed is a brief question and answer paper submitted on behalf of the North Carolina Home Builders Association (NCHBA).

As we have stated previously, NCHBA understands the need to meet the federal NPDES stormwater program deadlines and, over the past two years, offered constructive suggestions on how that could be accomplished. Our members understand the need to protect water quality and will do what is reasonably necessary to prevent degradation. We will not; however, support the EMC's attempt to use the federal program to create an unauthorized statewide stormwater program.

In the presentations by the League of Municipalities, Association of County Commissioners and NCHBA you may have noted several similarities in our positions. We do not support the EMC's use of a statewide buffer requirement, we do not support the state's expedited deadline for implementation of the post-construction requirements and we believe that decisions on appropriate densities and built-upon area are local government decision and should not be prescribed by the EMC.

Thank you for the opportunity to address the House Environment Committee with this very important issue. If you have questions or if I may be of assistance, please do not hesitate to contact me.

Sincerely,

Lisa D. Martin, AICP
Director of Regulatory Affairs

PAST PRESIDENTS

EUGENE A. GULLEDGE (1964)
C. PHIL ROBINSON JR. (1966)
CARL W. JOHNSON (1967)
JOHN CROSLAND, JR. (1968)
J. M. DAUGHTRIDGE (1969)
HOMER BARRETT (1970)
JAMES W. LESTER (1971)
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J. VAUGHN KLUTTS (1973)
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ROBERT YATKO (1999)
DANNY ADAMS (2000)
JONATHAN ELLIOT (2001)
DON CROOM (2002)

1. Are stream buffers required in the federal rule?

No! The federal rule acknowledges that stream buffers are one tool that may be used by MS4s (not the state permitting agency) to meet the post-construction minimum requirements. NCHBA (and the League of Municipalities and Association of County Commissioners) are opposed to a mandatory statewide 30-foot buffer requirement. Stream buffers can be an effective tool to prevent water quality degradation. It is arbitrary for the EMC to create a standard that applies from the mountains to the coast without any qualification regarding water quality impairment. As shown by the numerous variance requests for the Neuse Buffer Rule processed by DENR, a one-size-fits-all standard does not work. Land use decisions such as buffer requirements are the not within the authority of the EMC and should be left to local governments based upon the topography, soils and water quality parameters within local jurisdictions.

2. Are density limits and limits on built-upon area required in the federal rule?

No! Again, like buffers, the federal rule suggests that built-upon area limits are one tool that may be used by MS4s (not the state permitting agency) to meet the post-construction minimum requirements. The only authority the EMC has to limit development density is under specific authority given by the General Assembly in the Water Supply Watershed Protection Act. The EMC lacks the statutory authority to limit development density outside of water supply watersheds for the purpose of managing stormwater runoff.

3. Should the federal deadlines be expedited?

No! NCHBA, the League of Municipalities and Association of County Commissioners all ask that the federal deadlines be implemented as stated in the federal rule. The federal rule gives MS4s five years to implement all six minimum measures. We are not asking for a delay in the rules, only for the opportunity to educate and involve elected officials and the public prior to requiring implementation of the post-construction requirements. The post-construction requirements will be the most difficult measures to implement on the local level and the most costly for both individual citizens and local governments. Implementation will require training for Realtors and other professionals regarding disclosure to prospective homeowners on their financial responsibility for stormwater devices. It will require local governments to hire and train staff to inspect devices and to work with homeowners associations in maintaining the devices. If the post-construction requirements remain as proposed, it will require local governments to scrap plans for compact, pedestrian friendly, mixed use (e.g. high density development) in favor of low-density, large lot development if they can not fund the additional staff positions and training. The EMC's proposed 2-year implementation deadline (as opposed to the federal 5-year deadline) for post–construction was never proposed during the temporary rule public information process– the affected local governments were denied the opportunity to inform the EMC as to the hardship of expediting this deadline. NCHBA requests that the federal deadline be restored for post-construction implementation.

North Carolina General Assembly
Legislative Services Office

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

APR 0 8 2003

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MEMORANDUM

15 April 2003

To: Members of the House Committee on Environment and Natural Resources
From: George Givens, Committee Counsel
Tim Dodge, Research Assistant for Environmental Issues
Re: Question and Answer Documents on Phase II Stormwater

At the 8 April 2003 meeting of the House Committee on Environment and Natural Resources, Representative Gibson requested that the presenters and other interested parties provide written "Question and Answer" documents regarding the Phase II NPDES Stormwater Program. The questions were to be those that the preparer anticipates that a legislator might ask and may be regarded as reflecting information that the preparer believes legislators should know. The answers are also provided by the preparer. Attached to this memorandum are copies of the "Question and Answer" documents and other information received to date:

1. *Schedule of public hearings for the NPDES Phase II Stormwater permanent rule-making process.* Submitted by Bradley Bennett, Supervisor, Stormwater and General Permits Unit, Water Quality Section, Division of Water Quality, Department of Environment and Natural Resources.

2. *NPDES Phase II Implementation Q and A document for the North Carolina House Environment Committee.* Submitted by Bradley Bennett, Supervisor, Stormwater and General Permits Unit, Water Quality Section, Division of Water Quality, Department of Environment and Natural Resources.

3. *Question and answer document on the Role of the North Carolina Department of Transportation in the Phase I and Phase II Stormwater Program.* Submitted by Roger E. Sheats, Jr., Deputy Secretary for Environment, Planning, & Local Government Affairs, Department of Transportation.

4. *Question and Answers Regarding April 8, 2003, Stormwater Presentations.* Submitted by S. Ansley Samson, Project Attorney, Southern Environmental Law Center.

5. *Stormwater Questions and Answers.* Submitted by Edmund P. Regan, Deputy Director, North Carolina Association of County Commissioners.

Please contact George Givens, Jeff Hudson, Jennifer McGinnis, or Tim Dodge if you have any additional questions or comments.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Back

North Carolina Department of Environment and Natural Resources

STORMWATER AND GENERAL PERMITS UNIT

Division of Water Quality

NPDES PHASE II STORMWATER PROGRAM

You'll need Adobe Acrobat Reader to view the documents denoted (pdf).

Get Acrobat Reader

North Carolina's NPDES Phase II Stormwater permanent rule-making process

UPDATE: 02/13/2003

At their February 13, 2003 meeting, the Environmental Management Commission gave their approval for the Division of Water Quality to move forward to public notice and public hearings with draft permanent rule language for implementing the NPDES Phase II Stormwater program in North Carolina. The proposed rule text is scheduled to be published in the *North Carolina Register* on March 17, 2003. Public hearings will be held across the state in the month of April. The locations are posted in the links below. The public comment period is scheduled to close on May 16, 2003. Comments may be submitted by e-mail to stormwater@ncmail.net or by regular mail. The address is Stormwater and General Permits Unit, Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

Links to information on North Carolina's NPDES Phase II Stormwater permanent rule-making process

DRAFT permanent rule language:

15A NCAC 2H .0126 (pdf) 15A NCAC 2H .1014 (pdf)

Fiscal Note (pdf)

Public Hearing Schedule

Date	04/01/03	04/07/03	04/17/03	04/22/03	04/28/03
Time	7 PM	7 PM	7 PM	7 PM	7 PM
City	Smithfield	Wilmington	Asheville	Kernersville	Washington
Location (links exit this site)	Johnston County Community College	New Hanover County Northeast Regional Library Map (MS Word)	Asheville - Buncombe Community College, Simpson Bldg.	Municipal Building	Washington Civic Center

If you have comments or suggestions, contact Darren England

Page last updated February 24, 2003

NPDES Phase II implementation Q and A document for the North Carolina House Environment Committee

- **Why do the rules target urbanizing areas?**

The types of activities, intensity of development and amount of built-upon surfaces in an urbanizing area have a direct impact on water quality. Built-upon surfaces (pavement, rooftops, etc.) prevent precipitation from naturally infiltrating into the soil and therefore increase the amount of precipitation that becomes stormwater runoff. In addition, the change in activities associated with developed and developing areas also generate increased levels of various types of pollutants. These activities include landscape maintenance, vehicle and industrial emissions, walking pets, etc. Pollutants from these activities are deposited on land surfaces where stormwater flows can easily pick them up and transport them to receiving waters. In addition, land disturbing activities associated with construction can cause significant pollutant loading to receiving streams.

Urbanization is a fundamental principle used by the Federal Government in developing the Phase II requirements, as is evidenced by the automatic designation of Urbanized Areas and extensive discussion in the preamble to the federal rules. In urban and urbanizing areas, the affects of increased built-upon area and concentrated human activities result in an environment where significant stormwater pollutant sources may exist. It has been shown that urban development and the subsequent stormwater runoff from these areas represent a major cumulative source of pollution to surface waters.

- **How do communities become subject to NPDES Phase II?**

A small Municipal Storm Sewer System (MS4) becomes part of the Phase II program in one of three ways; Automatic federal rule designation, State designation, or Petitioning.

- ***Automatic federal designation*** into the program applies to areas defined as an Urbanized Area by the U.S. Census Bureau. The definition of an Urbanized Area is complex, but in general terms it is any local government or group of local governments that combined have a population of 50,000 and a density of 1,000 people per square mile. Based on the 2000 census data, there are 17 Urbanized Areas in North Carolina. These areas include 123 cities and 33 counties for automatic designation.

- ***State designation:*** The federal regulations require North Carolina to develop designation criteria. The criteria is used to screen communities outside of Urbanized Areas to determine if they will be subject to Phase II. Under the federal regulations, the state's designation criteria must be applied, at a minimum, to any unit of government that has a population of 10,000 or more and a density of 1,000 people per square mile. Based on the 2000 census data, the state has at least 22 cities that must be screened through designation criteria.

- ***Petitioning:*** This is the third mechanism for inclusion of small MS4s into the Phase II program. Under this option, anyone can petition DWQ to cover a local government under a Phase II permit if there are significant water quality concerns associated with that community. Affected communities are notified when a petition is received. The EMC's draft rules establish criteria to be used to evaluate whether the community should be in the program.

- **What are the State designation criteria under the rules?**

The rules include a set of criteria for identifying communities for possible inclusion in the program and another set to evaluate those communities that have been identified. The "identification" criteria are total population (>10,000 for municipalities/ >45,000 for counties) and location based. The "evaluation" criteria are tied to discharges to sensitive waters, impaired waters, and population growth. The specific details of the designation process can be found in the rule language at sub-item 15A NCAC 2H .0126(2)(b).

- **What are the application deadlines under the state rules?**

Communities designated based on the 1990 US census were required to file permit applications or certifications of MS4 non-ownership / non-operation by March 10, 2003. The application / certification submittal deadline for communities designated based on the 2000 US census is May 6, 2004.

- **When will a community know it will be regulated?**

DWQ sent written notification to all automatically designated communities in November of 2002. DWQ solicited contact information from the NCLM and NCACC. For municipalities, the notifications were sent to the mayor or city/town manager. For counties, the letters were sent to the chairman of the Board of Commissioners or the county manager. The Division will also notify any future designees (by federal, state, or petitioning) in writing. These designees will have 18 months from notification to submit a permit application package.

- **Why are county governments being included in the program, if for the most part, they do not own and operate the municipal storm sewer system in the unincorporated areas of the county?**

North Carolina is one of the few states that has roadway systems owned and operated entirely by the state Department of Transportation. The federal rules were set up to address the typical situation where counties own and operate the roadway systems, not the DOT. This is a key issue in areas where the storm sewer systems consist of drainage systems located within the roadway right-of-way.

As with municipalities, the counties have authorities, including zoning and development ordinances, which apply to areas draining to waters of the State and NCDOT right-of-ways. These authorities are key components of the Federal NPDES Phase II program, which requires local authorities to implement construction and post-construction controls for development activities and to implement illicit discharge detection and elimination strategies. These controls must be applied outside of the NCDOT right-of-way. Therefore, counties should be part of the program based upon their jurisdictional land use authorities.

It should also be noted that the EMC desires to provide a consistent and equitable program across urban and developing areas. The participation of county governments in the program is an essential element in providing both a consistent and equitable stormwater management program.

- **How can an automatically designated community be removed from the program?**

The NPDES rules do include waiver options for systems served by less than 10,000 people. The requirements for waiver differ somewhat depending on size (less than 1,000 and less than 1000). In general, the waivers require that the entity show that they are not contributing substantially to pollutant loading. The entity also may have to show that other approved programs are in place to address pollutants of concern.

- **What are the minimum federal mandates?**

NPDES permits and comprehensive stormwater programs are required for all owners and operators of storm sewer systems in census designated urbanized areas. The federal regulations also require that entities outside of the urbanized areas be reviewed for potential designation into the program. At a minimum, these reviews must take place for entities with a population over 10,000. The federal regulations also establish minimum control measures for stormwater management programs, including: public education and outreach, public participation/involvement, illicit discharge detection and elimination, construction site runoff control, post-construction stormwater control and pollution prevention/ good housekeeping.

- **Can existing programs (federal, state and local) be used to meet the Phase II requirements?**

Yes, the federal regulations and state rules both provide the option of and encourage the use of existing programs to meet, in whole or in part, the various program requirements. Examples of programs that can be used include State or local Sedimentation and Erosion Control programs, the State polluted runoff education program that is currently being developed by NC DENR, and the existing NPDES Construction Activities general permit. In addition, existing local stormwater programs may be used or modified to meet the requirements.

- **What are the Post-Construction Stormwater Control Requirements?**

  - ❖ Rules apply to all new development and redevelopment disturbing one acre or more of land.
  - ❖ Stormwater controls must be designed to have an 85% annual average removal of Total Suspended Solids (TSS)

- ❖ Controls must be designed to control and treat the difference in stormwater runoff volume (pre verses post construction) for the 1 year 24 hour storm.
- ❖ Owners of structural stormwater measures must provide adequate long-term operation and maintenance of the measures.
- ❖ Built-upon area must be 30 foot landward of surface waters
- ❖ For projects draining to sensitive waters, measures selected must be those appropriate for the pollutant of concern - fecal coliform for shellfishing waters, temperature for trout waters and nitrogen and phosphorous for nutrient sensitive waters.

- **Do the rules include maximum limits on impervious surface?**

No, the EMC rules do not include a maximum limit on the amount of impervious surface that can be constructed. The rules do include a threshold for impervious surface below which stormwater management structures are not required. If that threshold is to be exceeded on a particular project, stormwater management practices are required for that project. The current temporary rule language sets that threshold at 24% impervious surface. The EMC is requesting public comment on setting that threshold within the 12% to 24% range in the permanent rule.

- **15A NCAC 2H.0126(10)(g) requires control of sources of fecal coliform. Why and what is envisioned by the language "coordinated with the local county health department?"**

Fecal coliform bacteria is of significant concern in shellfishing waters and swimming waters as it is a indication of potential human health problems. The requirement is to have a program to control the sources of fecal coliform to the maximum extent practical. The intent is to have the local community to take a more active role in dealing with this issue. One possible major source is failing or improperly maintained on-site waste water treatment systems. To combat this problem, the owners need to be informed on how to operate and maintain their systems, where to report failing systems, how to deal with failing systems when they're not the owner, local government employees need to be trained to spot failing systems and how/who to report them to, etc. This program can, and should be integrated with the "Public education" measure and The "Illicit discharge detection and elimination" measure. The language about coordination with the "local county health department" is to ensure that the local community and LCHD have a working relationship and that they are not duplicating efforts.

- **15A NCAC 2H.0126(h)(i)(A) requires the implementation of a pet waste management program. What does this mean? Can this be achieved through the amendment of a litter ordinance and incorporating pet waste management into the education program?**

The rule language clearly states that revision of an existing litter ordinance can be used to meet this requirement. A revision of this type, in conjunction with a component in the education program would meet this requirement.

- **Will permitted communities be required to use a high density / low density approach to meet the requirements of the post-construction minimum measure?**

No, that option is available if they choose to use that approach, but the rule language states that public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the post construction requirements of the Rule.

- **What are the differences in the temporary and permanent rules?**

The major change was the establishment of a state stormwater permitting program for entities, like counties, that are designated but do not own or operate a stormwater sewer system. There were also a few areas of clarification added to the permanent rules. This was accomplished by refining some definitions and adding definitions. In addition, language was added to give local programs the authority to grant exceptions with respect to some requirements related to the post-construction minimum measure.

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

LYNDO TIPPETT
SECRETARY

April 9, 2003

The Honorable Pryor A. Gibson, III
N. C. House of Representatives
419A Legislative Office Building
Raleigh, NC 27603-5925

RE: Request for information on Phase I and Phase II NPDES Stormwater Program

Dear Representative Gibson:

As requested at the April 8 meeting of the House Committee on the Environment & Natural Resources, enclosed is a brief "question & answer" document prepared by the North Carolina Department of Transportation (NCDOT) staff regarding the Phase I and Phase II NPDES stormwater program and the NCDOT's role in that program. The NCDOT is currently regulated by a Phase I NPDES stormwater permit that is scheduled for renegotiation and renewal this summer. The Department believes that the North Carolina Department of Environment & Natural Resources can achieve their stormwater regulation goals for the road drainage systems throughout the State through NCDOT's Phase I permit. Please feel free to contact the Department if you have any questions or concerns about NCDOT's stormwater program.

Sincerely,

Roger E. Sheats, Jr.
Deputy Secretary for Environment,
Planning, & Local Governmental Affairs

RESjr:lg

Enclosure

c: George Givens, Committee Counsel
Lisa Glover, NCAGO
Matt Lauffer, NCDOT

Questions and Answers
On NCDOT's Role in the Phase I and Phase II NPDES Stormwater Program

April 9, 2003

Prepared For: The North Carolina General Assembly
House Committee on the Environment & Natural Resources
Rep. Pryor A. Gibson, III, Chair

NCDOT Staff Contact:
Matt S. Lauffer, P.E.
Project Engineer - Stormwater
(919) 250-4100

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1. Is NCDOT regulated by the NPDES stormwater program?

Yes. NCDOT owns and operates the storm sewer systems associated with road drainage on all state-maintained roads. In 1998, NCDENR issued stormwater permit to NCDOT pursuant to Phase I of the NPDES stormwater rules. NCDOT's Phase I permit applies to general roadway drainage throughout the State on NCDOT owned right-of-way, as well as to NCDOT construction activities disturbing more than one acre; NCDOT industrial activities; and borrow pits and waste piles associated with road construction.

2. Is NCDOT regulated under Phase II of the NPDES stormwater program?

No. The Phase II regulations apply only to owners or operators of small municipal separate storm sewer systems (MS4s) and do not apply to any entity that has a Phase I permit. *See* 40 C.F.R. §§ 122.26(a)(1)(v); 122.26(a)(9)(i)(A). As a holder of a Phase I permit and operator of a statewide, interconnected MS4, NCDOT is not a small MS4 and is not regulated under Phase II.

3. Is NCDOT regulated under NCDENR's proposed rule which would adopt a state stormwater program for urbanized areas not covered by the Phase II program?

No. The EMC has proposed two new permanent stormwater rules. The first rule would implement the federal Phase II program which, as stated above, does not apply to NCDOT

because NCDOT is not a small MS4 and is a Phase I permitted entity. The second rule would create a state stormwater program to regulate the urbanized areas of counties that are not subject to the Phase II rules because they do not own or operate MS4s. The purpose of the state stormwater program rules is to provide complete coverage in urbanizing areas, regardless of whether they are located in a municipality or county.

NCDOT is already providing complete coverage statewide, not just in urbanizing areas, for the road drainage system on NCDOT right-of-way, pursuant to its Phase I permit. Any additional requirements that NCDOT may need to impose to strengthen its stormwater control program should be implemented through the Phase I permit renewal process.

4. What has NCDOT accomplished during the current permit term?

NCDOT's current Phase I permit contained three primary coverage areas: (1) roadway drainage and NCDOT construction activities; (2) NCDOT industrial activities (*i.e.*, facility maintenance yards); and (3) borrow pits and waste piles associated with road construction. Among the most notable accomplishments of the first permit term are the following:

- NCDOT has identified over 4,500 sensitive water crossings on primary highways and 504 industrial outfalls and made them available in GIS. NCDOT uses this data to develop potential sites for retrofits.
- NCDOT will construct over 28 Best Management Practices (BMPs) retrofits by the end of the permit term. NCDOT is the only Phase I entity required to add retrofits to its existing stormwater system. Each BMP retrofit is designed to remove pollutants from NCDOT facilities that are most likely to impact water quality in the receiving stream. For example, each retrofit will remove 85% of total suspended solids.
- NCDOT has completed Stormwater Pollution Prevention Plans for all 184 Industrial Facilities across the state and implemented an interactive management program to maintain compliance.
- NCDOT is developing a draft BMP toolbox for roadways, ferry terminals, and maintenance facilities.
- NCDOT regularly inspects its drainage system for illicit connections and illegal dumping.
- The NCDOT Hydraulics Unit and Office of Beautification have developed an educational and public participation program to promote stormwater quality awareness. NCDOT has educated the 83,000 volunteers that participate in the Adopt-A-Highway program on identifying potential stormwater pollution.
- NCDOT participates in the "Merger 01" process with numerous environmental permitting agencies, including NCDENR, to address planning issues associated with reducing roadway impacts of new projects. Some of the issues considered during the Merger 01 process include minimizing the size of the project to reduce costs and impacts; using grass swales for roadway drainage when practical; and locating the project to minimize impacts to environmentally sensitive areas when possible.

In addition, NCDOT complies with all applicable buffer or other water-quality protection rules, administers a sedimentation and erosion control program for all NCDOT activities disturbing greater than one acre, and must obtain individual state stormwater permits for certain projects. NCDOT estimates that implementation of the first permit term resulted in charges of approximately $14,214,000.

5. When does NCDOT's current permit expire?

NCDOT's current Phase I permit expires on May 31, 2003. NCDOT submitted an application for a new permit on November 26, 2002, together with proposed permit conditions. NCDENR staff are currently reviewing that application. If a new permit is not issued prior to May 31, 2003, NCDOT may continue operating under the old permit, or may choose to implement the new provisions of the proposed permit.

6. What are the differences between the current permit and NCDOT's proposed permit?

The new permit proposed by NCDOT would strengthen stormwater runoff protection in numerous ways. Among the most important additions to the permit are post-construction runoff control measures. The proposed post-construction stormwater management program includes existing first term program elements such as BMP retrofits and industrial facility certifications. In addition, NCDOT is proposing to develop a post-construction stormwater management program to control runoff from new NCDOT development and redevelopment. NCDOT will develop a BMP design manual for approval by DWQ that will provide internal guidance on design of structural post-construction runoff control measures. NCDOT will then define implementation of the DWQ-approved NCDOT BMP design manual (*i.e.*, what types of BMPs should be implemented on new road projects) and provide specific nutrient management measures for areas draining to nutrient sensitive waters in the Neuse and Tar-Pamlico rivers basins.

7. Will NCDOT implement the "six minimum measures" of the Phase II program?

Yes. The Phase II program requires that regulated entities implement "six minimum measures:" (1) public education and outreach; (2) public involvement and participation; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management for new development and redevelopment; and (6) pollution prevention and good housekeeping for municipal operations. NCDOT is currently implementing five of the six minimum measures under the existing Phase I permit. Post-construction runoff controls will be addressed during the permit application renewal as identified above.

8. Can NCDOT implement the post-construction requirements as contained in NCDENR's draft permanent rules?

No. NCDENR's draft permanent rules require permit holders to regulate all new private development and redevelopment projects (that cumulatively disturb one acre or more) through a local permitting process. The rules require that new private development abide by density or impervious surface limitations or install structural stormwater treatment systems. NCDOT does not have statutory authority to impose development restrictions on private development outside of NCDOT right-of-way, and thus could not implement the post-construction requirements contained in the draft permanent rules; only municipalities and counties have that authority. NCDOT may, of course, implement a post-construction stormwater management program for all NCDOT projects, and has proposed to do so in its renewed Phase I NPDES permit as explained above.

Question and Answers Regarding April 8, 2003, Stormwater Presentations For the House Environment and Natural Resources Committee By: the Southern Environmental Law Center

Question: What is the current status of the Phase II rules?

Answer: They are a work in progress. The EMC has approved temporary Phase II rules to comply with federal Clean Water Act requirements. Proposed permanent Phase II rules are currently undergoing review and comment as part of the public hearing process and will likely change as a result of that process.

Question: Is the proposed Phase II stormwater program needed?

Answer: Yes. First, the program is required as a matter of federal law. If the state does not implement a program, the federal government will have to do so. Second, controlling stormwater pollution is needed to protect water quality. Contaminated surface runoff is the number one cause of impaired surface water quality in North Carolina. The North Carolina Division of Water Quality determined in a 2000 report that more than 2000 stream miles have impaired water quality. Data suggest that surface runoff from cities, construction sites, and other land uses accounts for nearly two-thirds of that pollution – with about half coming from urban runoff and construction. More recent data show 3,500 impaired stream miles in North Carolina. In addition, specific stormwater-related problems exist for coastal and other sensitive waters. For example, fecal coliform pollution caused by stormwater runoff results in shellfishing waters up and down the coast being closed after 1.5 to 2 inches of rain. Poor water quality is not the only problem stormwater causes: another devastating impact of poor stormwater controls is that some neighborhoods flood during heavy rains because existing stormwater controls are not effective.

Question: Is the proposed Phase II stormwater program too expensive?

Answer: No. It will not be cheap to design and implement an effective stormwater program as required by the federal Phase II program, which is designed to promote building stormwater solutions into new development in small urban and rapidly urbanizing areas as it occurs. However, it would be more expensive to attempt to solve after-the-fact the stormwater problems – both water quality and flooding problems – that uncontrolled development causes.

Preventing stormwater pollution from occurring makes economic as well as environmental sense. The cost of retrofits to remediate flooding and to restore impaired waters is extremely high. A study conducted for the City of Wilmington determined the cost of remediating flooding after developments had been built on Page's Creek watershed was $7,500 per acre. The Town of Washington spent over $4 million to redirect stormwater from the downtown area away from the Pamilco River and onto a stormwater wetland. The Town of Emerald Isle is also spending about $5 million to pump out Coast Guard Road onto wetland, which floods due to overdevelopment during heavy rains. The state spent $300,000 simply to stop a 1,300 foot portion of a stream from eroding in a Raleigh neighborhood.

It would also be expensive to ignore the stormwater problems that uncontrolled development causes. Protected (and economically valuable) uses of waters, such as shellfishing and recreational swimming, have been and are being lost in violation of the federal Clean Water Act. For example, due to stormwater runoff, most shellfish beds from Cedar Island to the South Carolina line are closed regularly as a result of fecal coliform bacteria contamination after 1.5 or 2 inches of rain. Recreational swimming is also curtailed whenever stormwater is pumped into the ocean. If stormwater pollution is not controlled, it will place at risk the uses of drinking water and fishing waters (which support significant commercial and recreational fishing industries in North Carolina).

Question: Did EPA intend to regulate counties?

Answer: Yes. Some have suggested (in part based on a 2002 letter from EPA) that EPA did not intend to regulate counties in the Phase II program. In fact, the federal government *did* intend to regulate counties with the Phase II program and EPA has not suggested to the contrary. EPA's 2002 letter does not determine whether all North Carolina counties are or are not covered by the federal program; it merely acknowledges that North Carolina is confronted with a unique problem of potential coverage gaps due to the state DOT's ownership and operation of roads and the associated drainage located in the unincorporated areas of counties. Moreover, in that letter, EPA made it clear that even if counties are not explicitly covered by the Phase II rules, states may designate counties for coverage as stormwater dischargers and may expand program coverage under state law.

We agree that North Carolina is confronted with a unique problem of potential coverage gaps. Counties have claimed that because DOT owns and operates the county road systems and associated ditches, they do not "own" or "operate" MS4s within their jurisdictional areas and thus should not be required to apply for and obtain Phase II permits. The temporary Phase II rules allow gaps in coverage to develop where a local government with the authority to control local stormwater pollution in a designated stormwater problem area is not required to apply for a permit. The proposed permanent rules would close these gaps. We contend that the approach taken in the proposed permanent rules is not only a sensible one, it is the one required by federal law and appropriate as a matter of state law. If counties are omitted from the Phase II program, water quality will not be protected and cities will be forced to bear an inequitable share of the burden of protecting state waters.

Question: Does the proposed state stormwater program for counties violate the separation of powers clause in the North Carolina Constitution?

Answer: No. The suggestion is that the rules pose a separation of powers problem because an appointed administrative body (the EMC) may require an elected legislative body to enact certain laws over which it holds a veto. First, the North Carolina Constitution says simply that the legislative, executive and judicial powers of the *state* government are to remain separate. Here, the legislature has delegated (lawfully) to the EMC extensive authority to manage the state's stormwater problems. In the late 1980s,

the General Assembly directed the EMC 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. . . . [and to] implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis." N.C. Gen. Stat. § 143-214.7(a)-(b). First, the EMC was to consider standards for classified shellfish waters, water supply watersheds, outstanding resource waters (ORWs), and high quality waters (HQWs). After developing standards for those specific waters, the EMC was to consider standards and best management practices to control runoff to "[a]ll other waters of the State to the extent that the [EMC] finds control of stormwater is needed to meet the purposes of [Article 21, the State law providing for the protection of air and water resources]." N.C. Gen. Stat. § 143-214.7(b)(5). The stormwater law specifically envisions the EMC reviewing ordinances proposed by local governments and determining whether those ordinances conformed with minimum standards, saying: the EMC "shall review each stormwater management program submitted by a . . . unit of local government and shall notify the . . . unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved." N.C. Gen. Stat. § 143-214.7(d).

In the proposed stormwater rules, the EMC is acting within this express authority granted by the legislature: the proposed rules fit squarely within the design the General Assembly has set forth. This is especially true given the standards that courts have set forth for evaluating the authority of an agency like the EMC (as opposed to a county) to take action: courts do so based on the language of the laws authorizing the agency to act, the spirit of those laws, and the purposes behind those laws.

Some have further suggested that the EMC is "usurping" the power of the legislature (and, they claim, violating separation of powers principles) by requiring counties to promulgate pesticide ordinances as part of their stormwater permit applications. First off, this does not appear to be a separation of powers issue but rather an issue of whether the EMC is acting within its delegated legislative authority. The EMC is. At best, it is a stretch to claim that the required pesticide ordinances amount to regulating farming in a way they legislature intended to prevent. In contrast, there is a *direct* legislative policy to allow the EMC to evaluate city and county ordinances to protect water quality from stormwater runoff (as discussed above). The EMC is not acting to usurp legislative powers; it is acting in accordance with a clear grant of authority from the legislature to handle stormwater problems statewide.

Question: Do the rules violate a constitutional prohibition on local acts of the legislature on health questions (because they require the adoption of pet waste ordinances)?

Answer: No. It is unreasonable to label the amorphous pet waste ordinance a "health question" and the rules themselves "a local act of the legislature." First off, the law applies throughout the state to all designated urbanized areas, which may change with each new decennial census, and not simply to a fixed, small list of counties. Second, the pet waste ordinance is not about a "health question"; it's about environmental and water quality – clearly something the General Assembly has the authority to regulate.

Question: Do the proposed permanent rules exceed the delegated authority to EMC and intrude on constitutional system that gives the legislature the authority to determine which counties exist?

Answer: No. The General Assembly is given the authority to provide for local government and give local governments the powers and authority it deems advisable. Nothing in these rules affects that authority. The rules don't give the EMC authority to determine whether a county exists; they simply reflect the EMC's authority to evaluate counties' stormwater programs – an authority the EMC has had for more than a decade.

Question: Do the current post-construction requirements protect water quality?

Answer: The current post-construction requirements need to be strengthened to protect water quality. The temporary rules allow developments to proceed without engineered stormwater controls where a proposed project would result in less than two dwelling units per acre or less than 24 percent built-upon area regardless of the water to which stormwater drains. This is significantly less restrictive than requirements already in place and complied with in sensitive watersheds throughout North Carolina. See e.g., 15A N.C.A.C. 2B.0214. Moreover, the science makes it clear that areas in North Carolina with significantly less than 24 percent built-upon area suffer from significant stormwater-related water quality problems.

Where a development exceeds the "low density" built-upon area thresholds, the temporary rules require engineered stormwater controls to control the additional run-off caused by a development from the 1-year 24-hour storm. Where run-off drains to sensitive waters – not only shellfishing waters, but also trout waters, nutrient sensitive waters, outstanding resource waters, and high quality waters – this requirement is insufficient to protect water quality as required by federal law. Natural landscapes infiltrate much bigger design storms than the 1-year 24-hour event, and therefore this design standard is grossly inferior to the water quality protection provided by nature before development occurs. Engineered systems should be designed to mimic the level of water quality protection provided by nature if water quality degradation is to be prevented.

Question: Do the proposed Phase II rules encourage sprawl?

Answer: In general, no. In fact, in some important respects, the proposed rules should discourage sprawl. Most importantly, they do not require low density development; they allow developers who choose to develop less intensively to avoid implementing structural stormwater controls. On larger sites, developers would likely be able to cluster development and, by setting aside open space areas and designing streets and parking lots in accordance with techniques designed to minimize stormwater impacts, reduce impervious surface levels to that required for low density developments. In this way, developers could both design livable, walkable communities and protect water quality. Similarly, developers who choose to rebuild brownfield or infill sites within urban areas

are not required to meet the new stormwater requirements as long as the rebuilding "results in no net increase in built-upon area, and . . . provides equal or greater stormwater control than the previous development." This kind of redevelopment – which involves redeveloping sprawling areas to retrofit suburbia with traditional neighborhood design – represents one of the most promising opportunities to both discourage sprawl and improve water quality. The proposed Phase II rules encourage this kind of redevelopment.

We are willing to discuss ways we could build flexibility into the rules to better ensure that the proposed rules both protect water quality and discourage sprawling growth patterns (that can also adversely affect water quality).

Question: Should we delay the implementation of post-construction controls?

Answer: No. The federal Phase I and Phase II stormwater regulations have been a 30-year work in progress. The post-construction requirements are what help ensure that new growth happens in ways that minimize stormwater impacts. To further delay these new requirements simply means that we will need to pay more in the future for expensive after-the-fact solutions to the stormwater problems our new development generates. That makes neither economic nor environmental sense.

Question: Are the proposed 30-foot buffers needed?

Answer: Yes. Science clearly supports the use of buffers to protect water quality, although buffers may need to be much larger than 30 feet in order to protect water quality. A South Carolina Task Force recently summarized data regarding buffers and pollution control and recommended a minimum statewide buffer of 35 feet in a report available on its web site. See http://www.scdhec.net/eqc/water/pubs/npsrip.pdf. The report also discusses the economic benefits of buffers.

North Carolina Association of County Commissioners

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STORMWATER QUESTIONS AND ANSWERS

Q. Why has the Department of Environment and Natural Resources issued two sets of proposed permanent stormwater management rules?

A. One set of proposed permanent rules has been issued to implement the Phase II Stormwater Management regulations of the U.S. Environmental Protection Agency that were promulgated under the Federal Clean Water Act. These rules apply to municipal separate storm sewer systems (MS4s) that are owned or operated by state agencies and local governments.

The second set of proposed permanent rules would establish state stormwater management requirements to compliment the Federal Phase II requirements. This proposed state program is NOT required by Federal law but is intended to extend the Federal requirements to urbanized areas that are not served by local government-owned MS4s.

Q. What is the statutory authority for the proposed state stormwater program?

A. The proposed rules cite G.S. 143-214.1, 143-214.7 and 143-215.3(a)(1) as the sources of authority for the proposed state program that essentially would mandate the implementation of six minimum measures in 33 counties containing urbanized areas. However, these sections of the law appear to authorize a voluntary rather than a mandatory program. G.S. 143-214.7(c) states, "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 **may** adopt rules, and units of local government **are authorized** to adopt ordinances and regulations necessary to establish and enforce stormwater control programs." (Emphasis added.)

Several groups, the N.C. Association of County Commissioners and the N.C. Home Builders Association in particular, have questioned the Department's legal authority and have asked that the proposed state program rules be withdrawn. It would be more appropriate to assign the issue of a mandatory state stormwater program to the Environmental Review Commission to allow development of unambiguous statutory authority for consideration by the General Assembly in 2004.

Q. What responsibility does the state Department of Transportation have for implementation of the proposed Federal Phase II rules and the proposed state stormwater program rules, since DOT operates the most extensive public storm drainage system outside municipal boundaries?

A. Currently, DOT has a Phase I permit under the Federal Clean Water Act. However, neither the proposed Phase II rules or the proposed state program rules address the question of DOT responsibility.

NORTH CAROLINA HOME BUILDERS ASSOCIATION

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17 April 2003

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MIKE CARPENTER

The Honorable Pryor A. Gibson, III
Chair, House Environment Committee
North Carolina House of Representatives
419 A Legislative Office Building
Raleigh, NC 27601-1096

Dear Representative Gibson,

In response to your request at the April 8, 2003 meeting of the House Environment Committee, enclosed is a brief question and answer paper submitted on behalf of the North Carolina Home Builders Association (NCHBA).

As we have stated previously, NCHBA understands the need to meet the federal NPDES stormwater program deadlines and, over the past two years, offered constructive suggestions on how that could be accomplished. Our members understand the need to protect water quality and will do what is reasonably necessary to prevent degradation. We will not; however, support the EMC's attempt to use the federal program to create an unauthorized statewide stormwater program.

In the presentations by the League of Municipalities, Association of County Commissioners and NCHBA you may have noted several similarities in our positions. We do not support the EMC's use of a statewide buffer requirement, we do not support the state's expedited deadline for implementation of the post-construction requirements and we believe that decisions on appropriate densities and built-upon area are local government decision and should not be prescribed by the EMC.

Thank you for the opportunity to address the House Environment Committee with this very important issue. If you have questions or if I may be of assistance, please do not hesitate to contact me.

Sincerely,

Lisa D. Martin, AICP
Director of Regulatory Affairs

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1. **Are stream buffers required in the federal rule?**

No! The federal rule acknowledges that stream buffers are one tool that may be used by MS4s (not the state permitting agency) to meet the post-construction minimum requirements. NCHBA (and the League of Municipalities and Association of County Commissioners) are opposed to a mandatory statewide 30-foot buffer requirement. Stream buffers can be an effective tool to prevent water quality degradation. It is arbitrary for the EMC to create a standard that applies from the mountains to the coast without any qualification regarding water quality impairment. As shown by the numerous variance requests for the Neuse Buffer Rule processed by DENR, a one-size-fits-all standard does not work. Land use decisions such as buffer requirements are the not within the authority of the EMC and should be left to local governments based upon the topography, soils and water quality parameters within local jurisdictions.

2. **Are density limits and limits on built-upon area required in the federal rule?**

No! Again, like buffers, the federal rule suggests that built-upon area limits are one tool that may be used by MS4s (not the state permitting agency) to meet the post-construction minimum requirements. The only authority the EMC has to limit development density is under specific authority given by the General Assembly in the Water Supply Watershed Protection Act. The EMC lacks the statutory authority to limit development density outside of water supply watersheds for the purpose of managing stormwater runoff.

3. **Should the federal deadlines be expedited?**

No! NCHBA, the League of Municipalities and Association of County Commissioners all ask that the federal deadlines be implemented as stated in the federal rule. The federal rule gives MS4s five years to implement all six minimum measures. We are not asking for a delay in the rules, only for the opportunity to educate and involve elected officials and the public prior to requiring implementation of the post-construction requirements. The post-construction requirements will be the most difficult measures to implement on the local level and the most costly for both individual citizens and local governments. Implementation will require training for Realtors and other professionals regarding disclosure to prospective homeowners on their financial responsibility for stormwater devices. It will require local governments to hire and train staff to inspect devices and to work with homeowners associations in maintaining the devices. If the post-construction requirements remain as proposed, it will require local governments to scrap plans for compact, pedestrian friendly, mixed use (e.g. high density development) in favor of low-density, large lot development if they can not fund the additional staff positions and training. The EMC's proposed 2-year implementation deadline (as opposed to the federal 5-year deadline) for post–construction was never proposed during the temporary rule public information process– the affected local governments were denied the opportunity to inform the EMC as to the hardship of expediting this deadline. NCHBA requests that the federal deadline be restored for post-construction implementation.

necessary to prevent degradation. The rules proposed by the EMC and the temporary rulemaking process followed are arbitrary, unjustified and unreasonable.

Thank you for the opportunity to present our position. If you have questions, or if we can assist you in any way, please do not hesitate to contact Paul Wilms (pwilms@nchba.org), Tim Minton (tminton@nchba.org) or me (lmartin@nchba.org). You may reach us by phone at 919-676-9090.

Sincerely,

Lisa D. Martin, AICP
Director of Regulatory Affairs

CC Members, House Environment Committee

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

LYNDO TIPPETT
SECRETARY

April 9, 2003

The Honorable Pryor A. Gibson, III
N. C. House of Representatives
419A Legislative Office Building
Raleigh, NC 27603-5925

RE: Request for information on Phase I and Phase II NPDES Stormwater Program

Dear Representative Gibson:

As requested at the April 8 meeting of the House Committee on the Environment & Natural Resources, enclosed is a brief "question & answer" document prepared by the North Carolina Department of Transportation (NCDOT) staff regarding the Phase I and Phase II NPDES stormwater program and the NCDOT's role in that program. The NCDOT is currently regulated by a Phase I NPDES stormwater permit that is scheduled for renegotiation and renewal this summer. The Department believes that the North Carolina Department of Environment & Natural Resources can achieve their stormwater regulation goals for the road drainage systems throughout the State through NCDOT's Phase I permit. Please feel free to contact the Department if you have any questions or concerns about NCDOT's stormwater program.

Sincerely,

Roger E. Sheats, Jr.
Deputy Secretary for Environment,
Planning, & Local Governmental Affairs

RESjr:lg

Enclosure

cc: George Givens, Committee Counsel
Lisa Glover, NCAGO
Matt Lauffer, NCDOT

PHONE 919-733-2520 FAX 919-733-9150

Questions and Answers
On NCDOT's Role in the Phase I and Phase II NPDES Stormwater Program

April 9, 2003

Prepared For: The North Carolina General Assembly
House Committee on the Environment & Natural Resources
Rep. Pryor A. Gibson, III, Chair

NCDOT Staff Contact:
Matt S. Lauffer, P.E.
Project Engineer - Stormwater
(919) 250-4100

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1. Is NCDOT regulated by the NPDES stormwater program?

Yes. NCDOT owns and operates the storm sewer systems associated with road drainage on all state-maintained roads. In 1998, NCDENR issued stormwater permit to NCDOT pursuant to Phase I of the NPDES stormwater rules. NCDOT's Phase I permit applies to general roadway drainage throughout the State on NCDOT owned right-of-way, as well as to NCDOT construction activities disturbing more than one acre; NCDOT industrial activities; and borrow pits and waste piles associated with road construction.

2. Is NCDOT regulated under Phase II of the NPDES stormwater program?

No. The Phase II regulations apply only to owners or operators of small municipal separate storm sewer systems (MS4s) and do not apply to any entity that has a Phase I permit. *See* 40 C.F.R. §§ 122.26(a)(1)(v); 122.26(a)(9)(i)(A). As a holder of a Phase I permit and operator of a statewide, interconnected MS4, NCDOT is not a small MS4 and is not regulated under Phase II.

3. Is NCDOT regulated under NCDENR's proposed rule which would adopt a state stormwater program for urbanized areas not covered by the Phase II program?

No. The EMC has proposed two new permanent stormwater rules. The first rule would implement the federal Phase II program which, as stated above, does not apply to NCDOT

because NCDOT is not a small MS4 and is a Phase I permitted entity. The second rule would create a state stormwater program to regulate the urbanized areas of counties that are not subject to the Phase II rules because they do not own or operate MS4s. The purpose of the state stormwater program rules is to provide complete coverage in urbanizing areas, regardless of whether they are located in a municipality or county.

NCDOT is already providing complete coverage statewide, not just in urbanizing areas, for the road drainage system on NCDOT right-of-way, pursuant to its Phase I permit. Any additional requirements that NCDOT may need to impose to strengthen its stormwater control program should be implemented through the Phase I permit renewal process.

4. What has NCDOT accomplished during the current permit term?

NCDOT's current Phase I permit contained three primary coverage areas: (1) roadway drainage and NCDOT construction activities; (2) NCDOT industrial activities (*i.e.*, facility maintenance yards); and (3) borrow pits and waste piles associated with road construction. Among the most notable accomplishments of the first permit term are the following:

- NCDOT has identified over 4,500 sensitive water crossings on primary highways and 504 industrial outfalls and made them available in GIS. NCDOT uses this data to develop potential sites for retrofits.
- NCDOT will construct over 28 Best Management Practices (BMPs) retrofits by the end of the permit term. NCDOT is the only Phase I entity required to add retrofits to its existing stormwater system. Each BMP retrofit is designed to remove pollutants from NCDOT facilities that are most likely to impact water quality in the receiving stream. For example, each retrofit will remove 85% of total suspended solids.
- NCDOT has completed Stormwater Pollution Prevention Plans for all 184 Industrial Facilities across the state and implemented an interactive management program to maintain compliance.
- NCDOT is developing a draft BMP toolbox for roadways, ferry terminals, and maintenance facilities.
- NCDOT regularly inspects its drainage system for illicit connections and illegal dumping.
- The NCDOT Hydraulics Unit and Office of Beautification have developed an educational and public participation program to promote stormwater quality awareness. NCDOT has educated the 83,000 volunteers that participate in the Adopt-A-Highway program on identifying potential stormwater pollution.
- NCDOT participates in the "Merger 01" process with numerous environmental permitting agencies, including NCDENR, to address planning issues associated with reducing roadway impacts of new projects. Some of the issues considered during the Merger 01 process include minimizing the size of the project to reduce costs and impacts; using grass swales for roadway drainage when practical; and locating the project to minimize impacts to environmentally sensitive areas when possible.

In addition, NCDOT complies with all applicable buffer or other water-quality protection rules, administers a sedimentation and erosion control program for all NCDOT activities disturbing greater than one acre, and must obtain individual state stormwater permits for certain projects. NCDOT estimates that implementation of the first permit term resulted in charges of approximately $14,214,000.

5. When does NCDOT's current permit expire?

NCDOT's current Phase I permit expires on May 31, 2003. NCDOT submitted an application for a new permit on November 26, 2002, together with proposed permit conditions. NCDENR staff are currently reviewing that application. If a new permit is not issued prior to May 31, 2003, NCDOT may continue operating under the old permit, or may choose to implement the new provisions of the proposed permit.

6. What are the differences between the current permit and NCDOT's proposed permit?

The new permit proposed by NCDOT would strengthen stormwater runoff protection in numerous ways. Among the most important additions to the permit are post-construction runoff control measures. The proposed post-construction stormwater management program includes existing first term program elements such as BMP retrofits and industrial facility certifications. In addition, NCDOT is proposing to develop a post-construction stormwater management program to control runoff from new NCDOT development and redevelopment. NCDOT will develop a BMP design manual for approval by DWQ that will provide internal guidance on design of structural post-construction runoff control measures. NCDOT will then define implementation of the DWQ-approved NCDOT BMP design manual (*i.e.*, what types of BMPs should be implemented on new road projects) and provide specific nutrient management measures for areas draining to nutrient sensitive waters in the Neuse and Tar-Pamlico rivers basins.

7. Will NCDOT implement the "six minimum measures" of the Phase II program?

Yes. The Phase II program requires that regulated entities implement "six minimum measures:" (1) public education and outreach; (2) public involvement and participation; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management for new development and redevelopment; and (6) pollution prevention and good housekeeping for municipal operations. NCDOT is currently implementing five of the six minimum measures under the existing Phase I permit. Post-construction runoff controls will be addressed during the permit application renewal as identified above.

8. Can NCDOT implement the post-construction requirements as contained in NCDENR's draft permanent rules?

No. NCDENR's draft permanent rules require permit holders to regulate all new private development and redevelopment projects (that cumulatively disturb one acre or more) through a local permitting process. The rules require that new private development abide by density or impervious surface limitations or install structural stormwater treatment systems. NCDOT does not have statutory authority to impose development restrictions on private development outside of NCDOT right-of-way, and thus could not implement the post-construction requirements contained in the draft permanent rules; only municipalities and counties have that authority. NCDOT may, of course, implement a post-construction stormwater management program for all NCDOT projects, and has proposed to do so in its renewed Phase I NPDES permit as explained above.

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

April 15, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order and as time allows):**

   - **H996*** **Monitor Coastal Water Quality**
   - **H1025** **Haw River State Park**
   - **H1134** **Extend CHPP Adoption Deadline**
   - **H1082*** **Environmental Reports Consolidation**
   - **H1083*** **Environmental Technical Corrections**
   - **H1205** **Franchise Not Req. Smokestacks Landfills**

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 15, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 15, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Ray Rapp, John Rhodes, Bonner Stiller, Alex Warner, and Jennifer Weiss. Representative Walt Church was excused. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:07 pm. The following bills were taken up:

HB 1205 – Franchise Not Req. Smokestacks Landfills (Attachments 1 and 2).

Representative McComas said that this legislation is necessary and technical so the State can comply with last year's clean air bill. This bill clarifies that the utilities, which have landfills within their premises, do not have to get franchises from the local governments for those landfills. Coal residue, which is inert, goes into these utility landfills. Representative Haire said that the Clean Air Bill of last Session brought up unintended consequences in that the utility companies had to install scrubbers, which produce more residues that must be disposed of. Since the utility companies own their waste disposals sites, it was not the intent that the landfills be franchised. The intent of this bill is to bring compliance to the Clean Air Bill.

John McAllister, Duke Energy, and Gene Upchurch, Progress Energy, said they supported the bill. Representative LaRoque moved for a favorable report. Passed.

HB 966 – Monitor Coastal Water Quality (Attachments 3 and 4).

Representative Preston said that Wayne Mobley, Section Chief, Shellfish Sanitation and Recreational Water Quality Program with Environment Health requested this bill. It makes North Carolina comply with Federal requirements to be in place by 2004.

Mr. Mobley said that in the mid-1990s, the National Resources Defense Council labeled North Carolina a "beach bum" because of water quality standards. In 1997, Governor Hunt decided that North Carolina needed to monitor its coastal waters for recreational water qualities. In 1997, the Federal Government enacted the "Beaches Act" which makes coastal water sampling mandatory and in compliance by 2004. If this program were disbanded, the EPA would then monitor North Carolina waters and have primacy of this program. With this bill, North Carolina will have primacy with this program. Following a short discussion, Representative Lucy Allen moved for a favorable report. Passed.

HB 1134 – Extend CHPP Adoption Deadline (Attachments 5 and 6).

Representative Preston said the bill extends the deadline for the adoption of Coastal Habitat Protection to December 31, 2004. The Fisheries Reform Act of 1997 required that the Department of Environment and Natural Resources work with the Marine Fisheries Commission, the Environmental Management Commission and the Coastal Resources Commission to develop and adopt Coastal Habitat Protection Plans (Plans). Because all these groups are involved, more time is needed to complete the plan. Representative Haire moved for a favorable report. Passed.

HB 1025 – Haw River State Park (Attachments 7 and 8).

Representative Jeffers said this bill authorizes DENR to add Haw River State Park to the State Parks System. It is one of the four areas that have been identified in the 2000 system-wide plan system for the North Carolina Park System.

Phil McNally, Director of the Division of Parks and Recreation, said that of the 77 sites under study to become part of the Parks System, Haw River is in the top ten areas. It is also underserved. In order to purchase this property, this legislation is needed. Representative Warner said that if we don't take action now, we would lose the opportunity. Representative Warner moved for a favorable report. After a question of financing, Mr. McNally said that this land would be eligible for one of the trust funds, i.e., the Park and Recreation Trust Fund, the Natural Heritage Trust Fund, the Federal Land and Water Fund, or the Clean Water and Management Trust Fund. Following a short discussion, the bill passed.

Representative Hackney took over the gavel.

HB 1082 – Environmental Reports Consolidation (Attachments 9 and 10).

Representative Gibson said that the bill modifies the frequency that DENR is required to submit reports to the Environmental Review Commission. Representative McHenry moved for a favorable report. Passed.

HB 1083 – Environmental Technical Corrections (Attachments 11 and 12).

Representative Gibson said that this bill is essentially as the last. It makes several technical changes and corrections to environmental statutes. Representative Rapp moved for a favorable report. Passed.

Chair Gibson adjourned the meeting at 12:42 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1205

Short Title:	Franchise Not Req. Smokestacks Landfills.	(Public)
Sponsors:	Representatives McComas, Gibson, Sherrill, Haire (Primary Sponsors); Brubaker, Goforth, and Saunders.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE IMPLEMENTATION OF THE "CLEAN SMOKESTACKS ACT" BY EXEMPTING SANITARY LANDFILLS USED FOR THE DISPOSAL OF WASTE GENERATED BY INVESTOR-OWNED PUBLIC UTILITY COAL-FIRED GENERATING UNITS THAT ARE SUBJECT TO THE "CLEAN SMOKESTACKS ACT" FROM THE REQUIREMENT THAT FRANCHISES BE OBTAINED FOR THE OPERATION OF THOSE LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(5) As used in this subdivision, 'coal-fired generating unit' and 'investor-owned public utility' have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D."

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

ATT #9
4/15/03

HOUSE BILL 1205:
Franchise Not Req. Smokestacks Landfills.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Reps. McComas, Gibson, Sherrill, and Haire
Date:	April 14, 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1205 exempts sanitary landfills that are used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the "Clean Smokestacks Act" from the requirement that franchises be obtained for the operation of those landfills.***

The bill would become effective when it becomes law.

CURRENT LAW: Current law (G.S. 130A-294(b1)(3)) requires an applicant for a new permit, a permit renewal, or a substantial amendment to a permit for a sanitary landfill, to obtain a franchise for the operation of the landfill from each local government with jurisdiction over any part of the land on which the landfill is located.

BILL ANALYSIS: The bill exempts sanitary landfills that are used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the "Clean Smokestacks Act" (S.L. 2002-4) from the requirement that franchises be obtained for the operation of those landfills.

BACKGROUND: Investor-owned public utilities currently dispose of waste in onsite landfills. In order to meet the requirements of the Clean Smokestacks Act, these utilities may need to expand existing landfills or build new landfills to dispose of the solid waste generated from the new air pollution control equipment.

In 1994, the General Assembly amended G.S. 130A-294 to require that a sanitary landfill permit applicant obtain a franchise for the operation of the landfill from each local government with jurisdiction over any part of the land on which the landfill is located. Since then, both the Division of Waste Management of the Department of Environment and Natural Resources and industry have operated under the assumption that the franchise requirement provision did not apply to private industrial landfills until recently when an informal interpretation of the statute given by personnel from the Attorney General's office indicated that the statute applied to all sanitary landfills including private industrial landfills.

EFFECTIVE DATE: The bill would become effective when it becomes law.

ATT. # 3
4/15/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 996*

Short Title:	Monitor Coastal Water Quality.	(Public)
Sponsors:	Representative Preston.	
Referred to:	Environment and Natural Resources.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES REGARDING MONITORING OF COASTAL RECREATION WATERS IN ORDER TO IMPLEMENT THE FEDERAL BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000.

The General Assembly of North Carolina enacts:

SECTION 1. Part 3A of Article 8 of Chapter 130A of the General Statutes reads as rewritten:

"Part 3A. Monitor Water Quality of Coastal Fishing and Recreation Waters.

"**§ 130A-233. Definitions.**

The following definitions apply to this Part:

(1) Coastal fishing waters. – Defined in G.S. 113-129(4).

(2) Inland fishing waters. – Defined in G.S. 113-129(9).

(3) Coastal recreation waters. – Defined in 33 U.S.C. § 1362.

"**§ 130A-233.1. Monitoring program for State coastal fishing and recreation waters; development and implementation of program.**

(a) For the protection of the public health of swimmers and others who use the State's coastal fishing waters for recreational activities, the Department shall develop and implement a program to monitor the State's coastal fishing waters for contaminants. The monitoring program shall cover all coastal fishing waters up to the point where those waters are classified as inland fishing waters.

(b) The Commission shall adopt rules to provide for a water quality monitoring program for the coastal recreation waters of the State and to allow the Department to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000 (Pub. L. No. 106-284; 114 Stat. 870, 875; 33 U.S.C. §§ 1313, 1362). The rules shall address, but are not limited to, definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.

"**§ 130A-233.2. Removal or destruction of warning signs.**

No person shall remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department pursuant to G.S. 130A-233.1. No person, without just cause or excuse, shall have in his possession any sign posted by the Department pursuant to G.S. 130A-233.1. Any person who violates this section is guilty of a Class 2 misdemeanor."

SECTION 2. This act is effective when it becomes law except that G.S. 130A-233.2, as enacted by Section 1 of this act, becomes effective 1 December 2003 and applies to offenses committed on or after that date.

ATT # 4
4/15/03

HOUSE BILL 996:
Monitor Coastal Water Quality

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Rep. Preston
Date:	April 14, 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 996 authorizes the Commission for Health Services (Commission) to adopt rules regarding monitoring of coastal recreation waters in order to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000. The rules will address definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters. The bill also provides that a person who removes or destroys a sign posted to convey information on the water quality of coastal recreation waters is guilty of a Class 2 misdemeanor.***

The bill would become effective when it becomes law, except that the misdemeanor provision would become effective 1 December 2003 and apply to offenses committed on or after that date.

BACKGROUND: The federal Beaches Environmental Assessment and Coastal Health Act of 2000, enacted on 10 October 2000, requires that each state that has coastal recreation waters adopt and submit water quality criteria and standards for pathogens and pathogen indicators designated by the Administrator of the United States Environmental Protection Agency (Administrator) for the coastal recreation waters of the state within 42 months of the enactment of the federal act. In the event that a state fails to adopt coastal water quality criteria and standards within the prescribed period, the federal act directs the Administrator to propose such regulations for the state.

CURRENT LAW: Current law (G.S. 130A-233.1) requires that the Department of Environment and Natural Resources develop and implement a program to monitor the coastal fishing waters of the State for contaminants.

BILL ANALYSIS: The bill authorizes the Commission to adopt rules regarding monitoring of coastal recreation waters. The bill:

- Adds a definition for "coastal recreation waters" that references the definition for "coastal recreation waters" found in the federal act.
- Includes a provision that authorizes the Commission to adopt rules for the monitoring of coastal recreation waters that address definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.
- Adds a section that provides that a person who removes, damages, or destroys a sign posted to convey information on the water quality of coastal recreation waters is guilty of a Class 2 misdemeanor. A Class 2 misdemeanor is punishable by a minimum of 1 day of community punishment up to a maximum of 60 days active punishment, depending on the misdemeanant's record for prior convictions.

EFFECTIVE DATE: The bill would become effective when it becomes law, except the misdemeanor provision which would become effective 1 December 2003 and apply to offenses committed on or after that date.

H996-SMRI-001

ATT #5
4/15/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1134

Short Title:	Extend CHPP Adoption Deadline.	(Public)
Sponsors:	Representative Preston.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6.9 of S.L. 1997-400 reads as rewritten:

"**Section 6.9.** 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~~.December 31, 2004. 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(e), 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 2. This act is effective when it becomes law.

ATT. #6
4/15/03

HOUSE BILL 1134:
Extend CHPP Adoption Deadline.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Preston
		Summary by:	Jeff Hudson Committee Counsel
Date:	April 15, 2003		
Version:	First Edition		

SUMMARY: ***House Bill 1134 extends the deadline for the adoption of Coastal Habitat Protection Plans from July 1, 2003 to December 31, 2004.***

CURRENT LAW: Under current law, all Coastal Habitat Protection Plans must be adopted by July 1, 2003.

BACKGROUND: In 1997, the General Assembly enacted the Fisheries Reform Act. This legislation overhauled the licensing of marine fishing; required systematic, long-range planning for management of marine fisheries resources; increased penalties for violation of marine fisheries laws; and authorized a number of studies related to marine fisheries. The Act also required the Department of Environment and Natural Resources to work with the Marine Fisheries Commission, the Environmental Management Commission, and the Coastal Resources Commission to jointly develop and adopt Coastal Habitat Protection Plans (Plans). The goal of the Plans is the long-term enhancement of marine fisheries through the protection of habitats important to these fisheries, such as wetlands, spawning grounds, nursery areas, shellfish beds, and submerged aquatic vegetation beds. Once the Plans are adopted, the three environmental rulemaking commissions are required to ensure, to the maximum extent practicable, that their actions are consistent with the Plans.

Although the Fisheries Reform Act was enacted in 1997, the provisions requiring the development and adoption of the Coastal Habitat Protection Plans did not become effective until July 1, 1998.

EFFECTIVE DATE: This act is effective when it becomes law.

ATT #7
4/15/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1025

Short Title:	Haw River State Park.	(Public)
Sponsors:	Representatives Jeffus, Adams, Cole, Sexton (Primary Sponsors); Blust, Bowie, Jones, and Wood.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF HAW RIVER STATE PARK TO THE STATE PARKS SYSTEM.

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 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

Whereas, the Haw River in Guilford and Rockingham Counties supports a large collection of wetlands, high quality upland forests, and rare plant and animal species and possesses biological, archaeological, and scenic resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Haw River State Park to the State Parks System as provided by G.S. 113-44.14(b).

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

ATTH 8
4/15/03

HOUSE BILL 1025:
Haw River State Park

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Reps. Jeffus, Adams, Cole, and Sexton
Date:	April 15, 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1025 authorizes the Department of Environment and Natural Resources to add Haw River State Park to the State Parks System. The bill would be effective when it becomes law.***

BACKGROUND: G.S. 113-44.14(b) provides that the Department of Environment and Natural Resources (DENR) may add a State park, State natural area, State recreation area, State trail, State river, or State lake to the State Parks System upon authorization by an act of the General Assembly.

The proposed Haw River State Park would be located north of Greensboro along the border between Guilford and Rockingham Counties. This region of the State is one of four areas identified in the 2000 Systemwide Plan for the North Carolina State Parks System as underserved by the current parks system, based on State park acres per capita. This area was identified as a high priority for the addition of new parks.

The Haw River in Guilford and Rockingham Counties supports several natural communities within the river floodplain and on the adjacent bluffs and uplands. The river corridor contains a large collection of wetlands, including what may be the largest complex of beaver ponds in the Piedmont. There are several areas with high quality upland forests, habitat for rare plant and animal species, and significant historic and archaeological resources.

The boundaries of the proposed park have not yet been determined. It is likely that the park would include a linear corridor protecting the water quality and natural resources of the river as well as one or more upland nodes that would support State park facilities such as a visitor center, campground, picnic area, trails, and river access. DENR is considering several different revenue sources to fund land acquisition for the new park, including the Natural Heritage Trust Fund, the Clean Water Management Trust Fund, the Ecosystem Enhancement Program, and the Parks and Recreation Trust Fund. Park facilities would be constructed in future years when suitable land has been acquired for the park.

BILL ANALYSIS: House Bill 1025 authorizes DENR to add Haw River State Park to the State Parks System. The bill would be effective when it becomes law.

H1025-SMRI-001

ATT # 9
4/15/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **1**

HOUSE BILL 1082*

Short Title:	Environmental Reports Consolidation.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2001-442 reads as rewritten:

"**SECTION 7.** Beginning 1 ~~March 2002,~~ September 2003, the ~~Department~~ Secretary of Environment and Natural Resources shall submit ~~a semiannual~~ an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M."

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

ATT. #10
4/15/03

HOUSE BILL 1082:
Environmental Reports Consolidation.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Gibson
		Summary by:	Tim Dodge Research Assistant for Environmental Issues
Date:	April 15, 2003		
Version:	First Edition		

SUMMARY: ***House Bill 1082 modifies the reporting requirements on implementation of the performance-based cleanup program for underground storage tanks to conform with the reporting requirement for the consolidated report on the Leaking Petroleum Underground Storage Tank Cleanup Program.***

BILL ANALYSIS: House Bill 1082 modifies the frequency by which the Department of Environment and Natural Resources is required to submit reports to the Environmental Review Commission on implementation of the performance-based cleanup program for leaking petroleum underground storage tank sites from semiannually to annually. The bill also changes the report submittal date from March 1 to September 1 to conform to the reporting dates for the Leaking Petroleum Underground Storage Tank Cleanup Program.

BACKGROUND: In 2002, the General Assembly modified the reporting requirement for the Leaking Petroleum Underground Storage Tank Program from semiannually to annually. The next report on the Leaking Petroleum Underground Storage Tank Cleanup Program is due September 1, 2003.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1082-SMSY-001

ATT # 11
4/15/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1083*

Short Title:	Environmental Technical Corrections.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-44.8(a) reads as rewritten:

"(a) The State of North Carolina offers unique archaeologic, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by ~~those~~ the people for their use and for the use of their visitors and descendants."

SECTION 2. G.S. 113-173(e) reads as rewritten:

"(e) Replacement RCGL. – The provisions of ~~G.S.~~ G.S. 113-168.1(h) apply to this section."

SECTION 3. G.S. 113A-232(a) reads as rewritten:

"(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by ~~that~~ the Department. The purpose of the Fund is to stimulate the use of conservation easements and conservation tax credits, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements."

SECTION 4. G.S. 130A-309.14(a1)(3) reads as rewritten:

"(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environment and Natural Resources a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information

provided by the Department of Administration and the Department of Transportation to the Department of Environment and Natural Resources shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 5. G.S. 143-215.107B reads as rewritten:

"**§ 143-215.107B. Statewide goals for reduction in emissions of ~~nitrogen oxides;~~ oxides of nitrogen; report.**

It shall be the goal of the State to reduce emissions of ~~nitrogen~~ oxides of nitrogen (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each ~~year beginning 1 October 2000.~~year."

SECTION 6. G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to cause air ~~pollution;~~pollution.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause ~~such~~ any air-cleaning device to be constructed, installed, or operated."

SECTION 7. G.S. 143-726(d)(4) reads as rewritten:

"(4) The Secretary of ~~the Department of~~ Environment and Natural Resources."

SECTION 8. This act is effective when it becomes law.

ATT # 12
4/15/03

HOUSE BILL 1083:
Environmental Technical Corrections.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Gibson
Date:	April 15, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	First Edition		

SUMMARY: ***House Bill 1083 makes the following technical changes and corrections to environmental statutes:***

- ***Adds text to the General Statutes that was inadvertently omitted.***
- ***Repeals obsolete statutory language.***
- ***Makes other clarifying and conforming changes.***

BILL ANALYSIS:

Sections 1 and 2 make typographical corrections and stylistic changes in Chapter 113 of the General Statutes.

Section 3 amends G.S. 113A-232(a) to add the word "organizations" where it was inadvertently omitted.

Section 4 adds a sentence to G.S. 130A-309.14(a1)(3) where it was inadvertently omitted. The sentence directs the Department of Environment and Natural Resources to include information provided by the Department of Administration and the Department of Transportation in its annual report on the status of solid waste management efforts in the State.

Section 5 makes stylistic changes and deletes obsolete language in G.S. 143-215.107B.

Sections 6 and 7 make stylistic, clarifying, and conforming changes to environmental statutes.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1083-SMSY-001

VISITOR REGISTRATION SHEET

Environment + Nat Resources 4/15/03

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ernestine Durham	Exc. Intern
Robert Holman	NCDOT
Cindy McCabe	N.C. Conservation Network
Elizabeth Owens	NCPIRG
Sarah Ledford	NCDENR
Tim McGroarty	DENR/DPR
Dexter Matthews	DENR - Waste Management
Chris Nichols	Hunton + Williams
John Cyrus	n c State Grange
David Meredith	N C State Grange
Terry Hardesty	N.C. Park Council
Bethanne Mumford	NCPC
Sherron K	CAA
Angie McMillan	TNC
Carol Lawler	EGHS
Rob McRight	Intern (Rep Hackney)
Chuck Wakefield	Progress Energy
[illegible]	[illegible]
John Medlicott	Duke Energy
Linda Small	DEH/DENR
Wayne Mobley	Shellfish Sanitation/DEH
Kari Barkhuss	NCDENR
Robin Smith	DENR
Laura DeVivo	NCGA
Elizabeth Owens	NCPIRG
[illegible]	NC Sierra
Brian Harrison	Beaufort NC
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NCAA
Wayne Mabley	"
Audrey H. Gallowway	Strategic Influencers
Lisa Martin	NC Home Builders Assn.
Amy Fullbright	Hunton & Williams
Marcy Thompson	MCIC
Julie Allen	NC Statewatch
Ken Melton	Alley & Associates
Sandra Hong	Martin Marietta

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 996 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES REGARDING MONITORING OF COASTAL RECREATION WATERS IN ORDER TO IMPLEMENT THE FEDERAL BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1025 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ADDITION OF HAW RIVER STATE PARK TO THE STATE PARKS SYSTEM.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 1082 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 1083 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 1134 A BILL TO BE ENTITLED AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 1205 A BILL TO BE ENTITLED AN ACT TO FACILITATE THE IMPLEMENTATION OF THE "CLEAN SMOKESTACKS ACT" BY EXEMPTING SANITARY LANDFILLS USED FOR THE DISPOSAL OF WASTE GENERATED BY INVESTOR-OWNED PUBLIC UTILITY COAL-FIRED GENERATING UNITS THAT ARE SUBJECT TO THE "CLEAN SMOKESTACKS ACT" FROM THE REQUIREMENT THAT FRANCHISES BE OBTAINED FOR THE OPERATION OF THOSE LANDFILLS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

April 22, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 1045 – NC CLIMATE ACTION REGISTRY – Rep. Hackney & Rep. Insko

   HB 1062 – LOCAL WATER SUPPLY PLANS – Rep. McLawhorn

   SB 733 – SMALL AND MEDIUM ANIMAL OPERATIONS PERMITS – Sen. Albertson

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 22, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 22, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church, Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Jean Preston, Ray Rapp, John Rhodes, Bonner Stiller, Jennifer Weiss, and Larry Womble. Alex Warner was excused to attend a funeral. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:06 pm. The following bills were taken up:

HB 1062 – Local Water Supply Plans (Attachment 1, 2, 3) Representative Womble moved to adopt the H1062-PCS70309-RT-15 to be put before the Committee. Adopted. Representative McLawhorn said that the bill provides for two changes in State Statutes to respond to the 2002 drought related to local water supply planning and process for drought warning designations. During the 2002, local governments that had a plan responded well to the drought; those that did not had a more difficult time. The PCS would require a community water system that regularly serves 1,000 or more service connections or 3,000 or more individuals to comply with the local water supply planning requirements—an increase of 38 communities, or over 192,000 persons in the state.

John Morrow, Director, NC Water Resources, said the bill assures an adequate water supply. Following discussion, Representative Hackney said that it is a plan for information and water resources sharing. He moved for a favorable report, unfavorable to the original bill. Passed.

Representative LaRoque took the gavel.

SB 733 – Small and Medium Animal Operations Permits (Attachment 4) – Representative Gibson moved the adoption of S733-PCS35248-RT-11 (Attachment 5, 6) before the Committee. Adopted. He said there was no controversy, and the bill directs DENR to extend the expiration of general permits for animal waste management systems that serve swine, cattle and poultry operations and incorporate regulatory changes made to the federal National Pollutant Discharge Elimination System (NPDES) permit program. Counsel Givens explained the permitting system, and said that the bill extends the limits of those permits due to expire at the end of April 2003.

Robin Smith, Assistant Secretary, DENR, said that the bill is a compromise and extends coverage for 18 months for additional time to resolve concerns from smaller dairies related by the new general permit. During a short discussion, Representative Luebke expressed his concern over extending these deadlines at the expense of state water quality. He asked, "When are we going to make water quality a priority in this state?"

Jim Cummings, Assistant Commissioner, Department of Agriculture, said they support the bill.

Dan Widdle, Environmental Defense, said there are two issues with this bill: (1) which general permit, cattle, poultry and swine (if any) should have a extension for the new permit, and (2) how long a delay? They encouraged the Committee to debate this bill further.

Steve Woodson, NC Farm Bureau, said there are only 200 dairies in the state and they support the bill.

Representative Gibson said that the concerns discussed will be worked out with technical corrections, given the time element of crossover time constraints, and moved for a favorable report, unfavorable to the original report. Passed.

Chair Gibson adjourned the meeting at 12:55 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 1
4/22/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1062

Short Title:	Local Water Supply Plans.	(Public)
Sponsors:	Representative McLawhorn.	
Referred to:	Public Utilities.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLIC WATER SYSTEMS TO PREPARE LOCAL WATER SUPPLY PLANS AND TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water service or that plans to provide public water service and each public water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more individuals shall, either individually or together with other units of local ~~government,~~government and public water systems, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government and public water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government and public water systems shall include in local water supply plans all information that is readily available to them. Plans shall include present and projected population, industrial development, water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, current and future water conservation and water reuse programs, a description of how the local government or public water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or public water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and

revised plans shall be submitted to the Department once they have been approved by the unit(s) of local ~~government.~~ government or public water system."

SECTION 2. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-355.1. Drought designations.**

(a) In order to alert units of local government and public water systems, as defined in G.S. 130A-313(10), to the likelihood of potential drought and the severity of existing drought, the Secretary of Environment and Natural Resources may do any of the following:

(1) Designate certain areas of the State where drought conditions are impending.

(2) Designate certain areas of the State as suffering from drought conditions.

(3) Designate the level of severity of drought conditions.

(b) In making any of the designations described in subsection (a) of this section, the Secretary may consult with representatives of public water systems and State, federal, and local governmental agencies that are involved in water management or are responsible for addressing drought impacts. The Secretary may appoint a drought management advisory council composed of representatives of public water systems and State, federal, and local governmental agencies that are involved in water management and are responsible for drought impacts to assist with making the determinations described in subsection (a) of this section."

SECTION 3. This act is effective when it becomes law. The first local water supply plans prepared by public water systems pursuant to G.S. 143-355(l), as amended by Section 1 of this act, are due on or before January 1, 2004.

ATT # 2
4/22/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1062
PROPOSED COMMITTEE SUBSTITUTE H1062-PCS70309-RT-15

Short Title: Local Water Supply Plans. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE COMMUNITY WATER SYSTEMS THAT REGULARLY SERVE ONE THOUSAND OR MORE SERVICE CONNECTIONS OR THREE THOUSAND OR MORE INDIVIDUALS TO PREPARE LOCAL WATER SUPPLY PLANS AND TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355(l) reads as rewritten:

"(l) For purposes of this subsection, 'community water system' means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals. Each unit of local government that provides public water service or that plans to provide public water service and each community water system shall, either individually or together with other units of local ~~government,~~government and community water systems, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government and community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, ~~local units~~each unit of local government and community water system shall include in local water supply plans all information that is readily available to ~~them.~~it. Plans shall include present and projected population, industrial development, and water use within the service ~~area,~~ area; present and future water ~~supplies,~~ supplies; an estimate of the technical assistance that may be needed at the local level to address projected water ~~needs,~~ needs; current and future water conservation and water reuse ~~programs,~~ programs; a description of how the local government or community water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency; and any other related information as the Department may require in the

preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by ~~the unit(s)~~ each unit of local ~~government.~~government and community water system that participated in the preparation of the plan."

SECTION 2. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-355.1. Drought designations.**

(a) In order to alert units of local government and public water systems, as defined in G.S. 130A-313(10), to the likelihood of potential drought and the severity of existing drought, the Secretary of Environment and Natural Resources may do any of the following:

(1) Designate certain areas of the State where drought conditions are impending.

(2) Designate certain areas of the State as suffering from drought conditions.

(3) Designate the level of severity of drought conditions.

(b) In making any of the designations described in subsection (a) of this section, the Secretary may consult with representatives of public water systems and federal, State, and local governmental agencies that are involved in water management or are responsible for addressing drought impacts. The Secretary may appoint a drought management advisory council composed of representatives of public water systems and federal, State, and local governmental agencies that are involved in water management and are responsible for drought impacts to assist with making the determinations described in subsection (a) of this section."

SECTION 3. This act is effective when it becomes law. The first local water supply plans prepared by community water systems pursuant to G.S. 143-355(l), as amended by Section 1 of this act, are due on or before 1 January 2004.

ATT # 3
4/22/03

HOUSE BILL 1062:
Local Water Supply Plans.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative McLawhorn
Date:	April 22, 2003	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed Committee Substitute H1062-PCS70309-RT-15		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1062 would require certain community water systems to prepare local water supply plans and would require certain community water systems and local governments to include in their local water supply plans a description of how the community water system or local government will respond to water shortage emergencies and continue to meet essential public water supply needs.***

CURRENT LAW: Under current law, each local government that provides or plans to provide public water service must prepare a local water supply plan and submit it to the Department of Environment and Natural Resources (DENR). A local water supply plan must include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of technical assistance needed to address projected water needs; current and future water conservation and water reuse programs; and other related information required by DENR. Local water supply plans must be revised at lease once every five years.

BILL ANALYSIS:

Section 1 of the Proposed Committee Substitute for House Bill 1062 (PCS) would require a community water system that regularly serves 1,000 or more service connections or 3,000 or more individuals to comply with the local water supply planning requirements that currently apply to local governments. The PCS also requires both local governments and community water systems that prepare local water supply plans to include a description of how the local government or community water supply system will respond to drought or other water shortage emergencies and continue to meet essential public water supply needs. The first local water supply plans prepared by community water systems are due on or before January 1, 2004.

Section 2 of the PCS authorizes the Secretary of Environment and Natural Resources to alert local governments and public water systems to the likelihood of potential drought and the severity of existing drought by:

- Designating certain areas of the State where drought conditions are impending.
- Designating certain areas of the State as suffering from drought conditions.
- Designating the level of severity of drought conditions.

In order to obtain assistance in making these designations, the Secretary may appoint a drought management advisory council and consult with representatives of public waters systems and federal, State, and local government agencies that are involved in water management or are responsible for addressing drought impacts.

EFFECTIVE DATE: This act is effective when it becomes law.

H1062-SMSB-001

ATT #4
4/22/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 733

Short Title:	Small and Medium Animal Operations Permits.	(Public)
Sponsors:	Senators Albertson; Bingham, Brock, Dorsett, Garrou, Garwood, Hargett, Holloman, Horton, Hoyle, Jenkins, Kerr, Kinnaird, Lucas, Malone, Moore, Purcell, Rand, Sloan, Smith, Thomas, Tillman, and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO STUDY THE USE OF GENERAL PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS FOR SMALL AND MEDIUM DAIRY, POULTRY, AND ANIMAL OPERATIONS AND RECOMMEND ANY ADDITIONAL PERMIT REQUIREMENTS THAT ARE NEEDED TO PROTECT WATER QUALITY.

Whereas, in 1995, the General Assembly made the following findings, as set forth in G.S. 154-215.10A: "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"; and

Whereas, the North Carolina Environmental Management Commission has required large dairy, poultry, and animal operations located in North Carolina to obtain general NPDES permits; and

Whereas, the North Carolina Environmental Management Commission has required dairy, poultry, and animal operations defined as "small" and "medium" by the United States Environmental Protection Agency to obtain general nondischarge permits; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Dairy, poultry, and animal operations that are defined as small or medium by the United States Environmental Protection Agency shall continue until May 1, 2008, to operate under current general permits and certificates of coverage issued prior to January 1, 2003, by the North Carolina Environmental Management Commission in accordance with G.S. 143-215.10C.

SECTION 2. The Secretary of Environment and Natural Resources or the Secretary's designee; the Commissioner of Agriculture or the Commissioner's designee; and the Dean of the North Carolina State University School of Agriculture and Life Sciences or the Dean's designee shall jointly study the success of the current use of general permits for animal waste systems for small and medium dairy, poultry, and animal operations, including the decrease of nitrogen and phosphorous to streams and estuaries that resulted from the implementation of the general permits program. The Secretary of Environment and Natural Resources or the Secretary's designee; the Commissioner of Agriculture or the Commissioner's designee; and the Dean of the North Carolina State University School of Agriculture and Life Sciences or the Dean's designee shall recommend any additional permit requirements that would improve the ability of small and medium dairy, poultry, and animal operations to protect water quality, shall estimate the costs associated with implementing and complying with any new general permit requirements, and shall establish specific environmental goals and strategies that they used to establish new general permit requirements.

SECTION 3. The Department of Environment and Natural Resources shall report annually beginning no later than August 1, 2004, to the Environmental Review Commission on the progress of the study under this act and shall submit a final report no later than August 1, 2007, to the Environmental Review Commission. The study shall terminate with the submission of the final report.

SECTION 4. This act is effective when it becomes law.

ATT #5
4/22/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 733

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/17/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S733-PCS35248-RT-11

Short Title: Gen. Nondischarge Permits/Animal Operations. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXTENSIONS OF THE EXPIRATION DATES OF CERTAIN GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE USE OF GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS TO PROTECT WATER QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding 15A NCAC 2H.0225(e), the Department of Environment and Natural Resources, pursuant to the powers relative to general permits and to permits for facilities not discharging to the surface waters of the State that are granted to the Environmental Management Commission under G.S. 143-215.1 and G.S. 143-215.10C and delegated by the Commission to the Department, shall extend the expiration of general permits AWG100000 (Swine), AWG200000 (Cattle), and AWG300000 (Poultry) until 1 October 2004. Subject to the provisions of 40 Code of Federal Regulations Part 123 (1 July 2002 Edition) and of subsections (g) and (h) of 15 NCAC 2H.0225, the Department of Environment and Natural Resources shall extend the expiration of individual certificates of coverage issued under these general permits until 1 October 2004.

SECTION 2. The Department of Environment and Natural Resources shall study the use of general nondischarge permits for animal waste management systems for swine, cattle, and poultry operations to protect water quality, including the impact of the use of general permits for swine, cattle, and poultry operations on the land application and potential discharge of nitrogen and phosphorous to surface water and groundwater

in the State. In conducting this study, the Department shall consult with the Department of Agriculture and Consumer Services; the College of Agriculture and Life Sciences at North Carolina State University; representatives of swine, cattle, and poultry farmers; representatives of environmental protection and natural resources conservation groups; and other interested parties. In the course of the study required by this section, the Department of Environment and Natural Resources shall prepare draft revised general permits for animal waste management systems that serve swine, cattle, and poultry operations and shall circulate these draft permits, along with drafts of the forms that farmers would be required to use in connection with these permits, among interested parties for comment. Consistent with water quality protection goals and strategies, the Department of Environment and Natural Resources may further revise the draft revised general permits and associated forms on the basis of comment from interested parties. The Department of Environment and Natural Resources shall report its findings and recommendations to the Environmental Review Commission on or before 1 March 2004.

SECTION 3. This act becomes effective 30 April 2003.

ATT # 6
4/22/03

SENATE BILL 733:
Gen. Non-Discharge Permits Animal Operations

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Albertson
Date:	April 22, 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	PCS for Second Edition (S733-PCS35248-RT-11)		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 733 directs the Department of Environment and Natural Resources (DENR) to extend the expiration dates of certain general non-discharge permits for animal waste management systems that serve swine, cattle and poultry operations; and directs DENR to study, in consultation with other interested parties, the use of general non-discharge permits for these operations to protect water quality. The bill would become effective 30 April 2003.***

CURRENT LAW: The United States Environmental Protection Agency automatically requires animal operations to be covered by a federal National Pollutant Discharge Elimination System (NPDES) permit if the facility meets the following thresholds: swine facilities with 2,500 or more animals weighing at least 55 pounds each or 10,000 or more animals weighing less than 55 pounds; cattle facilities with 1,000 or more confined beef or 700 or more mature dairy cattle; and poultry facilities with 30,000 or more laying hens or broilers (if the facility has a liquid manure system). Animal waste management systems that serve swine, cattle, and poultry operations under these thresholds, except those deemed permitted under 15A NCAC 2H.0217, are required to obtain either an individual non-discharge permit or certificate of coverage under a general non-discharge permit pursuant to G.S. 143-215.1(a) and G.S. 143-215.10C. 15A NCAC 2H.0225(e) provides that general permits are effective for a term not to exceed five years at the end of which DENR may renew the permits. 15A NCAC 2H.0225(g) provides that an individual covered under a general permit may choose to pursue an individual permit for operation. 15A NCAC 2H.0225(h) provides that DENR may require any person eligible to operate under a general permit to apply for an individual permit based upon certain reasons specified in the rule. 40 Code of Federal Regulations Part 123 governs state program requirements for delegation of authority to administer the National Pollutant Discharge Elimination System of the federal Clean Water Act.

BACKGROUND: The general non-discharge permits for animal waste management systems for swine, cattle, and poultry operations are set to expire on 30 April 2003. Changes to the general permit requirements have been proposed to incorporate regulatory changes made to the federal National Pollutant Discharge Elimination System (NPDES) permit program. The proposed permit renewals would modify operating, monitoring, and reporting requirements.

BILL ANALYSIS:

Section 1 directs DENR to extend the expiration of general permits AWG100000 (Swine), AWG200000 (Cattle), and AWG300000 (Poultry) and of the certificates of coverage issued under these general permits to 1 October 2004.

Section 2 directs DENR to study the use of general non-discharge permits for animal waste management systems for swine, cattle, and poultry operations, including the impact on land application and potential

discharge of nitrogen and phosphorous to surface water and groundwater in the State. DENR will conduct the study in consultation with the Department of Agriculture and Consumer Services; the College of Agriculture and Life Sciences at North Carolina State University; representatives of swine, cattle, and poultry farmers; representatives of environmental protection and natural resources conversation groups; and other interested parties. In the course of the study, DENR will prepare and circulate draft revised general permits for these operations, along with drafts of the forms that farmers would be required to use in connection with these permits, among interested parties for comment. DENR may, consistent with water quality protection goals and strategies, further revise the draft general permits and associated forms on the basis of comment from interested parties. DENR will report its findings and recommendations to the Environmental Review Commission on or before 1 March 2004.

Section 3 provides that the bill would become effective 30 April 2003.

SB733-SMRI-001

VISITOR REGISTRATION SHEET

Environment and Natural Resources — 4/22

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NC Farm Bureau
Rick Zechini	NC Assoc. of Realtors
Lucius Pullen	Counsel NC Mining Assoc
Bob Slocum	NC Forestry Assn
Nancy Thompson	MCIC
Chandler Case	Hunton & Williams
Lisa Martin	NC Home Builders Assn.
Mirios, Noly & Chemo Arellano	Friendly Visitors of N.C.
Jerry SCHILL	NC Fisheries Association
[illegible] Hardesty	NC. Pork Council
Beth Anne Mumford	NCPC
Chris Nichols	Hunton + Williams
James Southerland	DENR/DAQ
Phyllis D. Jones	DENR/DAQ
Fred Allen	NC Aggregates Assn
Lydia Long	Long and Long Associates
Claudia Long	Martin Marietta
Anne Mergist	NCACC
Kim Hibbard	NCLM
Jim CUMMINGS	NCDA & CS
John Morris	DWR
Don RAYNO	DWR
Larry Shirley	State Energy Office
DAN Whittle	ENV. DEFENSE
Elizabeth Ouzts	NCPIRG
Percy Harrison	Beaufort NC
Tom Bean	NC Env. Def
RUTHARD HAUKRADER	NC SUSTAINABLE ENERGY ASSOC

VISITOR REGISTRATION SHEET

Environment and Natural Resources 4/22
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eneshia Duchon	Exe. Intern
Bob Gillam	Public Staff - NCUC
Andy Lee	Public Staff - NCUC
Carol Lauven	EGHS
Grady McLaughlin	N.C. Cmn Act.
Steve Wall	Conservation Council
Colleen Kochanek	Hafer & Caldwell
Lisa Glover	NCAGO/NCDOT
Hawley Truax	Office of the Governor
Anita Watkins	NCLM
Robin Smith	NC DENR
Molly Diggins	NC Sierra Club
Laura DeVine	NCGA
Alan Briggs	Save Our State
Angie McMillan	The Nature Conservancy
DENNIS RAMSEY	DENR / DWQ
Kari Barsness	DENR

PUBLIC BILL

H.B. 1062 SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLIC WATER SYSTEMS TO PREPARE LOCAL WATER SUPPLY PLANS AND TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS.

Introduced by Representative(s): McLawhorn.

Principal Clerk's Use Only

PASSED 1st READING
APR 10 2003
AND REFERRED TO COMMITTEE
ON Public Utilities

ON MOTION OF
REP. Culpepper
WITHDRAWN FROM
Public Utilities
APR 17 2003
RECOMMITTED TO
Environment

)BLIC BILL

Comm Env/Nat. Res.
~~Proposed~~ Committee Substitute For
S.B. 733

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXTENSIONS OF THE EXPIRATION DATES OF CERTAIN GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE USE OF GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS TO PROTECT WATER QUALITY.

Introduced by Senator(s) Albertson

Principal Clerk's Use Only

Committee Substitute Adopted
Pursuant to Rule 45.1
APR 17 2003

CHANGES TITLE

ES SUSPENDED

ON TODAY'S CALENDAR
4/17/03

PASSED 2nd & 3rd READINGS
43-0 VV
APR 17 2003
ORDERED SENT TO HOUSE OF REPRESENTATIVE
BY SPECIAL MESSENGER
Janet Pruitt

05 32925R23 080EFLE

04-21-03P01:27 RCVD

PASSED 1st READING
APR 21 2003
AND REFERRED TO COMMITTEE ON Environment & Natural Resources

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1062 A BILL TO BE ENTITLED AN ACT TO REQUIRE PUBLIC WATER SYSTEMS TO PREPARE LOCAL WATER SUPPLY PLANS AND TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☒ Committee Substitute for
S.B. 733 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR EXTENSIONS OF THE EXPIRATION DATES OF CERTAIN GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE USE OF GENERAL NONDISCHARGE PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS THAT SERVE SWINE, CATTLE, AND POULTRY OPERATIONS TO PROTECT WATER QUALITY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

April 24, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 1045 – NC CLIMATE ACTION REGISTRY – Rep. Hackney

   HB 1112 – CLARIFY FOOD SERVICE LAWS – Rep. Gibson

   ~~**HB 866 – CLEAN AIR TRUST FUND – Rep. Haire**~~ (not heard)

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 24, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 24, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Jean Preston, Bonner Stiller, Alex Warner, Jennifer Weiss, and Larry Womble. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:10 pm and asked Representative Hackney to Chair for the first bill. The following bills were taken up:

HB 866 – Clarify Food Service Laws (Attachments 1, 2). Representative Gibson said this bill is about food sanitation with pushcarts. Regulations that are already being used by the Department and expanding the operations for pushcarts to include commissaries, deletes obsolete language from the Statutes, and is non-controversial. Representative McHenry moved for a favorable report.

Susan Grayson, Dairy and Food Protection Branch, Department of Agriculture, said there was no change in current practice. The food carts must be affiliated with a commissary (defined as a restaurant) to provide back-up maintenance, such as trash disposal, water, etc. This bill makes no change in the current practice.

Following a discussion, Representative McHenry again moved for a favorable report. Passed.

HB 1045 – NC Climate Action Registry (Attachment 3). Representative Hackney moved to adopt H1045-PCS80271-SY-3 (Attachment 4, 5). He said that this bill takes over the revolving debate over greenhouse gases and establishes a voluntary action registry that shows in an official way that reductions have occurred. There have been no objections to the bill, thus far. The Department of Energy has a voluntary registry that requires a 10 percent reduction in greenhouse gases before you are eligible to use that one. There are no requirements with this bill, and it is thoroughly voluntary. It is an appropriate first step for North Carolina. Representative Womble moved, at the appropriate time, for a favorable report, unfavorable to the original bill.

Robin Smith, Assistant Secretary, DENR, said the Department favors the bill.

Representative McHenry questioned wording that would "expand" the registry, page 2, and line 5 of the original bill. He also questioned the overall intent of the bill, and page 3, lines 14-16 "regulatory scheme" which would be regulations that industry must adhere to. He also stated that in a tough budget year, DENR is being asked to do more with less resources—urged that the mandatory programs be well administered.

Henry Jones, Automobile Manufacturers and the American Forest and Paper Association, said his clients' concerns had been addressed by the PCS. Considerations of page 3, line 21 "international best practice".

Nancy Thompson, Manufacturers and Chemical Industry Council (Attachment 6) stated her concerns over page 3, lines 12, 13 as it relates to her industries.

George Givens, Chief Counsel, said that the bill is subject to North Carolina rules and would come back to the Committee if changes were needed. He also said North Carolina goes by rules not guidelines.

Leslie Bavaqua, NC Citizens for Business and Industry, concerns were over issues in duplication.

Sam Taylor, Honda North America, supports the bill, however had concerns about complying with regulations. Representative Hackney stressed that there was no "comply" to the bill.

The discussion was lengthy; no resolutions to the concerns were formed; the bill was left in Committee.

Chair Gibson adjourned the meeting at 1:00 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 2
4/24/03

HOUSE BILL 1112:
Clarify Food Service Laws.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Gibson
		Summary by:	Tim Dodge
Date:	April 24, 2003		Research Assistant for
Version:	First Edition		Environmental Issues

SUMMARY: ***House Bill 1112 expands the classification of a base of operations for a pushcart or mobile food unit to include commissaries. The bill also repeals obsolete language in the Statutes.***

BILL ANALYSIS:

Section 1 deletes obsolete language in the Statutes.

Section 2 authorizes permitted commissaries to serve as the base of operations for a pushcart or mobile food unit. Under current law, a pushcart or mobile food unit may only be operated in conjunction with a permitted restaurant.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H1112-SMSY-001

Att # 3
4/24/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1045

Short Title: NC Climate Action Registry. (Public)

Sponsors: Representatives Hackney; and Insko.

Referred to: Environment and Natural Resources.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA CLIMATE ACTION REGISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.107E. Legislative findings.**

(a) The General Assembly makes the following findings:

(1) It is in the best interests of North Carolina, the United States of America, and the earth as a whole to encourage actions to achieve all economically beneficial reductions of greenhouse gas emissions from North Carolina sources.

(2) Mandatory greenhouse gas emissions reductions may be imposed on North Carolina sources at some future point, and, in view of this, the State has a responsibility to use its best efforts to ensure that organizations that voluntarily reduce their emissions receive appropriate consideration for emissions reductions made prior to the implementation of any mandatory programs.

(3) The State's tradition of environmental leadership should be recognized through the establishment of a registry to provide documentation of those greenhouse gas emissions reductions that are voluntarily achieved by sources in the State.

(4) The State hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are verified in accordance with this section receive appropriate consideration under any future international, federal, or State regulatory scheme relating to greenhouse gas emissions. The State cannot guarantee that any regulatory regime relating to greenhouse gas emissions will recognize

the baselines or reductions recorded in the North Carolina Climate Action Registry.

(b) No later than July 1, 2004, the Department shall adopt guidelines to establish the North Carolina Climate Action Registry. Participation in the Registry shall be voluntary. No later than July 1, 2005, the Commission shall adopt rules to expand the Registry. The guidelines and the rules under this subsection shall do all of the following:

(1) Design programs to establish emissions baselines and to monitor and track greenhouse gas emissions.

(2) Adopt systems to verify emissions and reductions of emissions.

(3) Adopt a uniform format for reporting emissions baselines and reductions in order to facilitate their recognition in any future regulatory scheme.

(4) Maintain a record of all emissions baselines and reductions.

(c) The purposes of the North Carolina Climate Action Registry are all of the following:

(1) To help various entities in the State establish emissions baselines against which any future federal greenhouse gas emission reduction requirements may be applied.

(2) To encourage voluntary actions to increase energy efficiency and reduce greenhouse gas emissions.

(3) To enable participating entities to record voluntary greenhouse gas emissions reductions made after 1990 in a consistent format that is supported by third-party verification.

(4) To ensure that sources in the State receive appropriate consideration for verified emissions reductions under any future federal regulatory regime relating to greenhouse gas emissions.

(5) To recruit broad participation in the process from all economic sectors and regions of the State.

(6) To recognize, publicize, and promote registrants that make voluntary reductions of emissions.

(7) To create an inventory of greenhouse gas emissions from all major emission sectors.

(d) The Commission shall adopt rules that require facilities that participate in the North Carolina Climate Action Registry and that are significant sources of carbon dioxide and other greenhouse gases to report these emissions by amount.

(e) Companies and organizations shall be encouraged to establish emissions reduction goals based on international best practices for specific industries and economic sectors. The Department shall recognize, publicize, and promote participants that commit to monitor their emissions, set emissions reduction targets, establish emissions baselines, and report the quantity of their annual emissions progress.

(f) The following definitions apply in this section:

(1) Greenhouse gas. – Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(2) Greenhouse gas emissions. – Emissions of a greenhouse gas, including all of the following:

a. Stationary combustion source emissions, which are emitted as a result of combustion of fuels in stationary equipment such as boilers, furnaces, burners, turbines, heaters, incinerators, engines, flares, and other similar sources.

b. Process emissions, which consist of emissions from chemical or physical processes other than combustion.

c. Fugitive emissions, which consist of intentional and unintentional emissions from both:

1. Equipment leaks such as joints, seals, packing, and gaskets.

2. Piles, pits, cooling towers, and other similar sources.

d. Mobile source emissions, which are emitted as a result of combustion of fuels in transportation equipment such as automobiles, trucks, trains, airplanes, and vessels."

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

ATT# 4
4/24/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1045
PROPOSED COMMITTEE SUBSTITUTE H1045-PCS80271-SY-3

Short Title: NC Climate Action Registry. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA CLIMATE ACTION REGISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.107E. Climate Action Registry.**

(a) Legislative Findings. – The General Assembly finds that:

(1) Climate change is a matter of increasing concern for public health and the environment in the State.

(2) The control and reduction of emissions of greenhouse gases are critical to slow the effects of climate change.

(3) It is in the best interests of the State, the United States of America, and the earth as a whole to encourage actions to achieve all economically beneficial reductions of greenhouse gas emissions from sources in the State.

(4) Mandatory greenhouse gas emissions reductions may be imposed on sources in the State at some future point, and, in view of this, the State has a responsibility to use its best efforts to ensure that organizations that voluntarily reduce their greenhouse gas emissions receive appropriate consideration for emissions reductions made prior to the implementation of any mandatory programs.

(5) The State's tradition of environmental leadership should be recognized through the establishment of a registry to provide documentation of those greenhouse gas emissions reductions that are voluntarily achieved by sources in the State.

(6) While the State cannot guarantee that any regulatory program relating to greenhouse gas emissions will recognize the baselines or reductions

recorded in the North Carolina Climate Action Registry, the State hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are verified in accordance with this section receive appropriate consideration under any future international, federal, or State regulatory scheme relating to greenhouse gas emissions.

(b) Definitions. – As used in this section:

(1) 'Greenhouse gas' means carbon dioxide, methane, oxides of nitrogen, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(2) 'Greenhouse gas emissions' means emissions of a greenhouse gas, including all of the following:

a. Stationary combustion source emissions that are emitted as a result of combustion of fuels in stationary equipment such as boilers, furnaces, burners, turbines, heaters, incinerators, engines, flares, and other similar sources.

b. Process emissions that consist of emissions from chemical or physical processes other than combustion.

c. Fugitive emissions that consist of intentional and unintentional emissions from all of the following:

1. Equipment leaks such as joints, seals, packing, and gaskets.

2. Piles, pits, cooling towers, and other similar sources.

d. Mobile source emissions that are emitted as a result of combustion of fuels in transportation equipment such as automobiles, trucks, trains, airplanes, and vessels.

(3) 'Registry' means the Climate Action Registry created pursuant to this section.

(c) Registry Established; Purposes. – There is established the Climate Action Registry within the Department. The Registry shall serve the following purposes:

(1) To help various entities in the State establish greenhouse gas emissions baselines against which any future federal greenhouse gas emission reduction requirements may be applied.

(2) To encourage voluntary actions to increase energy efficiency and reduce greenhouse gas emissions.

(3) To enable participating entities to record voluntary greenhouse gas emissions reductions made after 1990 in a consistent format that is supported by third-party verification.

(4) To ensure that sources in the State receive appropriate consideration for verified greenhouse gas emissions reductions under any future federal regulatory program relating to greenhouse gas emissions.

(5) To recruit broad participation in the process from all economic sectors and regions of the State.

(6) To recognize, publicize, and promote registrants that make voluntary reductions of greenhouse gas emissions.

(7) To create an inventory of greenhouse gas emissions from all major emission sectors.

(d) Participation. – Participation in the Registry is voluntary. Any entity conducting business in the State may register its greenhouse gas emissions results, including emissions generated outside of the State, on an entitywide basis with the Registry, and may utilize the services of the Registry.

(e) Rule-Making Authority. – The Department shall adopt rules to implement this section in accordance with the provisions of Chapter 150B of the General Statutes. The rules shall establish the following components of the Registry:

(1) A program to establish greenhouse gas emissions baselines and to monitor and track greenhouse gas emissions.

(2) A system to verify greenhouse gas emissions and reductions of greenhouse gas emissions.

(3) A uniform format for reporting greenhouse gas emissions baselines and reductions in order to facilitate their recognition in any future regulatory scheme.

(4) A permanent record of all greenhouse gas emissions baselines and reductions.

(f) Emissions Reduction Goals. – The Department shall encourage companies and organizations to establish greenhouse gas emissions reduction goals based on international best practices for specific industries and economic sectors. The Department shall recognize, publicize, and promote participants that commit to monitor their greenhouse gas emissions, set emissions reduction targets, establish emissions baselines, and report the quantity of their annual emissions progress.

(g) Report Required. – The Department shall report no later than 1 October of each year to the Environmental Review Commission and the Governor regarding the implementation of this section. The report shall include the number of organizations participating in the Registry, the percentage of the State's greenhouse gas emissions represented by the participants in the Registry, and the reductions in greenhouse gas emissions achieved by those participants. The report shall also include an evaluation of methods to make the Registry more conducive to participation by all major greenhouse gas emission sectors."

SECTION 2. The Department of Environment and Natural Resources shall adopt permanent rules to implement the provisions of this act so that the rules shall be subject to legislative review pursuant to G.S. 150B-21.3(b) by the 2005 Regular Session of the General Assembly and, unless disapproved, shall become effective on 1 July 2005. Notwithstanding G.S. 150B-21.1(a), this act shall not be construed to authorize the adoption of temporary rules.

SECTION 3. The first report required by G.S. 143-215.107E(g), as enacted by Section 1 of this act, shall be due no later than 1 October 2006.

SECTION 4. This act is effective when it becomes law.

ATT #5
4/24/03

HOUSE BILL 1045:
NC Climate Action Registry.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Hackney
Date:	April 24, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	PCS for First Edition (H1045-PCS80271-SY-3)		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1045 (PCS) establishes the North Carolina Climate Action Registry (Registry). The Registry provides a method to document voluntary reductions in greenhouse gas emissions that are achieved by sources in the State. The PCS directs the Department of Environment and Natural Resources (DENR) to adopt rules to establish monitoring and tracking systems for greenhouse gas emissions in the State, to establish programs to promote participation in the Registry, and to encourage companies and organizations to establish greenhouse gas emissions reduction goals.***

BILL ANALYSIS: The PCS establishes the North Carolina Climate Action Registry. The primary purpose of the Registry is to promote the voluntary reduction of greenhouse gas emissions in the State. The PCS defines greenhouse gases to include carbon dioxide, methane, oxides of nitrogen, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The PCS authorizes DENR to adopt rules to do the following:

- Design programs to establish emissions baselines and to monitor and track greenhouse gas emissions.
- Adopt systems to verify emissions and reductions of emissions.
- Adopt a uniform format for reporting emissions baselines and reductions in order to facilitate their recognition in any future regulatory scheme.
- Maintain a record of all emissions baselines and reductions.

Participation in the Registry is voluntary. The PCS directs DENR to encourage companies and organizations to establish greenhouse gas emissions reduction goals based on international best practices for specific industries and economic sectors and to provide recognition for those companies and organizations that participate in the Registry. The PCS also directs DENR, beginning October 1, 2006, to submit annual reports to the Environmental Review Commission and the Governor regarding the implementation of the act.

EFFECTIVE DATE: The PCS would become effective when it becomes law. DENR would adopt permanent rules to implement the provisions of the PCS that, unless disapproved by the 2005 Regular Session of the General Assembly, would become effective July 1, 2005. The PCS does not authorize the adoption of temporary rules.

H1045-SMSY-001

ATTACHMENT 6
4/24/03

About

The Voluntary Reporting of Greenhouse Gases Program

Reduce Emissions...
Report Reductions...
Receive Recognition...

What is the Voluntary Reporting Program? . . . . Why Report? . . . . Who Can Report?
What Types of Information Can I Reported? . . . . On Which Greenhouse Gases Can I Report?
How Is the Information Collected? . . . . Electronic Reporting . . . . How Will the Information Be Used?
Check Out Our Homepage . . . . How Can I Get Involved?

What is the Voluntary Reporting Program?

Greenhouse gases such as carbon dioxide, methane, and nitrous oxide absorb infrared energy radiated from the Earth's surface and prevent it from leaving the atmosphere. The presence of these naturally occurring gases in the atmosphere warms the planet's surface, making it hospitable to life. However, during the last century, human activities such as the burning of fossil fuels have increased the atmospheric levels of these gases. The effects of these increased concentrations are uncertain, but many scientists believe they will result in unpredictable and potentially catastrophic changes to the Earth's climate.

In response to these concerns, the United States has undertaken efforts to reduce its greenhouse gas emissions. Rather than implement a regulatory program, the Congress and President Clinton have called for voluntary actions to reduce emissions and meet U.S. commitments under the Framework Convention on Climate Change.

The **Voluntary Reporting of Greenhouse Gases Program**, established by Section 1605(b) of the Energy Policy Act of 1992, provides a means for organizations and individuals who have reduced their emissions to record their accomplishments and share their ideas for action.

Why Report?

There are a number of reasons you may wish to report including:

- To gain recognition for environmental stewardship.
- To inform the public debate about activities aimed at achieving reductions in greenhouse gas emissions.
- To establish a public record of emissions and reductions that may be referenced for future consideration.
- To demonstrate support for voluntary approaches to achieving environmental policy goals.
- To contribute to information exchanges on the most effective ways to reduce emissions of greenhouse gases.
- To demonstrate progress toward meeting commitments to reduce emissions of greenhouse gases made under voluntary programs.

Who Can Report?

Anyone can report. You can report as: an individual, head of household, organization, small business, or large corporation. Past reporters include:

- Utilities such as Niagara Mohawk, Houston Lighting and Power, and New England Electric Systems
- Manufacturers such as General Motors, Johnson & Johnson, and Alcan Ingot
- Coal producers such as Consol and Peabody
- Chemical companies like Dow and DuPont
- Information technology innovators like IBM
- Coal producers such as Consol and Peabody
- Trade associations reporting on behalf of their members like the Integrated Waste Services Association.

What Types of Information Can I Report?

You can report any activity that reduces emissions of greenhouse gases or increases carbon fixation or sequestration. Some examples of what you can report include:

- Baseline emissions for 1987-1990 and subsequent years.
- Emission reductions from 1991 onwards.
- Projects such as:
  - *Operation of more efficient vehicles,*
  - *Replacing lighting fixtures or appliances with more efficient ones,*
  - *Fuel switching,*
  - *Recovering methane from landfills,*
  - *Forest preservation and tree planting,*
  - *Carpooling*
  - *Recycling*
- Future Commitments to reduce emissions of greenhouse gases, undertaken through local or national voluntary reduction programs.

On Which Greenhouse Gases Can I Report?

This voluntary reporting program accepts information on:

- Carbon Dioxide,
- Methane,
- Nitrous Oxide,
- Halogenated substances, including many refrigerants (such as CFCs and HCFCs) and
- Other radiatively enhancing gases, including nitrogen oxides (NOx), nonmethane volatile organic compounds (NMVOCs), and carbon monoxide (CO).

How Is the Information Collected?

To allow flexibility, the Voluntary Reporting of Greenhouse Gases Program offers two reporting forms:

- **Form EIA-1605**, or the long form, allows you to give a detailed account of emissions, emission reductions, and carbon sequestration for an entire entity (for example your entire corporation, plant, or household) or for specific projects.
- **Form EIA-1605EZ**, or the short form, allows you to provide a brief synopsis of emission reductions or sequestration achieved by individual projects.

Electronic Reporting

Both Form EIA-1065 and Form EIA-1605EZ can be downloaded from this web-site and submitted to the Energy Information Administration via the Internet. To access the electronic reporting form, click here. Forms are also available on CD-ROM or diskette and may be submitted on diskette via U.S. mail or by e-mail.

How Will the Information Be Used?

The information collected through the Voluntary Reporting of Greenhouse Gases Program is made available through a public use database. Public access to the data supports educational exchanges, informs public policy development, and encourages public recognition of your initiatives to reduce greenhouse gases. The database preserves, and makes publicly available, data on your emissions, emission reductions, and sequestration achievements.

Check Out Our Homepage

The Voluntary Reporting of Greenhouse Gases web site can be accessed through EIA's Greenhouse Gases Homepage at http://www.eia.doe.gov/oiaf/1605/frntend.html

This site provides general information about the program, and makes all the program's documentation available for viewing or downloading, including

- current electronic and paper reporting forms
- the database of reports received
- guidelines and worksheets for the estimation of emissions, emission reductions, and carbon sequestration

How Can I Get Involved?

Anyone can get involved. If you have done anything- large or small - to reduce emissions of greenhouse gases, you can complete and submit a report to EIA.

For more information or hard copies of the reporting forms:

Call: 1-800-803-5182 or (202) 586-0688

Fax: (202) 586-3045

Write: **Voluntary Reporting of Greenhouse Gases Program**
U.S. Department of Energy, Energy Information Administration, EI-81
1000 Independence Avenue, SW Washington, DC 20585

E-mail: infoghg@eia.doe.gov

Return to **Voluntary Reporting of Greenhouse Gases** Home Page

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 1112 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS RELATED TO SANITATION OF FOOD AND LODGING FACILITIES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES 4-24-03

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hem Jones	Attorney Raleigh
Dan Ivy	Honda NA
Albert Eckel	Counting
Jim Kuszaj	MCIC
Nancy Thompson	UNC IC
Leslie Belanger	NCCBC
Angie McMillan	TNC
[illegible]	NCRA
Susan Grayson	DENR
Tom Bean	Envir Defense
Chris Nichols	Hunton + Williams

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob P. Right	Intern (Rep. Hackney)
Sharon Strand	State Energy Office
Ed Rego	N.C. Assoc. of Co. Comm.
Pam Mayo	NCACC
Kim Hibbard	NCLM
Lisa Martin	NC HBA
Bob Spearman	NC Forestry Assn
Amy Fullbright	Hunton & Williams
Kari Barsness	NCDENR
Eliz Ouzts	NCPIRG
Robin Smith	NCDENR

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Pabson	NC Statewatch
Brian Buzby	ConAct
Gordy McKeithan	NC ConAct
Jim Stephenson	NC Coastal Federation
Molly Diggins	Sierra Club
David Knight	NC Sierra
James Sutherland	DENR-DWQ
Sharon Miller	CUCA
Brad Wilson	concerned citizen
R. Randall Williams	NCMSA
Laura DeVico	NCGA

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary F. Harris	NCPMA
Doug Howey	NCPMA

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

April 29, 2003

12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 868 – IMPROVE ENVIRONMENTAL ENFORCEMENT – Rep. Culpepper
   HB 897 – UNDERGROUND STORAGE TANK PRGM. – Rep. Gibson
   HB 987 – AMEND MARINE FISHERIES LAWS – Rep. Wainwright
   HB 1028 – NEW BULKHEAD PERMIT – Rep. K. Williams
   HB 1179 – GROUNDWATER PROTECTION ACT – Rep. McComas

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 29, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 29, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Russell Capps, Mitch Gillespie, Phil Haire, Verla Insko, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Jean Preston, Ray Rapp, Bonner Stiller, Alex Warner, and Jennifer Weiss. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:10 pm. The following bills were taken up:

HB 868 – Improve Environmental Enforcement (Attachment 1) Representative Haire moved to place H868-PCS80293-RT-24 (Attachment 2, 3, 4) before the Committee. Representative Culpepper spoke on the bill and said that it would improve environmental enforcement under various acts and explained Sections 1 through 8 (See Bill Analysis in Attachment 3). There was an omission of Section 7 in the "PCS which would repeal a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties and civil forfeitures that are collected and payable to the County School Fund" due to a typing error. Representative Hackney requested staff to draft the amendment (Attachment 5) to add this exclusion to the bill. Upon being drafted, Representative Hackney's amendment was adopted.

Discussion of collection of civil penalties and who collected them was raised and an explanation of violations and penalties. To which, Robin Smith, Assistant Secretary, DENR, said that the Department refers the civil penalties to the Attorney General's office for collection first. Only after that fails, is the collection referred to a collection agency. Representative McComas voiced a concern regarding the maximum amouth of the civil penalty applicable to CAMA major development projects. He requested an amendment be drafted to raise the penalty to $25,000.

Representative Allen said the PCS and the Bill Analysis on Section 4 was not the same. It was again noted that a typing error had been made. Representative Allen requested an amendment to correct this error. Representative Allen's amendment (Attachment 6) to correct the typing errors was adopted.

The discussion continued to discuss specific sedimentation violations, significant enforcement issues, constituent issues with violations, protecting public health, and DENR's responsibilities and informational/educational efforts which are in the General Statutes.

Upon being drafted, Representative McComas' moved for adoption of his amendment (Attachment 7), which increases the penalty from $10,000 to $25,000. Adopted.

Representative McHenry moved to incorporate the amendments into a new PCS to authorize the staff to make any technical changes necessary to correct errors, giving the PCS a favorable report, unfavorable to the original bill. Passed.

HB 1028 – New Bulkhead Permit (Attachment 8, 9, 10) Representative Weiss moved to adopt the PCS H868-PCS80293-RT-24.

Representative K. Williams said this bill would direct coastal resources to adopt rules to establish a general permit for construction of offshore sills for shoreline and wetland protection. Riprap sills are placed offshore to diminish wave action, which erode the shoreline. There was no objection to the bill.

Jim Stevenson, NC Coastal Federation, passed out materials (Attachment 11) and said marshes would be created and restored. Other states have been successful with this.

Donna Moffitt, Director, Division of Coastal Management (Attachment 12[spoken from, not distributed]), said the Division does not strongly oppose the bill; rather it feels the programs should be discretionary, give the CRC more time to consider this and hold the public process before adoption, and language changes should be made to the bill. Representative Haire said that, rather that hurry through the bill, he would like the Committee to continue to study the bill. Chair Gibson said that the Committee would bring up the bill after crossover.

HB 1179 – Groundwater Protection Act (Attachment 13), sponsored by Representative McComas. As time was running out, Representative Gibson proposed that a fee provision be added to it in order that it would make it eligible after crossover. There was no opposition. George Givens, Chief Counsel, said that the bill is a work in progress, and that the PCS contains clear fee language. Representative Gibson moved to adopt the PCS H1180-PCS60315-RTf-25 (Attachments 14 and 15). Adopted.

Chair Gibson adjourned the meeting at 1:00 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

#1
4/29/03
NOON

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 868*

Short Title:	Improve Environmental Enforcement.	(Public)
Sponsors:	Representatives Culpepper; Luebke and Weiss.	
Referred to:	Environment and Natural Resources.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18 (a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of ~~health,~~ health, or any order issued pursuant to this Chapter, the Secretary or a local health director 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."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ thirty-seven thousand five hundred dollars ($37,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment 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. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars ($5,000) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under Article ~~9.~~9 and Article 10.**

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 Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter 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 7. This act becomes effective 1 December 2003 and applies to violations and offenses committed on or after that date.

#2
4/29/03
NOON

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 868*
PROPOSED COMMITTEE SUBSTITUTE H868-PCS80293-RT-24

Short Title: Improve Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS.

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b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

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SECTION 7. This act becomes effective 1 December 2003 and applies to violations and offenses committed on or after that date.

#3
4/29/03
NOON

HOUSE BILL 868:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Culpepper; Luebke, and Weiss
Date:	29 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	Summary for 1st Edition and PCS (H868-PCS80293-RT-24)		

SUMMARY: ***House Bill 868 would increase the amount of civil penalties that may be assessed for violations of the Sedimentation Pollution Control Act of 1973, minor and major development violations under the Coastal Area Management Act of 1974, and violations of other environmental statutes. The bill authorizes the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for major and minor development violations under the Coastal Area Management Act of 1974. The bill also adds a penalty for false reporting under the North Carolina Drinking Water Act. The PCS would repeal a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties and civil forfeitures that are collected and payable to the County School Fund. The bill would become effective 1 December 2003 and apply to violations and offenses committed on or after that date.***

CHANGES IN PCS:

- Section 4 of the PCS changes the amount of the maximum penalty that may be assessed for a violation involving hazardous waste from thirty-seven thousand five hundred dollars ($37,500) per day as provided in the original bill to twenty-seven thousand five hundred dollars ($27,500) per day as provided in the PCS.
- Section 5 of the PCS adds the term "per violation" in two places. The original bill increased the maximum amounts of certain administrative penalties that may be assessed per day for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems). The PCS adds the term "per violation" after "per day."
- A new Section 7 is added to the PCS. Currently, the Statutes contain a provision that the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to the Constitution shall be remitted to the Office of State Budget and Management. The Statute provides that the clear proceeds of these penalties and forfeitures include the full amount collected diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected. The PCS would repeal the ten percent (10%) cap on the actual costs of collection.

BILL ANALYSIS:

Section 1 would add a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act.

Section 2 would increase the civil penalty that may be assessed for a minor development violation under the Coastal Area Management Act of 1974 from two hundred fifty dollars ($250) to one thousand dollars

($1,000), and increase the civil penalty that may be assessed for a major development violation under the Act from two thousand five hundred dollars ($2,500) to ten thousand dollars ($10,000).

In addition, the section adds an authorization to assess reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for minor and major development violations under the Coastal Area Management Act of 1974. The amount of investigative costs assessed for a minor development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or one thousand dollars ($1,000), whichever is less. The amount of investigative costs assessed for a major development violation shall not exceed one-half of the amount of civil penalty assessed for the violation or two thousand five hundred dollars ($2,500), whichever is less.

Section 3 provides that the Secretary of Environment and Natural Resources or a local health director may institute an action for injunctive relief against a person who violates an order issued pursuant to Chapter 130A of the General Statutes, in addition to existing authority under the Statute to institute actions for injunctive relief for violations of the Chapter, or any rule adopted by the Commission for Health Services or a local board of health.

Section 4 increases the maximum amounts of certain administrative penalties that may be assessed for violations of Article 9 of Chapter 130A of the General Statutes (Solid Waste Management). The maximum penalty for a violation involving nonhazardous waste is increased from five thousand dollars ($5,000) to ten thousand dollars ($10,000) per day. The PCS would increase the maximum penalty for a violation involving hazardous waste from twenty-five thousand dollars ($25,000) to twenty-seven thousand five hundred dollars ($27,500) per day. The penalty is also made applicable to failure to make a determination whether a solid waste is a hazardous waste.

Section 5 increases maximum amounts of certain administrative penalties that may be assessed for violations of Article 11 of Chapter 130A of the General Statutes (Wastewater Systems). The maximum penalty for a violation involving a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling is increased from fifty dollars ($50.00) to one hundred dollars ($100.00) per day per violation, and is increased from three hundred dollars ($300) to five thousand dollars ($5,000.00) per day per violation for systems with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

Section 6 adds a penalty for false reporting under Article 10 of Chapter 130A of the General Statutes (North Carolina Drinking Water Act), in addition to existing authority under the statute to impose a penalty for false reporting under Article 9 of the Chapter. A person who violates this provision would be guilty of a Class 2 misdemeanor and may be assessed a fine not to exceed ten thousand dollars ($10,000). A Class 2 misdemeanor is punishable by a minimum of 1 day of community punishment up to a maximum of 60 days active punishment, depending on the misdemeanant's record for prior convictions.

Section 7 of the PCS would repeal a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties and civil forfeitures that are collected and payable to the County School Fund.

Section 8 provides that the bill would become effective 1 December 2003 and apply to violations and offenses committed on or after that date.

H868-SMRI-001

Bill reported out #4 4/29/03 NOON

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 868*
PROPOSED COMMITTEE SUBSTITUTE H868-PCS60322-RT-26

Short Title: Improve Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars ($250.00)~~ one thousand dollars ($1,000) for a minor development violation and ~~two thousand five hundred dollars ($2,500)~~ twenty-five thousand dollars ($25,000) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty,~~ any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.

(4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less.

(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. G.S. 130A-18(a) reads as rewritten:

"(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~ Chapter, any rule adopted by the ~~Commission or rules~~ Commission, any rule adopted by a local board of health or any order issued pursuant to this Chapter, the Secretary or a local health director 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."

SECTION 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~five~~ ten thousand dollars ~~($5,000)~~($10,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand dollars ($25,000)~~ twenty-seven thousand five hundred dollars ($27,500) per day in the case of a ~~first~~ violation involving hazardous ~~waste~~ waste, as defined in G.S. ~~130A-290 or~~ 130A-290, or for a failure to make a determination whether a solid waste is a hazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment 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. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 5. G.S. 130A-22(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed ~~three hundred dollars ($300.00)~~ five thousand dollars

($5,000) per day per violation in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling."

SECTION 6. G.S. 130A-26.2 reads as rewritten:

"**§ 130A-26.2. Penalty for false reporting under Article ~~9~~9 and Article 10.**

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 Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 or Article 10 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of this Chapter 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 7. G.S. 115C-457.2 reads as rewritten:

"**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all funds which are civil penalties or civil forfeitures within the meaning of Article IX, Section 7 of the Constitution shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of such funds include the full amount of all such penalties and forfeitures collected under authority conferred by the State, diminished only by the actual costs of ~~collection, not to exceed ten percent (10%) of the amount collected.~~collection."

SECTION 8. This act becomes effective 1 December 2003 and applies to violations and offenses committed on or after that date.

4/29/03
ATT 5
NOON

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 868 DATE 29 April 2003

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hanig
)
Sen.)

moves to amend the bill on page 4 between lines 10 & 11

( ) WHICH CHANGES THE TITLE

by inserting a new section to read:

"Section 7 G.S. 115C-457.2 is amended by deleting the word, "and" to exceed ten percent (10%) of the amount collected." and adding a period at the end of that section, and

on page 4, line 11 by changing "Section 7" to "Section 8".

[Note: This amendment incorporated into PCS for H 868 in coded bill drafting form per motion adopted by House Env. & Nat. Resources Committee to authorize staff to make technical changes. G.F. Givens, Chief Counsel]

SIGNED _____

Pw

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

AFT # 5A
4/29/03
VOON

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 868*

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

H868-ART-6 [v.1]

Date _____,2003

Comm. Sub. [NO]
Amends Title [NO]
H868-PCS80293-RT-24

Representative Hackney

moves to amend the bill on page 4, line 11,
by rewriting that line to read:

"**SECTION 7.** G.S. 115C-457.2 reads as rewritten:
'**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and are payable to the County School Fund pursuant to Article IX, Section 7 of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all funds which are civil penalties or civil forfeitures within the meaning of Article IX, Section 7 of the Constitution shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of such funds include the full amount of all such penalties and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 868*

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

H868-ART-6 [v.1]

forfeitures collected under authority conferred by the State, diminished only by the actual costs of ~~collection, not to exceed ten percent (10%) of the amount collected.~~collection.'

SECTION 8. This act becomes effective 1 December 2003 and applies to".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATT# 6
4/29/03
NOON

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 868

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 25 April 2003

Amendment No. 2
(to be filled in by Principal Clerk)

Rep.) Allen
)
~~Sen.~~)

moves to amend the bill on page 3, line 41

( ) WHICH CHANGES THE TITLE

by inserting "per violation" on that line after the word "penalty" and on page 4, line 1, by inserting "per violation" after the word "penalty" on that line and on page 3, line 10 by rewriting that line to read:

"~~dollars ($25,000)~~ twenty-seven thousand five hundred dollars ($27,500) per day in the"

P.V

SIGNED Lucy T. Allen

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

4/29/03
ATT# 7
NOON

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 868 DATE 4-29-03

S. B. No. _____ Amendment No. 3 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ H868-PCS80293-RT-24

(Rep.) McComas
Sen.)

1 moves to amend the bill on page 1, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "ten thousand
4
5 dollars ($10,000)" and substituting
6
7 the words "twenty-five thousand
8
9 dollars ($25,000)".
10
11
12
13
14
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16
17
18
19

SIGNED _____

PW

ADOPTED _____ FAILED _____ TABLED _____

ATT. # 8

4/29/03

DOON

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **2**

HOUSE BILL 1028
Corrected Copy 4/16/03

Short Title:	New Bulkhead Permit.	(Public)
Sponsors:	Representatives K. Williams, Justice (Primary Sponsors); Stiller, Grady, Gorman, and Preston.	
Referred to:	Finance.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-118.1A. General permit for construction of riprap sills for wetland enhancement and shoreline protection.**

(a) The Commission shall establish a general permit to allow the construction of offshore parallel sills, made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 7J. I 100. The permit shall not apply within the ocean hazard areas of environmental concern, or waters adjacent to these areas of environmental concern, with the exception of those portions of shoreline within the Inlet Hazard Area of environmental concern that feature characteristics of estuarine shorelines, including the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the ocean erodible area.

(b) A permit issued under this section authorizes only the construction of sills and wetland enhancements that conform to the general conditions set out under subsection (c) of this section and the specific conditions set out under subsection (d) of this section. A permit issued under this section shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G. S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights. Also, a permit issued under this

section does not eliminate the need to obtain any other required State, local, or federal authorization.

(c) A permit issued under this section shall include the following general conditions:

(1) The permittee shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions of the permit.

(2) There shall be no significant interference with navigation or use of the waters by the public by the existence of the breakwater authorized by the permit.

(3) Development carried out under the permit shall be consistent with all local requirements, area of environmental concern rules, and local land-use plans current at the time of authorization.

(d) A permit issued under this section shall also include the following specific conditions:

(1) On shorelines without existing wetlands, the landward edge of the sill shall be positioned no more than 20 feet waterward of the waterward depth of locally growing wetlands or 30 feet waterward of mean high water or normal high water level, whichever is greater. On shorelines with existing wetlands, the landward edge of the structures shall be positioned no more than 20 feet waterward of the waterward depth contour of locally growing wetlands or 20 feet waterward of the existing wetlands at any point along the alignment of the structure, whichever is greater. For narrow waterbodies (canals, creeks, etc.), the sill alignment shall not be positioned offshore more than one-sixth the width of the waterbody.

(2) Where insufficient wetlands habitat exists along the permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate wetland species landward of the sill structure as directed by Department staff. This permit shall only apply to projects that combine existing or planted wetlands with constructed sill structures.

(3) Construction authorized by this permit shall be limited to a maximum length of 500 feet.

(4) The height of the sill shall be constructed so as not to exceed six inches above the highest elevation of the adjacent wetland substrate, or six inches above the mean high water or normal high waterline, whichever is greater. The constructed slope of the sill shall not exceed 2:1 (2 foot horizontal 1 foot vertical) slope, and the width of the sill crest shall not exceed three feet.

(5) No fill shall be placed on submerged aquatic vegetation or productive shellfish beds. Backfilling of the sills shall only be utilized for the

purpose of creating a suitable substrate for the establishment or reestablishment of coastal wetlands. Only clean sandy fill shall be used for backfilling sills. Prior to filling, shellfish may be considered for relocation to other sites using methods approved by the North Carolina Division of Marine Fisheries. No more than 100 square feet of existing emergent wetlands shall be filled per project site.

(6) No excavation of the shallow water bottom, any wetland, or high ground is authorized by this permit.

(7) The sill material shall not be placed in a manner so as to impede water flow into or out of any natural channel or stream.

(8) The sill material shall be free from loose dirt or other pollutants. It shall be of a size sufficient to prevent its movement from the site by wave or current action.

(9) Riprap material shall consist of clean rock or masonry materials, such as marl, granite, or broken concrete. Material such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material, or similar materials are not appropriate riprap for the purposes of this general permit.

(10) If the crossing of wetlands with mechanized or nonmechanized construction equipment is necessary, temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the riprap structure.

(11) The permittee shall maintain the structure in good condition and in conformance with the terms and conditions of this permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal Management."

SECTION 2. The Department of Environment and Natural Resources shall begin implementation of this act when it becomes law. The Department shall establish the permit enacted by Section 1 of this act by December 1, 2003.

SECTION 3. Section 1 of this act becomes effective December 1, 2003. The remainder of this act is effective when it becomes law.

ATT #9
4/29/03
NOON

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1028
Corrected Copy 4/16/03
PROPOSED COMMITTEE SUBSTITUTE H1028-PCS80294-RTf-23

Short Title: New Bulkhead Permit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COASTAL RESOURCES COMMISSION TO ADOPT RULES TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 113A-118.1, the Coastal Resources Commission shall adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall be applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. The permit shall not apply within the ocean hazard areas of environmental concern, or waters adjacent to these areas of environmental concern, with the exception of those portions of shoreline within the Inlet Hazard Area of environmental concern that are characteristic of estuarine shorelines, including the presence of wetland vegetation, lower wave energy, and lower erosion rates than in ocean erodible areas.

SECTION 2. In adopting temporary rules pursuant to Section 1 of this act, the Coastal Resources Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions

and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 3. The fee for a general permit established by temporary rules pursuant to Section 1 of this act shall be one hundred dollars ($100.00). In adopting permanent rules pursuant to Section 1 of this act, the Coastal Resources Commission shall set a fee for the general permit as provided in G.S. 113A-119.1.

SECTION 4. The Coastal Resources Commission shall adopt temporary rules pursuant to Section 1 of this act so that the rule shall become effective no later than 1 December 2003.

SECTION 5. This act is effective when it becomes law.

AH # 10
4/29/03
Dodd

HOUSE BILL 1028:
New Bulkhead Permit.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Williams and Justice
Date:	April 29, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	PCS for First Edition (H1028-PCS80294-RTf-23)		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1028 directs the Coastal Resources Commission to adopt temporary and permanent rules to establish a general permit for the construction of offshore sills for shoreline and wetland protection.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1028 (PCS) directs the Coastal Resources Commission (Commission) to adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills for shoreline protection in conjunction with existing, created, or restored wetlands. The general permit would applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. Sills must be made of stone or other suitable riprap material.

In adopting the temporary rule, the Commission must:

1. Consult with interested parties.
2. Notify persons on the mailing list that the Commission maintains of its intent to adopt a temporary rule.
3. Publish a notice of intent and the text of the proposed temporary rule in the North Carolina Register.
4. Accept written comments for at least 30 days after the notice of intent is published.
5. Hold at least one public hearing on the proposed temporary rule.

The initial fee for the general permit established by temporary rule is one hundred dollars ($100.00). The Commission will set a fee for the general permit adopted by permanent rule as provided in G.S. 113A-119.1.

BACKGROUND: G.S. 113A-118.1 authorizes the Coastal Resources Commission, by rule, to designate certain classes of major and minor development for which a general or blanket permit may be issued. In identifying the classes of development, the Commission must consider:

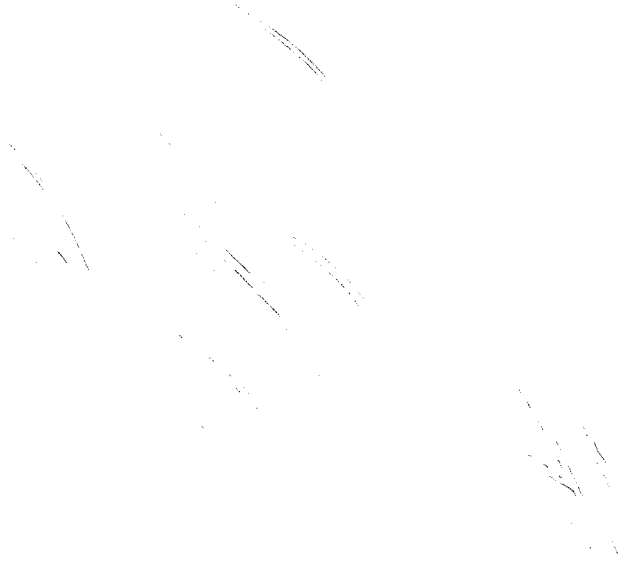
1. The size of the development.
2. The impact of the development on areas of environmental concern.
3. How often the class of development is carried out.
4. The need for onsite oversight of the development.
5. The need for public review and comment on individual development projects.

EFFECTIVE DATE: The PCS becomes effective when it becomes law. The temporary rule adopted pursuant to the act would become effective no later than 1 December 2003.

H1028-SMSY-001

North Carolina Coastal Federation

Erosion Control: Non-Structural Alternatives Preparing for Storms





TRACY SKRABAL

(left) Boat wakes can cause erosion in areas that otherwise would suffer little erosion from natural wave action. (below) Vertical walled bulkheads can cause increased erosion of adjacent shoreline by reflection of wave energy.

As the owner of shorefront property, you must examine your property and determine what erosion forces are at work. They will be different depending on whether you have property that is exposed or sheltered, high bank or low bank, etc. The process of shoreline erosion may be due to natural causes such as the interaction of tidal action with the bank face. The erosion may be accelerated by activities such as boat wakes or high waves during storms. Each year, this erosion causes the loss of valuable shorefront property. In addition, bank erosion can adversely affect the living resources of our bays and waterways by increasing sedimentation and turbidity which decreases the light penetration needed to sustain critical underwater vegetation and habitat. Conversely, placement of hard structures along estuarine shorelines often leads to losses of valuable wetlands and natural buffers, and may increase erosion on adjacent shorelines.



The practices outlined in this brochure are basic and are presented to introduce you to the concepts. You may wish to seek professional guidance in the actual design of an erosion project.

Why nonstructural alternatives?

The most commonly used techniques for erosion control have been the installation of hardened structures such as bulkheads or rip-rap. Structures such as these may be necessary along very exposed (high energy) shorelines. Although bulkheads and rip-rap are effective in these areas, rip-rap or other non-vertical structures are preferable since they result in less disturbance and loss of adjacent lands and intertidal habitats. In addition, bulkheads may be treated with wood preservatives which have been found to be toxic in the marine environment.

For many shorelines along the moderate to lower energy areas of North Carolina's tributaries and bays, the creation or restoration of fringing marshes is an effective, less expensive option for the control of shoreline erosion. These marshes:

- ☐ Act as a buffer from wave energy to lessen the effects of erosion.
- ☐ Reduce the amount of pollutants entering the water by filtering upland runoff and trapping sediment and nutrients.
- ☐ Enhance the fisheries and near shore habitat value of an area.
- ☐ Present natural, attractive views from both land and water.

For low to moderate energy areas, natural vegetation (either alone or with bank grading) may be used to lessen the effects of erosion. For moderate to higher energy areas with exposed shorelines, it is possible to combine the use of wetland plantings with low profile alternatives such as rip-rap sills, groins or breakwaters to provide effective solutions. There are some basic guidelines which can help you to choose a technique which will be successful for your shoreline. The following questions and possible solutions may help you to determine your needs:

Question: Is wave action a factor?

Waves can be caused by wind, tidal currents and boat wakes, and can undercut the toe of the slope, which can slump and erode.

Solutions:

- ☐ Reinforce the toe of the slope with some combination of rip-rap and vegetation.
- ☐ Regrade the bank and vegetate above or in combination with rip-rap.
- ☐ Limit boat speeds.

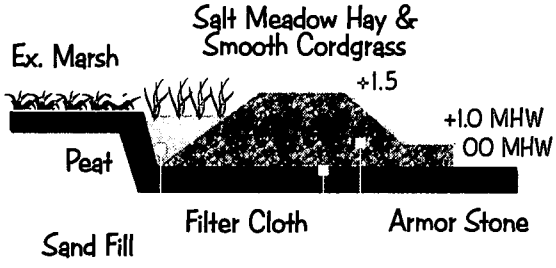


TRACY SKRABAL

This combination of stone rip-rap and vegetation can be used to provide effective shoreline stabilization.

Question: Is concentrated storm water runoff a factor? During periods of rain, does the rainwater run off of the house, driveways and lawns, and channelize down the slope? Are gullies forming on the slope?

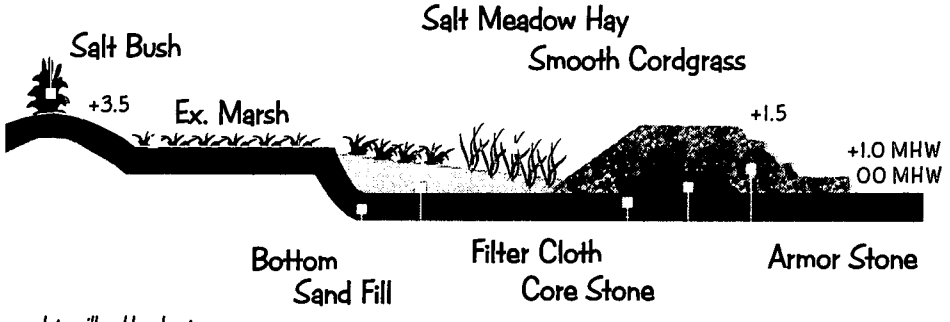
In many cases, loss of soil along with shoreline is not the result of shoreline erosion, but is instead the result of inadequate stormwater management on the upland property.



MARSH TOE SILL SECTION B-B'

Solutions:

- ☐ Install gutters at roof's edge.
- ☐ Divert rainwater away from the slope to flat vegetated areas.
- ☐ Create a berm along the top of bank to redirect water down the edges of the bank or in a reinforced channel.
- ☐ Encourage the use of native, mixed vegetation (grasses, shrubs, trees) in landscaping.
- ☐ Minimize hard-paved surfaces adjacent to shorelines.



Illustrations depict design examples of a marsh toe sill and breakwater combined with bank grading and use of wetland plantings.

BREAKWATER SECTION A-A'

Question: Are the slopes too steep?

Naturally occurring stable banks are usually 2H:1V (two feet horizontal for every one foot of vertical rise). Soils will not permanently remain on a vertical face but will erode and slump until they reach a natural angle of repose. Wave and boat wakes can cause undercutting of over-steepened banks, which quickly accelerates this process resulting in rapid erosion of the banks.

Solutions:

Slopes less than 2:1

- ☐ Regrade and revegetate with suitable groundcover or wetlands vegetation (such as *Spartina alterniflora* or *Spartina patens*).

Slopes greater than 2:1

- ☐ Regrade and plant suitable vegetation (such as *Spartina alterniflora* or *Spartina patens*) either alone or in combination with some rip-rap alternative such as groins, breakwaters, low-profile sills

Question: Is seepage in the slope causing bank failure?

This problem occurs when a coarse layer of sand overlays an impermeable layer such as clay. Water will filter quickly through the sand to the clay layer. Once it reaches this layer, it flows along the clay surface and exits the slope face.

Solution:

In minor cases, suitable vegetation and/or some combination of rip-rap may halt the bank erosion, however, this problem may be complex and require a detailed review by a trained professional.

Question: Can vegetation hold the slope?

Thick healthy vegetation contributes greatly to slope stability by holding soil in place with its root system. Even over-steepened banks can be held in place by existing vegetation. Once vegetation is cut or removed from over-steepened banks, revegetation may be very difficult to do without some regrading and/or stabilization with a structural alternative such as rip-rap.

Solutions:

- ☐ Where possible, maintain as much of the naturally occurring vegetation on the banks.
- ☐ Remove all dead vegetation and debris which may kill vegetation by smothering it.
- ☐ Where there is no vegetation or where regrading is necessary, select the best vegetation for the site, plant it, protect it and foster its growth until it is well established.
- ☐ For sites where vegetation alone has been unsuccessful in stabilizing a slope, install some combination of rip-rap and vegetation.
- ☐ Keep foot traffic to a minimum around eroding slopes and revegetated areas. Stable foot paths or constructed walkways work well to achieve this goal.

Question: Should I use vegetation alone or with rip-rap?

There are many factors that determine if plantings alone will be successful in stabilizing a bank. In addition, these factors will also determine what combination of vegetation and rip-rap should be applied to any given shoreline.

Solutions:

Before investing your time and money, evaluate the site (or consult with a professional) for the following factors:

- ☐ ***Existing vegetation:*** The presence of native vegetation below the toe of a slope is a favorable indication that further plantings will be successful.



TRACY SKRABAL

This combination of rip-rap groins and marsh plants create stable areas for successful marsh growth in low energy levels.

- ☐ ***Fetch:*** How many miles of open water does wind blow across before reaching your property? This distance, and the dominant direction from which it blows, is important in designing a project. If fetch is greater than 5 miles, it is unlikely vegetation alone will successfully halt erosion. Vegetation alone is most successful where the fetch is less than half a mile.
- ☐ ***Shape of shoreline:*** Orientation of the shoreline helps to determine what the forces of erosion are, and whether vegetation alone (such as in protected coves or lagoons) or some combination of vegetation and rip-rap will work to halt erosion.
- ☐ ***Boat traffic:*** The numbers of boats and how close they travel to a shoreline will help to determine the choice of a solution for a given site.
- ☐ ***Width of beach above mean high tide:*** Beaches which are greater than 10-feet above the mean tide high tide, or which can be regraded to create 10-feet in width above the mean high tide line have the best chance for successful vegetation growth.

Question: Are fluctuating water levels a problem?

Fluctuating water levels such as those that occur on tidal shorelines may make it difficult to get vegetation established or keep natural banks stabilized.

Solutions:

- ☐ For moderate to higher energy sites, it may be necessary to stabilize the toe of the bank from the full range of tidal action by some combination of rip-rap (such as low-profile revetment) and/or planting of suitable vegetation.
- ☐ When regrading, allow the fluctuating water levels to help create a stable slope during construction. Also, observe the range of rise and fall of the waters when planning the planting scheme for your site.
- ☐ Choose vegetation that can adjust to



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A demonstration project area prior to installation of shoreline stabilization measures.



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Same shoreline after regrading of eroding banks and stabilization with stone sill.



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Same area two months after planting behind stone sill with marsh grass.



Question: What should you plant?

The growing season is an important factor in deciding when to plant. For marshes, spring is the best time to plant because it gives the plants an entire growing season to become established and take a firm hold. For native upland and dune grasses, certain species require spring planting while others need planting over the winter months to allow at least one good freeze during dormancy. For estuarine marsh areas, the grasses that are most commonly planted include smooth cordgrass planted in the intertidal zone, black needlerush, and saltmeadow hay planted above the mean high tide. These grasses are adapted to a wide range of salt tolerances and form a protective matting as the waves roll over them. Other grasses and plants may also be used in more freshwater areas. For planting in dune areas, or higher estuarine areas, numerous native grasses and shrubs will provide stabilization. American beach grass, coastal panicum, and wax myrtles are examples of native plants which are effective for erosion control.

Question: What maintenance is needed?

Proper maintenance is vital to the success of the grasses and shrubs. Foot traffic on the plantings should be kept to a minimum. Debris such as driftwood, trash, and other items that could smother or shade out the grasses must be cleared away. Trees or limbs shading the grasses must be kept pruned. In times of drought, fresh water should be applied to the upper grasses which do not get flooded by the normal tides. If there is damage to an area, it should be replanted as soon as possible. In some areas, a goose exclusion fence is also recommended to keep the geese from eating the grasses the first two years, while the grasses are established. The goose fence can be removed after that time.



ANITA LANCASTER

Many types of suitable wetland plants are available to provide an effective and aesthetically pleasing project. Choosing a qualified consultant and/or nursery to provide healthy plants is critical to the success of a wetlands planting project.

Question: How do I get started?

- ☐ Contact a qualified consultant, landscaper and/or marine contractor who is familiar with the approaches outlined here.
- ☐ Incorporate your personal needs into his/her design approach for your shoreline.
- ☐ Receive a cost estimate to have a better idea of total project costs.



Please Note ...

Erosion occurs most often from a combination of factors, rather than just one. Take the time to examine the history of your shoreline carefully or consult with a professional to determine what combination of factors is causing the total erosion problem. Only then can you choose a solution that will be effective for your site.

About Permitting ...

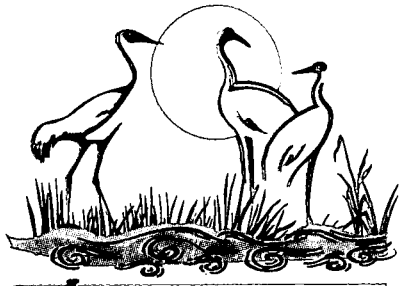
If you are interested in pursuing a shoreline project, you may need permits from the NC Department of Environment and Natural Resources (DENR), the US Army Corps of Engineers and local permit office. For more information on the permit process, call your local DENR Division of Coastal Management office, or in Raleigh call 919-733-2293.

The North Carolina Coastal Federation

The NCCF is the state's largest non-profit organization working to restore and protect the coast. Our headquarters are located at 3609 Highway 24 in Ocean, NC between Morehead City and Swansboro. The NCCF field office is located at 720 Market Street in Wilmington. Offices are open Monday through Friday between 8:30 a.m. and 5:00 p.m. The headquarters in Ocean houses a nature shop, library and information center.

NCCF's ShoreKeeper Program

The projects presented here are part of NCCF's ShoreKeeper Program. The program includes membership, public education, certification and accreditation programs, and restoration and protection projects. To learn more about how you can take an active role in caring for our coast, please call today.



ShoreKeeper

For more information contact:
North Carolina Coastal Federation
3609 Hwy. 24 (Ocean)
Newport, NC 28570
***Phone:* 252-393-8185**
***Fax:* 252-393-7508**
***E-mail:* nccf@nccoast.org**
***Website:* www.nccoast.org**

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Q & A on Adopting a General Permit for Sills for Shoreline Stabilization/Restoration Projects (H.B. 1028)

Q: What is a sill?

A: A sill is a shore-parallel erosion control structure that is also used for restoration and/or protection of coastal marsh. Unlike bulkheads and riprap, the sills are placed on the waterward side of existing or restored marshes.

Q: What are the benefits of sills?

A: One major benefit of sills is the ability to provide effective stabilization of eroding upland properties, while also providing protection, restoration or creation of valuable estuarine marshes and the adjacent upland buffers. The traditional erosion control devices are bulkheads and riprap, which are often located immediately adjacent to coastal marshes. While these structures provide erosion control, they are often not effective in protecting coastal marshes and adjacent upland vegetated buffers. Sills, in combination with existing or restored marshes, preserve a "living shoreline" for future generations.

Q: Why is protection or restoration of coastal marshes so important?

A: Coastal marshes are declining throughout NC's coastal region, and will continue to do so in the coming decades due to storms, boat wakes, and sea level rise. Healthy marsh systems provide critical nursery habitat for many recreationally and commercially valuable fisheries. They also serve as a direct food source for other wildlife such as turtles, fishes, and waterfowl, and are a major contributor of organic material for the estuarine food cycle. Sill projects allow for both the protection and restoration of marshes, which help to improve water quality by acting as the "kidneys" of the estuary. Marshes filter out pollution and sediment from stormwater runoff, and they provide flooding and erosion control protection. Protecting existing marshes is cheaper and more successful than efforts to reverse the effects of flooding and polluted runoff. Coastal marshes are also a very important part of North Carolina's natural heritage and beauty, and are closely associated with the health of the estuaries' shellfish areas.

Q: Are sills a new concept?

A: Sills are very extensively used along shorelines in a number of nearby states, including Virginia, Maryland, Delaware, and Florida. Sills have been very successful in stabilizing eroding shorelines and preserving marshes for over 25 years along the shores of Chesapeake Bay, which have very similar conditions to North Carolina's estuaries. States, such as Maryland, have had cost share programs for nearly 20 years to encourage the use of sills, and all of the states listed above encourage the construction of sill projects. Florida Department of Environmental Protection, in cooperation with numerous federal, local and private partners, has developed an extensive model shoreline program called Project Greenshores, which is based on the principles of constructed sills and marsh restoration.

Prepared by the North Carolina Coastal Federation

Q: Are sills a new concept? (Continued)

In North Carolina, sills have been constructed for over five years, with very successful results. Projects have been constructed along private properties and public shorelines, and demonstration projects have been used to train contractors, consultants, agency personnel, and citizens. A number of contractors have begun to construct sills throughout the coastal region, despite a relatively difficult permit process.

Q: What is North Carolina's current permit system for sills and other erosion control measures?

A: NC Division of Coastal Management (DCM) issues permits for riprap or bulkhead projects totaling at least 30 miles of estuarine shorelines each year. Many of these projects are permitted by existing CAMA general permits (GP), which may be issued by the local permit officers or DCM staff in one or two days. Permits can also be issued in one day in the field. Application requirements are minimal; application fees are $50 to $100. No multi-agency review of projects is required, and approval by adjacent property owners is not a requirement for approval. In contrast, permitting for sills requires a Major CAMA permit, which is a minimum 75-day review with an option for an additional 75-day review. Major CAMA permit fees range from $250 to $475, and involve a multi-agency review of each project (up to 16 agencies). In addition, the CAMA Major Permit application is designed for more complex projects, so that many property owners would need to hire an expert to prepare an application for a sill project.

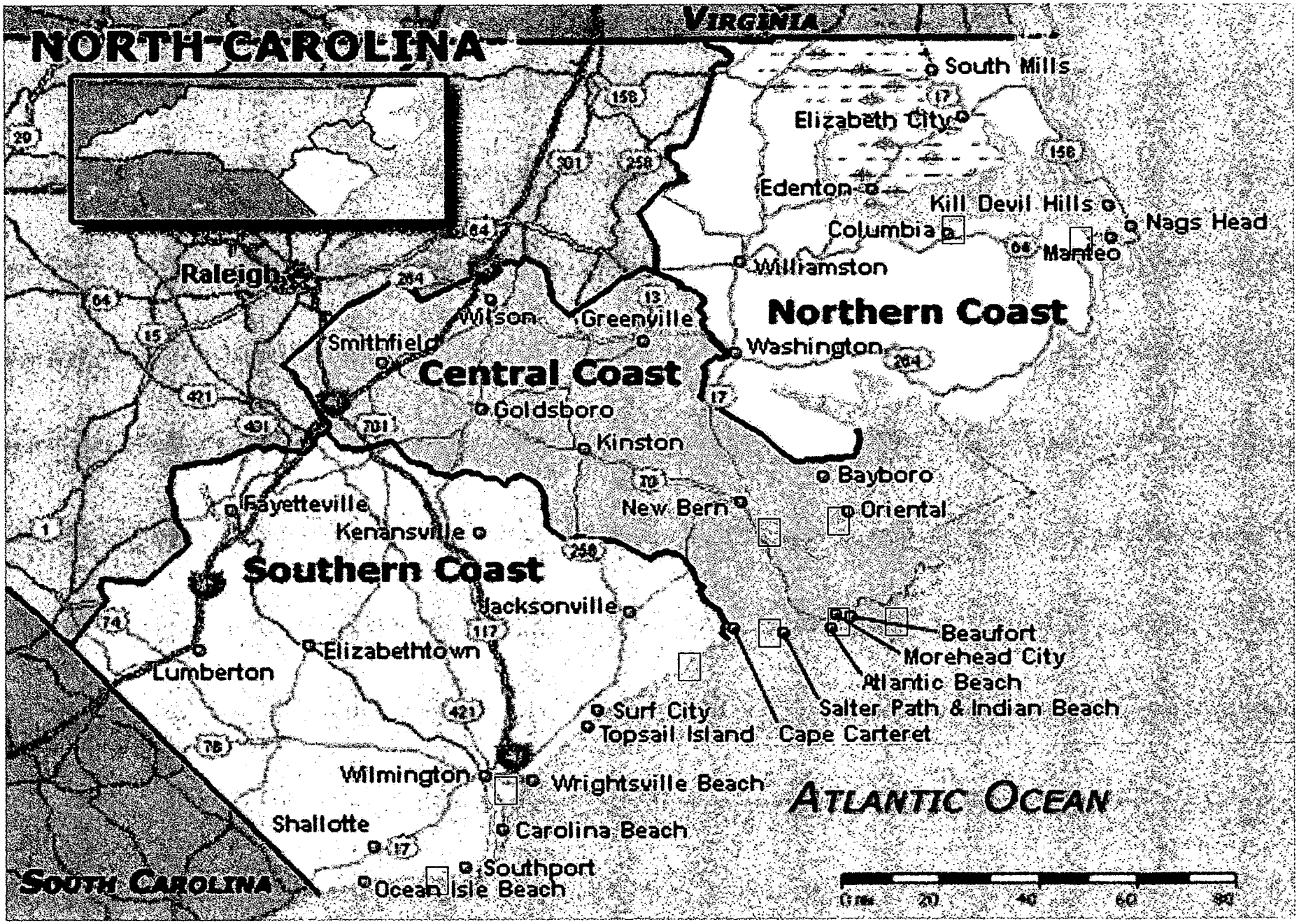
Q: Why do we need a General Permit for sills?

A: Adopting a General Permit for sill and marsh restoration projects will make the process equal to that which is currently allowed for bulkheads and rip-rap. As a result, it will allow an equal choice for property owners among the various stabilization options. It would remove the current disincentive that exists because of the relatively difficult process involved in obtaining permit approvals for these projects. Removing the current disincentive will allow for greater use of the sill and marsh approaches, with the numerous environmental benefits cited above.

Q: Why do some sill projects require backfill?

A: Many sill projects are designed to protect existing marshes, and are placed directly next to an eroding marsh. In some cases, the sill may be placed 10-30 feet waterward of an eroding marsh, and the area between the marsh and the sill is replanted with marsh plants. In other cases, erosion has progressed so that no marsh remains, and the shoreline has become too deep for marsh to continue to grow. In these cases, some backfilling of the sill is needed to allow for the replanting of the eroded marsh. In these cases, the newly planted marsh closely resembles a natural marsh within one to two growing seasons. In all cases, the restored marsh areas are intended to remain as intertidal wetland areas, and would require a CAMA permit for any future filling or modification.

For more information, please contact Jim Stephenson or Todd Miller with the North Carolina Coastal Federation at (252) 393-8185.


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Carolina Beach
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Southport
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ATTH 12
4/29/03
NOON

Changes proposed by the Div. of Coastal Management, DENR, on April 29, 2003.

PROPOSED COMMITTEE SUBSTITUTE H1028-CSRTf-23 [v.1]

from Donna Moffitt

AUTHORIZE A BILL TO BE ENTITLED

AN ACT TO ~~DIRECT~~ THE COASTAL RESOURCES COMMISSION TO ADOPT RULES TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

The General Assembly of North Carolina enacts:

MAY **SECTION 1.** Pursuant to G.S. 113A-118.1, the Coastal Resources Commission ~~shall~~ adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall be applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. The permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard areas of environmental concern with the exception of those shorelines that feature characteristics of the Estuarine Shoreline. Such features include ~~within the ocean hazard areas of environmental concern, or waters adjacent to these areas of environmental concern, with the exception of those portions of shoreline within the Inlet Hazard Area of environmental concern that are characteristic of estuarine shorelines, including~~ the presence of wetland vegetation, lower wave energy, and lower erosion rates than in ocean erodible areas.

SECTION 2. In adopting temporary rules pursuant to Section 1 of this act, the Coastal Resources Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 3. The fee for a general permit established by temporary rules pursuant to Section 1 of this act shall be one hundred dollars ($100.00). In adopting permanent rules pursuant to Section 1 of this act, the Coastal Resources Commission shall set a fee for the general permit as provided in G.S. 113A-119.1.

SECTION 4. The Coastal Resources Commission shall adopt temporary rules pursuant to Section 1 of this act so that the rule shall become effective no later than 1 December 2004 ~~2003~~.

SECTION 5. This act is effective when it becomes law.

ATT #13
4/29/30
noon

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1179*

Short Title:	Groundwater Protection Act.	(Public)
Sponsors:	Representative McComas.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT GROUNDWATER AS A CURRENT AND FUTURE WATER RESOURCE AND TO ENCOURAGE REDEVELOPMENT OF BROWNFIELDS SITES.

Whereas, the General Assembly finds that the groundwater of North Carolina is a valuable public and private resource; and

Whereas, the General Assembly finds that half of the population of North Carolina relies on groundwater as a drinking water source; and

Whereas, the General Assembly finds that groundwater provides the water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of the surface water and groundwater resources of North Carolina will become increasingly important to the continued economic vitality of the State; and

Whereas, the General Assembly finds that there are contaminated areas in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues; decreased ability to develop and expand the beneficial use of these areas; and other opportunity costs due to the uncertainties and concerns that result from the environmental contamination of these areas; and

Whereas, the General Assembly finds that it is in the public interest that contaminated areas are cleaned up and managed in a manner that protects public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that both private citizens and local governments would benefit from a source of funding to plan for and provide alternate drinking water supplies to replace contaminated drinking water wells; and

Whereas, the General Assembly finds that North Carolina would benefit both economically and environmentally by the creation of a source of funding for State remediation of contaminated sites for which no responsible party has been identified; and

Whereas, the General Assembly finds that persons responsible for contamination would benefit from the creation of a fund to provide for prevention and mitigation of hazards on sites that become a threat to the public health, safety, and welfare and the environment because of a change in conditions after successful completion of voluntary remediation; and

Whereas, the General Assembly finds that such a fund would provide greater certainty to responsible parties with respect to the extent of their obligation to remediate and would facilitate the conversion of contaminated properties to an economically beneficial use; and

Whereas, the General Assembly finds that it is the policy of this State that persons responsible for damaging natural resources have an obligation to repair the damage or mitigate the damage to the extent possible; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can best be protected by encouraging persons responsible for groundwater contamination to remediate contaminated sites; and

Whereas, the General Assembly finds that persons responsible for groundwater contamination may have a greater incentive to undertake voluntary remediation of contaminated areas if the remediation process is streamlined; and

Whereas, the General Assembly finds that the State would benefit both environmentally and economically from encouraging redevelopment of brownfields sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310 is amended by adding two new subdivisions to read:

"(1a) 'Contiguous property owner' means a person who owns real property that is contiguous to real property on which a release of a hazardous substance has occurred or is threatened and that is or may be contaminated by the release.

(1b) 'Groundwater Mitigation and Environmental Response Fund' means the Groundwater Mitigation and Environmental Response Fund established by G.S.130A-310.14."

SECTION 2. G.S. 130A-310.2 reads as rewritten:

"**§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.**

~~No later than six months after July 1, 1987, the~~ The Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which ~~such~~ the sites endanger ~~the~~ public ~~health~~ health, safety, and welfare and the environment. The Secretary shall apply the prioritization system to the

inventory of sites to ~~create and~~ maintain an Inactive Hazardous Waste Site Priority ~~List, which~~List. The List shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The List shall also identify those sites for which the responsible party has defaulted, no responsible party can be located, or the responsible party has demonstrated to the satisfaction of the Secretary that it does not have the funds to assess the site or remedy the contamination. ~~The first such list shall be published within two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter.~~ The Secretary shall revise and publish the List at least once every two years. ~~The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list.~~ The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial ~~action,~~ action pursuant to G.S. 130A-310.6, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available."

SECTION 3. G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;

(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(a1) Within 90 days of the date on which an owner or responsible party knows or should have known of the existence of an inactive hazardous substance or waste disposal site, the owner or responsible party shall submit to the Secretary an assessment plan for the determination of the nature, concentration, and extent of hazardous substances present in each environmental medium including but not limited to groundwater, soil, sediment, surface water, and waste.

(a2) Within 90 days of the date the Secretary notifies the responsible party that hazardous substance remediation will be necessary, the responsible party shall:

(1) Develop an inactive hazardous substance or waste disposal site remedial action plan for the site subject to approval by the Secretary, and

(2) Implement the inactive hazardous substance or waste disposal site remedial action plan within time limits specified in the Department-approved plans.

(a3) With the approval of the Secretary, a responsible party may employ a private environmental consulting or engineering firm to implement and oversee an assessment or a remedial action.

(b) ~~Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that~~ To the extent necessary, the Secretary shall coordinate development and implementation of a remedial action with the Environmental Management Commission, the Commissioner of Agriculture, ~~or~~ and the Pesticide ~~Board~~Board. ~~has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.~~

(b1) An owner, operator, or responsible party who has completed a remedial action for hazardous substances at an inactive hazardous substance or waste disposal site pursuant to this Part shall not be required to perform any remedial action for the same release pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes, unless the Department makes a later determination as provided in G.S. 130A-310.7(c).

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the Environmental Management Commission.

(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive any requirement that a permit be obtained unless either the removal or remedial action is being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the owner, operator, or other responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a removal or remedial action conducted pursuant to G.S. 130A-310.5.

(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, use of groundwater, 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. 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 site. 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 Part shall abide by the land-use restriction."

SECTION 4. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. Action for reimbursement; liability of responsible parties; notification of completed remedial action.**

(a) ~~Notwithstanding any other provision or rule of law, and subject~~Subject only to the defenses set forth in this ~~subsection, any person who:~~section, a responsible party is a person who causes or contributes to the existence of an inactive hazardous substance or waste disposal site by any of the following:

(1) ~~Discharges or deposits; or~~Discharging, releasing, or depositing any hazardous substance.

(2) ~~Contracts or arranges for any discharge or deposit; or~~Contracting or arranging for a discharge, release, or deposit of any hazardous substance.

(3) ~~Accepts for discharge or deposit; or~~Accepting any hazardous substance.

(4) ~~Transports or arranges for transport for the purpose of discharge or deposit~~Transporting or arranging for the transport of any hazardous substance for the purpose of discharging, releasing, or depositing any hazardous substance.

(5) Owning or operating a site that contains any hazardous substance.

(6) Owning or operating a site at the time of discharge, release, or deposit of any hazardous substance.

~~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~~

(a1) 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~~ shall not be considered a responsible party if the landowner establishes all of the following by a preponderance of the evidence:

(1) All of the discharge, release, or deposit of hazardous substances at the site occurred before the landowner acquired the site; or the disposal was the result of:

a. An act of God; or

b. An act of war; or

c. An intentional act or omission of a third party who is not an employee or agent of the landowner or who does not have a contractual relationship with the landowner.

(2) On or before the date of purchase, the landowner made all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted and customary commercial standards and practices. The Secretary shall take into account any specialized knowledge or experience on the part of the landowner, the relationship of the purchase price to the value of the property if the property were not contaminated, commonly known or reasonably ascertainable information about the property, and whether the contamination is detectable by appropriate inspection. In the case of property that is used for residential or similar purposes at the time of its purchase by an entity that is neither governmental or commercial, a site inspection and title search that does not reveal information that would cause a reasonable person to make further investigation shall satisfy the requirements of this subdivision.

(3) The landowner has provided all legally required notices with respect to the discovery of a discharge, release, or deposit of any hazardous substances at the site.

(4) The landowner has exercised appropriate care with respect to hazardous substances found at the sites by taking reasonable steps to do all of the following:

a. Stop any continuing discharge, release, or deposit.

b. Prevent any threatened future discharge, release, or deposit.

c. Conduct such remedial measures approved by the Secretary that prevent or limit human, environmental, or natural resource exposure to any previously discharged, released, or deposited hazardous substance and make the site safe for its intended use. Such measures might include the application of institutional controls and other means of preventing exposure. Unless necessary to prevent exposure, the innocent landowner is not required to restore groundwater contamination to State standards.

(5) The landowner has provided and continues to provide full cooperation, assistance, and access to persons who are authorized to conduct any response, remedial action, or natural resource restoration at the property, including any cooperation and access necessary to install, operate, maintain, or secure any completed or partial response, remedial action, or natural resource restoration at the property.

(6) The landowner has complied and continues to comply with any land-use restrictions established or relied on in connection with the response, remedial action, or natural resources restoration at the property.

(7) The landowner has not impeded and continues to not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response, remedial action, or natural resources restoration.

(8) The landowner has complied or has agreed to comply with any requirement to record any land-use restrictions that may be required by the Secretary.

(9) The landowner has complied and continues to comply with any request for information or administrative subpoena issued by the Secretary.

(10) The landowner is not liable, potentially liable, or affiliated with any other person who is liable or potentially liable for any cost associated with the response, remedial action, or natural resources restoration at the property through any of the following:

a. Any direct or indirect familial relationship.

b. Any contractual, corporate, or financial relations, other than a contractual, corporate, or financial relationship that is created by an instrument through which title to the property is

conveyed, an instrument through which sale or purchase of the property is financed, or by a contract for the sale of goods or services.

c. A reorganization in bankruptcy of a business entity that is liable or potentially liable.

(a2) 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.

(a3) A responsible party shall also be directly liable to the State for any damage to natural resources that result from a discharge, release, or deposit of hazardous substances as provided in subsection (a) of this section. Damages shall be based on the replacement value of any contaminated groundwater for the period of time between the discovery of the contamination and the completion of an approved remedial action. To determine the replacement value of the contaminated groundwater, the Secretary shall multiply the groundwater recharge rate for the area of contaminated groundwater by a median per gallon water rate charged by public water systems in the State as determined by the Secretary. The Secretary may bring an action for natural resource damages for groundwater contamination in the superior court of the county in which the site is located or in any county in which the responsible party resides or has a place of business to recover the replacement value of contaminated groundwater and the cost of bringing the action. The State must show that a danger to ~~the~~ public ~~health~~ health, safety, or welfare or the environment existed and that the State complied with the provisions of this Part. Natural resource damages recovered pursuant to this section shall be deposited in the Groundwater Mitigation and Environmental Response Fund established by G.S. 130A-310.14.

(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.~~

If there are any unrecovered response costs incurred by the State at a property for which an owner of the property is not liable under this section and the remedial action increases the fair market value of the property above the fair market value of the property that existed before the remedial action was initiated, the State shall have a lien

on the property. The owner of the property may substitute a lien on other property or provide other assurance of payment of unrecovered costs satisfactory to the Secretary. A lien created pursuant to this subsection shall meet all of the following requirements:

(1) Be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of the sale or other disposition of the property.

(2) Arise at the time at which costs are first incurred by the State with respect to a response action at the site.

(3) Continue until the earlier of:

a. Satisfaction of the lien by sale or other means or

b. Notwithstanding any statute of limitations under this Chapter, recovery of all response costs incurred at the site.

(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 unrestricted use 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 unrestricted use 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 unrestricted use 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 unrestricted use 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 unrestricted use standards."

SECTION 5. Part 3 of Article 9 of Chapter 130A is amended by adding a new section to read:

"**§ 130A-310.14. Groundwater Mitigation and Environmental Response Fund.**

(a) There is established under the control and direction of the Department the Groundwater Mitigation and Environmental Response Fund. The Fund shall be a nonreverting, interest-bearing fund consisting of groundwater mitigation fee payments made to the Department, monies appropriated to the Fund by the General Assembly, investment interest credited to the Fund, payments for expedited review of a risk assessment or site-specific remediation standards, administrative fees for review of a site-specific remedial action, and other monies paid to or recovered on behalf of the Fund.

(b) The Fund may be used to pay the costs of any of the following:

(1) Assessment or remediation of environmental contamination at sites where a responsible party cannot be identified or located, or where the responsible party is unable to pay the costs of assessment or remediation, and where there is no other dedicated source of State or federal funds to undertake remediation.

(2) Assessment or remediation of environmental contamination at sites where a responsible party fails to comply with the requirements of G.S. 130A-310.1 or G.S. 130A-310.3.
(3) Provision of alternative drinking water supplies for third parties affected by environmental contamination either on a temporary basis until a responsible party has been identified or on a permanent basis with respect to sites described in subdivision (1) of this subsection.
(4) Establishment, administration, and maintenance of a geographic information system capable of mapping the land and water resources of the State where contamination exists above statewide health standards.
(5) Administration of the Brownfields Property Reuse Act of 1997.
(6) Audits of institutional controls."

SECTION 6. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in the case of a first violation involving hazardous ~~waste~~ waste, as defined in ~~G.S. 130A-290 or~~ G.S. 130A-290, involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the ~~State;~~ State, or hazardous substances as defined in G.S. 130A-310; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment 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. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 7. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.12. Use of private environmental consulting and engineering firms.**

A responsible party who enters into an agreement with the Secretary to implement a voluntary remedial action pursuant to this Part may hire a private environmental consulting or engineering firm approved by the Department to implement and oversee the voluntary remedial action. A voluntary remedial action that is implemented and

overseen by a private environmental consulting or engineering firm shall be implemented in accordance with all federal and State laws, regulations, and rules that apply to remedial actions generally and is subject to rules adopted pursuant to this section. The Department may revoke its approval of the oversight of a voluntary remedial action by a private environmental consulting or engineering firm and assume direct oversight of the remedial action whenever it appears to the Department that the remedial action is not being implemented in accordance with federal and State laws, regulations, and rules or is not being implemented in accordance with the approved remediation plan. The Department may require the responsible party to take any action necessary to bring the remedial action into compliance with applicable requirements. The Environmental Management Commission shall adopt rules governing the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, and responsible parties under all programs for the remediation of groundwater contamination administered by any agency of the Department of Environment and Natural Resources. Rules adopted under this subsection shall specify:

(1) Standards applicable to private environmental consulting and engineering firms.

(2) Criteria and procedures for approval of firms by the Department.

(3) Requirements and procedures under which the Department monitors and audits a voluntary remedial action to ensure that the voluntary remedial action complies with applicable federal and State law, regulations, and under which the owner, operator, or other responsible party reimburses the Department for the cost of monitoring and auditing the voluntary remedial action.

(4) Any financial assurances that may be required of an owner, operator, or other responsible party.

(5) Requirements for the preparation, maintenance, and public availability of work plans and records, reports of data collection including sampling, sample analysis, and other site testing, and other records and reports that are consistent with the requirements applicable to remedial actions generally."

SECTION 8. G.S. 130A-310.31(b)(3) reads as rewritten:

"(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~~ under:

a. Any State remedial ~~program other than Part 2A of Article 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the~~ program or

b. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, ~~as amended (42 U.S.C. § 9601 et~~

~~seq.)~~ 42 U.S.C. § 9601; except for sites listed in the National Priorities List promulgated pursuant to 42 U.S.C. § 9605."

SECTION 9. G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) 'Unrestricted use standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing ~~the~~ remediation of contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the site-specific requirements that may allow remediation to less than unrestricted use standards incorporated in a brownfields agreement. ~~the risk-based standards established by the Commission pursuant to this Part.~~"

SECTION 10. G.S. 130A-310.32(a) reads as rewritten:

"(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 unrestricted use 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.

(6) The prospective developer has a bona fide intention to buy or sell the brownfields property."

SECTION 11. G.S. 130A-310.34(b) reads as rewritten:

"(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~~ 30 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."

SECTION 12. G.S. 130A-310.34(c) reads as rewritten:

"(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~~21 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~~15 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~~15 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."

SECTION 13. G.S. 130A-310.37(c) reads as rewritten:

"(c) The Department shall not enter into a brownfields agreement for ~~a brownfields site that is identified by the United States Environmental Protection Agency as a federal Superfund~~ any site on the National Priorities List promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9605. ~~pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition).~~"

SECTION 14. G.S. 105-277.13(a) reads as rewritten:

"(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as provided in this subsection, an owner of land who is protected from liability for remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. If a person who caused or contributed to contamination at a brownfields property holds any ownership interest in the property, that owner is not eligible for the partial exclusion. After property has qualified for the exclusion provided

by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion."

SECTION 15. This act becomes effective 1 July 2003.

Att # 14
4/29/30
Noon

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **D**

HOUSE BILL 1180*
PROPOSED COMMITTEE SUBSTITUTE H1180-PCS60315-RTf-25

Short Title: Groundwater Protection Act. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT GROUNDWATER AS A CURRENT AND FUTURE WATER RESOURCE AND TO ENCOURAGE REDEVELOPMENT OF BROWNFIELDS SITES.

Whereas, the General Assembly finds that the groundwater of North Carolina is a valuable public and private resource; and

Whereas, the General Assembly finds that half of the population of North Carolina relies on groundwater as a drinking water source; and

Whereas, the General Assembly finds that groundwater provides the water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of the surface water and groundwater resources of North Carolina will become increasingly important to the continued economic vitality of the State; and

Whereas, the General Assembly finds that there are contaminated areas in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues; decreased ability to develop and expand the beneficial use of these areas; and other opportunity costs due to the uncertainties and concerns that result from the environmental contamination of these areas; and

Whereas, the General Assembly finds that it is in the public interest that contaminated areas are cleaned up and managed in a manner that protects public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that both private citizens and local governments would benefit from a source of funding to plan for and provide alternate drinking water supplies to replace contaminated drinking water wells; and

Whereas, the General Assembly finds that North Carolina would benefit both economically and environmentally by the creation of a source of funding for State remediation of contaminated sites for which no responsible party has been identified; and

Whereas, the General Assembly finds that persons responsible for contamination would benefit from the creation of a fund to provide for prevention and mitigation of hazards on sites that become a threat to the public health, safety and welfare, and the environment because of a change in conditions after successful completion of voluntary remediation; and

Whereas, the General Assembly finds that such a fund would provide greater certainty to responsible parties with respect to the extent of their obligation to remediate and would facilitate the conversion of contaminated properties to an economically beneficial use; and

Whereas, the General Assembly finds that it is the policy of this State that persons responsible for damaging natural resources have an obligation to repair the damage or mitigate the damage to the extent possible; and

Whereas, the General Assembly finds that public health, safety and welfare, and the environment can best be protected by encouraging persons responsible for groundwater contamination to remediate contaminated sites; and

Whereas, the General Assembly finds that persons responsible for groundwater contamination may have a greater incentive to undertake voluntary remediation of contaminated areas if the remediation process is streamlined; and

Whereas, the General Assembly finds that the State would benefit both environmentally and economically from encouraging redevelopment of brownfields sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.2 reads as rewritten:

"**§ 130A-310.2. Inactive Hazardous Waste Sites Priority List.**

~~No later than six months after July 1, 1987, the~~ The Commission shall develop a system for the prioritization of inactive hazardous substance or waste disposal sites based on the extent to which ~~such~~ the sites endanger ~~the~~ public ~~health~~ health, safety and welfare, and the environment. The Secretary shall apply the prioritization system to the inventory of sites to ~~create and~~ maintain an Inactive Hazardous Waste Site Priority ~~List, which~~List. The List shall rank all inactive hazardous substance or waste disposal sites in decreasing order of danger. This list shall identify the location of each site and the type and amount of hazardous substances or waste known or believed to be located on the site. The List shall also identify those sites for which the responsible party has defaulted, no responsible party can be located, or the responsible party has demonstrated

to the satisfaction of the Secretary that it does not have the funds to assess the site or remedy the contamination. ~~The first such list shall be published within two years after July 1, 1987, with subsequent lists to be published at intervals of not more than two years thereafter.~~ The Secretary shall revise and publish the List at least once every two years. ~~The Secretary shall notify owners, operators, and responsible parties of sites listed on the Inactive Hazardous Waste Sites Priority List of their ranking on the list.~~ The Inactive Hazardous Sites Priority List shall be used by the Department in determining budget requests and in allocating any State appropriation which may be made for remedial ~~action,~~ action pursuant to G.S. 130A-310.6, but shall not be used so as to impede any other action by the Department, or any remedial or other action for which funds are available."

SECTION 2. G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;

(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(a1) Within 90 days of the date on which a responsible party knows or should have known of the existence of an inactive hazardous substance or waste disposal site, the responsible party shall:

(1) Develop an assessment plan for the determination of the nature, concentration, and extent of hazardous substances present in each environmental medium including, but not limited to, groundwater, soil, sediment, surface water, and waste subject to approval by the Secretary.

(2) Implement the assessment plan within time limits specified in the approved plan.

(a2) Within 90 days of the date the Secretary notifies the responsible party that hazardous substance remediation will be necessary, the responsible party shall:

(1) Develop an inactive hazardous substance or waste disposal site remedial action plan for the site subject to approval by the Secretary, and

(2) Implement the inactive hazardous substance or waste disposal site remedial action plan within time limits specified in the approved plan.

(a3) With the approval of the Secretary, a responsible party may employ a private environmental consulting or engineering firm to implement and oversee an assessment or a remedial action.

(b) ~~Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that~~ To the extent necessary, the Secretary shall coordinate development and implementation of a remedial action with the Environmental Management Commission, the Commissioner of Agriculture, ~~or~~ and the Pesticide Board~~Board. has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.~~

(b1) A responsible party who has completed a remedial action for hazardous substances at an inactive hazardous substance or waste disposal site pursuant to this Part shall not be required to perform any remedial action for the same release pursuant to Article 21 or 21A of Chapter 143 of the General Statutes, unless the Department makes a later determination as provided in G.S. 130A-310.7(c).

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

(c1) Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return ~~of the~~ receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the Environmental Management Commission.

(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive

any requirement that a permit be obtained unless either the removal or remedial action is being conducted pursuant to G.S. 130A-310.3(c), 130A-310.5, or 130A-310.6, or the ~~owner, operator, or~~ other responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). The Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4 prior to granting a permit waiver, except for a removal or remedial action conducted pursuant to G.S. 130A-310.5.

(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, use of groundwater, 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. 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 site. 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 Part shall abide by the land-use restriction."

SECTION 3. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. Action for reimbursement; liability of responsible parties; notification of completed remedial action.**

(a) ~~Notwithstanding any other provision or rule of law, and subject~~Subject only to the defenses set forth in this ~~subsection, any person who:~~section, a responsible party is a person who causes or contributes to the existence of an inactive hazardous substance or waste disposal site by any of the following:

(1) ~~Discharges or deposits; or~~Discharging, releasing, or depositing any hazardous substance.

(2) ~~Contracts or arranges for any discharge or deposit; or~~Contracting or arranging for a discharge, release, or deposit of any hazardous substance.

(3) ~~Accepts for discharge or deposit; or~~Accepting any hazardous substance.

(4) ~~Transports or arranges for transport for the purpose of discharge or deposit~~Transporting or arranging for the transport of any hazardous substance for the purpose of discharging, releasing, or depositing any hazardous substance.

(5) Owning or operating a site that contains any hazardous substance.

(6) Owning or operating a site at the time of discharge, release, or deposit of any hazardous substance.

~~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~~

(a1) 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~~ shall not be considered a responsible party if the landowner establishes all of the following by a preponderance of the evidence:

(1) All of the discharge, release, or deposit of hazardous substances at the site occurred before the landowner acquired the site; or the disposal was the result of:

a. An act of God; or

b. An act of war; or

c. An intentional act or omission of a third party who is not an employee or agent of the landowner or who does not have a contractual relationship with the landowner.

(2) On or before the date of purchase, the landowner made all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted and customary commercial standards and practices. The Secretary shall take into account any specialized knowledge or experience on the part of the landowner, the relationship of the purchase price to the value of the property if the property were not contaminated, commonly known or reasonably ascertainable information about the property, and whether the contamination is detectable by appropriate inspection. In the case of property that is used for residential or similar purposes at the time of its purchase by an entity that is neither governmental nor commercial, a site inspection and title search that does not reveal information that would cause a reasonable person to make further investigation shall satisfy the requirements of this subdivision.

(3) The landowner has provided all legally required notices with respect to the discovery of a discharge, release, or deposit of any hazardous substances at the site.

(4) The landowner has exercised appropriate care with respect to hazardous substances found at the sites by taking reasonable steps to do all of the following:

a. Stop any continuing discharge, release, or deposit.

b. Prevent any threatened future discharge, release, or deposit.
c. Conduct remedial measures approved by the Secretary that prevent or limit human, environmental, or natural resource exposure to any previously discharged, released, or deposited hazardous substance and make the site safe for its intended use. Measures may include the application of institutional controls and other means of preventing exposure. Unless necessary to prevent exposure, the innocent landowner is not required to restore groundwater contamination to State standards.

(5) The landowner has provided and continues to provide full cooperation, assistance, and access to persons who are authorized to conduct any response, remedial action, or natural resource restoration at the property, including any cooperation and access necessary to install, operate, maintain, or secure any completed or partial response, remedial action, or natural resource restoration at the property.

(6) The landowner has complied and continues to comply with any land-use restrictions established or relied on in connection with the response, remedial action, or natural resources restoration at the property.

(7) The landowner has not impeded and continues to not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response, remedial action, or natural resources restoration.

(8) The landowner has complied or has agreed to comply with any requirement to record any land-use restrictions that may be required by the Secretary.

(9) The landowner has complied and continues to comply with any request for information or administrative subpoena issued by the Secretary.

(10) The landowner is not liable, potentially liable, or affiliated with any other person who is liable or potentially liable for any cost associated with the response, remedial action, or natural resources restoration at the property through any of the following:

a. Any direct or indirect familial relationship.
b. Any contractual, corporate, or financial relations, other than a contractual, corporate, or financial relationship that is created by an instrument through which title to the property is conveyed, an instrument through which sale or purchase of the property is financed, or by a contract for the sale of goods or services.
c. A reorganization in bankruptcy of a business entity that is liable or potentially liable.

(a2) 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 not 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~~ health, safety, or welfare or to the environment existed and that the State complied with the provisions of this Part.

(a3) A responsible party shall also pay a groundwater mitigation fee to the Department in an amount equal to the value of the natural resources that are damaged as a result of a discharge, release, or deposit of a hazardous substance. The amount of the fee shall be the replacement value of the contaminated groundwater as determined by multiplying the groundwater recharge rate in the area of groundwater contamination by the length of time between the discovery of the contamination and the completion of an approved remedial action and then multiplying the product by the median per gallon water rate charged by public water systems, as defined by G.S. 130A-313, that are operated by cities and counties in the State as determined by the Secretary. If a responsible party fails to pay a groundwater mitigating fee, the Secretary may bring an action in the superior court of the county in which the site is located or in any county in which the responsible party resides or has a place of business to recover the amount of the fee and the cost of bringing the action. Groundwater mitigation fees paid or recovered pursuant to this subsection shall be deposited in the Groundwater Mitigation and Environmental Response Fund established by G.S. 143B-279.13.

(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.~~

If there are any unrecovered response costs incurred by the State at a property for which an owner of the property is not liable under this section and the remedial action increases the fair market value of the property above the fair market value of the property that existed before the remedial action was initiated, the State shall have a lien on the property. The owner of the property may substitute a lien on other property or provide other assurance of payment of unrecovered costs satisfactory to the Secretary. A lien created pursuant to this subsection shall meet all of the following requirements:

(1) Be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of the sale or other disposition of the property.

(2) Arise at the time at which costs are first incurred by the State with respect to a response action at the site.

(3) Continue until the earlier of:
a. Satisfaction of the lien by sale or other means or
b. Notwithstanding any statute of limitations under this Chapter, recovery of all response costs incurred at the site.

(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 unrestricted use 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 unrestricted use 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 unrestricted use 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 unrestricted use 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 unrestricted use standards."

SECTION 4. G.S. 130A-310.31(b)(3) reads as rewritten:

"(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~~ under:
a. Any State remedial ~~program other than Part 2A of Article 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the~~ program or
b. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, ~~as amended (42 U.S.C. § 9601 et seq.).~~42 U.S.C. § 9601; except for sites listed in the National Priorities List promulgated pursuant to 42 U.S.C. § 9605."

SECTION 5. G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) 'Unrestricted use standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing ~~the~~ remediation of contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the site-specific requirements that may allow remediation to less than unrestricted use standards incorporated in a brownfields agreement. ~~the risk-based standards established by the Commission pursuant to this Part.~~"

SECTION 6. G.S. 130A-310.32(a) reads as rewritten:

"(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 unrestricted use 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.

(6) The prospective developer has a bona fide intention to buy or sell the brownfields property."

SECTION 7. G.S. 130A-310.34(b) reads as rewritten:

"(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~~ 30 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."

SECTION 8. G.S. 130A-310.34(c) reads as rewritten:

"(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~~21 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~~15 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~~15 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."

SECTION 9. G.S. 130A-310.37(c) reads as rewritten:

"(c) The Department shall not enter into a brownfields agreement for ~~a brownfields site that is identified by the United States Environmental Protection Agency as a federal Superfund~~ any site on the National Priorities List promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9605. ~~pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition).~~"

SECTION 10. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in the case of a first violation involving hazardous ~~waste~~ waste, as defined in ~~G.S. 130A-290 or~~ G.S. 130A-290, involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the ~~State;~~ State, or hazardous substances as defined in G.S. 130A-310; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment 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. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

SECTION 11. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

"**§ 143B-279.12. Use of private environmental consulting and engineering firms.**

A responsible party who enters into an agreement with the Secretary to implement a voluntary remedial action pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes may hire a private environmental consulting or engineering firm approved by the Department of Environment and Natural Resources to implement and oversee the voluntary remedial action. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be implemented in accordance with all federal and State laws, regulations, and rules that apply to remedial actions generally and is subject to rules adopted pursuant to this section. The Department may revoke its approval of the oversight of a voluntary remedial action by a private environmental consulting or engineering firm and assume direct oversight of the remedial action whenever it appears to the Department that the remedial action is not being implemented in accordance with federal and State laws, regulations, and rules or is not being implemented in accordance with the approved remedial action plan. The Department may require the responsible party to take any action necessary to bring the remedial action into compliance with applicable requirements. The Environmental Management Commission shall adopt rules governing the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, and responsible parties under all programs for the remediation of groundwater contamination administered by any agency of the Department of Environment and Natural Resources. Rules adopted under this section shall specify:

(1) Standards applicable to private environmental consulting and engineering firms.

(2) Criteria and procedures for approval of firms by the Department.

(3) Requirements and procedures under which the Department monitors and audits a voluntary remedial action to ensure that the voluntary remedial action complies with applicable federal and State law, regulations, and under which the owner, operator, or other responsible party reimburses the Department for the cost of monitoring and auditing the voluntary remedial action.

(4) Any financial assurances that may be required of an owner, operator, or other responsible party.

(5) Requirements for the preparation, maintenance, and public availability of work plans and records, reports of data collection including sampling, sample analysis, and other site testing, and other records and reports that are consistent with the requirements applicable to remedial actions generally.

"**§ 143B-279.13. Groundwater Mitigation and Environmental Response Fund.**

(a) There is established under the control and direction of the Department the Groundwater Mitigation and Environmental Response Fund. The Fund shall be a nonreverting, interest-bearing fund consisting of groundwater mitigation fee payments

made to the Department, monies appropriated to the Fund by the General Assembly, investment interest credited to the Fund, payments for expedited review of a risk assessment or site-specific remediation standards, administrative fees for review of a site-specific remedial action, and other monies paid to or recovered on behalf of the Fund.

(b) The Fund may be used to pay the costs of any of the following:

(1) Assessment or remediation of environmental contamination at sites where a responsible party cannot be identified or located, or where the responsible party is unable to pay the costs of assessment or remediation, and where there is no other dedicated source of State or federal funds to undertake remediation.

(2) Assessment or remediation of environmental contamination at sites where a responsible party fails to comply with the requirements of G.S. 130A-310.1 or G.S. 130A-310.3.

(3) Provision of alternative drinking water supplies for third parties affected by environmental contamination either on a temporary basis until a responsible party has been identified or on a permanent basis with respect to sites described in subdivision (1) of this subsection.

(4) Establishment, administration, and maintenance of a geographic information system capable of mapping the land and water resources of the State where contamination exists above statewide health standards.

(5) Administration of the Brownfields Property Reuse Act of 1997.

(6) Audits of institutional controls."

SECTION 12. G.S. 105-277.13(a) reads as rewritten:

"(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as provided in this subsection, an owner of land who is protected from liability for remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. If a person who caused or contributed to contamination at a brownfields property holds any ownership interest in the property, that owner is not eligible for the partial exclusion. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion."

SECTION 13. This act becomes effective 1 July 2003.

ATT #15
4/29/03
NOON

HOUSE BILL 1180:
Groundwater Protection Act

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative McComas
Date:	29 April 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	PCS for 1st Edition (H1180-PCS60315-RTf-25)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1180 amends the Statutes relating to the liability and responsibilities of a responsible party of an inactive hazardous substance or waste disposal site (Site). The PCS:***

- ***Revises the content and notification requirements for the Inactive Hazardous Waste Site Priority List.***
- ***Requires a responsible party of an inactive hazardous substance or waste disposal site to develop and implement an assessment plan with respect to the Site, and, upon notice from the Secretary that remediation of the site will be necessary, develop and implement a remedial action plan for the Site.***
- ***Revises the definitions of responsible party and innocent landowner. The PCS provides that the responsible party shall pay a groundwater mitigation fee to the State in an amount equal to the value of the natural resources that are damaged as a result of a discharge, release, or deposit of hazardous substances. The amount of the fee shall be the replacement value of contaminated groundwater.***
- ***Provides that the State will have a lien on property for the unrecovered response costs incurred by the State from a remedial action on property for which the owner is not liable for the contamination not to exceed the increase in the fair market value of the property that results from the State remedial action.***
- ***Creates the Groundwater Mitigation and Environmental Response Fund (Fund).***
- ***Extends the administrative penalty that can be assessed for solid waste management violations to specifically include violations involving the disposal of hazardous substances.***
- ***Authorizes the use of private environmental consulting and engineering firms by responsible parties who enter into agreements with the Secretary to implement voluntary remedial action plans.***
- ***Alters various procedural time frames related to execution of a brownfields agreement.***
- ***Limits the partial tax exclusion offered for owners of property that is subject to a brownfields agreement to which qualifying improvements have been made.***
- ***Makes other clarifying and conforming changes.***

BILL ANALYSIS:

Section 1: Inactive Hazardous Waste Site Priority List

Current law requires the Commission for Health Services (Commission) to maintain an Inactive Hazardous Waste Site Priority List (List) that includes information on each inactive hazardous substance or waste disposal site (Site) and ranks all Sites in decreasing order of danger.

The PCS requires that the List include the identity of each Site for which the responsible party has defaulted, cannot be located, or has demonstrated to the satisfaction of the Secretary that the responsible party has insufficient funds to assess the site or remedy the contamination. The PCS also repeals the requirement that the Secretary notify owners, operators, and responsible parties of Sites included in the list of their Sites ranking on the list. The PCS deletes obsolete language and make other technical and stylistic changes to the Statute.

Section 2: New requirements for Responsible Party & Secretary for Assessment/Action Plans

Current law authorizes the Secretary of Environment and Natural Resources (Secretary) to issue a written declaration that a Site endangers the public health or environment. After issuing a declaration, the Secretary is required to monitor the Site, develop a plan for public notice and local participation in any remedial action program (Action) to be undertaken at the Site, approve and coordinate an Action for the Site, and ensure that an Action is completed for the Site. The Secretary may order any responsible party to develop and implement an Action for the Site.

Assessment Plan Requirement: The PCS requires that within 90 days of the date on which a responsible party knew or should have known of the existence of an inactive hazardous substance or waste disposal site, the responsible party must develop and implement an assessment plan for the determination of the nature, concentration, and extent of hazardous substances present in each environmental medium.

Action Plan Requirement: The PCS requires that within 90 days of notice from the Secretary that remediation of the site will be necessary, the responsible party must develop and implement an Action plan for the site.

Use of Private Firms to Implement Actions: The PCS authorizes the responsible party to employ a private environmental consulting or engineering firm to implement or oversee an assessment or Action, subject to approval by the Secretary.

Secretary to Coordinate Action with Others: The PCS requires that the Secretary coordinate, to the extent necessary, the development and implementation of an Action with the Environmental Management Commission, the Commissioner of Agriculture, and the Pesticide Board; and would repeal the directive that the Secretary work cooperatively, where possible, with the responsible party and others to develop and implement an Action.

Action Performed/No Further Action Required Absent DENR Determination: The PCS provides that following completion of an Action, the responsible party would not be required to perform remedial action for the same release pursuant to other provisions in the General Statutes pertaining to water or air resources, or oil pollution and hazardous substances, unless the Department of Environment and Natural Resources (DENR) makes a later determination based on new information or information not

previously provided, that the site has not been remediated to unrestricted use standards or that DENR was provided with false or incomplete information.

Section 3: New Definitions/Groundwater Mitigation Fee/State Lien

Current law provides that a responsible party is one who discharges or deposits any hazardous substance the result of which is the existence of a Site; or one who contracts or arranges for any discharge or deposit, accepts for discharge or deposit, transports or arranges for transport for the purpose of discharge or deposit, any hazardous substance the result of which is the existence of a Site. A responsible party is directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing an Action for the Site. An innocent landowner who is a bona fide purchaser of the Site without knowledge or a reasonable basis for knowing that hazardous substance or waste disposal had occurred, or a person whose interest or ownership in the Site is based on or derived from a security interest in the property, shall not be considered a responsible party.

Definition Change – Responsible Party: The PCS revises the definition of responsible party by making stylistic and technical changes to the existing definition; and adding to the list of activities involving a hazardous substance that give rise to responsible party status the "release" or "releasing" of a hazardous substance; the ownership or operation of a site that contains a hazardous substance or ownership; or operation of a site at the time a hazardous substance is discharged, released or deposited.

Innocent Landowner – Information Required: The PCS adds information that an innocent landowner must establish by a preponderance of the evidence in order to establish that the landowner is not a responsible party for the Site.

Groundwater Mitigation Fee Authorized: The PCS provides that the responsible party shall pay a groundwater mitigation fee to the State in an amount equal to the value of the natural resources that are damaged as a result of discharge, release, or deposit of hazardous substances. The amount of the fee shall be the replacement value of contaminated groundwater. If a responsible party fails to pay the groundwater mitigating fee, the Secretary is authorized to bring an action against the responsible party to recover the amount of the fee. Any damages recovered would be deposited in the Groundwater Mitigation and Environmental Response Fund.

State Lien Provision: The PCS provides that if there are unrecovered response costs incurred by the State at a property for which an owner is not liable and an Action increases the fair market value of the property above what the fair market value was before the Action was initiated, the State shall have a lien on the property for an amount not to exceed the increase in fair market value which is attributable to the Action. The owner of the property is authorized to substitute a lien on other property or provide other assurance of payment of unrecovered costs that satisfies the Secretary.

Section 4: Definition Change – "Brownfields property"

Current law defines a brownfields property or site as an abandoned, idled or underused property where redevelopment is hindered by actual or possible environmental contamination that may be subject to remediation under any State remedial program (except those involving leaking petroleum underground

storage tanks) or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

The PCS changes the definition to delete the existing exclusion of properties subject to remediation under the State's leaking petroleum underground storage tank program, exclude property on the National Priorities List, and makes other technical and stylistic changes.

Section 5: Definition Change – "Unrestricted Use"
Currently, "unrestricted use standards" as defined in the Brownfields Property Reuse Act of 1997, means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the remediation of contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or DENR. These standards are to be used instead of "risk-based standards established by the Commission."

The PCS changes the existing language that concerns the use of "risk-based standards established by the Commission" to now read "site-specific requirements that may allow remediation to less than unrestricted use standards incorporate in a Brownfields agreement."

Section 6: Brownfields Developer - Additional Information Required
Current law authorizes DENR to enter into a brownfields agreement with a prospective developer upon submittal of certain information from the developer.

In addition to the information already required from the developer under the statute, the PCS requires that the developer provide DENR with any information necessary to demonstrate that the developer has a bona fide intention to buy or sell the brownfields property.

Section 7: Change to Procedural Time Frame
Current law provides various procedural time frames governing the execution of a brownfields agreement.

The PCS decreases the public comment period associated with a Notice of Intent to Redevelop a Brownfields Property from 60 days to 30 days.

Section 8: Changes to Procedural Time Frames
The PCS decreases the period of time that a person has in order to submit a written request to DENR for a public meeting on a proposed brownfields agreement from 30 days to 21 days. The PCS also decreases the period of time for which DENR must give public notice of a public meeting on a proposed brownfields agreement from 30 days to 15 days and would decrease the period of time for which the developer is required to publish public notice of the meeting from 30 days to 15 days.

Section 9: No Brownfield Agreements on National Priorities List Sites
Current law prohibits DENR from entering into a Brownfields agreement on any site identified as a federal Superfund site.

The PCS deletes the language "federal Superfund site", and adds language that prohibits DENR from entering a brownfields agreement on any site included on the National Priorities List.

Section 10: Administrative Penalty to Encompass Disposal of Hazardous Substances
Under current law, an administrative penalty may be imposed for certain solid waste management violations, but the Statute does not explicitly cover violations involving disposal of hazardous substances.

The PCS extends the administrative penalty to specifically include violations involving the disposal of hazardous substances.

Section 11: Use of Private Firms to Implement Actions/Creation of Fund

Use of Private Firms to Implement Actions: Currently, the Statutes do not explicitly authorize a responsible party to hire a private environmental consulting or engineering firm to implement and oversee an Action. The PCS authorizes a responsible party who enters into an agreement with the Secretary to implement a voluntary remedial action to hire a private environmental consulting or engineering firm that is approved by DENR to implement and oversee the voluntary remedial action. The action shall be implemented in accordance with all applicable federal and State laws, regulations, and rules. DENR may revoke its approval of the oversight of an action by an environmental consulting or engineering firm and assume direct oversight of the action if it appears that the action is not being conducted in accordance with all applicable federal and State laws, regulations, rules, or in accordance with the approved remediation plan. The PCS directs the Commission to adopt rules governing the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions for the remediation of groundwater contamination.

Creation of Fund: The PCS establishes the Groundwater Mitigation and Environmental Response Fund (Fund) to consist of groundwater mitigation fee payments made to DENR, State appropriations, investment interest credited to the Fund, payments for expedited review of a risk assessment or site-specific remediation standards, administrative fees for review of a site-specific remedial action, and other monies paid to or recovered on behalf of the Fund. The Fund would be a nonreverting, interest-bearing fund that may be used to pay the costs to:

- assess or remediate environmental contamination at sites where a responsible party cannot be identified or located, or where a responsible party is unable to pay costs of assessment or remediation, and where there is not another dedicated source of State or federal funds to undertake remediation or assessment;
- remediate sites where a responsible party fails to comply with duties imposed by the General Statutes;
- provide alternative drinking water for third parties affected by environmental contamination;
- establish, administer and maintain a geographic information system capable of mapping the land and water resources of the State where contamination exists;
- administration of Brownfields Property Reuse Act; and,
- audits of institutional controls.

Section 12: Brownfields Properties – Partial Tax Exclusion
Current law provides that an owner of land that makes qualifying improvements to property that is subject to a brownfields agreement is eligible for a partial exclusion from taxation for the first five taxable years beginning after completion of the improvements.

The PCS provides that if a person who caused or contributed to contamination at a brownfields property holds any interest in the property, that owner is not eligible for the partial exclusion.

Section 13: Effective Date
The bill would become effective 1 July 2003.

H1180-SMRI-001.doc

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 868 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____ the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Howley Troax	Office of Governor
Steve Wall	Conservation Council
Rick Zechini	NC Assoc. of Realtors
Eddie Caldwell	Hofer + Caldwell, P.A.
Jim Stephenson	NC Coastal Federation
Carol Lauer	EGHS
Elaine Scarbrough	Anson Co Partnership - Smart Start
Ellen Dunlevy	" "
Kim Wilson	" "
Jennifer W. Dunlevy	" "
	" "
Kris Peplin	
Cindy Taylor-Lindley	" " "

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Howey	NCPMA
Thomas Richardson	CBM Environmental
Catherine Ross	CBM Environmental Services
Sharon Miller	CUCA
JERRY SCHILL	NC Fisheries Assoc.
Candice Rodgers	
Anita Watkins	NC League of Municipalities
Tracy Harrison	CRC
Donna Moffitt	DENR-DCM
Bob Midgette	DENR, DEH, PWSS
Jim Simons	DENR

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jackie Street	PPAB
David Farrell	Womble Bleak LLP
Nancy Thompson	MCIC
Chris Nichols	Hunton + Williams
Beth Anne Mumford	NCPC
Steve Woodson	NC Farm Bureau
Gordon McKie	N.C. Conservation Network
Preston Howard	MCIC
Fred Allen	NC Aggregates Assn.
Kim Hibbard	NCLM
Paul Meyer	NCAC

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Hafer & Caldwell, P.A.
Amy Dobson	NC Statewatch
Gary Harris	NC PMA

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 29, 2003

MINUTES

The House Committee on Environment and Natural Resources met April 29, 2003, in Room 643 of the Legislative Office Building at 6:45 pm. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Philip Haire, Danny McComas, Patrick McHenry, Jean Preston, Ray Rapp, and Bonner Stiller.

Chair Gibson called the meeting to order at 6:40 pm. The following bills were taken up:

HB 1078 – Amend Natural Resources Laws – 1 (Attachment 1) Representative L. Allen moved to adopt PCS H1078-CSRI-3 [v.2] (Attachment 2). Representative Sexton said that the Mayo River is one of the cleanest in the country and would be a respectable addition to the State Parks System.

Robin Smith, Assistant Secretary of DENR, said that is was a priority area for acquisition. Representative Blackwood moved for a favorable report, unfavorable to the original bill. Passed.

Representative Hackney chaired when Representative Gibson presented his bills.

HB 897 – Underground Storage Tank Prgm. Amends 2003 (Attachments 3 and 4) Representative Gibson said the bill authorizes the Environmental Management Commission to adopt temporary and permanent rules to modify the testing requirements for assessment and remediation of leaking petroleum underground storage tank cleanup sites. Representative Haire raised the question about the restrictive title. Rep. Gibson moved to adopt the amendment to change the narrowing the title as read by Counsel Givens (Attachment 4). The amendment was adopted the folded into the bill. Passed. Representative LaRoque moved for a favorable report for a new committee substitute, unfavorable to the original bill. Passed.

HB 987 – Amend Marine Fisheries Laws (Attachment 5,6,7) Representative Gibson moved that H987-PCS50271-SB-28 be adopted. Adopted He said that this bill authorizes the Director, Davison of Marine Fisheries, to make proclamations that govern quota-managed fishing.

Preston Pate, Director, Marine Fisheries, said the department has no objection to the bill, it gives the Director of Marine Fisheries has broad authority to harvest marine resources at the coast. Representative LaRoque moved for a favorable report, unfavorable to the original bill. Passed.

Chair Gibson adjourned the meeting at 7:03 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT. #1
4/29/03
#2 MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1078*

Short Title:	Amend Natural Resources Laws - 1.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTERS 113 AND 113A OF THE GENERAL STATUTES AND OTHER LAWS PERTAINING TO NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the laws pertaining to natural resources.

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

ATT. #2 H2
4/29/03
#2 MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1078*
PROPOSED COMMITTEE SUBSTITUTE H1078-CSRI-3 [v.2]

4/29/2003 5:41:34 PM

Short Title: Amend Natural Resources Laws - 1. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF MAYO RIVER STATE PARK TO THE STATE PARKS SYSTEM.

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 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

Whereas, the Mayo River in Rockingham County supports many rare species and possesses biological, geological, and scenic resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Mayo River State Park to the State Parks System as provided by G.S. 113-44.14(b).

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

ATT # 2A
4/29/03
#2 meeting
(Reported bill)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **D**

HOUSE BILL 1078*
PROPOSED COMMITTEE SUBSTITUTE H1078-PCS30301-RI-3

Short Title: Mayo River State Park. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF MAYO RIVER STATE PARK TO THE STATE PARKS SYSTEM.

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 1987 General Assembly enacted the State Parks Act, which declares that the State of North Carolina offers unique archaeological, geologic, biological, scenic, and recreational resources, and that these resources are part of the heritage of the people of the State, which should be preserved and managed by the people for their use and for the use of their visitors and descendants; and

Whereas, the Mayo River in Rockingham County supports many rare species and possesses biological, geological, and scenic resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Mayo River State Park to the State Parks System as provided by G.S. 113-44.14(b).

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

ATT. # 3
4/29/03
#2 MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 897*

Short Title:	Underground Storage Tank Prgm. Amends 2003.	(Public)
Sponsors:	Representatives Gibson, Gillespie (Primary Sponsors); Gorman and LaRoque.	
Referred to:	Environment and Natural Resources.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE IMPROVEMENTS IN THE REGULATION OF PETROLEUM UNDERGROUND STORAGE TANKS AND TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. In order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from petroleum underground storage tanks, the Environmental Management Commission may adopt temporary and permanent rules to modify the testing requirement set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Prior to the adoption of temporary rules under this section, the Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

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

ATTE 4
4/29/03
#2 MEETING

HOUSE BILL 897:
Underground Storage Tank Prgm. Amends 2003.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Gibson and Gillespie
Date:	April 29, 2003	**Summary by:**	Tim Dodge
Version:	First Edition		Research Assistant for Environmental Issues

SUMMARY: ***House Bill 897 authorizes the Environmental Management Commission to adopt temporary and permanent rules to modify the testing requirements for assessment and remediation of leaking petroleum underground storage tank cleanup sites.***

BILL ANALYSIS: The bill authorizes the Environmental Management Commission to adopt temporary rules to modify the testing requirements set out in 15A NCAC 2L .0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). The purpose of the rule-making authority is to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from leaking petroleum underground storage tank (UST) cleanup sites.

BACKGROUND: In 1988, the General Assembly established two funds, the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) and the Noncommerical Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund), to provide reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from a UST. The Commercial Fund receives revenue from three primary sources, including a small portion of the motor fuel excise tax, an inspection tax on motor fuel and kerosene, and an operating fee for USTs. The Noncommercial Fund receives revenue from the motor fuel excise tax and the inspection tax on motor fuel and kerosene. While the Funds continue to provide reimbursement for costs associated with assessment and remediation activities, the costs have continued to exceed the revenues to the Funds.

EFFECTIVE DATE: The bill would become effective when it becomes law.

H897-SMSY-001

ATT. 4A
4/30/03
2nd reading
reported bill

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 897*
PROPOSED COMMITTEE SUBSTITUTE H897-PCS30302-RT-27

Short Title: Underground Storage Tank Prgm. Testing Req. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES TO REDUCE CERTAIN TESTING REQUIREMENTS APPLICABLE TO THE LEAKING UNDERGROUND STORAGE TANK CLEANUP PROGRAM IN ORDER TO REDUCE COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. In order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from petroleum underground storage tanks, the Environmental Management Commission may adopt temporary and permanent rules to modify the testing requirement set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Prior to the adoption of temporary rules under this section, the Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

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

ATT. H
4/29/03 4
Meeting #2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 987
PROPOSED COMMITTEE SUBSTITUTE H987-CSSB-28 [v.1]

4/29/2003 11:36:18 AM

Short Title: Amend Fisheries Proclamation Process. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON ISSUANCE AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-221 reads as rewritten:

"**§ 113-221. ~~Rules; proclamations; emergency Commission meetings.~~Rules.**

(a) Chapter 150B of the General Statutes governs the adoption of rules under this ~~Article, other than proclamations issued under this Article. Chapter 150B does not apply to proclamations issued under this~~ Article.

(b) Upon purchasing a license, each licensee shall be given a copy of the rules concerning the activities authorized by the license.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change.

(d) Unless there are overriding policy considerations involved, any rule of the Marine Fisheries Commission ~~which will in the judgment of the Marine Fisheries Commission~~ that will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment ~~should~~ shall be given ~~such~~ a future effective date so as to minimize undue potential economic loss to fishermen. Whether or not any ~~provision may cause potential economic loss~~ rule will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment and whether or not a future effective date should be set is a matter within the ~~complete~~ sole discretion of the Marine Fisheries Commission. ~~The Marine Fisheries Commission need not set any future effective date more than two years in advance of the passage of any rule.~~This subsection does not require the Marine

Fisheries Commission to establish an effective date that is more than two years later than the date on which the rule is adopted.

~~(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. 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. It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports~~

~~fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.~~

~~The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious.~~

(f) All persons who may be affected by ~~them~~ rules adopted by the Marine Fisheries Commission are under a duty to keep themselves informed of ~~current rules of the Marine Fisheries Commission and proclamations of the Fisheries Director.~~ the current rules. It is no defense in any criminal prosecution for the defendant to show that ~~he~~ the defendant in fact received no notice of a particular ~~rule or proclamation.~~rule. In any prosecution for violation of ~~the provisions of any rule or proclamation,~~a rule, or in which proof of matter contained in a rule ~~or proclamation~~ is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the required publication procedures.

(g) Every court ~~must~~ shall take judicial notice of any codification of rules issued by the Fisheries Director within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, ~~such~~ the codifications are to be deemed accurate and current statements of the text of the rules in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the rules ~~which~~ that is in fact properly applicable.

(h) Repealed by Session Laws 1983, c. 221, s. 1."

SECTION 2. Article 17 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-221.1. Proclamations; emergency review.**

(a) Chapter 150B of the General Statutes does not apply to proclamations issued under this Article.

(b) 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 that may be affected by variable conditions. These proclamations shall be issued by the Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this subsection, all proclamations shall state the hour and date upon which they become effective and shall be issued at least 48 hours in advance of the effective date and time. A proclamation that prohibits the taking of certain fisheries resources for reasons of public health or that governs a quota-managed fishery may be made effective immediately upon issuance. A proclamation to reopen the taking of certain fisheries resources closed for reasons of public health shall be issued at least 12 hours in advance of the effective date and time of the reopening. A person who violates a proclamation that is made effective immediately upon issuance shall not be charged with a criminal offense for the violation

if the violation occurred between the time of issuance and 48 hours after the issuance and the person did not have actual notice of the issuance of the proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether the 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 shall make every reasonable effort to give actual notice of the terms of any proclamation to persons who may be affected by the proclamation. Reasonable effort includes a press release to communications media, posting of a notice at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and other measures designed to reach the persons who may be affected. It is a defense to an enforcement action for a violation of a proclamation that a person was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.

(c) All persons who may be affected by proclamations issued by the Fisheries Director are under a duty to keep themselves informed of current proclamations. It is no defense in any criminal prosecution for the defendant to show that the defendant in fact received no notice of a particular proclamation. In any prosecution for violation of a proclamation, or in which proof of matter contained in a proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show, by the greater weight of the evidence, substantial failure of compliance by the Department with the required publication procedures.

(d) Pursuant to the request of five or more members of the Marine Fisheries Commission, the Chair of the Marine Fisheries Commission may call an emergency meeting of the Commission to review an issuance or proposed issuance of proclamations under the authority delegated to the Fisheries Director pursuant to subsection (b) of this section or to review the desirability of directing the Fisheries Director to issue a proclamation to prohibit or allow the taking of certain fisheries resources. At least 48 hours prior to any emergency meeting called pursuant to this subsection, a public announcement of the meeting shall be issued that describes the action requested by the members of the Marine Fisheries Commission. The Department shall make every reasonable effort to give actual notice of the meeting to persons who may be affected. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may approve, cancel, or modify the previously issued or proposed proclamation under review or may direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources. An emergency meeting called pursuant to this subsection and any resulting orders issued by the Marine Fisheries Commission are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. The decisions of the Marine Fisheries Commission shall be the

final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

SECTION 3. G.S. 143B-289.52(a)(8) reads as rewritten:

"**§ 143B-289.52. 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 within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

...

(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).~~G.S. 113-221.1."

SECTION 4. This act becomes effective July 1, 2003.

ATT #5
4/29/03
Meeting #2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 987

Short Title:	Amend Marine Fisheries Laws.	(Public)
Sponsors:	Representative Wainwright.	
Referred to:	Environment and Natural Resources.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED, TO AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON ISSUANCE, TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE, TO EXPAND THE ENFORCEMENT AUTHORITY OF MARINE PATROL INSPECTORS, AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6.9 of S.L. 1997-400 reads as rewritten:

"**Section 6.9.** 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.~~December 31, 2004. 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(e), 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 2. G.S. 113-221 reads as rewritten:

"**§ 113-221. ~~Rules; proclamations; emergency Commission meetings.~~Rules.**

(a) Chapter 150B of the General Statutes governs the adoption of rules under this ~~Article, other than proclamations issued under this Article.~~ Article. Chapter 150B does not apply to proclamations issued under this Article.

(b) Upon purchasing a license, each licensee shall be given a copy of the rules concerning the activities authorized by the license.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change.

(d) Unless there are overriding policy considerations involved, any rule of the Marine Fisheries Commission ~~which will in the judgment of the Marine Fisheries Commission~~ that will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment ~~should~~ shall be given ~~such~~ a future effective date so as to minimize undue potential economic loss to fishermen. Whether or not any ~~provision may cause potential economic loss~~ rule will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment and whether or not a future effective date should be set is a matter within the ~~complete~~ sole discretion of the Marine Fisheries Commission. The Marine Fisheries Commission need not set any future effective date more than two years in advance of the ~~passage~~ adoption of any rule.

~~(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. 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. It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by~~

~~violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.~~

~~The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious.~~

(f) All persons who may be affected by ~~them~~ rules adopted by the Marine Fisheries Commission and proclamations issued by the Fisheries Director are under a duty to keep themselves informed of ~~current rules of the Marine Fisheries Commission and proclamations of the Fisheries Director.~~ the current rules and proclamations. It is no defense in any criminal prosecution for the defendant to show that ~~he~~ the defendant in fact received no notice of a particular rule or proclamation. In any prosecution for violation of ~~the provisions of any~~a rule or proclamation, or in which proof of matter contained in a rule or proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the required publication procedures.

(g) Every court ~~must~~ shall take judicial notice of any codification of rules issued by the Fisheries Director within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, ~~such~~ the codifications are to be deemed accurate and current statements of the text of the rules in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the rules ~~which~~ that is in fact properly applicable.

(h) Repealed by Session Laws 1983, c. 221, s. 1."

SECTION 3. Article 17 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-221.1. Proclamations; emergency review.**

(a) 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 that may be affected by variable conditions. These proclamations shall be issued by the Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this subsection, all proclamations shall state the hour and date upon which they become effective and shall be issued at least 48 hours in advance of the effective date and time. A proclamation that prohibits the taking of certain fisheries resources for reasons of public health or that governs a quota-managed fishery may be made effective immediately upon issuance. A proclamation to reopen the taking of certain fisheries resources closed for reasons of public health through a prior proclamation made effective immediately upon issuance may be issued at least 12 hours in advance of the effective date and time of the reopening. A person violating any proclamation that is made effective immediately upon issuance shall not be charged with a criminal offense during the time between the issuance and 48 hours after the issuance unless the person had actual notice of the issuance of the proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether the 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 shall make every reasonable effort to give actual notice of the terms of any proclamation to persons who may be affected by the proclamation. Reasonable effort includes a press release to communications media, posting of a notice at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and other measures designed to reach the persons who may be affected. It is a defense to an enforcement action for a violation of a proclamation that a person was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.

(b) Pursuant to the request of five or more members of the Marine Fisheries Commission, the Chair of the Marine Fisheries Commission may call an emergency meeting of the Commission to review an issuance or proposed issuance of proclamations under the authority delegated to the Fisheries Director pursuant to subsection (a) of this section or to review the desirability of directing the Fisheries Director to issue a proclamation to allow the taking of certain fisheries resources. At least 48 hours prior to any emergency meeting called pursuant to this subsection, a public announcement of the meeting shall be issued that describes the action requested by the members of the Marine Fisheries Commission. The Department shall make every reasonable effort to give actual notice of the meeting to persons who may be affected. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may approve, cancel, or modify the previously issued or proposed proclamation under review or may direct the Fisheries Director to issue a proclamation that allows the

taking of certain fisheries resources. An emergency meeting called pursuant to this subsection and any resulting orders issued by the Marine Fisheries Commission are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

SECTION 4. G.S. 143B-289.52(a)(8) reads as rewritten:

"**§ 143B-289.52. 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 within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

...

(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).~~G.S. 113-221.1."

SECTION 5. G.S. 113-134.1 reads as rewritten:

"**§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic ~~Ocean.~~Ocean; delegation of law enforcement powers from the National Marine Fisheries Service.**

(a) The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers.

(b) If authorized by the Fisheries Director or a designee of the Fisheries Director, an inspector may accept delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service. For purposes of this subsection, the office of inspector may be held concurrently with any other elected or appointed office, as authorized by G.S. 128-1.1 and Article VI, Section 9 of the Constitution of North Carolina."

SECTION 6. Subsection (d1) of G.S. 113-136 is repealed.

SECTION 7. G.S. 113-136 is amended by adding two new subsections to read:

"(d2) In addition to law enforcement authority granted elsewhere, an inspector or protector has the authority to enforce criminal laws when the inspector or protector has probable cause to believe that a person has committed a criminal offense in the presence of the inspector or protector and, at the time of the violation, the inspector or protector is engaged in the enforcement of laws otherwise within the jurisdiction of the inspector or protector. When acting pursuant to this subsection, an inspector or protector shall have the same powers invested in law enforcement officers by statute or common law. Nothing in this subsection shall be construed to expand the authority of an inspector or

protector to initiate or conduct an independent investigation into violations of criminal laws outside the scope of the subject matter or territorial jurisdiction of the inspector or protector.

(d3) In addition to law enforcement authority granted elsewhere, an inspector or protector has the authority to enforce criminal laws when the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or the designee of the head of a State or local law enforcement agency and the request is within the scope of the subject matter jurisdiction of the agency. When acting pursuant to this subsection, an inspector or protector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to this subsection, an inspector or 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 an inspector or protector to initiate or conduct an independent investigation into violations of criminal laws outside the scope of the subject matter or territorial jurisdiction of the inspector or protector."

SECTION 8. Sections 2, 3, and 4 of this act become effective July 1, 2003. All other sections of this act are effective when it becomes law.

ATT.# 6
4/29/03
Meeting #2

HOUSE BILL 987:
Amend Fisheries Proclamation Process.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Wainwright
Date:	April 29, 2003	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed Committee Substitute H987-CSSB-28 [v.1]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 987 would authorize the Director of the Division of Marine Fisheries to make a proclamation that governs a quota-managed fishery effective immediately upon issuance.***

CURRENT LAW: Under current law, the Marine Fisheries Commission may delegate to the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources (Fisheries Director) the authority to issue proclamations suspending or implementing rules of the Commission that are affected by variable conditions. Except for proclamations related to public health, all proclamations must be issued at least 48 hours in advance of the effective date and time. Proclamations that prohibit the taking of certain fisheries for reasons of public health may be made effective immediately upon issuance. A person violating a proclamation made effective immediately upon issuance shall not be charged with a criminal offense during the time between the issuance and 48 hours after the issuance unless the person had actual notice of the issuance of the proclamation. The Marine Fisheries Commission may call an emergency meeting to review an issuance or proposed issuance of a proclamation or to review the desirability of directing the Fisheries Director to issue a proclamation to allow the taking of certain fisheries resources.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 987 (PCS) would remove the proclamation provisions from current G.S. 113-221 and recodify them in new G.S. 113-221.1. The PCS would substantively change the recodified proclamation provisions by treating a proclamation that governs a quota-based fishery like a public health related proclamation. Both quota-based proclamations and public health related proclamations may be made effective immediately upon issuance. A person who violates a proclamation that is made effective immediately upon issuance shall not be charged with a criminal offense for the violation if the violation occurred between the time of issuance and 48 hours after the issuance and the person did not have actual notice of the issuance of the proclamation. The PCS also expands the authority of the Marine Fisheries Commission to call an emergency meeting to review proclamation issues to include review of the desirability of directing the Fisheries Director to issue a proclamation to prohibit the taking of certain fisheries resources.

The PCS makes technical, clarifying, and conforming changes to current G.S. 113-221 and new G.S. 113-221.1.

EFFECTIVE DATE: This act would become effective July 1, 2003.

H987-SMSB-002

ATTH. 7
4/29/03
2nd meeting
reported bill

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 987
PROPOSED COMMITTEE SUBSTITUTE H987-PCS50271-SB-28

Short Title: Amend Fisheries Proclamation Process. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON ISSUANCE AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-221 reads as rewritten:

"**§ 113-221. ~~Rules; proclamations; emergency Commission meetings.~~Rules.**

(a) Chapter 150B of the General Statutes governs the adoption of rules under this ~~Article, other than proclamations issued under this Article. Chapter 150B does not apply to proclamations issued under this~~ Article.

(b) Upon purchasing a license, each licensee shall be given a copy of the rules concerning the activities authorized by the license.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change.

(d) Unless there are overriding policy considerations involved, any rule of the Marine Fisheries Commission ~~which will in the judgment of the Marine Fisheries Commission~~ that will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment ~~should~~ shall be given ~~such~~ a future effective date so as to minimize undue potential economic loss to fishermen. Whether or not any ~~provision may cause potential economic loss~~ rule will result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment and whether or not a future effective date should be set is a matter within the ~~complete~~ sole discretion of the Marine Fisheries Commission. ~~The Marine Fisheries Commission need not set any future effective date more than two years in advance of the passage of any rule.~~This subsection does not require the Marine

Fisheries Commission to establish an effective date that is more than two years later than the date on which the rule is adopted.

~~(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. 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. It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports~~

~~fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.~~

~~The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious.~~

(f) All persons who may be affected by ~~them~~ rules adopted by the Marine Fisheries Commission are under a duty to keep themselves informed of ~~current rules of the Marine Fisheries Commission and proclamations of the Fisheries Director.~~ the current rules. It is no defense in any criminal prosecution for the defendant to show that ~~he~~ the defendant in fact received no notice of a particular ~~rule or proclamation.~~rule. In any prosecution for violation of ~~the provisions of any rule or proclamation,~~a rule, or in which proof of matter contained in a rule ~~or proclamation~~ is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the required publication procedures.

(g) Every court ~~must~~ shall take judicial notice of any codification of rules issued by the Fisheries Director within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, ~~such~~ the codifications are to be deemed accurate and current statements of the text of the rules in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the rules ~~which~~ that is in fact properly applicable.

(h) Repealed by Session Laws 1983, c. 221, s. 1."

SECTION 2. Article 17 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-221.1. Proclamations; emergency review.**

(a) Chapter 150B of the General Statutes does not apply to proclamations issued under this Article.

(b) 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 that may be affected by variable conditions. These proclamations shall be issued by the Fisheries Director or by a person designated by the Fisheries Director. Except as provided in this subsection, all proclamations shall state the hour and date upon which they become effective and shall be issued at least 48 hours in advance of the effective date and time. A proclamation that prohibits the taking of certain fisheries resources for reasons of public health or that governs a quota-managed fishery may be made effective immediately upon issuance. A proclamation to reopen the taking of certain fisheries resources closed for reasons of public health shall be issued at least 12 hours in advance of the effective date and time of the reopening. A person who violates a proclamation that is made effective immediately upon issuance shall not be charged with a criminal offense for the violation

if the violation occurred between the time of issuance and 48 hours after the issuance and the person did not have actual notice of the issuance of the proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether the 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 shall make every reasonable effort to give actual notice of the terms of any proclamation to persons who may be affected by the proclamation. Reasonable effort includes a press release to communications media, posting of a notice at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and other measures designed to reach the persons who may be affected. It is a defense to an enforcement action for a violation of a proclamation that a person was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight.

(c) All persons who may be affected by proclamations issued by the Fisheries Director are under a duty to keep themselves informed of current proclamations. It is no defense in any criminal prosecution for the defendant to show that the defendant in fact received no notice of a particular proclamation. In any prosecution for violation of a proclamation, or in which proof of matter contained in a proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show, by the greater weight of the evidence, substantial failure of compliance by the Department with the required publication procedures.

(d) Pursuant to the request of five or more members of the Marine Fisheries Commission, the Chair of the Marine Fisheries Commission may call an emergency meeting of the Commission to review an issuance or proposed issuance of proclamations under the authority delegated to the Fisheries Director pursuant to subsection (b) of this section or to review the desirability of directing the Fisheries Director to issue a proclamation to prohibit or allow the taking of certain fisheries resources. At least 48 hours prior to any emergency meeting called pursuant to this subsection, a public announcement of the meeting shall be issued that describes the action requested by the members of the Marine Fisheries Commission. The Department shall make every reasonable effort to give actual notice of the meeting to persons who may be affected. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may approve, cancel, or modify the previously issued or proposed proclamation under review or may direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources. An emergency meeting called pursuant to this subsection and any resulting orders issued by the Marine Fisheries Commission are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. The decisions of the Marine Fisheries Commission shall be the

final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

SECTION 3. G.S. 143B-289.52(a)(8) reads as rewritten:

"**§ 143B-289.52. 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 within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

...

(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).~~G.S. 113-221.1."

SECTION 4. This act becomes effective July 1, 2003.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 897 A BILL TO BE ENTITLED AN ACT TO MAKE IMPROVEMENTS IN THE REGULATION OF PETROLEUM UNDERGROUND STORAGE TANKS AND TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 987 A BILL TO BE ENTITLED AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED, TO AUTHORIZE THE FISHERIES DIRECTOR TO ISSUE PROCLAMATIONS THAT BECOME EFFECTIVE IMMEDIATELY UPON ISSUANCE, TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL MARINE FISHERIES SERVICE, TO EXPAND THE ENFORCEMENT AUTHORITY OF MARINE PATROL INSPECTORS, AND TO MAKE OTHER TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1078 A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTERS 113 AND 113A OF THE GENERAL STATUTES AND OTHER LAWS PERTAINING TO NATURAL RESOURCES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

May 13, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   SB 765 – LIMIT SHELLFISH LEASE AREA IN CORE SOUND – Senator Thomas
   SB 979 – AMEND ASMFC APPOINTMENT – Senator Albertson

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

May 13, 2003

MINUTES

The House Committee on Environment and Natural Resources met on May 13, 2003, in Room 643 of the Legislative Office Building at 12:07 noon with the following members present: Representative Gibson, Chair; Representatives Church and Hackney, Vice Chairs; Representatives Allen, Blackwood, Gulley, Haire, Insko, McCombs, McHenry, Preston, Rapp, Warner, Weiss and Womble. Committee counselors George Givens and Jeff Hudson were also in attendance. A Visitor Registration list is attached and made a part of these minutes.

Representative Gibson, Chair, called the meeting to order and recognized the pages.

The following bills were considered:

SB 765 - SHELLFISH LEASE AREA IN CORE SOUND. Senator Scott Thomas was recognized to explain the bill which would limit the area of western Core Sound that may be leased for shellfish cultivation to the area that is subject to shellfish cultivation leases on June 30, 2003. Preston Pate, Division of Fisheries, spoke and answered questions from members regarding the bill. Currently, 95 acres of the western, mainland side of Core Sound are subject to shellfish cultivation leases. This bill would allow the continuation of usage of the 95 acres.

Representative Hackney made a motion to give SB765 a favorable report. Motion carried.

SB 979 – ASMFC APPOINTMENT. Committee Counsel Jeff Hudson was recognized to explain the bill which would authorize the Governor to appoint the legislative member of North Carolina's delegation to the Atlantic States Marine Fisheries Commission and would delete language that provides for Senate approval of the Governor's appointment of the citizen member of North Carolina's delegation to the Commission. The bill also makes technical, clarifying, and conforming changes to the Atlantic States Marine Fisheries Commission statutes.

After a brief discussion period, Representative Blackwood made a motion to give the bill a favorable report. Motion carried.

Chair Gibson adjourned the meeting at 12:25 p.m.

Pryor Gibson, Chair

Edna Lee Collar, Acting Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 979

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/15/03

Short Title: Amend ASMFC Appointment. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS BY WHICH A MEMBER OF THE GENERAL ASSEMBLY IS APPOINTED TO THE ATLANTIC STATES MARINE FISHERIES COMMISSION AND TO MAKE TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 19 of Chapter 113 of the General Statutes reads as rewritten:

"Article 19.

Atlantic States Marine Fisheries Compact and Commission."

SECTION 2. G.S. 113-251 reads as rewritten:

"**§ 113-251. Definition of terms.**

~~(a)~~ As used in this ~~Article, the word~~ Article:

(1) 'Commission' ~~refers to~~ means the Atlantic States Marine Fisheries ~~Commission and the word "commissioner" refers to a member of that Commission.~~Commission.

~~(b) The reference in Article III of the Compact set out in G.S. 113-252 to the chairman of the committee on commercial fisheries shall be deemed to refer to the chairman of the Marine Fisheries Commission.~~

~~(c) The reference in Article III of the Compact set out in G.S. 113-252 to the Commissioner of Commercial Fisheries shall be deemed to refer to the Secretary.~~

~~(d) The reference in Article III of the Compact set out in G.S. 113-252 to the Board of the North Carolina Department of Conservation and Development shall be deemed to refer to the Secretary.~~

(2) 'Commissioner' means a member of the Atlantic States Marine Fisheries Commission.

(3) 'Compact' means the Atlantic States Marine Fisheries Compact.

(4) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources."

SECTION 3. Article III of G.S. 113-252 reads as rewritten:

"**§ 113-252. Atlantic States Marine Fisheries Compact and Commission.**

...

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. ~~The Board of the North Carolina Department of Conservation and Development shall designate either the director of the Department, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries as one member of the Commission, and the Commission on Interstate Cooperation of the State shall designate a member of the North Carolina legislature as one of the members of said Commission, and the third member of said Commission, who shall be a citizen of the State having a knowledge of and interest in marine fisheries, shall be appointed by the Governor.~~One shall be the executive officer of the administrative agency of the state charged with the conservation of the fisheries resources to which this compact pertains. The second shall be a member of the legislature appointed by the Governor. The third shall be a citizen who has knowledge of and interest in marine fisheries issues, appointed by the Governor. This Commission shall be a body corporate, with the powers and duties set forth herein.

...."

SECTION 4. G.S. 113-254 reads as rewritten:

"**§ 113-254. North Carolina members of Commission.**

(a) In pursuance of Article III of ~~said Compact~~ the Compact, there shall be three ~~members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called Commission) from the State of~~commissioners from North Carolina. The first commissioner ~~from the State of North Carolina shall be the Fisheries Director of the Division of Marine Fisheries of the Department, ex officio, and the term of such ex officio~~ shall be the Fisheries Director, ex officio. The term of this commissioner shall terminate at the time ~~he~~ the commissioner ceases to hold ~~such office, and his~~office as the Fisheries Director. The successor ~~as~~ to this commissioner shall be ~~his~~ the commissioner's successor as ~~Fisheries Director of the Division of Marine Fisheries.~~Fisheries Director. The second commissioner ~~from the State of North Carolina~~ shall be a legislator ~~and member of the Commission on Interstate Cooperation of the State of North Carolina, ex officio, designated by said Commission on Interstate Cooperation, and the~~appointed by the Governor. The term of ~~any such ex officio~~this commissioner shall terminate at the time ~~he~~ the commissioner ceases to hold ~~said legislative office or said office as Commissioner on Interstate Cooperation, and his successor as commissioner~~legislative office. This commissioner's successor shall be ~~named in like manner.~~appointed by the Governor. ~~The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem.~~ The third

commissioner from the State of North Carolina shall be a citizen of the State with knowledge of and interest in marine fisheries issues appointed by the Governor. The term of ~~said Commissioner~~this commissioner shall be three ~~years and he~~ years. This commissioner may be reappointed for successive terms and shall hold office until ~~his~~ the commissioner's successor ~~shall be~~is appointed and qualified. ~~Vacancies~~ A vacancy occurring in the office of ~~such Commissioner from~~ this commissioner for any reason or cause shall be filled by appointment by the ~~Governor (by and with the advice and consent of the Senate)~~Governor for the unexpired term.

(b) The Fisheries Director ~~of the Division of Marine Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time,~~may delegate to any deputy or other subordinate of the Fisheries ~~Director,~~Director the power to be ~~present and participate, including voting,~~present, participate, and vote as ~~his~~ the Fisheries Director's representative or substitute at any ~~meeting of or hearing by or other proceedings~~meeting, hearing, or other proceeding of the Commission.

~~The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said Compact shall then have gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which said Compact shall become effective in accordance with said Article II.~~

(c) Any commissioner may be removed from office by the Governor upon charges and after a hearing."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 765

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/17/03

Short Title: Limit Shellfish Lease Area in Core Sound. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AREA OF WESTERN CORE SOUND THAT MAY BE LEASED FOR THE CULTIVATION OF SHELLFISH AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT TO THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE ON THE IMPLEMENTATION OF THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) For purposes of this section:

(1) "Western Core Sound" is 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.

(2) "Lease" means a shellfish cultivation lease granted pursuant to G.S. 113-202.

SECTION 1.(b) It is the intent of the General Assembly to permanently limit the area within Western Core Sound that may be leased for the cultivation of shellfish to the area that is subject to a lease on June 30, 2003.

SECTION 1.(c) Notwithstanding G.S. 113-202, the Secretary of Environment and Natural Resources may grant a new lease or renew an existing lease in an area of Western Core Sound only if the area is subject to a lease on June 30, 2003.

SECTION 1.(d) This section shall not prohibit the transfer of a lease as provided in G.S. 113-202(k).

SECTION 2. The Division of Marine Fisheries in the Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on or before January 1, 2004, on the implementation of this act.

SECTION 3. Section 1 of this act becomes effective June 30, 2003. Sections 2 and 3 of this act are effective when this act becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **Environment and Natural Resources**.

☒ Committee Substitute for
S.B. 979 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROCESS BY WHICH A MEMBER OF THE GENERAL ASSEMBLY IS APPOINTED TO THE ATLANTIC STATES MARINE FISHERIES COMMISSION AND TO MAKE TECHNICAL, CLARIFYING, AND CONFORMING CHANGES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____ the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **Environment and Natural Resources.**

☒ Committee Substitute for
S.B. 765 A BILL TO BE ENTITLED AN ACT TO LIMIT THE AREA OF WESTERN CORE SOUND THAT MAY BE LEASED FOR THE CULTIVATION OF SHELLFISH AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT TO THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE ON THE IMPLEMENTATION OF THIS ACT.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

VISITOR REGISTRATION SHEET

Name of Committee

5/13/05
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	NC State Grange
[illegible]	Wildlife Comm.
JERRY SCHILL	NC Fisheries Association
[illegible]	NC. Pork Council
PRESTON HOWARD	MCIC
Ken Melton	Alley Associates
Preston Pate	NC Marine Fisheries
Laura DeVivo	NCGA
David Knight	NC Sierra, NC wildlife Fed Conservation Council
Ste Wall	
Joe McClen	McClen Consulting
Ernestine Durham	Executive Intern, Leg Prog + PR
Elizabeth Ouzts	NCPIRG
Jeremy Redenmayer	NCPIRG
DAVID PRESTWOOD	NCPIRG
Anita Watkins	NC League of Municipalities
Angie McMillan	TNC
Pricy Harrison	CRC
Gordy McLallin	NL - Complete
Kari Barsness	NC DENR
Nancy Thompson	MCIC
John McArthur	Gov Office
[illegible]	NMFS
Rayne Brown	Bone Fish SOC

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

May 20, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 831 – COASTAL RECREATIONAL FISHING LICENSE/FUND
   (Representatives Gibson and McComas)

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

May 20, 2003

MINUTES

The House Committee on Environment and Natural Resources met May 20, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Mitch Gillespie, Jim Gulley, Phil Haire, Paul Luebke, Danny McComas, Jean Preston, Ray Rapp, Bonner Stiller, Alex Warner, Jennifer Weiss, and Larry Womble. A Visitor Registration is attached and made part of these minutes.

Vice Chair Hackney called the meeting to order at 12:05 pm.

Richard Roger, DENR, introduced Cheryl Stephens, Legislative Liaison, who replaced Laura DiVivo.

The following bill was taken up:

HB 831 – Coastal Recreational Fishing License/Fund (Attachment 1). Representative Gibson moved for the adoption of H831-PCS30340-SB-32 (Attachments 2, 3, and 4) to be put before the Committee. Adopted. Representative Gibson said that this bill was about whether or not you believe that North Carolina marine resources belong to everyone, and who should be partaking of those resources. There are regulations of hunting, freshwater fishing, and other priviledges. It is time for us to improve and protect our marine/aquatic resource by requiring a fishing license. The only way to be able to regulate a natural resource is to be able to count that resource. Until we count the number of people who fish in North Carolina's coastal water, we're never going to be able to defend and protect that resource. The resource is under stress, and it is time to look ahead to future generations' enjoyment of that resource. North Carolina is the fish and invertebrates mari-culture hatcheries of the entire Atlantic Ocean. We must be good stewards of that God given ability and right.

Representative McComas said that a vast majority of recreational fishermen support this measure, and it is a measure that will give us the necessary fund to seek scientific evidence to determine which species need protection and which resources are stressed and what needs to be done. It is the 3rd time this bill has been before the Committee, and North Carolina is the only state on the eastern/southern coastline that does not have a saltwater fishing license.

Preston Pate, Director of Marine Fisheries, said that this bill would provide an opportunity to count fishermen, regulate catches, and his division supports the bill.

Dick Brame, Atlantic States Fisheries Director for the Coastal Conservation Association (Attachment 5), said that the anglers support the license to protect the fish species as a good management process. The Fisheries Reform Act of 1997 has been crippled by the lack of funding that would have come willingly from the saltwater fishermen. The licensing was kept out of the Reform Act. The anglers support the bill.

Jerry Schill, President, North Carolina Fisheries Association, said the commercial fishermen are opposed to the bill. He said the group was against the bill because of restriction of freedom of rights to fish, a proposed small group directing the funds, problem with blanket licenses take away from the data collection ability, but do feel, if the Committee goes ahead with the bill, there are ways to make it better.

Dan Whittle, Environmental Defense, speaking for the Sierra Club, NC Wildlife Federation, and the Conservation Council of North Carolina speaks in support of the bill. The Fisheries Reform Act passed in 1997 was the most progressive state fisheries bill in the country. This bill continues that stewardship by providing better data collection to manage fish populations in the future.

Bill Brown, Past President of CCA, spoke in support of the bill (Attachment 6). He said, "This is a bill whose time has come and will provide $10 million for operations."

A discussion ensued touching on the fine points of the PCS, the impact of bottom disturbing gear of the shrimp and crab industry at the expense of other species, and the need to have funds to more fully study the impact of those fisheries and their management to further understand our fisheries, manage their harvest, and carry our the charge of the Fisheries Act of 1997.

Representative Owen said he opposed the bill. Representative Gillespie put an amendment before the committee (Attachment 7). After a short discussion, a vote was taken and the amendment was defeated. He then introduced another amendment (Attachment 8). It also was defeated. Representative Rapp moved for a favor report on the PCS, unfavorable to the original bill and be re-referred to Finance. Passed.

Vice Chair Hackney adjourned the meeting at 1:02 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

Att #1
5/20/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 831*

Short Title:	Coastal Recreational Fishing License/Fund.	(Public)
Sponsors:	Representatives Gibson, McComas (Primary Sponsors); Ellis, Hackney, C. Johnson, Luebke, McLawhorn, McMahan, Munford, Parmon, Stiller, Warren, and C. Wilson.	
Referred to:	Environment and Natural Resources, if favorable, Finance.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE AND A MARINE RESOURCES RESTORATION FUND TO RESTORE, PROTECT, AND ENHANCE THE MARINE RESOURCES OF THE STATE.

Whereas, the marine resources of North Carolina are in decline; based on present trends, recreational catch per trip will approach zero in thirty-six years; and some specific marine fisheries have experienced such a severe decline that recovery will take years of careful management; and

Whereas, management of marine resources can achieve significant restoration of stocks as demonstrated by the role regulation of over-fishing has played in restoring stocks of species such as stripped bass; and

Whereas, a system for licensing coastal recreational fishers and a fund containing revenue generated by the licensing system would enable the Division of Marine Fisheries to better disseminate information to and gather information from recreational fishers, the largest marine resources user group in our State, and to better manage the marine resources of the State through habitat protection, research, and law enforcement; and

Whereas, a valid, objective poll conducted by North Carolina State University found that almost 80% of recreational fishers in North Carolina support the establishment of a system for licensing coastal recreational fishing, with the revenues from the license to be used to manage the marine resources of the State; and

Whereas, recreational fishers should help pay for the fishery regulation and management efforts of the State and should have a voice in this regulation and management; and

Whereas, at a time when the State faces a severe fiscal crisis, a $15.00 annual license for coastal recreational fishing would provide $6,000,000 to $8,000,000 per year

in new funds for protection, restoration, and enhancement of fisheries habitat; fisheries research; public education; and enforcement of fisheries laws.

Whereas, the State requires an individual to hold a license to engage in fishing in the inland, fresh waters of the State and charges the individual $15.00 for this license, there is no logic in requiring a license to fish in inland, fresh waters, but not coastal, salt water;

Whereas, North Carolina is the only coastal state between Texas and Delaware that is not benefiting from a system for licensing coastal recreational fishing; and

Whereas, the establishment of a system for licensing coastal recreational fishing and the revenue that such a license would generate for the protection, restoration, and enhancement of the marine resources of the State offer the best hope for the long-term health of the coastal tourism, boating, and fishing industries of North Carolina; Now, therefore,

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 14B.

"Coastal Recreational Fishing Licenses.

"**§ 113-174. Definitions.**

As used in this Article:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'CRFL' means Coastal Recreational Fishing License.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(4) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4).

(5) 'RCGL' means Recreational Commercial Gear License.

(6) 'Recreational fishing' 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, by any means:

a. That does not constitute a commercial fishing operation as defined in G.S. 113-168.

b. Except as provided in G.S. 113-261.

(7) 'RSCFL' means Retired Standard Commercial Fishing License issued pursuant to G.S. 113-168.3.

(8) 'SCFL' means Standard Commercial Fishing License issued pursuant to G.S. 113-168.2.

"**§ 113-174.1. General provisions governing licenses.**

(a) License Required to Engage in Recreational Fishing. – It is unlawful for any person to engage in recreational fishing in coastal fishing waters without holding a license required by this Article. It is unlawful for any person to engage in recreational fishing without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(b) Sale of Fish Prohibited. – A license issued under this Article does not authorize a person who takes or lands any species of fish under the authority of the Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – Except as provided in G.S. 113-174.3(e)(1), it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article.

(d) Format. – A license issued under this Article shall be issued in the name of the applicant. A license shall show the type of license; the name, mailing address, physical or residence 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.

(e) Licenses Available for Inspection. – It is unlawful for any person to engage in recreational fishing in coastal fishing waters in the State without having ready at hand for inspection all licenses required under this Article. It is unlawful for a person to refuse to exhibit any license required by this Article upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(f) Replacement Licenses. – The Division shall issue a replacement license to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed five dollars ($5.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(g) No Dual Residency. – It is unlawful for any person to hold any license issued under this Article to the person as a North Carolina resident if that person holds any commercial or recreational fishing license issued by another state to the person as a resident of that state.

(h) Limitations on Eligibility. – A person is not eligible to obtain a license under G.S. 113-174.3 if, at the time the person applies for the license, any other license or endorsement issued to the person under G.S. 113-174.3 or Article 14A of Chapter 113 of the General Statutes is suspended or revoked. A person is not eligible to obtain a license under G.S. 113-174.3 if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of State laws, regulations, or rules governing the management of marine and estuarine resources.

An applicant for a license under G.S. 113-174.3 shall certify that the applicant has not been determined to be responsible for four or more violations of State laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of federal law and regulations governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license.

(i) Cancellation. – The Division may cancel a license issued on the basis of an application that contains false information supplied by the applicant. A cancelled license is void from the date of issuance. A person in possession of a cancelled license shall surrender the cancelled license to the Division. It is unlawful to refuse to surrender a cancelled license upon demand of any authorized agent of the Division.

(j) Reporting Requirements. – The holder of a license issued under this Article shall comply with the biological data sampling and survey programs of the Commission and the Division.

"**§ 113-174.2. Coastal Recreational Fishing License.**

(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any person to engage in recreational fishing in coastal fishing waters by means of recreational gear without holding a CRFL issued under this section. It is unlawful for any person licensed under this section or fishing under a CRFL to possess fish in excess of recreational possession limits.

(b) Purchase; Renewal. – Any license issued under this section may be purchased at designated offices of the Division or from the Division by mail. A license issued under subdivisions (1) and (2) of subsection (c) of this section may also be purchased through a license agent authorized under G.S. 113-174.5. Any license issued under this section may be renewed by mail.

(c) Types of CRFLs; Fees; Duration. – The Division shall issue the following CRFLs:

(1) Standard CRFL. – $15.00. This license is valid for a period of one year from the date of issuance.

(2) Ten-Day CRFL. – $5.00. This license is valid for a period of 10 days.

(3) Lifetime CRFL. – This license is valid for the lifetime of the licensee. The fee for the Lifetime CRFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:

a.	Younger than six years of age	$100.00
b.	Between six and 11 years of age	$150.00
c.	Between 11 and 17 years of age	$200.00
d.	Between 17 and 70 years of age	$250.00
e.	70 years of age or older	$10.00.

(4) Permanently Handicapped or Disabled Lifetime CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is permanently handicapped or disabled. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the licensee.

(5) Disabled Veteran Lifetime CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is a fifty percent (50%) or more disabled war veteran as determined by the United States Department of Veterans Affairs. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the licensee.

(6) Legally Blind Lifetime CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is legally blind. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the licensee.

(d) Charter/Head/Dive Boat Blanket CRFL. – A person who operates a charter boat, head boat, or dive boat may purchase a Charter/Head/Dive Boat Blanket CRFL. The Charter/Head/Dive Boat Blanket CRFL entitles all persons on the boat who do not hold a CRFL to engage in recreational fishing by means of recreational gear. It shall be unlawful for the owner of a charter, head, or dive boat who does not hold a Charter/Head/Dive Boat Blanket CRFL to allow any person on the boat who does not hold a CRFL to engage in recreational fishing by means of recreational gear. This license is valid for a period of one year from the date of issuance. The fee for a Charter/Head/Dive Boat Blanket CRFL is:

(1)	Vessel of 25 feet or less in length	$200.00
(2)	Vessel of greater than 25 feet in length	$400.00.

(e) Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing by means of recreational gear from the pier shall purchase an Ocean Fishing Pier Blanket CRFL. An applicant for an Ocean Fishing Pier Blanket CRFL shall disclose the names of all parties involved in the pier operation, including the owner of the property, the owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier. The Ocean Fishing Pier Blanket CRFL entitles all persons on the pier who do not hold a CRFL to engage in recreational fishing by means of recreational gear. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) 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. 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 as provided in G.S. 113-174.1(f).

(f) Exemptions. – A person may engage in recreational fishing by means of recreational gear without holding a CRFL if the person:

(1) Is under 16 years of age.

(2) Holds a SCFL or a RSCFL.

(3) Holds a Lifetime Resident Comprehensive Fishing License under G.S. 113-271(d)(3) or a Lifetime Sportsman License under G.S. 113-270.1D(b).

(g) If a state that requires a license to engage in recreational fishing by means of recreational gear recognizes through statute, rule, or reciprocal agreement the validity of a CRFL within its boundaries, North Carolina shall recognize the validity of a license to engage in recreational fishing by means of recreational gear held by a resident of that state.

"**§ 113-174.3. Recreational Commercial Gear License.**

(a) License Required. – Except as provided in subsection (e) of this section, it is unlawful for any person to engage in recreational fishing by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Authorized Commercial Gear. –

(1) 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 fishing operation as defined in G.S. 113-168 and commercial gear used for recreational purposes.

(2) A person who holds a RCGL may use up to 100 yards of gill net to take fish for recreational purposes. Two persons who each hold a RCGL and who are fishing from a single vessel may use up to a combined 200 yards of gill net to take fish for recreational purposes. No more than 200 yards of gill net may be used to take fish for recreational purposes from a single vessel regardless of the number of persons aboard the vessel who hold a RCGL.

(c) Purchase; Renewal. – A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-174.5. A RCGL may be renewed by mail.

(d) 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).

(e) Exemptions. –

(1) A person who is under 16 years of age may engage in recreational fishing 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 engage in recreational fishing for crabs 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 engage in recreational fishing 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.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL.

(5) A person may take fish for recreational purposes by means of a gig without holding a RCGL.

"**§ 113-174.4. Marine Resources Restoration Fund.**

(a) Definitions. – As used in this section:

(1) 'Fund' means the Marine Resources Restoration Fund.

(2) 'License revenues' means the net proceeds from the sale of licenses issued under G.S. 113-174.2 and interest earned from the investment of license proceeds. The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.

(b) Marine Resources Restoration Fund Established. – The Marine Resources Restoration Fund is established as a special nonreverting fund within the Department. License revenues shall be deposited in the Fund. The State Treasurer shall invest the assets of the Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The Commission shall administer the Fund with the advice of the Marine Resources Restoration Advisory Committee.

(c) Allocation of Moneys From the Fund. – The Secretary shall disburse moneys from the Fund only upon the written direction of the Commission. The Commission shall use the moneys that accrue to the Fund in each fiscal year for the administration and enforcement of the provisions of Subchapter IV of Chapter 113 of the General Statutes related to marine fisheries as follows:

(1) Resource and habitat enhancement. – Not less than twenty-five percent (25%) of the moneys in the Fund shall be used for resource and habitat enhancement, including, but not limited to, artificial reef construction,

restoration and enhancement of submerged aquatic vegetation, acquisition of land or an interest in land that provides for the preservation of critical fisheries habitat, and studies used in the development of a Fishery Management Plan or a Coastal Habitat Protection Plan.

(2) Marine fisheries research. – Not less than twenty-five percent (25%) of the moneys in the Fund shall be used for marine fisheries research, including, but not limited to, life history studies of commercially or recreationally significant marine and estuarine species or fisheries, sampling and statistical studies, data collection and analysis, fisheries habitat studies, commercial and recreational discard mortality studies, and studies used in the development of a Fishery Management Plan or a Coastal Habitat Protection Plan.

(3) Law enforcement. – Not less than twenty percent (20%), but no more than twenty-five percent (25%) of the moneys in the Fund shall be used for law enforcement.

(4) Administration. – Not more than ten percent (10%) of the moneys, exclusive of the license agent fees, in the Fund shall be used for administrative costs.

(5) Public education and information. – Not less than five percent (5%), but no more than ten percent (10%) of the moneys in the Fund shall be used for public education and information.

(6) Grants. – Not more than five percent (5%) of the moneys in the Fund shall be used to fund grants for coastal fishing programs, projects, and scholarships.

(d) Marine Resources Restoration Advisory Committee. – The Marine Resources Restoration Advisory Committee shall advise the Commission on expenditure of license revenues from the Fund. The Advisory Committee shall consist of nine members as follows:

(1) The Governor shall appoint seven persons, each of whom holds a CRFL at the time of appointment. A person appointed under this subdivision must continue to hold a CRFL in order to remain eligible to serve on the Advisory Committee.

(2) The Director of the Division of Marine Fisheries or the Director's designee shall serve as a nonvoting, ex officio member of the Advisory Committee.

(3) The Chair of the Marine Fisheries Commission or the Chair's designee shall serve as a nonvoting, ex officio member of the Advisory Committee.

(e) Report Required. – The Secretary shall submit to the Joint Legislative Commission on Seafood and Aquaculture and the Joint Legislative Commission on Governmental Operations by 30 September of each year a report on the Fund that shall include the source and amounts of all moneys credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year.

"§ 113-174.5. 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 licenses authorized under this Article in accordance with this Article and the rules of the Commission.

(b) The Secretary may 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 of 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.

(c) A license agent may deduct a fee of six percent (6%) from the amount collected for each license."

SECTION 2. G.S. 113-168(1) reads as rewritten:

"(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 does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is ~~used or~~ used, (ii) the taking of fish under a ~~RCGL.~~ RCGL, or (iii) the taking of fish as provided in G.S. 113-261."

SECTION 3. G.S. 113-168.1(a) reads as rewritten:

"(a) Duration, Fees. – ~~Except as provided in G.S. 113-173(f), all~~ All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual fee at the time the applicant applies for the license or endorsement regardless of when application is made."

SECTION 4. G.S. 113-168.1(f) reads as rewritten:

"(f) License Issuance and Renewal. – ~~Except as provided in G.S. 113-173(d), the~~ The Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL."

SECTION 5. G.S. 113-168.1(g) reads as rewritten:

"(g) Limitations on Eligibility. – A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article or G.S. 113-174.3 is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant for a license under this Article shall certify that the applicant has not been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of federal law and regulations governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license."

SECTION 6. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with G.S. ~~113-169.4.~~ 113-174.2(e). The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

SECTION 7. G.S. 113-169.4 is repealed.

SECTION 8. G.S. 113-172 is repealed.

SECTION 9. G.S. 113-173 is repealed.

SECTION 10. G.S. 143B-289.52(a) is amended by adding a new subdivision to read:

"(13) To adopt rules to define fishing gear as either recreational gear or commercial gear."

SECTION 11. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. 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 12. 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 13. Sections 10, 11, 12, and 13 of this act are effective when this act becomes law. All other sections of this act become effective March 1, 2004.

ATT #2
5/20/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 831*
PROPOSED COMMITTEE SUBSTITUTE H831-PCS30340-SB-32

Short Title: Coastal Recreational Fishing License/Fund. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE AND A MARINE RESOURCES RESTORATION FUND TO RESTORE, PROTECT, AND ENHANCE THE MARINE RESOURCES OF THE STATE.

Whereas, the marine resources of North Carolina are in decline; based on present trends, recreational catch per trip will approach zero in thirty-six years; and some specific marine fisheries have experienced such a severe decline that recovery will take years of careful management; and

Whereas, management of marine resources can achieve significant restoration of stocks as demonstrated by the role regulation of overfishing has played in restoring stocks of species such as striped bass; and

Whereas, implementing a system for licensing coastal recreational fishers and establishing a fund containing revenue generated by the licensing system would enable the Division of Marine Fisheries to better disseminate information to and gather information from recreational fishers, who are the largest marine resources user group in our State, and would enable the Division to better manage the marine resources of the State through habitat protection, research, and law enforcement; and

Whereas, an objective poll conducted by North Carolina State University found that almost 80% of recreational fishers in North Carolina support the establishment of a system for licensing coastal recreational fishing, with the revenues from the license to be used to manage the marine resources of the State; and

Whereas, recreational fishers should help pay for the fishery regulation and management efforts of the State and should have a voice in this regulation and management; and

Whereas, at a time when the State faces a severe fiscal crisis, a $15.00 annual license for coastal recreational fishing would provide $6,000,000 to $8,000,000 per year in new funds for protection, restoration, and enhancement of fisheries habitat; fisheries research; public education; and enforcement of fisheries laws; and

Whereas, the State requires an individual to hold a license to engage in fishing in the inland, fresh waters of the State and charges the individual $15.00 for this license; there is no logic in requiring a license to fish in inland, fresh waters, but not in coastal, salt water; and

Whereas, North Carolina is the only coastal state between Delaware and Texas that is not benefiting from a system for licensing coastal recreational fishing; and

Whereas, the establishment of a system for licensing coastal recreational fishing and the revenue that such a license would generate for the protection, restoration, and enhancement of the marine resources of the State offer the best hope for the long-term health of the coastal tourism, boating, and fishing industries of North Carolina; Now, therefore,

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 14B.

"Coastal Recreational Fishing Licenses.

"**§ 113-174. Definitions.**

As used in this Article:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'CRFL' means Coastal Recreational Fishing License.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(4) 'North Carolina resident' means an individual who is a resident within the meaning of G.S. 113-130(4).

(5) 'RCGL' means Recreational Commercial Gear License.

(6) 'Recreational fishing' 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, by any means:

a. That does not constitute a commercial fishing operation as defined in G.S. 113-168.

b. Except as provided in G.S. 113-261.

(7) 'RSCFL' means Retired Standard Commercial Fishing License issued pursuant to G.S. 113-168.3.

(8) 'SCFL' means Standard Commercial Fishing License issued pursuant to G.S. 113-168.2.

"**§ 113-174.1. General provisions governing recreational licenses.**

(a) License Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters without holding a license required by this Article. It is unlawful for any individual to engage in recreational fishing without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(b) Sale of Fish Prohibited. – A license issued under this Article does not authorize an individual who takes or lands any species of fish under the authority of the Commission to sell, offer for sale, barter, or exchange the fish for anything of value.

Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – Except as provided in G.S. 113-174.3(e)(1), it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article.

(d) Format. – A license issued under this Article shall be issued in the name of the applicant. A license shall show the type of license; the name, mailing address, physical or residence 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.

(e) Licenses Available for Inspection. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without having ready at hand for inspection all licenses required under this Article. It is unlawful for an individual to refuse to exhibit any license required by this Article upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(f) Replacement Licenses. – The Division shall issue a replacement license to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed five dollars ($5.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(g) No Dual Residency. – It is unlawful for any individual to hold any license issued under this Article to the individual as a North Carolina resident if that individual holds any commercial or recreational fishing license issued by another state to the individual as a resident of that state.

(h) Limitations on Eligibility. – An individual is not eligible to obtain a license under this Article if, at the time the individual applies for the license, any other license or endorsement issued to the individual under this Article is suspended or revoked. An individual is not eligible to obtain a license under this Article if, within the three years prior to the date of application, the individual has been determined to be responsible for four or more violations of State laws, regulations, or rules governing the management of marine and estuarine resources. An applicant for a license under this Article shall certify that the applicant has not been determined to be responsible for four or more violations of State laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of

federal law and regulations governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license.

(i) Cancellation. – The Division may cancel a license issued on the basis of an application that contains false information supplied by the applicant. A cancelled license is void from the date of issuance. An individual in possession of a cancelled license shall surrender the cancelled license to the Division. It is unlawful to refuse to surrender a cancelled license upon demand of any authorized agent of the Division.

(j) Reporting Requirements. – The holder of a license issued under this Article shall comply with the biological data sampling and survey programs of the Commission and the Division.

"**§ 113-174.2. Coastal Recreational Fishing License.**

(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without holding a CRFL issued under this section. It is unlawful for any individual licensed under this section or fishing under a CRFL to possess fish in excess of recreational size or possession limits.

(b) Purchase; Renewal. – Any license issued under this section may be purchased at designated offices of the Division or from the Division by mail. A license issued under subdivisions (1) and (2) of subsection (c) of this section may also be purchased through a license agent authorized under G.S. 113-174.5. Any license issued under this section may be renewed by mail.

(c) Types of CRFLs; Fees; Duration. – The Division shall issue the following CRFLs:

(1) Standard CRFL. – $15.00. This license is valid for a period of one year from the date of issuance.

(2) Ten-Day CRFL. – $5.00. This license is valid for a period of 10 days.

(3) Lifetime CRFL. – This license is valid for the lifetime of the licensee. The fee for the Lifetime CRFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:

a.	Younger than six years of age	$100.00
b.	Six years of age to younger than 11 years of age	$150.00
c.	11 years of age to younger than 17 years of age	$200.00
d.	17 years of age to younger than 70 years of age	$250.00
e.	70 years of age or older	$10.00.

(4) Disabled Individual CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is disabled as determined by the United States Social Security Administration. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the individual so long as the individual remains disabled.

(5) Disabled Veteran CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is a fifty percent (50%) or more disabled

veteran as determined by the United States Department of Veterans Affairs. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled.

(6) Legally Blind Lifetime CRFL. – An applicant for a license under this subdivision shall provide documentation to the Division to demonstrate that the applicant is legally blind. A license issued under this subdivision shall be issued without charge and is valid for the lifetime of the licensee.

(d) Charter/Head/Dive Boat Blanket CRFL. – A person who operates a charter boat, head boat, or dive boat may purchase a Charter/Head/Dive Boat Blanket CRFL. The Charter/Head/Dive Boat Blanket CRFL entitles all individuals on the boat who do not hold a CRFL to engage in recreational fishing by means of recreational gear. It shall be unlawful for the owner of a charter, head, or dive boat who does not hold a Charter/Head/Dive Boat Blanket CRFL to allow any individual on the boat who does not hold a CRFL to engage in recreational fishing by means of recreational gear. This license is valid for a period of one year from the date of issuance. The fee for a Charter/Head/Dive Boat Blanket CRFL is:

(1)	Vessel of 25 feet or less in length	$200.00
(2)	Vessel of greater than 25 feet in length	$400.00.

(e) Exemptions. – An individual may engage in recreational fishing by means of recreational gear without holding a CRFL if the individual:

(1) Is under 16 years of age.

(2) Holds a SCFL or a RSCFL.

(3) Holds a Lifetime Resident Comprehensive Fishing License under G.S. 113-271(d)(3) or a Lifetime Sportsman License under G.S. 113-270.1D(b).

(f) Notwithstanding the fee for the Standard CRFL specified in subdivision (1) of subsection (c) of this section, if the Commission finds that a state has established a coastal recreational fishing license fee that exceeds the fee for the Standard CRFL, the Commission may increase the fee for the Standard CRFL applicable to residents of that state to an amount equal to the fee a North Carolina resident is required to pay for a coastal recreational fishing license in that state. The action of the Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article 2A of Chapter 150B of the General Statutes. The action of the Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Commission.

"**§ 113-174.3. Recreational Commercial Gear License.**

(a) License Required. – Except as provided in subsection (e) of this section, it is unlawful for any individual to engage in recreational fishing by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational size and possession limits. It is unlawful for any individual licensed under this section or fishing under a RCGL to possess fish in excess of recreational size or possession limits.

(b) Authorized Commercial Gear. –

(1) 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 fishing operation as defined in G.S. 113-168 and commercial gear used for recreational purposes.

(2) An individual who holds a RCGL may use up to 100 yards of gill net to take fish for recreational purposes. Two individuals who each hold a RCGL and who are fishing from a single vessel may use up to a combined 200 yards of gill net to take fish for recreational purposes. No more than 200 yards of gill net may be used to take fish for recreational purposes from a single vessel regardless of the number of individuals aboard the vessel who hold a RCGL.

(c) Purchase; Renewal. – A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-174.5. A RCGL may be renewed by mail.

(d) 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).

(e) Exemptions. –

(1) An individual who is under 16 years of age may engage in recreational fishing by means of authorized commercial gear without holding a RCGL if the individual is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the individual has in the individual's possession a valid RCGL issued to the individual's parent, grandparent, or guardian.

(2) An individual may engage in recreational fishing for crabs 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) An individual who is on a vessel may engage in recreational fishing by means of authorized commercial gear without holding a RCGL if there is another individual 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 individual who holds the valid RCGL or,

if more than one individual on the vessel holds a RCGL, in excess of that authorized for use by those individuals.

(4) An individual using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL.

(5) An individual may take fish for recreational purposes by means of a gig without holding a RCGL.

"**§ 113-174.4. Marine Resources Restoration Fund.**

(a) Definitions. – As used in this section:

(1) 'Fund' means the Marine Resources Restoration Fund.

(2) 'License revenues' means the net proceeds from the sale of licenses issued under G.S. 113-174.2 and interest earned from the investment of license proceeds. The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.

(b) Marine Resources Restoration Fund Established. – The Marine Resources Restoration Fund is established as a special nonreverting fund within the Department. License revenues shall be deposited in the Fund. The State Treasurer shall invest the assets of the Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The Department shall administer the Fund with the advice of the Marine Fisheries Commission and the Marine Resources Restoration Advisory Committee.

(c) Allocation of Moneys From the Fund. – The Department shall use the moneys that accrue to the Fund in each fiscal year for the administration and enforcement of the provisions of Subchapter IV of Chapter 113 of the General Statutes related to marine fisheries as follows:

(1) Resource and habitat enhancement. – Not less than twenty-five percent (25%) of the moneys in the Fund shall be used for resource and habitat enhancement, including, but not limited to, artificial reef construction, restoration and enhancement of submerged aquatic vegetation, acquisition of land or an interest in land that provides for the preservation of critical fisheries habitat, and studies used in the development of a Fishery Management Plan or a Coastal Habitat Protection Plan.

(2) Marine fisheries research. – Not less than twenty-five percent (25%) of the moneys in the Fund shall be used for marine fisheries research, including, but not limited to, life history studies of commercially or recreationally significant marine and estuarine species or fisheries, sampling and statistical studies, data collection and analysis, fisheries habitat studies, commercial and recreational discard mortality studies, and studies used in the development of a Fishery Management Plan or a Coastal Habitat Protection Plan.

(3) Law enforcement. – Not less than twenty percent (20%), but no more than twenty-five percent (25%) of the moneys in the Fund shall be used for law enforcement.

(4) Administration. – Not more than ten percent (10%) of the moneys, exclusive of the license agent fees, in the Fund shall be used for administrative costs.

(5) Public education and information. – Not less than five percent (5%), but no more than ten percent (10%) of the moneys in the Fund shall be used for public education and information.

(6) Grants. – Not more than five percent (5%) of the moneys in the Fund shall be used to fund grants for coastal fishing programs, projects, and scholarships.

(d) Marine Resources Restoration Advisory Committee. – The Marine Resources Restoration Advisory Committee shall advise the Department on expenditure of license revenues from the Fund. The Advisory Committee shall consist of nine members as follows:

(1) The Governor shall appoint seven individuals, each of whom holds a CRFL at the time of appointment. An individual appointed under this subdivision must continue to hold a CRFL in order to remain eligible to serve on the Advisory Committee.

(2) The Director of the Division of Marine Fisheries or the Director's designee shall serve as a nonvoting, ex officio member of the Advisory Committee.

(3) The Chair of the Marine Fisheries Commission or the Chair's designee shall serve as a nonvoting, ex officio member of the Advisory Committee.

(e) Report Required. – The Secretary shall submit to the Joint Legislative Commission on Seafood and Aquaculture and the Joint Legislative Commission on Governmental Operations by September 30 of each year a report on the Fund that shall include the source and amounts of all moneys credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year.

"**§ 113-174.5. 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 licenses authorized under this Article in accordance with this Article and the rules of the Commission.

(b) The Secretary may 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 of 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.

(c) A license agent may deduct a fee of six percent (6%) from the amount collected for each license."

SECTION 2. G.S. 113-168(1) reads as rewritten:

"(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 does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is ~~used or~~ used, (ii) the taking of fish under a ~~RCGL.~~ RCGL, or (iii) the taking of fish as provided in G.S. 113-261."

SECTION 3. The catch line of G.S. 113-168.1 reads as rewritten:

"**§ 113-168.1. General provisions governing commercial licenses and endorsements.**"

SECTION 4. G.S. 113-168.1(a) reads as rewritten:

"(a) Duration, Fees. – ~~Except as provided in G.S. 113-173(f), all~~ All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual fee at the time the applicant applies for the license or endorsement regardless of when application is made."

SECTION 5. G.S. 113-168.1(f) reads as rewritten:

"(f) License Issuance and Renewal. – ~~Except as provided in G.S. 113-173(d), the~~ The Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL."

SECTION 6. G.S. 113-169.4 reads as rewritten:

"**§ 113-169.4. Licensing of ocean fishing piers; fees.**

(a) The owner or operator 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 as provided in G.S. 113-168.1(h).

(c) Pier licenses are issued upon payment of ~~fifty cents (50¢)~~ four dollars ($4.00) 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.

(e) A pier license entitles all individuals on the pier who do not hold a Coastal Recreational Fishing License issued under Article 14B of this Chapter to engage in recreational fishing, as defined in G.S. 113-174, by means of recreational gear."

SECTION 7. G.S. 113-172 is repealed.

SECTION 8. G.S. 113-173 is repealed.

SECTION 9. G.S. 143B-289.52(a) is amended by adding a new subdivision to read:

"(13) To adopt rules to define fishing gear as either recreational gear or commercial gear for purposes of implementing Article 14B of Chapter 113 of the General Statutes."

SECTION 10. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. 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 11. 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 12. Sections 9, 10, 11, and 12 of this act are effective when this act becomes law. All other sections of this act become effective March 1, 2004.

ATT# 3
5/20/03

HOUSE BILL 831:
Coastal Recreational Fishing License/Fund.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Gibson and McComas
Date:	May 20, 2003	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Proposed Committee Substitute H831-PCS30340-SB-32		

Section 1 establishes a program for the licensing of coastal recreational fishing.

G.S. 113-174. – Definitions.

- Commission means the Marine Fisheries Commission.
- CRFL means Coastal Recreational Fishing License.
- Division means the Division of Marine Fisheries.
- RCGL means Recreational Commercial Gear License.
- Recreational fishing means any activity involved in taking fish regulated by the Commission that is not part of a commercial fishing operation or for scientific purposes.

G.S. 113-174.1 – General Provisions Governing Recreational Fishing Licenses.

- It is unlawful to engage in recreational fishing without complying with the new licensing requirements.
- A CRFL or RCGL does not authorize the license holder to sell fish taken under the license.
- Assignment or transfer of a CRFL or RCGL is prohibited.
- A CRFL or RCGL will show the name, mailing address, residence address, and date of birth of the licensee as well as the date the license was issued, the date it will expire, and any other information the Division or Commission determines to be necessary.
- An individual engaging in recreational fishing must have a CRFL or RCGL issued in the individual's name available for inspection.
- A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and must apply for a replacement license within 30 days of a change of name or address.
- An individual may not hold a recreational fishing license as a North Carolina resident and hold a commercial or recreational fishing license as a resident of another state.
- An individual isn't eligible to obtain a CRFL or a RCGL if any of the individual's coastal recreational licenses have been suspended or revoked or the individual has been responsible for four or more violations of marine fisheries laws in the three years prior to the date of application.
- The Division may cancel a CRFL or RCGL issued on the basis of false information.
- A CRFL or RCGL holder must comply with sampling and survey programs.

G.S. 113-174.2. – Coastal Recreational Fishing License

Any CRFL may be purchased from a Division office or from the Division by mail. The Standard and Ten-Day CRFL may be purchased from authorized license agents.

Types of CRFL's:

Standard CRFL	$15.00	One year duration
Ten-Day CRFL	$5.00	Ten day duration
Lifetime CRFL		Lifetime duration
Younger than 6 years of age	$100.00	
6 years of age to younger than 11 years of age	$150.00	
11 years of age to younger than 17 years of age	$200.00	
17 years of age to younger than 70 years of age	$250.00	
70 years of age or older	$10.00	
Disabled Individual CRFL	No charge	Duration of disability
Disabled Veteran CRFL	No charge	Duration of disability
Legally Blind Lifetime CRFL	No charge	Lifetime duration
Charterboat Blanket CRFL		One year duration
Vessel of 25 feet or less	$200.00	
Vessel of greater than 25 feet	$400.00	

Exemptions: An individual may engage in recreational fishing by means of recreational gear without holding a CRFL if the individual:

- Is under 16 years of age.
- Holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License.
- Holds a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License.

Reciprocity: The Commission may increase the fee for a Standard CRFL for residents of another state to the level charged to North Carolina residents for a recreational license in that state.

G.S. 113-174.3. – Recreational Commercial Gear License (RCGL)

Recodified from existing G.S. 113-173 without substantive changes.

G.S. 113-174.4. – Marine Resources Restoration Fund

Establishes the Marine Resources Restoration Fund in the Department of Environment and Natural Resources to hold proceeds from the sale of CRFL's. The Department shall use moneys from the Fund as follows:

- Resource and habitat enhancement: Not less than 25%.
- Marine fisheries research: Not less than 25%.
- Law enforcement: Not less than 20%, but no more than 25%
- Administration: Not more than 10%.
- Public education and information: Not less than 5%, but no more than 10%.
- Grants for coastal fishing programs and scholarships: Not more than 5%.

The Department will be assisted by the Commission and the Marine Resources Restoration Advisory Committee. The Advisory Committee will be composed of nine members as follows:

- Seven members, each of whom holds a CRFL, to be appointed by the Governor.
- The Director of the Division or the Director's designee (*ex officio* and non-voting).
- The Chair of the Commission or the Chair's designee (*ex officio* and non-voting).

The Secretary of Environment and Natural Resources will report to the Joint Legislative Commission on Seafood and Aquaculture and the Joint Legislative Commission on Governmental Operations by September 30 of each year on the source and amounts of monies credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year.

G.S. 113-174.5. – License Agents

Recodified from existing G.S. 113-172 with the following substantive changes:

- License agents shall be compensated at a rate of 6% of the value of each license sold rather than $1.00 per license sold.
- The Secretary of Environment and Natural Resources is authorized rather than required to bond license agents.

Sections 2 through 5 and Sections 7 and 8 make technical, clarifying, and conforming changes.

Section 6 increases the fee for the existing pier license from 50¢ per linear foot to $4.00 per linear foot and provides that the pier license will entitle all individuals on the pier who do not hold CRFL's to engage in recreational fishing by means of recreational gear.

Section 9 directs the Commission to adopt rules to define recreational gear and commercial gear for purposes of implementing the new program for licensing coastal recreational fishing.

Section 10 authorizes every agency to which this act applies to adopt temporary rules until all rules necessary to implement the provisions of the act become effective.

Section 11 is a severability clause.

Section 12 provides that the licensing provisions become effective March 1, 2004.

H831-SMSB-002

ATTH 4
5/20/03

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: May 20, 2003

TO: Reps. Gibson and McComas

FROM: Stephanie Schmitt
Fiscal Research Division

RE: HB 831 - Coastal Recreational Fishing License / Fund

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
Marine Resources Restoration Fund License Revenue	4,877,019	9,754,037	9,754,037	9,754,037	9,754,037
DMF Agency Receipts	(6,614)	(13,228)	(13,228)	(13,228)	(13,228)
EXPENDITURES					
Wildlife Resources Comm System Modification	320,000	-	-	-	-
Division of Marine Fisheries System Development and Administration*	1,339,828	2,280,271	2,291,270	2,302,818	2,314,940
Division of Marine Fisheries Enforcement	842,200	454,950	472,950	491,850	511,695
Total Cost	**2,502,028**	**2,735,221**	**2,764,220**	**2,794,668**	**2,826,635**
POSITIONS: (cumulative)	9.00	16.00	16.00	16.00	16.00

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Marine Fisheries; Wildlife Resources Commission

EFFECTIVE DATE: March 1, 2004. Section 9, 10, 11 and 12 are effective when the act becomes law.

The bill authorizes up to 10% of the funds credited to the Marine Resources Restoration Fund to be used for administration. This administrative allowance will not be sufficient to cover the total cost of the licensing program.

BILL SUMMARY: The bill establishes general provisions governing a Coastal Recreational Fishing License (CRFL) and sets out a fee structure for the sale of these licenses. License fee exemptions are granted for certain classes of individuals. It creates a Marine Resources Restoration Fund in the Department of the Environment and Natural Resources (DENR) to hold the proceeds from the sale of CRFL's, and provides for the allocation of the proceeds upon direction of the Marine Fisheries Commission. The bill also recodifies the Recreational Commercial Gear License (RCGL) without substantive changes.

ASSUMPTIONS AND METHODOLOGY:

Revenues: The amount of revenue raised by the CRFL depends on two factors: the number of licenses sold and the type of license sold. At this time, there is no precise count of the number recreational anglers in North Carolina. The best estimate available is based on an annual Marine Recreational Fishery Statistics Survey compiled by the Division of Marine Fisheries. The surveys include direct interviews with approximately 20,000 anglers at various public access points along the North Carolina coast, as well as telephone interviews with 20,000 additional, randomly selected persons.

Information obtained through the surveys is used to estimate the total number of marine or coastal anglers in North Carolina, the total number of coastal fishing trips annually and the mode of fishing (i.e. from a man-made structure, beach or bank, charter/head boat or private boats). The following two tables summarize the results of the annual survey over the last six years:

Table 1: Estimated Number of Marine Recreational Anglers in NC, 1997-2002

	Coastal Residents	Non-Coastal	Out-of State	Total Anglers
1997	329,909	166,104	859,110	1,355,123
1998	312,246	143,355	635,197	1,090,798
1999	324,091	164,398	804,561	1,293,051
2000	392,131	215,815	1,203,779	1,811,725
2001	448,272	248,311	1,281,925	1,978,508
2002	409,601	224,744	1,120,938	1,755,283
6 Year Average	377,268	199,325	1,009,280	1,547,415
Percentage of Total	24%	12%	64%	

Table 2: Estimated Marine Recreational Fishing Trips in NC, 1997-2002

	Beach/Bank	Charter Boats	Man-Made	Private Boats	Total
1997	1,772,884	295,820	1,252,716	1,570,089	4,891,509
1998	1,446,621	241,001	1,135,830	1,638,009	4,461,461
1999	1,459,571	221,369	1,013,535	1,860,564	4,555,039
2000	2,136,284	183,219	1,665,748	2,105,734	6,090,985
2001	2,409,723	197,710	1,809,738	2,142,621	6,559,792
2002	1,973,242	181,073	1,396,937	2,011,633	5,562,885
6 Year Average	1,885,088	204,874	1,404,358	1,951,712	5,353,612
Percentage of Total	34%	4%	26%	36%	

Based on the six-year average number of estimated marine anglers (Table 1), there are 1,547,415 potential licensees. However, the bill provides for a number of general exemptions and individual licenses at no charge, reducing the number of potential anglers subject to the Coastal Recreational Fishing License fees. Table 3 outlines the adjustments necessary to estimate the number of anglers who may be required to purchase a license.

Table 3: Calculation of Adjusted Total Number of Anglers

Total Number of Anglers, 6 year average:		**1,547,415**
General Exemptions, No Charge Licenses, Attrition		
1. Standard/Retired Standard Commercial Fishing License (SCFL/RSCFL count for FY2002. FY2003 sales are expected to be similar.)	7,307	
2. Wildlife Resources Commission – (Lifetime Resident Comprehensive Fishing License and Lifetime Sportsman Combination License holders minus infant license holders; assume 90% are coastal anglers)	102,015	
Less SCFL/RSCFL, WRC Lifetime		109,322
Subtotal		**1,438,093**
3. Permanently Handicapped/Disabled, Disabled Veteran, Legally Blind, Attrition (Based on WRC disabled and blind licenses; assume 3% of anglers subtotal to capture persons eligible for no charge licenses and possible attrition)	43,143	
4. Persons < 16 Years of Age (2002 North Carolina Marine Recreational Fishery Statistics Survey indicates 7.07% of NC coastal anglers are under the age of 16; assume 7% of anglers subtotal will fall under this exemption)	100,666	
Less Other General Exemptions, No Charge Licenses, Attrition		143,809
Adjusted Total Number of Anglers		**1,294,283**

According to the Division of Marine Fisheries, applying the percentages associated with each type of fishing trip (Table 2) to the adjusted total number of anglers (Table 3) provides

a rough estimate of the number of anglers engaging in that particular mode of fishing. Table 4 provides a breakdown of total anglers by type of fishing trip.

Table 4: Estimated Marine Recreational Anglers by Type of Fishing Trip

	Beach/Bank	Charter Boats	Man-Made	Private Boats	Total
Adjusted for no charge licenses, general exemptions and attrition	448,003	48,690	333,754	463,836	**1,294,283**

These numbers can be used to estimate the number of additional exemptions as specified in the bill and the number of anglers purchasing CRFLs as follows:

Table 5: Calculation of Anglers Purchasing Coastal Recreational Fishing License

Adjusted Total Number of Anglers		**1,294,283**
Blanket Licenses		
1. Charter/Head/Dive Boat Blanket (Assume 20% of charter boat fishermen will purchase a CRFL to fish using a different means; therefore 80% will fall under the blanket license.)	38,952	
2. Ocean Fishing Pier Blanket (Assume 30% of pier fishermen will purchase a CRFL to fish using a different means, therefore 70% of those persons fishing from man-made structures will fall under the blanket license.)	233,628	
Less Blanket Licenses		272,580
Adjusted Total Number of Anglers Purchasing CRFLs		1,021,704

The estimated revenue from the sale of the Coastal Recreational Fishing Licenses as outlined in the bill follows:

Table 6: Estimated Revenue Generated by Coastal Recreational Fishing License

License Type	License Fee	Estimated License Sales	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Annual/Standard CRFL (40%)	$15.00*	404,595	$3,034,459	$6,068,919	$6,068,919	$6,068,919	$6,068,91
10 Day CRFL (60%)	$5.00	606,892	$1,517,230	$3,034,459	$3,034,459	$3,034,459	$3,034,45
		1,011,486					
Lifetime CRFL							
< 6 years of age	$100.00	715	$35,760	$71,519	$71,519	$71,519	$71,51
6 to 11 years of age	$150.00	307	$22,988	$45,977	$45,977	$45,977	$45,97
11 to 17 years of age	$200.00	1,533	$153,256	$306,511	$306,511	$306,511	$306,51
17 to 70 years of age	$250.00	2,554	$319,282	$638,565	$638,565	$638,565	$638,56
> 70 years of age	$10.00	5,109	$25,543	$51,085	$51,085	$51,085	$51,08
		10,217					
Charter/Head/Dive Boat Blanket CRFL							
Vessel 25 feet or less	$200.00	52	$5,200	$10,400	$10,400	$10,400	$10,40
Vessel greater than 25 ft	$400.00	190	$38,000	$76,000	$76,000	$76,000	$76,00
Ocean Fishing Pier Blanket CRFL	$4/linear ft	25	$36,600	$73,200	$73,200	$73,200	$73,20
Gross Revenue from CRFL Receipts			**$5,188,318**	**$10,376,635**	**$10,376,635**	**$10,376,635**	**$10,376,63**
Less License Agent Fee (6%)			($311,299)	($622,598)	($622,598)	($622,598)	($622,598
Net Revenue from CRFL Receipts -- Credited to the Marine Resources Restoration Fund			**$4,877,019**	**$9,754,037**	**$9,754,037**	**$9,754,037**	**$9,754,03**

*The legislation allows for North Carolina to charge out-of-state residents a fee equal to the amount a North Carolina resident would have to pay for a standard coastal recreational fishing license in that state. Currently, some states charge more, while other states charge less, than the fees identified in the legislation. It cannot be determined how much additional revenue will be generated by charging some residents higher fees than identified in the legislation, nor how other state fees will change over time. **However, the annual/standard license fees generated from any out-of-state residents would result in revenues higher than shown in Table 6 above.**

The revenue estimate is based on the following assumptions:

1. License sales are assumed to begin January 1, 2004, two months prior to the CRFL effective date of March 1, 2004. Consequently, license revenue for the last six months of the 2003-04 fiscal year is estimated to be one-half of the annual amount. Even though the total number of anglers varies from year, the six–year average has remained stable at

approximately 1.4 million anglers since 1993. Consequently, no growth is assumed in projecting future revenues.

2. Lifetime licenses are assumed to be 1% of total sales. The sale of lifetime licenses sold to people under age 70 accounted for 1.23% of total Wildlife Resources Commission (WRC) license sales in recent years. The sale of lifetime CRFLs is anticipated to account for a lower percentage of total sales than Wildlife's experience, because HB 831 exempts persons holding a WRC lifetime license from the CRFL requirement, but does not exempt persons who hold a lifetime CRFL from the WRC freshwater license requirement. Consequently, lifetime anglers who fish in both fresh and salt water are likely to purchase the WRC license. However, the lifetime CRFL is cheaper than the WRC lifetime license so it is assumed that a small percentage of coastal anglers will purchase the cheaper license.

3. The distribution of lifetime CRFL sales among the various age groups is based on the sale of WRC lifetime licenses to the same age groups.

4. The distribution of licenses sales is based on the following assumptions: 1) 90% of the ten-day licenses will be sold to out-of-state anglers and 10 % sold to NC residents, and 2) 90% of the standard or annual licenses will be sold to NC residents and 10 % sold to out-of-state anglers.

5. According to the Division of Marine Fisheries, there are 242 known charter boat operations in North Carolina. Fifty-two of these vessels are 25 feet and less in length.

6. According to the Division of Marine Fisheries, there are 25 known commercial fishing piers with an average pier length of 732 feet.

Other Revenue Issues

House Bill 831 also changes the amount of the fee to be retained by authorized license agents from the sale of Recreational Commercial Gear License (RCGL). Currently, agents are authorized to charge $1.00 in addition to the NC resident license fee of $35.00. The Division of Marine Fisheries retains the entire $35.00 license fee. The bill changes this practice to reimburse the agent six percent of the $35.00 license fee or $2.10 per license sold, thereby reducing the amount of revenue going to the Division. In 2002, agents sold a total of 6,299 RCGLs. Assuming that roughly the same number of licenses will be sold in subsequent years, the Division will lose $13,228 in RCGL revenues annually. Losses for the last six months of FY 2003-04 is estimated to be one-half of the annual amount

Expenditures:

Wildlife Resources Commission

The Division of Marine Fisheries would like to take advantage of the automated licensing system operated by the Wildlife Resources Commission and the large network of WRC license agents to sell CRFLs.

Wildlife will have a new Internet-based system in place that can handle the required changes for the CRFLs with more flexibility. To accommodate the additional license types, the Wildlife system will require some modification and upgrades. The WRC estimates the cost for software modification, system upgrades to accommodate additional license agents and increased volume, and point of sale computer equipment provided to any new agent selling the CRFLs to be approximately $320,000. Funds are needed in the 2003-04 fiscal year to ensure that the system is complete and operational prior to March 1, 2004 when the CRFL goes into effect.

Division of Marine Fisheries

Administration: Integration of the Marine Fisheries licensing system with the Wildlife licensing system will also require upfront General Fund expenditures for system development. The Division estimates that $1 million will be required in the 2003-04 fiscal year for additional hardware, software development and related information technology expenses. Funds are needed in the 2003-04 fiscal year to ensure that the system is complete and operational prior to March 1, 2004 when the CRFL goes into effect.

The Division also anticipates requiring additional staff and operating support to administer the CRFL program. An administrative officer will oversee management of the license program and will serve as the primary contact with the WRC. A computer programmer will be responsible for system maintenance, quality control and data transfer. An accounting clerk will be responsible for tracking license sales, deposits and auditing sales records. Three processing assistants will issue licenses in-person and by phone, handle questions concerning license requirements and regulations, and data entry in the Morehead and Columbia offices. For the purposes of this analysis, the administrative officer and computer programmer positions are assumed to be effective July 1, 2003 to allow for program and system preparation. The remaining four positions are assumed to be effective September 1, 2003, or six months prior to the effective date of the licenses to allow for recruitment and training. Operating support for the 2003-04 fiscal year is reduced proportionally.

In addition, the Division will pay a per transaction fee to the Wildlife Resources Commission to cover the Commission's costs for training, technical support, hardware maintenance, and communication charges associated with the transfer of data to and from agents. The actual transaction fee will be negotiated between DMF and WRC based on expected volume of license sales. Based on projected sales of approximately 1,000,000 licenses, the WRC estimates the transaction fee per CRFL sold would be $2.00. This note assumes that licensed agents will sell approximately 95 percent of all licenses sold.

The total estimated budget for Marine Fisheries to administer the Coastal Recreational Fishing License requirements is outlined in the following table:

Table 7: Division of Marine Fisheries, Budget Requirements for Administration

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Administrative Personnel					
Administrative Officer II	40,245	42,217	44,328	46,544	48,870
Applications Analyst Programmer II	63,463	66,573	69,901	73,396	77,065
Accounting Clerk IV	22,080	27,795	29,185	30,644	32,176
Processing Assistant IV (3 FTEs)	66,240	83,386	87,555	91,933	96,529
Total Salaries and Benefits	192,028	219,971	230,970	242,518	254,640
Positions	*4.00*	*6.00*	*6.00*	*6.00*	*6.00*
Operating Expenses for Admin.	47,000	21,000	21,000	21,000	21,000
Computer Expenses	1,008,000	39,300	39,300	39,300	39,300
Transaction Fee Paid to WRC	1,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Total Requirements	**$1,339,828**	**$2,280,271**	**$2,291,270**	**$2,302,818**	**$2,314,940**

Enforcement: HB 831 makes it unlawful for any person to engage in recreational fishing without first holding a Coastal Recreational Fishing License. The Division of Marine Fisheries' Marine Patrol Section has the duty of enforcing all laws relating to conservation of marine and estuarine resources (G.S. 113-8). According to DMF, a total of 6,336 hours was spent checking recreational fishermen for catch and size limits in the year 2000. Based on the current workforce of 43 marine patrol officers, 6,336 hours equates to less than ten percent of their patrol time. With the implementation of the recreational saltwater fishing license, the Division anticipates placing more emphasis on recreational fishing. To adequately enforce the estimated CRFL's projected to be sold, the Division estimates that it will need 10 additional marine patrol officers. These additional officers in combination with existing staff will allow the Division to check between 16 and 32 percent of the license holders on annual basis. This assumes a work year of 230 days and an average of five to ten checks per hour per officer or 40 to 80 license checks per day per officer. [230 days x 40 to 80 license checks per day = 9,200 to 18,400 license checks per new officer x 10 FTEs = 92,000 to 184,000 license checks annually plus existing staff time of 6,336 hours or approximately 792 days x 40 to 80 license checks per day = 31,680 to 63,360 license checks annually with existing staff time for a total of 123,680 to 247,360 licenses checked annually.]

Each marine patrol officer currently employed by the Division is assigned a motor vehicle and marine patrol boat for duty. Based on this practice, each of the 10 new positions will require a motor vehicle, leased from motor pool at approximately $4,800 per year, and a marine patrol boat at approximately $45,000 per boat. Marine patrol boats are currently replaced every 5 to 6 years.

For the purposes of this analysis, the marine patrol officers are assumed to be effective September 1, 2003, or six months prior to the effective date of the licenses to allow for recruitment and training. Operating support for the 2003-04 fiscal year is reduced proportionally.

The total estimated budget for Marine Fisheries to enforce the Coastal Recreational Fishing License requirements is outlined in the following table:

Table 8: Division of Marine Fisheries, Budget Requirements for Enforcement

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Enforcement Personnel					
Marine Enforcement Officer I (10 FTEs)	285,950	359,950	377,950	396,850	416,695
Operating Expenses for Enforcement	556,250	95,000	95,000	95,000	95,000
Total Requirements	842,200	454,950	472,950	491,850	511,695
Positions	*5.00*	*10.00*	*10.00*	*10.00*	*10.00*

The bill authorizes up to 10% of the funds credited to the Marine Resources Restoration Fund to be used for *administrative costs*. Based on the revenue projections outlined on page 4 (Table 6), this allowance will not cover the required administrative expenditures beginning with 2003-04 fiscal year. Assuming DENR authorizes the maximum for administration, a General Fund appropriation will be required to cover the remainder as follows:

Table 9: Appropriation Required for License Implementation

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Total Administrative Requirements	$1,339,828	$2,280,271	$2,291,270	$2,302,818	$2,314,940
10% Admin Allowance, Fund Transfer	($487,702)	($975,404)	($975,404)	($975,404)	($975,404)
Appropriation Required for Admin	**$852,126**	**$1,304,867**	**$1,315,866**	**$1,327,414**	**$1,339,536**
Total Enforcement Requirements	842,200	454,950	472,950	491,850	511,695
Total Appropriation Required	**$1,694,326**	**$1,759,817**	**$1,788,816**	**$1,819,264**	**$1,851,231**

SOURCES OF DATA: Department of Environment and Natural Resources, Division of Marine Fisheries; Wildlife Resources Commission

TECHNICAL CONSIDERATIONS: The provisions of the Coastal Recreational Fishing License become effective March 1, 2004. In order to give the public time to purchase a license prior to the license requirement becoming effective, this analysis assumed that

license sales would begin January 1, 2004, two months prior to the March 1 effective date. However, the bill is silent as to the date that license sales can begin.

ATT#5
5/20/03

Coastal Conservation Association of North Carolina
3716 National Drive, Suite 217
Raleigh, NC 27612

FOR IMMEDIATE RELEASE
April 1, 2003

CONTACT: Dick Brame
Phone: 910-793-3098

Coastal Conservation Association Praises Introduction of Bill to Protect the Future of Fishing

RALEIGH, NC – "The bipartisan legislation introduced today will allow coastal recreational fishing enthusiasts in this state to protect the future of saltwater fishing and allow the state of North Carolina to ensure we continue to have some of the best fishing in America," said Billy Byrd, President of the Coastal Conservation Association of North Carolina in praise of legislation introduced jointly in the NC House and Senate today.

The bills, entitled the Coastal Recreational Fishing License/Fund, H. 831 and S. 684, will allow North Carolina to apply many of the same successful techniques now used for inland fish to our saltwater resources as well. It would establish both an annual ($15) and a short-term ($5) fishing license that would be required of anyone over 16 years of age fishing in North Carolina coastal waters, joining every Atlantic coast state from Maryland to Texas in working to ensure the future of these precious resources.

"This legislation is a win-win-win for everyone involved," said House co-sponsor Pryor Gibson (D-Troy). "It allows sport fishing enthusiasts to make a difference in the future of fishing, it provides the state with income and information that is vital to growing and preserving the resource, and it makes sure that this important part of our economy remains vital today and for years to come."

The legislation is also a win for taxpayers in that new funding for research, regulation, new habitat, and education are provided by those who use the resource rather than from additional taxation.

-more-

"The state has needed this legislation for a long time," said Sen. David Weinstein (D-Lumberton). "Passage of this bill will help our estuaries, provide new habitat for fish stocks and will assure our children and grandchildren will be able to enjoy fishing along North Carolina's coast."

Rep. Pryor Gibson and Rep. Danny McComas (R-Wilmington) are cosponsors of the House legislation. Sen. David Weinstein and Sen. Hamilton Horton (R-Winston-Salem) have authored the legislation in the Senate.

The state has long-recognized the need for a coastal recreational fishing license. There have been calls for such a system since before the General Assembly passed the landmark Fisheries Reform Act of 1997.

"Fisheries management works, as evidenced by the hard work on the state and federal level to bring back North Carolina's prized striped bass population," said CCA NC President Byrd. "This legislation allows those who care most about the resource to take the lead in making sure it is properly managed."

The Coastal Conservation Association of North Carolina is the state's chapter of a national organization dedicated to the promotion of recreational saltwater fishing and the conservation of these precious resources. CCA NC, boasting more than 4,000 members in the state, has worked for many years on this and other coastal conservation issues.

Studies in recent years have shown that nearly 80% of coastal recreational fishing enthusiasts support creation of a license with funds going back to the resource. The license, as created in this bill, would generate $6-$8 million in revenues that will be administered by the Division of Marine Fisheries of the Department of Environment and Natural Resources. Revenue use would be split generally as follows: 25% directed to habitat creation, 25% to fisheries research, 25% to regulatory enforcement, 15% for public education and grants, and 10% for administration.

It is estimated that over 1.6 million recreational enthusiasts fish in North Carolina's coastal waters each year, with half of those coming from out of state, adding an estimated $1.3 billion to the state's economy.

-30-

ATT # 6
5/20/03

BROWN & WOOD
PONTIAC • CADILLAC • JEEP • GMC TRUCK
329 GREENVILLE BLVD. - GREENVILLE, NC 27834
(252) 355-6080

May 20, 2003

To: Mr. Chairmen, Distinguished Members of the House Environment and Natural Resources Committee, Ladies and Gentlemen.

Subject: H831 Coastal Recreational Fishing License/Fund

I am Bill Brown, an automobile dealer and saltwater fisherman from Greenville, N. C. I am also past president of CCA-NC. I am here to endorse H831, the Coastal Recreational Fishing License/Fund both as a representative of the Coastal Conservation Association of North Carolina and as a saltwater fisherman.

I ask you to review the progress of the Department of Marine Fisheries in restoring our public trust resource of fisheries in North Carolina. A recap of the Stock Status Reports that I took off the DMF website last night is prepared for your review. The important fact is the downward trend of all categories of fisheries that are monitor by DMF.

The Fisheries Reform Act of 1997 charged DMF with implementing Fishery Management Plans to improve the status of our Public Trust Resource-Fisheries Stocks. One can only conclude that DMF has failed in this charge. But, it is not their fault. The necessary data and funds to carry out this mission were omitted from the bill in 1997.

You distinguished ladies and gentlemen today face a budget crisis. Your preliminary budget calls for deep cuts in education and other budgets. **Recreational Fisherman stand before you today to offer $10,000,000 to operate the Division of Marine Fisheries as provided for in this bill if you pass this law as proposed. It will make the North Carolina Division of Marine Fisheries almost a self-funding department. If you combine the commercial and recreational license revenue (as proposed), then you are providing approximately 80% of the total revenue necessary to operate the DMF.**

Distinguished Ladies and Gentlemen of our Legislature, this is bill whose time has come. Recreational Fishermen today are offering you $10,000,000 in dedicated funds to operate the Division of Marine Fisheries.

NC DMF Stock Status Reports

1997 thru 2001

	Viable	Recovering	Concern	Overfished	Unknown
2001	**25%**	**5%**	**30%**	**25%**	**15%**
2000	**22%**	**9%**	**21%**	**26%**	**22%**
1999	**26%**	**9%**	**15%**	**28%**	**22%**
1998*	**30%**	**12%**	**12%**	**15%**	**31%**
1997*	**31%**	**19%**	**11%**	**11%**	**29%**

*** NC DMF changed names on categories from Stressed Recovering to Recovering, Stressed Declining to Concern, and from Depressed to Overfished.**

The most important fact is the downward trend of all categories. The Fisheries Reform Act of 1997 charged the DMF to implement Fisheries Management Plans to improve the status of our Public Trust Resource-Fishery Stocks.
But, one important part was omitted.
The Funding to carry out the charge!!!

Source of data is taken from NCDMF website Stock Statue Reports

ATT. # 7
5/20/03

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 831*

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

H831-ASB-14 [v.2]

Date _____,2003

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

Representative Gillespie

moves to amend the bill on page 4, lines 34 and 35,
by rewriting those lines to read:

"d. 17 years of age to younger than 65 years of age";

on page 5, between lines 23 and 24,
by inserting between those lines:

"(2) Is 65 years of age or older." and

by renumbering the subsequent subdivisions accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 20 May 2003 TABLED _____
GFF

ATTH 8
5/20/03

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 831*

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

H831-ASB-13 [v.3]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Representative Gillespie

moves to amend the bill on page 1,
by rewriting the Short Title to read:

"Coastal Recreational Fishing License.";

on page 1, lines 2 through 4,
by rewriting those lines to read:

"AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE.";

on page 1, line 12, through page 2, line 11,
by rewriting those lines to read:

"Whereas, a system for licensing coastal recreational fishers would enable the Division of Marine Fisheries to better disseminate information to and gather information from recreational fishers, the largest marine resources user group in our State; and

Whereas, at a time when the State faces a severe fiscal crisis, a $15.00 annual license for coastal recreational fishing would provide $6,000,000 to $8,000,000 per year in new funds; and

Whereas, the State requires an individual to hold a license to engage in fishing in the inland, fresh waters of the State and charges the individual $15.00 for this license, there is no logic in requiring a license to fish in inland, fresh waters, but not coastal, salt water; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 831*

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

H831-ASB-13 [v.3]

Whereas, North Carolina is the only coastal state between Texas and Delaware that is not benefiting from a system for licensing coastal recreational fishing; Now, therefore,";

on page 4, line 20,
by deleting "G.S. 113-174.5." and substituting "G.S. 113-174.4.";

on page 5, between lines 36 and 37,
by inserting:

"(g) Fees collected under this section shall be credited to the General Fund.";

on page 6, line 22,
by deleting "G.S. 113-174.5." and substituting "G.S. 113-174.4."; and

on page 7, line 8, through page 8, line 32,
by rewriting those lines to read:

"'**§ 113-174.4. License agents.**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 20 May 2003 GPG TABLED _____

To: The Sponsors of SB 684/HB 831, Coastal Recreational Fishing License Fund

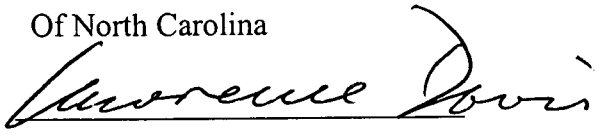
Over 4,500 members of the Coastal Conservation Association of North Carolina appreciate your sponsorship of the above-captioned Bill.

Most of the media coverage has been very favorable. Occasionally, there is an adverse editorial based on erroneous information. In those cases we need to provide a quick and accurate response. Please let us know if you become aware of any public misinformation about the Bill that needs to be corrected.

Attached for your information is information assembled recently in response to an editorial that challenged the rationale for the Bill as stated in its "Whereas" clauses and claimed that recreational anglers already share in the cost of fishing management and that a few people were trying to control the fisheries.

Thank you again for sponsoring this legislation.

Coastal Conservation Association
Of North Carolina



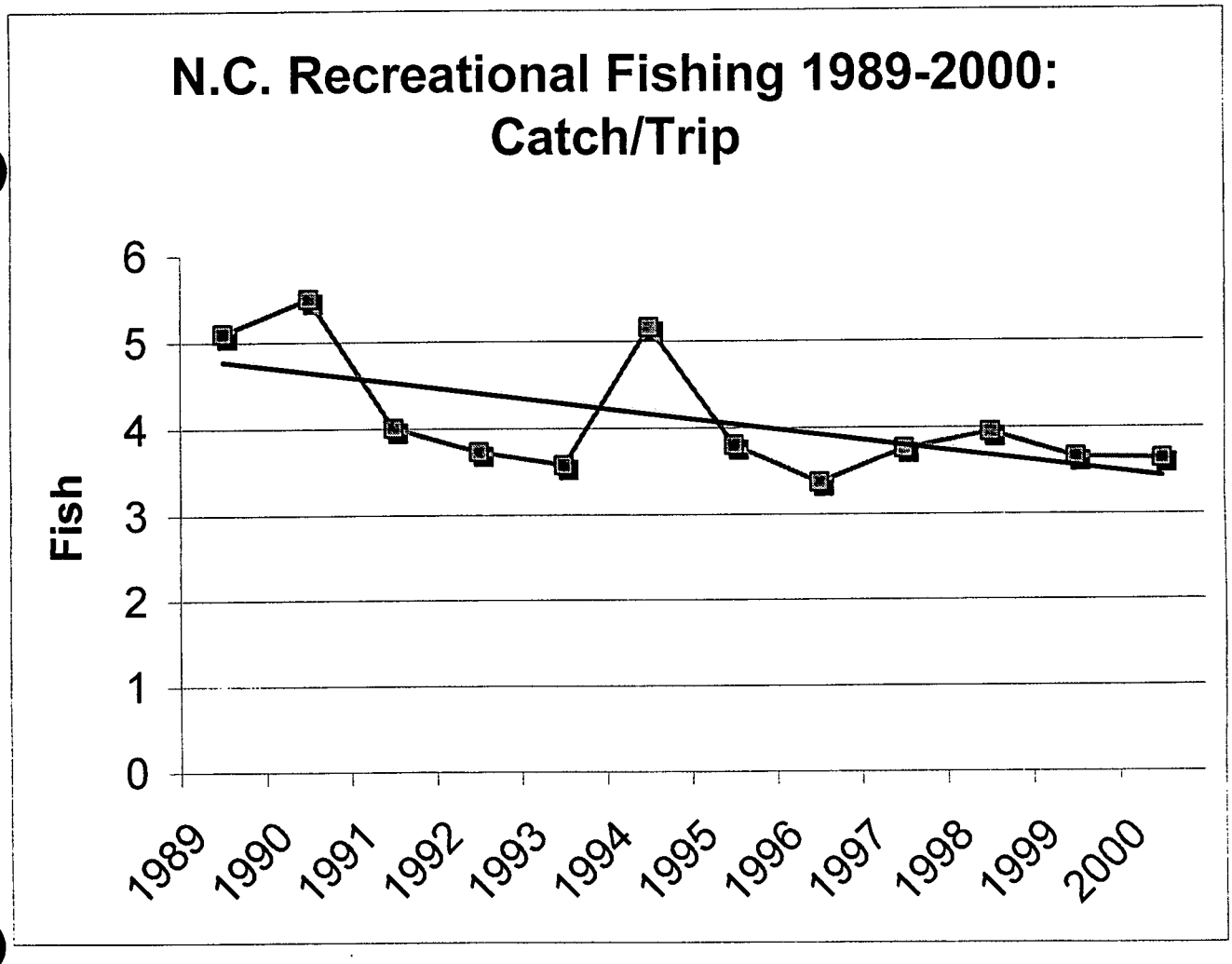
E. Lawrence Davis, III, Member
Legislative Committee, Coastal Conservation
Association of North Carolina
Womble Carlyle Sandridge & Rice, PLLC
150 Fayetteville Street Mall, P.O. Box 831
Raleigh, North Carolina 27602
919-755-2103

DRAFT

The editorial asks what data predict the recreational catch will reach zero in 36 years.

The Marine Recreational Fisheries Statistics Survey, a joint state-federal project conducted annually since 1986, shows a declining trend in the recreational catch per trip. If it continues at its present rate, it will reach zero in about 34 years. North Carolina uses funds derived from taxes on fishing tackle to increase the number of anglers surveyed and thereby the accuracy of its MRFSS data. It has as high a degree of statistical validity as that from any state. A license would make this data collection far more efficient because the Division would sample from a known population of anglers instead of surveying thousands of non-anglers to find those that fish.

Data from N.C. Division of Marine Fisheries



(I can get data for 2001 and 2002 when DMF's Doug Mumford returns about May 15)

How could a fishing license correct that?

The Division of Marine Fisheries, like most state agencies, is so strapped for cash it cannot do its job. It is severely handicapped in executing its responsibilities to write fisheries management plans as directed by the 1997 Fisheries Reform Act. A recreational fishing license was an integral part of the Act and necessary for its execution. The license was deleted, however, leaving the remaining provisions with inadequate funding, crippling the Act. The DMF has had to do the best it can with appropriations, to the detriment of vitally important programs mandated by the FRA. The number of enforcement agents is a fraction of that necessary to patrol our vast expanses of water. With a diminishing budget, the DMF must curtail staff travel and cut corners in many ways that are detrimental to execution of the division's responsibilities. A recreational fishing license could provide millions of dollars for necessary research, administration, protection and enhancement of fisheries resources.

Stocks are in decline.

For the first time in a long time, a few stocks are improving, but they are improving because we have necessarily cut harvest to near zero. Last year, under a fisheries management plan, North Carolina anglers were required to release, and did release, 94 percent of the red drum they caught. Few anglers object. That is the price anglers are willing to pay to help restore the overfished stock. But that is not a circumstance we are willing to live with. Unlike striped bass, which have recovered to a degree through management designed and mandated by outside agencies, most stocks remain either overfished or government lacks the data to determine their status. We don't know their status because DMF lacks the staff and budget to address the issue. A few other problems have gone away, thanks to other agencies and to management plans developed by staff now limited by an inadequate budget in the number of meetings they can attend. Empty staff positions cannot be filled. DMF is operating on a bare-bones budget, with little prospect for improvement. A recreational license would solve that and provide the resources to address the other overfished stocks.

The bill insinuates that anglers don't share in the cost of the program.

Anglers share in the cost of the program about to the extent of the average citizen of a mountain county who has never fished in salt water in his life. Shouldn't citizens who use the resource pay for its management in proportion to their use? The 4,523 active commercial fishermen do. They must pay to exploit the public trust resource. Why shouldn't anglers? Some two million anglers are able and willing, as indicated by a scientific poll. A recreational fishing license can be viewed as a use fee. Commercial fishermen wouldn't have to buy one, so why would they object? Anyone who does not fish in salt water would not have to buy

one. Only those who use the resource would have to contribute a few dollars annually toward management of it, relieving the general public of a portion of its tax burden. We think that's a good idea.

Why a dedicated fund?

Because anglers want to insure that the funds they contribute be used for the purposes they were contributed for, as specified in the bill. A poll conducted by North Carolina State University was clear on this point. Anglers would only support a license if the funds generated went into a dedicated fund for marine fisheries management. If the money went into the general fund it could then be used for non-fishery related expenses, potentially causing the loss of over a million dollars in federal aid funds. A shining example is the North Carolina Wildlife Resources Commission. Its dedicated fund, overseen by an appointed commission, provides the necessary buffer against unwise diversion by a few powerful individuals in the legislative budget process. It insures that every dollar raised goes to improvement of wildlife. The license bill envisions a dedicated fund modeled after the highly successful wildlife fund.

A shady attempt for the few to control the future of fisheries?

4,523 active commercial fishermen, all buying licenses; two million recreational fishermen contributing nothing. How is that "the few?" To the contrary, it is the many who, out of a sense of responsibility and stewardship, only want to pay their way. It is an old an honored tradition.

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES — 5-20-03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lawrence Davis	Coastal Conservation Association
Dick Brame	CCA
Bill Brown	CCA
Preston Pate	NC Div of Marine Fisheries
DAN Whittle	EDF
Tom Bean	NC EnviroDef
Grady McCallie	N.C. Conservation
DAVID PRESSWOOD	NCPIRG
Bobby Dunn	
Janice Underwood Hodges	
Ricky Harrison	CCA

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Steve Wall	Conservation Council
David Knight	NC Wildlife Fed, NC Sierra Club
[illegible]	
Hokey Tsumas	
John Gilbert	
Jerry Schill	NC Fisheries Assoc
Frances Workman	NC State Watch
Carole Lawler	EGTS

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 831 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE AND A MARINE RESOURCES RESTORATION FUND TO RESTORE, PROTECT, AND ENHANCE THE MARINE RESOURCES OF THE STATE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

May 27, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 1028 – NEW BULKHEAD PERMIT – Rep. K. Williams
   SB 959 – MONITOR COASTAL WATER QUALITY – Sen. Scott Thomas

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

May 27, 2003

MINUTES

The House Committee on Environment and Natural Resources met May 27, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church, Joe Hackney, and Stephen Laroque, and Committee members Lucy Allen, Jim Gulley, Phil Haire, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Ray Rapp, Bonner Stiller, and Larry Womble. Representative Alex Hall was excused. A Visitor Registration is attached and made part of these minutes.

Vice Chair Church called the meeting to order at 12:05 pm.

HB 1028 – New Bulkhead Permit (Attachment 1). Representative Gibson presented the bill for sponsor Representative Keith Williams and moved that H1028-PCS 30348-RTf-32 (Attachments 2 and 3) and be adopted and placed before the Committee. Adopted. Counsel George Givens reminded the Committee that this was the same bill that was heard on April 29, 2003, and was displaced while some objections were worked out; the PCS is supposed to work out all the objections. This bill is about the coastline erosion control (riprap) that would protection the geography and geology of the shoreline, and there is no opposition to the bill. Representative Gibson moved the PCS for HB 1028 be given a favorable report, unfavorable to the original bill, and re-referred to the Finance Committee. Passed.

SB 959 – Monitor Coastal Water Quality (Attachments 4 and 5). Representative Gibson presented the bill for Senator Scott Thomas. This bill does a match-up of definitions to monitor water quality of coastal recreation waters and is a companion to HB 996, which has already passed the House.

Following questions from Representative Womble, Wayne Mobley, Associate Chief, North Carolina Shellfish Sanitation and Recreation Water Quality Program, Division of Environmental Health, said this bill would monitor coastal recreational waters and advise the public when water quality standards are exceeded (Attachment 6). He said it is not an advisory to prohibit swimming, but a warning to swimmers of health threats.

Representative Gibson reiterated that there was no opposition to the bill. Mr. Mobley also stated that his department is working with local health departments to come up with the wording for advisories and is sensitive as to the effects on tourism. Every state along the coast has a water quality-monitoring program. If North Carolina does not have a water quality program, then EPA will take it over and run it out of Atlanta. Representative Womble moved for a favorable report. Passed.

Vice Chair Church adjourned the meeting at 12:19 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

Att #1
5/27/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 1028
Corrected Copy 4/16/03

Short Title:	New Bulkhead Permit.	(Public)
Sponsors:	Representatives K. Williams, Justice (Primary Sponsors); Stiller, Grady, Gorman, and Preston.	
Referred to:	Finance.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-118.1A. General permit for construction of riprap sills for wetland enhancement and shoreline protection.**

(a) The Commission shall establish a general permit to allow the construction of offshore parallel sills, made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 7J. I 100. The permit shall not apply within the ocean hazard areas of environmental concern, or waters adjacent to these areas of environmental concern, with the exception of those portions of shoreline within the Inlet Hazard Area of environmental concern that feature characteristics of estuarine shorelines, including the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the ocean erodible area.

(b) A permit issued under this section authorizes only the construction of sills and wetland enhancements that conform to the general conditions set out under subsection (c) of this section and the specific conditions set out under subsection (d) of this section. A permit issued under this section shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G. S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights. Also, a permit issued under this

section does not eliminate the need to obtain any other required State, local, or federal authorization.

(c) A permit issued under this section shall include the following general conditions:

(1) The permittee shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions of the permit.

(2) There shall be no significant interference with navigation or use of the waters by the public by the existence of the breakwater authorized by the permit.

(3) Development carried out under the permit shall be consistent with all local requirements, area of environmental concern rules, and local land-use plans current at the time of authorization.

(d) A permit issued under this section shall also include the following specific conditions:

(1) On shorelines without existing wetlands, the landward edge of the sill shall be positioned no more than 20 feet waterward of the waterward depth of locally growing wetlands or 30 feet waterward of mean high water or normal high water level, whichever is greater. On shorelines with existing wetlands, the landward edge of the structures shall be positioned no more than 20 feet waterward of the waterward depth contour of locally growing wetlands or 20 feet waterward of the existing wetlands at any point along the alignment of the structure, whichever is greater. For narrow waterbodies (canals, creeks, etc.), the sill alignment shall not be positioned offshore more than one-sixth the width of the waterbody.

(2) Where insufficient wetlands habitat exists along the permittee's shoreline to provide adequate shoreline stabilization, the permittee shall be required to plant appropriate wetland species landward of the sill structure as directed by Department staff. This permit shall only apply to projects that combine existing or planted wetlands with constructed sill structures.

(3) Construction authorized by this permit shall be limited to a maximum length of 500 feet.

(4) The height of the sill shall be constructed so as not to exceed six inches above the highest elevation of the adjacent wetland substrate, or six inches above the mean high water or normal high waterline, whichever is greater. The constructed slope of the sill shall not exceed 2:1 (2 foot horizontal 1 foot vertical) slope, and the width of the sill crest shall not exceed three feet.

(5) No fill shall be placed on submerged aquatic vegetation or productive shellfish beds. Backfilling of the sills shall only be utilized for the

purpose of creating a suitable substrate for the establishment or reestablishment of coastal wetlands. Only clean sandy fill shall be used for backfilling sills. Prior to filling, shellfish may be considered for relocation to other sites using methods approved by the North Carolina Division of Marine Fisheries. No more than 100 square feet of existing emergent wetlands shall be filled per project site.

(6) No excavation of the shallow water bottom, any wetland, or high ground is authorized by this permit.

(7) The sill material shall not be placed in a manner so as to impede water flow into or out of any natural channel or stream.

(8) The sill material shall be free from loose dirt or other pollutants. It shall be of a size sufficient to prevent its movement from the site by wave or current action.

(9) Riprap material shall consist of clean rock or masonry materials, such as marl, granite, or broken concrete. Material such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material, or similar materials are not appropriate riprap for the purposes of this general permit.

(10) If the crossing of wetlands with mechanized or nonmechanized construction equipment is necessary, temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the riprap structure.

(11) The permittee shall maintain the structure in good condition and in conformance with the terms and conditions of this permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal Management."

SECTION 2. The Department of Environment and Natural Resources shall begin implementation of this act when it becomes law. The Department shall establish the permit enacted by Section 1 of this act by December 1, 2003.

SECTION 3. Section 1 of this act becomes effective December 1, 2003. The remainder of this act is effective when it becomes law.

Att #2
5/27/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1028
Corrected Copy 4/16/03
PROPOSED COMMITTEE SUBSTITUTE H1028-PCS30348-RTf-32

Short Title: New Bulkhead Permit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COASTAL RESOURCES COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 113A-118.1, the Coastal Resources Commission may adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills made of stone or other suitable riprap materials for shoreline protection in conjunction with existing, created, or restored wetlands. The permit shall be applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. The permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the ocean hazard areas of environmental concern except that the permit may apply to those shorelines that exhibit characteristics of estuarine shorelines. Characteristics of estuarine shorelines include the presence of wetland vegetation, lower wave energy, and lower erosion rates than are generally characteristic of ocean erodible areas. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the authorization to adopt temporary rules pursuant to this section shall continue in effect until 1 July 2004.

SECTION 2. In adopting temporary rules pursuant to Section 1 of this act, the Coastal Resources Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.

(3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comments on the proposed rule may be submitted. The Commission shall accept written comments on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule as published in the North Carolina Register.

(4) Hold at least one public hearing on the proposed temporary rule.

SECTION 3. The fee for a general permit established by temporary rules pursuant to Section 1 of this act shall be one hundred dollars ($100.00). In adopting permanent rules pursuant to Section 1 of this act, the Coastal Resources Commission shall set a fee for the general permit as provided in G.S. 113A-119.1.

SECTION 4. This act is effective when it becomes law.

ATT #3
5/27/03

HOUSE BILL 1028:
New Bulkhead Permit.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Williams and Justice
Date:	May 27, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	PCS for First Edition (H1028-PCS30348-RTf-32)		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1028 authorizes the Coastal Resources Commission to adopt temporary and permanent rules to establish a general permit for the construction of offshore sills for shoreline and wetland protection.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1028 (PCS) authorizes the Coastal Resources Commission (Commission) to adopt temporary and permanent rules to establish a general permit to allow the construction of offshore parallel sills for shoreline protection in conjunction with existing, created, or restored wetlands. The general permit would applicable only where a shoreline is experiencing erosion in public trust areas and estuarine waters. Sills must be made of stone or other suitable riprap material.

In adopting the temporary rule, the Commission must:

1. Consult with interested parties.
2. Notify persons on the mailing list that the Commission maintains of its intent to adopt a temporary rule.
3. Publish a notice of intent and the text of the proposed temporary rule in the North Carolina Register.
4. Accept written comments for at least 30 days after the notice of intent is published.
5. Hold at least one public hearing on the proposed temporary rule.

The initial fee for the general permit established by temporary rule is one hundred dollars ($100.00). The Commission will set a fee for the general permit adopted by permanent rule as provided in G.S. 113A-119.1.

BACKGROUND: G.S. 113A-118.1 authorizes the Coastal Resources Commission, by rule, to designate certain classes of major and minor development for which a general or blanket permit may be issued. In identifying the classes of development, the Commission must consider:

1. The size of the development.
2. The impact of the development on areas of environmental concern.
3. How often the class of development is carried out.
4. The need for onsite oversight of the development.
5. The need for public review and comment on individual development projects.

EFFECTIVE DATE: The PCS becomes effective when it becomes law. The authorization to adopt temporary rules pursuant to the act would continue in effect until 1 July 2004.

H1028-SMSY-002

ATT #4
5/27/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 959

Short Title:	Monitor Coastal Water Quality.	(Public)
Sponsors:	Senators Thomas; and Moore.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES REGARDING MONITORING OF COASTAL RECREATION WATERS IN ORDER TO IMPLEMENT THE FEDERAL BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000.

The General Assembly of North Carolina enacts:

SECTION 1. Part 3A of Article 8 of Chapter 130A of the General Statutes reads as rewritten:

"Part 3A. Monitor Water Quality of Coastal Fishing and Recreation Waters.

"**§ 130A-233. Definitions.**

The following definitions apply to this Part:

(1) Coastal fishing waters. – Defined in G.S. 113-129(4).

(2) Inland fishing waters. – Defined in G.S. 113-129(9).

(3) Coastal recreation waters. – Defined in 33 U.S.C. § 1362.

"**§ 130A-233.1. Monitoring program for State coastal fishing and recreation waters; development and implementation of program.**

(a) For the protection of the public health of swimmers and others who use the State's coastal fishing waters for recreational activities, the Department shall develop and implement a program to monitor the State's coastal fishing waters for contaminants. The monitoring program shall cover all coastal fishing waters up to the point where those waters are classified as inland fishing waters.

(b) The Commission shall adopt rules to provide for a water quality monitoring program for the coastal recreation waters of the State and to allow the Department to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000 (Pub. L. No. 106-284; 114 Stat. 870, 875; 33 U.S.C. §§ 1313, 1362). The rules shall address, but are not limited to, definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.

"**§ 130A-233.2. Removal or destruction of warning signs.**

No person shall remove, destroy, damage, deface, mutilate, or otherwise interfere with any sign posted by the Department pursuant to G.S. 130A-233.1. No person, without just cause or excuse, shall have in his possession any sign posted by the Department pursuant to G.S. 130A-233.1. Any person who violates this section is guilty of a Class 2 misdemeanor."

SECTION 2. This act is effective when it becomes law except that G.S. 130A-233.2, as enacted by Section 1 of this act, becomes effective 1 December 2003 and applies to offenses committed on or after that date.

ATT # 5
5/27/03

SENATE BILL 959:
Monitor Coastal Water Quality

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senators Thomas and Moore
Date:	27 May 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 959 authorizes the Commission for Health Services (Commission) to adopt rules regarding monitoring of coastal recreation waters in order to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000. The rules will address definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters. The bill also provides that a person who removes or destroys a sign posted to convey information on the water quality of coastal recreation waters is guilty of a Class 2 misdemeanor.***

The bill would become effective when it becomes law, except that the misdemeanor provision would become effective 1 December 2003 and apply to offenses committed on or after that date.

BACKGROUND: The federal Beaches Environmental Assessment and Coastal Health Act of 2000, enacted on 10 October 2000, requires that each state that has coastal recreation waters adopt and submit water quality criteria and standards for pathogens and pathogen indicators designated by the Administrator of the United States Environmental Protection Agency (Administrator) for the coastal recreation waters of the state within 42 months of the enactment of the federal act. In the event that a state fails to adopt coastal water quality criteria and standards within the prescribed period, the federal act directs the Administrator to propose such regulations for the state.

CURRENT LAW: Current law (G.S. 130A-233.1) requires that the Department of Environment and Natural Resources develop and implement a program to monitor the coastal fishing waters of the State for contaminants.

BILL ANALYSIS: The bill authorizes the Commission to adopt rules regarding monitoring of coastal recreation waters. The bill:

- Adds a definition for "coastal recreation waters" that references the definition for "coastal recreation waters" found in the federal act.
- Includes a provision that authorizes the Commission to adopt rules for the monitoring of coastal recreation waters that address definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters.
- Adds a section that provides that a person who removes, damages, or destroys a sign posted to convey information on the water quality of coastal recreation waters is guilty of a Class 2 misdemeanor. A Class 2 misdemeanor is punishable by a minimum of 1 day of community punishment up to a maximum of 60 days active punishment, depending on the misdemeanant's record for prior convictions.

EFFECTIVE DATE: The bill would become effective when it becomes law, except the misdemeanor provision which would become effective 1 December 2003 and apply to offenses committed on or after that date.

ATT
#6
9/27/03

Recreational Water Quality Facts

This is a program to monitor coastal recreational waters and to advise the public when water quality standards are exceeded.

- Mid 1990s NC coastal waters received bad publicity because of the growing concerns of Pfiesteria and possible health threats.
- In spring of 1996 the National Resource Defense Council (NRDC) labeled North Carolina as a "Beach Bum" state for not having a recreational water testing and public notification program in place.
- In June of 1997 Governor Hunt's budget included funding to implement a 2-year pilot program. 6 people were added to the Shellfish Sanitation staff to help with the new responsibilities.
- July of 1999 the recreational water quality program was permanently funded.
- Positive aspect of program leads to restoring of public confidence in NC's coastal water quality. Critics now call NC a "beach buddy" state instead of "bum".
- October 2000 Federal government passes the BEACHES act (Beach Environmental Assessment and Coastal Health) requiring coastal states to implement Beach Monitoring programs. Grants available to financially assist states. BEACHES act required states to implement the program in steps to accomplish tasks over a certain time frame.
- North Carolina applies for federal grant and $307,000 awarded to fund the program.
- By April 2004, coastal states are required to adopt the EPA recommended beach-monitoring criteria. The enterococci indicator and action levels have to be put into rules.
- Number of advisories in past years:
  - 1997 3
  - 1998 13
  - 1999 5
  - 2000 8
  - 2001 4
  - 2002 0
  - The program is currently using the federal guidance issued by EPA for program implementation, but state adoption of rules is needed.
  - This legislation is necessary to authorize the Commission for Health Services to adopt rules to implement the federal BEACHES Act and to make it a misdemeanor for a person to interfere with the advisories and postings.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 1028 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT AND SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
S.B. 959 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES REGARDING MONITORING OF COASTAL RECREATION WATERS IN ORDER TO IMPLEMENT THE FEDERAL BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Stephanie Simpson	NC Assn. of Realtors
Nancy Thompson	YMCIC
Amy Fullbright	Hunton & Williams
Lucius Pullen	NC Mining Assoc.
Rick Zechini	NC Assoc. of REALTORS
Beth Anne Mumford	NC Pork Council
John Cyrus	NC State Grange
Wayne Mobley	NC Shellfish Sanitation
Kari Barsness	NCDENR
Sheryl Stephens	DENR
Pam Meyer	NCAGL
Kim Hibbard	NCLM
David Holman	CWMTF
Tyler Mumford	NC Envirn Dept
Katie Hoover	TNC
Angie McMillan	FNC
Gordy McLain	NC. Land.
Jimmy Rogers	NC Coastal
Steve Wall	CCNC
[illegible] GILBERT	RAND KNIGHT
David Meredith	NC State Grange

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 3, 2003

12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   SB 627 – EXTEND CHPP ADOPTION DEADLINE- Senator Alberton

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 3, 2003

MINUTES

The House Committee on Environment and Natural Resources met June 3, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church and Charles Johnson, and Committee members Lucy Allen, Curtis Blackwood, Becky Carney, Jim Gulley, Phil Haire, Paul Luebke, Danny McComas, Eugene McCombs, Patrick McHenry, Jean Preston, John Rhodes, Bonner Stiller, Alex Warner, Jennifer Weiss, and Larry Womble. Representative Ray Rapp was excused. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:05 pm.

SB 627 Extend CHPP Adoption Deadline (Attachment 1). Representative Johnson moved that S627-PCS35303-RT-36 (Attachments 2 and 3) be adopted and placed before the Committee. Adopted.

Chief Counsel George Givens informed the Committee that the Committee Substitute entirely deletes the original provisions of the bill, which are no longer needed because the House companion bill (H1134) has passed and was signed by the Governor yesterday (S.L. 2003-111) (June 2, 2003). Senate Bill 627 now makes additions to and deletions from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the North Carolina Constitution. Under the Constitution, additions to and deletions from the State Nature and Historic Preserve require a 3/5 vote of each house. Thus Senate Bill 627 will need a 3/5 vote on 2d and 3d reading in the House and a 3/5 vote in the Senate when it is returned to the Senate for concurrence. Although a 3/5 vote is required, the bill can have both readings in the House on the same day.

Counsel Jennifer McGinnis said the bill dedicates and accepts certain properties as part of the State Nature and Historic Preserve, removes certain lands from the Preserve, and deletes Waynesborough State Park from the State Parks System (see Attachment 3).

Philip McKnelly, Director of Parks and Recreation, said that since 2001, the Park System has taken in over 6,700 acres. The Council of State has petitioned the General Assembly to accept various parklands and delete others. The PCS dedicates and accepts Beech Creek Bog, Elk Knob State Natural Area and Lea Island State Natural Areas as new areas of the Preserve. Deletions are on Page 2 of Attachment 3.

Following a short discussion, Representative Allen moved for a favorable report for S627-PCS35303-RT-36, unfavorable to the original bill. Passed.

Chair Gibson adjourned the meeting at 12:25 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 1
6/3/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 627

Short Title:	Extend CHPP Adoption Deadline.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6.9 of S.L. 1997-400 reads as rewritten:

"**Section 6.9.** 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~~.December 31, 2004. 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(e), 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 2. This act is effective when it becomes law.

Att #2
6/3/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 627
PROPOSED HOUSE COMMITTEE SUBSTITUTE S627-PCS35303-RT-36

Short Title: State Nat. & Hist. Preserve Adds. & Removals. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO DEDICATE AND ACCEPT CERTAIN PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE, TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE, AND TO DELETE A PARK FROM THE STATE PARKS SYSTEM.

Whereas, Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the Constitution of North Carolina; and

Whereas, over 6,700 acres have been added to the State Parks System since the last dedication and acceptance of properties as part of the State Nature and Historic Preserve pursuant to a petition of the Council of State dated 3 April 2001, and

Whereas, in accordance with G.S. 143-260.8, on 6 May 2003 the Council of State voted to petition the General Assembly to enact a law pursuant to Section 5 of Article XIV of the Constitution of North Carolina to dedicate and accept properties added to the State Parks System and designated in the petition for inclusion as parts of the State Nature and Historic Preserve; and

Whereas, as a part of its petition of 6 May 2003 the Council of State also requested the General Assembly to remove certain properties from the State Nature and Historic Preserve; and

Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-260.10 reads as rewritten:

"**§ 143-260.10. Components of State Nature and Historic Preserve.**

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of ~~April 3, 2001:~~ 6 May 2003: Baldhead Island State Natural Area, Bay Tree Lake State Park, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Elk Knob State Natural Area, ~~Eno River State Park,~~ Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Hammocks Beach State Park, Hemlock Bluffs State Natural Area, Jones Lake State Park, Lake James State Park, Lake Norman State Park, Lake Waccamaw State Park, Lea Island State Natural Area, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park, Run Hill State Natural Area, Singletary Lake State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on

a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following ~~tract:~~ tracts: The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, Number Four Township, described in Deed Book 1286, Page 85, and containing 1.64 acres as shown on the drawing prepared by the Division of Parks and Recreation entitled "Property to Be Excepted Crowders Mountain State Park" dated 14 April 2003, and filed in the State Property Office. The ~~tract~~ tracts excluded from the State Nature and Historic Preserve under this subdivision ~~is~~ are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of ~~April 3, 2001.~~ 6 May 2003.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres; and the portion of that certain tract or parcel of land at Stone Mountain State Park in Alleghany County, Cherry Lane Township, described in Deed Book 219, Page 543, and more particularly described as all of the land in this parcel lying north of the new division line on the survey by Andrews and Hobson Surveyors dated August 15, 2000, and entitled "Property Exchange Agreement for State of North Carolina & the United States of America", and filed in the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of ~~April 3, 2001:~~ 6 May 2003: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following ~~tracts:~~ tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

a. The portion of that tract or property at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 862, Page 1471, required for the right-of-way and easements for the relocation of SR 1904 within the park and lying generally between the Rutherford Electric Membership Corporation right-of-way and the southern property boundary of the park, as described in the drawing entitled "Survey for State of North Carolina", dated January 28, 1999, prepared by Suttles Surveying, P.A., bearing the preparer's file name 12455.dwg and filed in the State Property ~~Office;~~Office. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and

use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portion of those certain tracts or parcels of land at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 925, Page 1284, and Deed Book 870, Page 1729 required for the right-of-way and easements for the relocation of SR 1904 within the Park and shown on the drawing prepared by Suttles Surveying P.A. entitled "Survey of the Proposed Centerline of the New Road Alignment for the State of North Carolina" bearing the preparer's file name 12455D.dwg, dated 10 April 2003, and filed in the State Property Office. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

c. ~~and the~~ The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. The portion of that certain tract or parcel of land at South Mountains State Park in Burke County, Morganton Township, described in Deed Book 28, Page 607, Deed Book 28, Page 467, and Plat Book 3, Page 78, and containing 0.33 acres as shown on the drawing prepared by Hawkins Land Surveying entitled "Subdivision for Trustees of Walker Top Baptist Church" dated 26 September 2001, and filed with the State Property Office. The State may transfer this property to the Trustees of Walker Top Baptist Church to be used for church purposes. The instrument transferring this property shall provide that the State retains a possibility of reverter and shall provide that, in the event that the Walker Top Baptist Church

ceases to use the property for church purposes, the property shall revert to the State. The State may not otherwise sell or exchange the property.

~~The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.~~

~~(14) All lands and waters within the boundaries of Bushy Lake State Natural Area as of April 3, 2001, with the exception of the following tract: The portion of that certain tract or parcel of land at Bushy Lake State Natural Area in Cumberland County, Beaver Dam Township, described in Deed Book 3588, Page 583, and shown as the 0.58 acre parcel within tract 2 on the survey prepared by Lewis G. Paschal, Professional Land Surveyor, entitled "Recombination Survey for State of North Carolina" dated April 1989 and December 2000, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Bushy Lake State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.~~

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of ~~April 3, 2001,~~ 6 May 2003 with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of ~~April 3, 2001.~~ 6 May 2003. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes."

(17) All lands and waters within the Eno River State Park as of 6 May 2003 with the exception of the following tract: The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land."

SECTION 2. The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina:

(1) The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, Number Four Township, described in Deed Book 1286, Page 85, and containing 1.64 acres as

shown on the drawing prepared by the Division of Parks and Recreation entitled "Property to be Excepted Crowders Mountain State Park" dated 14 April 2003 and filed in the State Property Office.

(2) The portion of those certain tracts or parcels of land at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 925, Page 1284, and Deed Book 870, Page 1729 required for the right-of-way and easements for the relocation of SR 1904 within the Park and shown on the drawing prepared by Suttles Surveying P.A. entitled "Survey of the Proposed Centerline of the New Road Alignment for the State of North Carolina" bearing the preparer's file name 12455D.dwg, dated 10 April 2003 and filed in the State Property Office.

(3) The portion of that certain tract or parcel of land at South Mountains State Park in Burke County, Morganton Township, described in Deed Book 28, Page 607, Deed Book 28, Page 467, and Plat Book 3, Page 78, and containing 0.33 acres as shown on the drawing prepared by Hawkins Land Surveying entitled "Subdivision for Trustees of Walker Top Baptist Church" dated 26 September 2001 and filed with the State Property Office.

(4) The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office.

SECTION 3. G.S. 143-260.8(e) reads as rewritten:

"(e) In order to provide accessible information to the public concerning the State Nature and Historic Preserve, every law accepting or removing properties in the Preserve shall be codified in the General Statutes. A certified copy of every law accepting or removing properties in the Preserve shall be transmitted by the Secretary of State to the register of deeds in each county wherein these properties, or any part of them, are located, for filing and indexing in the grantor index."

SECTION 4. In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this act to the register of deeds of each county in which any portion of the property dedicated and accepted or removed by this act as part of the State Nature and Historic Preserve is located.

SECTION 5. Waynesborough State Park is deleted from the State Parks System pursuant to G.S. 113-44.14.

SECTION 6. This act is effective when it becomes law.

ATT #3
6/3/03

SENATE BILL 627:
State Nat. & Hist. Preserve Adds. & Removals

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Albertson
Date:	3 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	Proposed House Committee Substitute (S627-PCS-35303-RT-36) for 1st Edition		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 627 dedicates and accepts certain properties as part of the State Nature and Historic Preserve, removes certain lands from the Preserve, and deletes Waynesborough State Park from the State Parks System.***

CURRENT LAW: Section 5 of Article XIV of the Constitution of North Carolina authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve (Preserve) upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 113-44.14 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. G.S. 143-260.10 lists the current components of the Preserve.

BACKGROUND: Properties were last accepted into the Preserve in 2001. Since that time over 6,700 acres have been added to the North Carolina Park System. The Council of State has petitioned the General Assembly to accept into the Preserve various State parklands and historic sites. In its petition, the Council of State also requested that certain small parcels be deleted for various reasons.

In the past, the process to accept property into the Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina required a joint resolution adopted by a vote of three-fifths of the members of each house. Then, a bill codifying the joint resolution had to be enacted by a vote of three-fifths of the members of each house. In November 2002 voters in a statewide referendum approved a constitutional amendment that simplified the process of acceptance by providing that properties may be accepted into the Preserve through the enactment of a bill alone. This is the first time that properties have been accepted into the Preserve since the passage of the constitutional amendment.

BILL ANALYSIS: The Proposed Committee Substitute (PCS) for Senate Bill 627 does the following:

- The PCS accepts into the Preserve over 6,700 acres of property added to the North Carolina Park System since the last acceptance of properties in 2001 through 6 May 2003. The PCS dedicates and accepts Beech Creek Bog, Elk Knob State Natural Area and Lea Island State Natural Area as new components of the Preserve.

- The PCS removes the following properties from inclusion in the Preserve:
  - A portion of a parcel at Crowders Mountain State Park that contains 1.64 acres and is located in Cleveland County. This property is excepted in order to resolve multiple encroachments on the Park and to improve an irregular boundary in this section of the Park where these properties are located. The adjacent landowners had encroached on this property prior to the State's acquisition of the property for Crowders Mountain State Park in 2000. In reviewing these encroachments, staff of the Division of Parks and Recreation determined that the property was not needed for the management of the Park. The property will be sold to the adjacent landowners with the proceeds used for future land acquisition at Crowders Mountain State Park.
  - A portion of two parcels at South Mountains State Park that are needed for the realignment of Secondary Road 1904 within the Park. This is a NC Department of Transportation project that includes the realignment of a section of SR 1904 away from the Jacobs Fork and the construction of two high water bridges. The new high water bridges will replace existing low water bridges that have trapped Park visitors and staff in the Park after heavy rains.
  - A portion of a parcel at South Mountains State Park that contains a .33 tract located in Burke County. This property contains the Walker Top Baptist Church that has existed on the property for over 100 years. This property is excepted in order that it may be transferred to the Trustees of the Church to use it for Church purposes, with a clause providing that it shall revert to the State if it ever ceases to be used for church purposes.
  - A portion of a parcel at Eno River State Park that contains 11,000 square feet of a scenic easement. This property is excepted in order to allow for the exchange of easement area with the adjacent landowners who are developing their property. The easement area the State would receive in exchange is greater than the easement area that is being removed and would increase the width of the buffer the State Park and easement provides to the Eno River.
- The PCS amends the statute that directs the Secretary of State to forward a certified copy of the enacted law to the register of deeds of the counties in which the accepted properties are located, to require that the Secretary of State also forward copies of the law to the register of deeds of counties in which properties that have been removed from the Preserve are located.
- The PCS deletes Waynesborough State Park from the State Parks System. The Systemwide Plan for the North Carolina State Parks System for 2000 through 2005 issued by the Division of Parks and Recreation of DENR recommended that the Park be removed on the basis that the Park did not meet the criteria established for inclusion in the State Park System. The Park is currently closed.

PCS CHANGES TO ORIGINAL BILL: SB 627 as originally introduced provided for an extension of the deadline for the adoption of Coastal Habitat Protection Plans. However, SB 627 is no longer needed for this purpose because its House companion bill (HB 1134) has been ratified and presented to the Governor for signature.

EFFECTIVE DATE: The PCS would be effective when it becomes law

S627-SMRI-002

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
S.B. 627 A BILL TO BE ENTITLED AN ACT TO EXTEND THE DEADLINE BY WHICH COASTAL HABITAT PROTECTION PLANS MUST BE ADOPTED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

JNW. — Name of Committee

6-03-02 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Carroll Lawer	EGHS
Preston Pate	DMF
[illegible]	CMMTF
Kim Gibbard	NCLM
Dick Hamilton	NC WRC
Sheryl Stephens	DENR
[illegible]	NC Council
Sue Regier	Div Parks & Rec
[illegible]	
Ken Burgess	DENR
Robin Smith	DENR

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 10, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order):**

   HB 849 – ENVIRONMENTAL ENFORCEMENT ACCOUNTABILITY ACT – Rep. Weiss

   HB 989 – LIMIT SHELLFISH LEASE AREA IN CORE SOUND Rep. Wainwright

   SB 593 – EXTEND SWINE MORATORIA –

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 10, 2003

MINUTES

The House Committee on Environment and Natural Resources met June 10, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Mitch Gillespie, Jim Gulley, Phil Haire, Danny McComas, Eugene McCombs, Patrick McHenry, Ray Rapp, John Rhodes, Alex Warner, Jennifer Weiss, and Larry Womble. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:11 pm.

HB 849 – Environmental Enforcement Accountability Act (Attachment 1). Representative Weiss moved to adopt H849-CSSB-36 [v. 4] (Attachments 2 and 3) and be put before the Committee. Adopted. She said that the bill would authorize the Environmental Review Commission to study issues of environmental laws enforcement and the feasibility of a database for violations and enforcement actions. Following a short discussion, Representative Rapp moved for a favorable report, unfavorable to the original bill, and re-referred to the Committee on Rules. Passed.

Vice Chair LaRoque took the gavel.

HB 989 – Limit Shellfish Lease Area In Core Sound (Attachment 4). Representative Gibson spoke on the bill for Sponsor Representative Wainwright. He moved to adopt H989-CSSB-40 [v. 1] (Attachments 5 and 6). He said that the companion bill, SB 765, passed out of this Committee earlier this Session, and signed into law. The areas, which needed further study, were taken out of the original bill, HB 989, and put into this PCS, which will be sent to the Rules to be included in the Study Bill. In summary, the bill authorizes the Joint Legislative Commission on Seafood and Aquaculture to study various marine fisheries issues. Representative Haire moved for a favorable report, unfavorable to the original bill and re-referred to the Committee on Rules. Passed.

SB 593 – Extend Swine Moratoria (Attachments 7 and 8). Representative Gibson spoke on the bill for Senator Albertson. He said the bill would extend the moratoria on swine farm and swine waste management system expansion or construction until September 1, 2007. Counsel George Givens explained that finding an environmentally superior and economically feasibly technology has been assigned to the Animal and Poultry Waste Management at NCSU, headed by Dr. Mike Williams. He is currently reviewing some 18 different systems and is several years away from forming viable conclusions. Once those conclusions are reached, it will take some time to

implement and finance them; thus, the 4-year timetable. Representative Gibson said rather than saying this moratorium is a "band-aid", it is a "pause" button to not making any wrong or bad decisions in the future for one of the largest functions of Eastern North Carolina's economy. Additionally, he said that North Carolina probably leads the world in the animal waste technology. Representative Hackney moved for a favorable report. Passed.

Vice Chair LaRoque adjourned the meeting at 12:39 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

ATT # 1
6/10/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **1**

HOUSE BILL 849

Short Title:	Environmental Enforcement Accountability Act.	(Public)
Sponsors:	Representatives Weiss; Insko, Jeffus, and Luebke.	
Referred to:	Environment and Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH AND MAINTAIN A LIST OF CHRONIC VIOLATORS AND A DATABASE OF ENFORCEMENT ACTIONS AND TO FURTHER DISCOURAGE VIOLATIONS RELATING TO THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.12. List of chronic violators; enforcement database.**

(a) The Department of Environment and Natural Resources shall establish and maintain a chronic violators list that identifies each permittee or licensee required to obtain a permit or license issued by the Department of Environment and Natural Resources that, during the preceding five years, the Department of Environment and Natural Resources or a court determined was the subject of two or more enforcement actions or was convicted of a crime regarding a violation. The Department of Environment and Natural Resources shall make this list available to the public by publishing it on the web site of the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall remove a chronic violator from this list if the permittee or licensee has complied with all enforcement actions for the past violations or crimes that resulted in being included on this list and has not been the subject of an enforcement action or convicted of a crime regarding a violation for at least two years.

(b) Any permittee or licensee required to obtain a permit or license issued by the Department of Environment and Natural Resources shall notify the Department of Environment and Natural Resources within 30 days of being convicted of a crime regarding a violation.

(c) The Department of Environment and Natural Resources shall establish and maintain an enforcement database of violations and enforcement actions taken by the

Department of Environment and Natural Resources and shall make it available to the public by publishing it on the web site of the Department of Environment and Natural Resources. The enforcement database shall include all of the following:

(1) A list of each violation.

(2) The extent of each violation.

(3) Any enforcement action that is ongoing or that was taken in the preceding two years.

(4) The number and date of any notices of violations sent by the Department of Environment and Natural Resources prior to its taking an enforcement action.

(5) The results of each enforcement action taken by the Department of Environment and Natural Resources.

(d) The enforcement database established under subsection (c) of this section shall contain and be searchable by all of the following:

(1) The name of the violator and its permit number.

(2) The name of the facility at which the violation occurred, if applicable.

(3) The location at which the violation occurred.

(4) The nature of the violation, including whether the violation involved a discharge to air or water or onto land.

(e) The Department of Environment and Natural Resources shall adopt any rules needed to implement this section.

(f) As used in this section:

(1) 'Enforcement action' means an action taken by the Department of Environment and Natural Resources in response to a violation by a permittee or a licensee required to obtain a permit or license issued by the Department of Environment and Natural Resources. Enforcement action includes a civil penalty, an injunction, a special order by consent, a restraining order, and a stopwork order. Enforcement action does not include a notice of violation.

(2) 'Violation' means any violation of a federal or State law, regulation, or rule for the protection of the environment or any violation of a condition of a permit or license issued by the Department of Environment and Natural Resources."

SECTION 2. G.S. 143B-279.2 reads as rewritten:

"**§ 143B-279.2. Department of Environment and Natural Resources – duties.**

(a) It shall be the duty of the ~~Department:~~Department of Environment and Natural Resources:

(1) To provide for the protection of the environment;

(1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.).

(1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and the administration of environmental health progams.
(2) Repealed by Session Laws 1997-443, s. 11A.5.
(2a) To provide and keep a museum or collection of the natural history of the State and to maintain the North Carolina Biological Survey; and
(3) To provide for the management of the State's natural resources.

(b) The Department of Environment and Natural Resources shall, when considering the amount to assess as a civil penalty, consider the amount of money saved by noncompliance, in addition to all the other relevant factors that it may consider."

SECTION 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. Contracts with chronic environmental violators prohibited.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with any vendor that appears in the list, under G.S. 143B-279.12, of chronic violators of federal or State laws, regulations, or rules for the protection of the environment or conditions of permits or licenses issued by the Department of Environment and Natural Resources. The Department of Administration shall adopt rules needed to implement this section.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection that is false shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each occurrence."

SECTION 4. The Department of Environment and Natural Resources shall prepare a report describing its ability, within its existing resources, to comply with the requirements of G.S. 143B-279.12(a), as enacted by Section 1 of this act, and a detailed estimate of the costs and additional resources needed to create and maintain the database under G.S. 143B-279.12(c), as enacted in Section 1 of this act. The Department of Environment and Natural Resources shall submit the report to the Environmental Review Commission on or before January 1, 2004.

SECTION 5. Nothing contained in this act shall be construed as limiting any existing remedy for noncompliance available to the Department of Environment and Natural Resources under existing law.

SECTION 6. This act becomes effective September 1, 2003.

ATT #2
6/10/02

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 849
PROPOSED COMMITTEE SUBSTITUTE H849-CSSB-36 [v.4]

6/5/2003 8:23:23 AM

Short Title: Study Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE ESTABLISHMENT OF A LIST OF CHRONIC ENVIRONMENTAL VIOLATORS, THE ESTABLISHMENT OF A DATABASE OF ENFORCEMENT ACTIONS, AND OTHER MEASURES TO REDUCE VIOLATIONS OF ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Review Commission may study any of the following:

(1) Whether the Department of Environment and Natural Resources should establish a list of chronic violators of environmental laws. In its conduct of this study, the Commission may consider the criteria for being included on the list, the criteria for being removed from the list, and the resources necessary to establish and maintain the list. The Commission may also consider whether entities subject to Article 3 of Chapter 143 of the General Statutes should be prohibited from entering into contracts with persons that are included on the list.

(2) Whether the Department of Environment and Natural Resources should establish a database of violations and enforcement actions taken by the Department against violators of environmental laws. The Commission may consider what information the database should contain, how this information should be formatted, and the resources necessary to establish and maintain the list.

(3) Whether the Department of Environment and Natural Resources should consider the amount of money saved through noncompliance when determining the amount of a civil penalty.

SECTION 2. The Environmental Review Commission may request the assistance of the Department of Environment and Natural Resources and any other State agency necessary to conduct any of the studies authorized by this act.

SECTION 3. The Environmental Review Commission shall report its findings and recommendations, if any, including any legislative proposals, related to any of the studies authorized by this act to the 2004 Regular Session of the 2003 General Assembly.

SECTION 4. This act is effective when it becomes law.

#3
6/10/03

HOUSE BILL 849:
Study Environmental Enforcement

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Weiss
Date:	June 10, 2003	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed Committee Substitute H849-CSSB-36 [v.4]		

SUMMARY: ***The proposed committee substitute for House Bill 849 would authorize the Environmental Review Commission to study issues related to the enforcement of environmental laws.***

BILL ANALYSIS: The proposed committee substitute for House Bill 849 would authorize the Environmental Review Commission to study the following issues and report its findings and recommendations, if any, including any legislative proposals, to the 2004 Regular Session of the 2003 General Assembly:

- Whether the Department of Environment and Natural Resources (Department) should establish a list of chronic violators of environmental laws and whether State entities subject to State purchase and contract laws should be allowed to enter into contracts for goods or services with these chronic violators.
- Whether the Department should establish a database of violations and enforcement actions.
- Whether the Department should consider the amount of money saved through noncompliance when determining the amount of a civil penalty.

The Environmental Review Commission may request the assistance of the Department and any other State agency necessary to conduct any of these studies.

BACKGROUND: This act is effective when it becomes law.

ATT # 4
6/10/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 989*

Short Title:	Limit Shellfish Lease Area In Core Sound.	(Public)
Sponsors:	Representative Wainwright.	
Referred to:	Environment and Natural Resources.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AREA OF WESTERN CORE SOUND THAT MAY BE LEASED FOR THE CULTIVATION OF SHELLFISH AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT TO THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE ON THE IMPLEMENTATION OF THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) For purposes of this section:

(1) "Western Core Sound" is 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.

(2) "Lease" means a shellfish cultivation lease granted pursuant to G.S. 113-202.

SECTION 1.(b) It is the intent of the General Assembly to permanently limit the area within Western Core Sound that may be leased for the cultivation of shellfish to the area that is subject to a lease on July 1, 2003.

SECTION 1.(c) Notwithstanding G.S. 113-202, the Secretary of Environment and Natural Resources may grant a new lease or renew an existing lease in an area of Western Core Sound only if the area is subject to a lease on July 1, 2003.

SECTION 1.(d) This section shall not prohibit the transfer of a lease as provided in G.S. 113-202(k).

SECTION 2. The Division of Marine Fisheries in the Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on or before January 1, 2005, on the implementation of this act.

SECTION 3. Section 1 of this act becomes effective July 1, 2003. Sections 2 and 3 of this act are effective when the act becomes law.

ATT # 5
6/10/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 989*
PROPOSED COMMITTEE SUBSTITUTE H989-CSSB-40 [v.1]

6/4/2003 4:50:09 PM

Short Title: Marine Fisheries Studies. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONDUCT VARIOUS STUDIES RELATED TO MARINE FISHERIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Commission on Seafood and Aquaculture may study any of the following:

(1) The statutory changes recommended by the Marine Fisheries Commission regarding shellfish and their cultivation. In its conduct of this study, the Joint Legislative Commission on Seafood and Aquaculture may specifically consider recommendations in the August 2001, Hard Clam Fishery Management Plan; recommendations in the August 2001, Oyster Fishery Management Plan; and other recommendations of the Marine Fisheries Commission related to the shellfish leasing program.

(2) Whether to amend the maximum sustainable yield fisheries management standard.

(3) The establishment of a violation points system for marine fisheries licenses.

(4) Whether and to what extent the enforcement authority of marine fisheries inspectors should be expanded.

(5) Whether to allow marine fisheries inspectors to accept delegation of law enforcement powers from the National Marine Fisheries Service.

SECTION 2. The Joint Legislative Commission on Seafood and Aquaculture may request the assistance of the Division of Marine Fisheries of the Department of Environment and Natural Resources and any other State agency necessary to conduct any of the studies authorized by this act.

SECTION 3. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, including any legislative proposals, to the 2004 Regular Session of the 2003 General Assembly.

SECTION 4. This act is effective when it becomes law.

Att # 6
6/10/03

HOUSE BILL 989:
Marine Fisheries Studies

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Wainwright
Date:	June 10, 2003	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed Committee Substitute H989-CSSB-40 [v.1]		

SUMMARY: ***The proposed committee substitute for House Bill 989 would authorize the Joint Legislative Commission on Seafood and Aquaculture to conduct various marine fisheries studies.***

BILL ANALYSIS: The proposed committee substitute for House Bill 989 would authorize the Joint Legislative Commission on Seafood and Aquaculture to study the following items and report its findings and recommendations, if any, including any legislative proposals, to the 2004 Regular Session of the 2003 General Assembly:

- Statutory changes recommended by the Marine Fisheries Commission regarding shellfish and their cultivation.
- Whether to amend the maximum sustainable yield fisheries management standard.
- Establishment of a violation points system for marine fisheries licenses.
- Whether and to what extent the enforcement authority of marine fisheries inspectors should be expanded.
- Whether to allow marine fisheries inspectors to accept delegation of law enforcement powers from the National Marine Fisheries Service.

The Joint Legislative Commission on Seafood and Aquaculture may request the assistance of the Division of Marine Fisheries and any other State agency necessary to conduct any of these studies.

House Bill 989, as introduced, would have limited the area of Western Core Sound that could be leased for the cultivation of shellfish. Its companion bill, Senate Bill 765, received a favorable report from this committee on May 13, 2003, and was signed by the Governor on May 23, 2003.

EFFECTIVE DATE: This act is effective when it becomes law.

#7

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 593

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/15/03

Short Title: Extend Swine Moratoria. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS.

Whereas, the 1997 General Assembly established moratoria on the construction or expansion of certain swine farms and on lagoons and animal waste management systems for certain swine farms; and

Whereas, one of the original purposes of these moratoria was to allow completion of certain studies related to swine farms and animal waste management systems; and

Whereas, the 1998 General Assembly extended these moratoria and established exceptions for animal waste management systems that meet certain performance standards; and

Whereas, the 1999 General Assembly and the 2001 General Assembly further extended the moratoria so that moratoria have remained in effect continuously since 1 March 1997; and

Whereas, on 25 July 2000, the Attorney General of North Carolina entered into an agreement with Smithfield Foods, Incorporated, and certain other companies; and

Whereas, on 29 September 2000, the Attorney General of North Carolina entered into an agreement with Premium Standard Farms, Incorporated, and certain other companies; and

Whereas, on 13 March 2002, the Attorney General of North Carolina entered into an agreement with Frontline Farmers, Incorporated; and

Whereas, the companies that are parties to these agreements constitute a significant portion of the swine production capacity of the State; and

Whereas, these agreements commit the companies that are parities to these agreements to work cooperatively to develop and implement animal waste management

technologies that meet the performance standards established by the General Assembly; and

Whereas, the companies that are parties to these agreements have agreed to provide substantial resources to assist the State in the development and implementation of animal waste management technologies that meet the performance standards established by the General Assembly and that are economically feasible; and

Whereas, the Animal and Poultry Waste Management Center at North Carolina State University is currently evaluating a number of animal waste management technologies in order to identify one or more technologies that meet the performance standards established by the General Assembly and that are economically feasible, as provided in the Smithfield and related agreements; and

Whereas, on 28 January 2003, the Environmental Review Commission received a report from the Animal and Poultry Waste Management Center on progress in the evaluation of animal waste management technologies; and

Whereas, based on this report, it appears that additional time will be needed to complete the evaluation of all technologies currently being evaluated; and

Whereas, it also appears that the General Assembly will need some time to consider the results of this evaluation process once it has been completed and to enact whatever legislation it determines to be appropriate; and

Whereas, it further appears that some time may be required for the implementation of any legislation that may be enacted by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (a1) of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, and Section 1 of S.L. 2001-254, reads as rewritten:

"(a1) 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~~ to allow time for the completion of ongoing evaluations of animal waste management technologies and related research and studies; to allow the General Assembly to receive and act on the findings and recommendations of those ~~studies.~~evaluations, research, and studies; and to allow for the implementation of any legislation that may be enacted. 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 September ~~2003.~~2007. 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 permitted under G.S. 143-215.1 or Part 1A of

Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217."

SECTION 2. Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L. 1998-188, Section 2.2 of S.L. 1999-329, and Section 2 of S.L. 2001-254, reads as rewritten:

"Section 1.2. (a) 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 for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars ($150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until 1 September ~~2003,~~2007, 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. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective 1 September ~~2003,~~2007, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars ($150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

SECTION 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 4. This act is effective when it becomes law.

#8

SENATE BILL 593:
Extend Swine Moratoria.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Tim Dodge
Date:	June 10, 2003		Research Assistant for
Version:	2nd Edition		Environmental Issues

SUMMARY: ***Senate Bill 593 would extend the moratoria on swine farm and swine waste management system expansion or construction until September 1, 2007.***

CURRENT LAW: Under existing law, the moratoria will end September 1, 2003.

BILL ANALYSIS: Senate Bill 593 would extend the moratoria on the issuance of a permit by the Environmental Management Commission (EMC) for the construction of a new swine farm or expansion of an existing swine farm from September 1, 2003, until September 1, 2007. The extension would allow time for the completion of ongoing studies of animal waste management technologies and related research and to allow for the implementation of any legislation that may be enacted as a result of the studies.

EFFECTIVE DATE: The bill would become effective when it becomes law.

S593-SMSY-002

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
H.B. 849 A BILL TO BE ENTITLED AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH AND MAINTAIN A LIST OF CHRONIC VIOLATORS AND A DATABASE OF ENFORCEMENT ACTIONS AND TO FURTHER DISCOURAGE VIOLATIONS RELATING TO THE ENVIRONMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

Reported bill (PCS)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 849
PROPOSED COMMITTEE SUBSTITUTE H849-PCS45157-SB-36

Short Title: Study Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE ESTABLISHMENT OF A LIST OF CHRONIC ENVIRONMENTAL VIOLATORS, THE ESTABLISHMENT OF A DATABASE OF ENFORCEMENT ACTIONS, AND OTHER MEASURES TO REDUCE VIOLATIONS OF ENVIRONMENTAL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Review Commission may study any of the following:

(1) Whether the Department of Environment and Natural Resources should establish a list of chronic violators of environmental laws. In its conduct of this study, the Commission may consider the criteria for being included on the list, the criteria for being removed from the list, and the resources necessary to establish and maintain the list. The Commission may also consider whether entities subject to Article 3 of Chapter 143 of the General Statutes should be prohibited from entering into contracts with persons that are included on the list.

(2) Whether the Department of Environment and Natural Resources should establish a database of violations and enforcement actions taken by the Department against violators of environmental laws. The Commission may consider what information the database should contain, how this information should be formatted, and the resources necessary to establish and maintain the list.

(3) Whether the Department of Environment and Natural Resources should consider the amount of money saved through noncompliance when determining the amount of a civil penalty.

SECTION 2. The Environmental Review Commission may request the assistance of the Department of Environment and Natural Resources and any other State agency necessary to conduct any of the studies authorized by this act.

SECTION 3. The Environmental Review Commission shall report its findings and recommendations, if any, including any legislative proposals, related to any of the studies authorized by this act to the 2004 Regular Session of the 2003 General Assembly.

SECTION 4. This act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 989 A BILL TO BE ENTITLED AN ACT TO LIMIT THE AREA OF WESTERN CORE SOUND THAT MAY BE LEASED FOR THE CULTIVATION OF SHELLFISH AND TO DIRECT THE DIVISION OF MARINE FISHERIES TO REPORT TO THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE ON THE IMPLEMENTATION OF THIS ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

Reported bill (PCS)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 989*
PROPOSED COMMITTEE SUBSTITUTE H989-PCS60376-SB-40

Short Title: Marine Fisheries Studies. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONDUCT VARIOUS STUDIES RELATED TO MARINE FISHERIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Commission on Seafood and Aquaculture may study any of the following:

(1) The statutory changes recommended by the Marine Fisheries Commission regarding shellfish and their cultivation. In its conduct of this study, the Joint Legislative Commission on Seafood and Aquaculture may specifically consider recommendations in the August 2001, Hard Clam Fishery Management Plan; recommendations in the August 2001, Oyster Fishery Management Plan; and other recommendations of the Marine Fisheries Commission related to the shellfish leasing program.

(2) Whether to amend the maximum sustainable yield fisheries management standard.

(3) The establishment of a violation points system for marine fisheries licenses.

(4) Whether and to what extent the enforcement authority of marine fisheries inspectors should be expanded.

(5) Whether to allow marine fisheries inspectors to accept delegation of law enforcement powers from the National Marine Fisheries Service.

SECTION 2. The Joint Legislative Commission on Seafood and Aquaculture may request the assistance of the Division of Marine Fisheries of the Department of Environment and Natural Resources and any other State agency necessary to conduct any of the studies authorized by this act.

SECTION 3. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, including any legislative proposals, to the 2004 Regular Session of the 2003 General Assembly.

SECTION 4. This act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☒ Committee Substitute for
S.B. 593 A BILL TO BE ENTITLED AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

VISITOR REGISTRATION SHEET

Name of Committee _____ Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Preston Howard	MCIC
Nancy Thompson	MCIC
Mandi Lawler	UNCW
Kim Hibbard	NCLM
Anita Watters	"
David Mundith	NC State Grange
John Cymes	NC State Grange
John McHugh	GOV OFFICE
Robin Smith	DENR
Alan Briggs	Save Our State
Dana Holmes	CWMTF
Christopher Brook	Environmental Defense
Dylan Fuge	Environmental Defense
Chad Essick	Edmisten & Webb
Michelle Nowlin	SELC
Sabina Jang	David Knight
Wendy Rutter	TNC
Angie McMillan	TNC
Hoyer Gilbert	David Knight
David Knight	NC Sierra, NC Wildlife Fed
Elizabeth Owens	NCDOT
Stan Grue	CCNC
Trellis Dixon	NC Sierra Club
Jim Ridge	NC Conservation Network
Lauren Stoer	Sierra Club
Kari Bargess	NCDENR
Sheryl Stephens	DENR

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Dean Naujoks	Neuse River Foundation
Mary Absentzeer	Pamlico-Tar River Foundation
Grady McCallie	N.C. Conservation Network
John Bean	NC Enviro Def
Tyler Hustead	NC Enviro Def.
Jim Stephenson	NC Coastal Federation
Pricy Harrison	Beaufort NC
David Presgraves	NC PIRG
Jeremy Buchmeyer	" "
Martin Clark	NYDAICS
Rick Zechini	NC Assoc. of REALTORS
John McAlister	Duke Energy
[illegible]	DENR
Kim [illegible]	Gov's office

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 17, 2003
12:00 noon

1. **Call to Order**

2. **Bills (not necessarily in this order and as time allows):**

   ## FOR DISCUSSION ONLY:

   HB 1145 – CLOSURE OF INDUSTRIAL LAGOONS – Rep. Nesbitt
   HB 1188 – PHASE OUT SWINE WASTE LAGOONS & SPRAYFIELDS - Rep. Luebke

   ## FOR ACTION:

   SB 824 – ENVIRONMENTAL REPORTS CONSOLIDATION- Sen. Albertson

3. **Adjourn**

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 17, 2003

MINUTES

The House Committee on Environment and Natural Resources met June 17, 2003, in Room 643 of the Legislative Office Building at 12:00 noon. Pryor Gibson, Chair, was present. Other members attending were Vice Chairs Walt Church, Joe Hackney, Charles Johnson, and Stephen Laroque, and Committee members Lucy Allen, Curtis Blackwood, Becky Carney, Mitch Gillespie, Jim Gulley, Phil Haire, Patrick McHenry, Jean Preston, Ray Rapp, John Rhodes, Bonner Stiller, Jennifer Weiss, and Larry Womble. A Visitor Registration is attached and made part of these minutes.

Chair Gibson called the meeting to order at 12:10 pm.

SB 824 – Environmental Reports Consolidation (Attachment 1). Representative Johnson moved to adopt S824-PCS75255-RT-50 (Attachment 2); so adopted. Chief Counsel George Givens explained the bill, which is comprised of five components (Attachment 3), some of which have been passed in two technical corrections bills in Committee earlier. Sections 8, 9, 10, and 11 are clarifying changes. Section 11 would increase ERC membership by two (to an even number of 8)—ERC now has 7 House and 7 Senate members. Representative Gillespie moved to amend the bill to delete increasing the number of members in the title and incorporate the amendment into a new PCS, and give the PCS a favorable report, unfavorable to the original bill. Passed. Representative Haire moved to amend the bill to delete "2007" and replace it with "2005." (Attachment 5). Representative Gillespie reviewed his motion to incorporate both amendments into a new PCS for a favorable report, unfavorable to the original bill. Passed.

HB 1145 – Closure of Industrial Lagoons (Attachments 6 and 7). Representative Nesbitt discussed the bill and gave the history of the Ecusta Paper Mill in Transylvania County. He said that this bill is not a fix to industrial waste disposal, but it is a start. Industries must show financial responsibility for these lagoons. Representative Gillespie supported the bill and made these suggested points: (1) when EMC makes rules, all interested parties (stake holders) should be included; (2) the Legislature should get a review of any EMC rules prior to adoption; (3) power waste treatment plants should be excluded, or treat them differently than industrial lagoons; (4) be flexible with the timetable it might take longer that one year, under certain conditions; (5) land lease owners should not be liable for past waste disposal issues; and (6) hauling solid waste from waste treatment plants should not be included. Representative Nesbitt asked that the Committee consider studying this bill, and he would seek passage of some form of this bill next Session. Representative Gibson said that it is the intent of the Chair to send this bill and Representative Leubke's bill to ERC for study over the interim.

HB 1188 – Phase out Swine Waster Lagoons & Sprayfields (Attachments 8, 9, and 11). Representative Weiss move that H1188-PCS70322-RTf-31 (Attachment 10) be adopted by the Committee. Adopted. Representative Luebke said this bill is a direct opposite of SB 824, which was passed earlier in the meeting. It is part of the ongoing debate of what is good for our environment and our state. His bill terminates lagoons on September 1, 2000. He reintegrated that the technology is there; what is lacking is the political will.

Jerry Hancock, NC Travel & Tourism Coalition, said that we must manage this problem successfully. People that travel to North Carolina because of its reputation of clean water, clean air, scenic beauty and world-class recreation will not come. Thus, a vast part of North Carolina's economy, essential to the well being of our state and the ability to function as a progressive state depend on those environmental assets to maintain our international reputation. Deadlines and timetables do matter. This bill is reasonable and sets a reasonable timetable.

Michele Nolan, Attorney, Southern Environment Law Center, said that lagoons and spray fields, as the primary the waste disposal program now in place, are inappropriate for eastern North Carolina. The ground water contamination needs action and leadership. The health studies being published are documenting neurological effects and brain damage from those pollutants. There is support for banning of lagoons and spray fields. Representative Rhodes asked about number of violations. Ms. Noland said that more than 400 operations have high lagoon levels, 20 have been cited for over spraying and dumping of their lagoons into surface waters. There have been several evidences of "breaching" of lagoons.

Mr. Rick Dove, Keeper Liaison, Litigation Assistant, Waterkeeper Alliance and New River Foundation, with a video presentation showed pollution in streams and rivers, sores on fish, water discolored by pollution, and water unfit for swimming and fishing which affects human and animal health. Hog waste lagoons are the leading source of nutrient pollution in our state. Also, included in the pollution mix comes chickens and turkey. Something must be done by a date certain.

Don Webb, Alliance for Responsible Swine Industry, spoke in favor of the bill and asked the Committee to put a deadline on hog lagoons.

Chair Gibson adjourned the meeting at 1:22 pm.

Pryor Gibson, Chair

Shirlyn MacPherson, Committee Assistant

Att # 1
6/17/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 824*

Short Title:	Environmental Reports Consolidation.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2001-442 reads as rewritten:

"**SECTION 7.** Beginning 1 ~~March 2002,~~ September 2003, the ~~Department~~ Secretary of Environment and Natural Resources shall submit ~~a semiannual~~ an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M."

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

ATT # 2
6/17/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 824*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S824-PCS75255-RT-50

Short Title: Amend Environmental Laws-1. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES; TO AMEND THE REPORTING REQUIREMENT SET OUT IN S.L. 2001-442; TO INCREASE THE MEMBERSHIP OF THE ENVIRONMENTAL REVIEW COMMISSION BY TWO; TO EXTEND THE PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS INITIALLY ESTABLISHED BY SECTION 15.4 OF S.L. 1997-443; AND TO ESTABLISH AN EXCEPTION TO THE MORATORIUM INITIALLY ESTABLISHED BY SECTION 1.2 OF S.L. 1997-458 FOR FACILITIES THAT WERE APPROVED FOR FUNDING UNDER THE AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL AT THE TIME THE MORATORIUM WAS ESTABLISHED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-44.8(a) reads as rewritten:

"(a) The State of North Carolina offers unique archaeologic, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by ~~those~~ the people for their use and for the use of their visitors and descendants."

SECTION 2. G.S. 113-173(e) reads as rewritten:

"(e) Replacement RCGL. – The provisions of ~~G.S.~~ G.S. 113-168.1(h) apply to this section."

SECTION 3. Article 13A of Chapter 113 of the General Statutes (G.S. 113-145.1 through G.S. 113-145.8) is recodified as Article 18 of Chapter 113A of the General Statutes (G.S. 113A-251 through G.S. 113A-259). The Revisor of Statutes is authorized to correct any reference in the General Statutes to the statutes that are recodified by this section.

SECTION 4. G.S. 113A-232(a) reads as rewritten:

"(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by ~~that~~ the Department. The purpose of the Fund is to stimulate the use of conservation easements and conservation tax credits, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements."

SECTION 5. G.S. 130A-309.14(a1)(3) reads as rewritten:

"(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environment and Natural Resources a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information provided by the Department of Administration and the Department of Transportation to the Department of Environment and Natural Resources shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 6. G.S. 143-215.107B reads as rewritten:

"**§ 143-215.107B. Statewide goals for reduction in emissions of ~~nitrogen oxides;~~ oxides of nitrogen; report.**

It shall be the goal of the State to reduce emissions of ~~nitrogen~~ oxides of nitrogen (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each ~~year beginning 1 October 2000.~~year."

SECTION 7. G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to cause air ~~pollution;~~pollution.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause ~~such~~ any air-cleaning device to be constructed, installed, or operated."

SECTION 8. G.S. 143-726(d)(4) reads as rewritten:

"(4) The Secretary of ~~the Department of~~ Environment and Natural Resources."

SECTION 9. G.S. 143B-428 reads as rewritten:

"**§ 143B-428. Department of Commerce – declaration of policy.**

It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; ~~to promote the management of North Carolina's energy resources and the development of a State energy policy;~~ and to assure throughout State government, the coordination of North Carolina's economic development efforts."

SECTION 10. Section 7 of S.L. 2001-442 reads as rewritten:

"**SECTION 7.** Beginning 1 ~~March 2002,~~ September 2003, the ~~Department~~ Secretary of Environment and Natural Resources shall submit ~~a semiannual~~ an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M."

SECTION 11. G.S. 120-70.42 reads as rewritten:

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

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, ~~and~~ the Chair of the House of Representatives Committee on Environment and Natural Resources or the equivalent ~~committee.~~committee, the Chair of the Senate Committee on Appropriations – Natural and Economic Resources, and the Chair of the House of Representatives Committee on Appropriations – Natural and Economic Resources.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission

who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of ~~eight~~ nine members."

SECTION 12. Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, and Section 1.1 of S.L. 2002-176, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2003~~, 2007, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these three counties at least once a year to determine whether any animal waste management 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. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the three counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 13. Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254 and Section 1.2 of S.L. 2002-176, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than ~~15 October 1999,~~ 15 April ~~2000,~~and 15 October ~~2000, 15 April 2001, 15 October 2001, 15 April 2002, and 15 April 2003~~of each year beginning 15 October 1999 and shall submit a final report no later than ~~1~~ 15 October ~~2003~~2007 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance

with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. ~~143-215.10F.~~ 143–215.10F and the resources that would be required to expand the pilot program to all counties. The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the ~~2003~~ General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals."

SECTION 14. The moratorium established by Section 1.2 of S.L. 1997-458; as amended by Section 3 of S.L. 1998-188, Section 2.2 of S.L. 1999-329, Section 2 of S.L. 2001-254; and Section 2 of Senate Bill 593 if Senate Bill 593 becomes law; on new swine farms and lagoons and on the expansion of existing swine farms and lagoons shall not apply to any swine farm or lagoon that would otherwise be prohibited by the moratorium if, on or before 27 August 1997, the Soil and Water Conservation Commission allocated funds under the Agriculture Cost Share Program for Nonpoint Source Pollution Control established pursuant to G.S. 143-215.74 for the construction or expansion of the otherwise prohibited swine farm or lagoon. The Environmental Management Commission may issue a permit for an animal waste management system, as defined by G.S. 143-215.10B, or for a new swine farm or lagoon or the expansion of an existing swine farm or lagoon, as defined in G.S. 106-802, that is authorized by this section.

SECTION 15. 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 16. This act is effective when it becomes law.

Att #3
6/17/03

SENATE BILL 824:
Amend Environmental Laws - 1

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Senator Albertson
Date:	17 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	Proposed House Committee Substitute (S824-PCS75255-RT-50) for 1st Edition		

SUMMARY: ***The Proposed House Committee Substitute (PCS) for Senate Bill 824 does the following:***

- ***Makes clarifying, conforming and technical changes and corrections to environmental statutes.***
- ***Modifies the reporting requirements on implementation of the performance-based cleanup program for underground storage tanks to conform with the reporting requirement for the consolidated report on the Leaking Petroleum Underground Storage Tank Cleanup Program.***
- ***Increases the membership of the Environmental Review Commission by two.***
- ***Extends the pilot program for inspection of animal waste management systems and amends the reporting requirement for the pilot program.***
- ***Establishes an exemption to the moratoria on swine farm and swine waste management system expansion or construction.***

The bill would become effective when it becomes law.

BILL ANALYSIS: Sections 1, 2, and 4 through 8 of this PCS were included in House Bill 1083 (Environmental Technical Corrections) which received a favorable report from this Committee on 15 April 2003, and passed the House on 23 April 2003. Section 10 of this PCS was included in House Bill 1082 (Environmental Reports Consolidation) which received a favorable report from this Committee on 15 April 2003, and passed the House on 23 April 2003. The PCS would make the following changes:

Sections 1 and 2 make typographical corrections and stylistic changes in Chapter 113 of the General Statutes.

Section 3 recodifies Article 13A (Clean Water Management Trust Fund) of Chapter 113 (Conservation and Development) of the General Statutes as a new Article 18 of Chapter 113A (Pollution Control and Environment) of the General Statutes.

Section 4 amends G.S. 113A-232(a) to add the word "organizations" where it was inadvertently omitted.

Section 5 adds a sentence to G.S. 130A-309.14(a1)(3) where it was inadvertently omitted. The sentence directs the Department of Environment and Natural Resources (DENR) to include information provided

by the Department of Administration and the Department of Transportation in its annual report on the status of solid waste management efforts in the State.

Section 6 makes stylistic changes and deletes obsolete language in G.S. 143-215.107B.

Sections 7 and 8 make stylistic, clarifying, and conforming changes to environmental statutes.

Section 9 amends G.S. 143B-428 (Department of Commerce – declaration of policy) to delete the clause "to promote the management of North Carolina's energy resources and the development of a State energy policy". In 2000 the General Assembly transferred the Energy Policy Council from the Department of Commerce to the Department of Administration. Language similar to that being deleted by this section appears in G.S. 113B-6.

Section 10 modifies the frequency by which DENR is required to submit reports to the Environmental Review Commission (ERC) on implementation of the performance-based cleanup program for leaking petroleum underground storage tank sites from semiannually to annually. The bill also changes the report submittal date from March 1 to September 1 to conform to the reporting dates for the Leaking Petroleum Underground Storage Tank Cleanup Program.

Section 11 increases the membership of the ERC by adding the Chair of the Senate Committee on Appropriations – Natural and Economic Resources, and the Chair of the House of Representatives Committee on Appropriations – Natural and Economic Resources.

Sections 12 and 13 extend the animal operation inspection pilot program being conducted in three counties from 1 September 2003 to 1 September 2007. Under the pilot program, the Division of Soil and Water Conservation of DENR may perform the required annual inspection of animal operations permitted under Article 21 of Chapter 143 of the General Statutes. The bill directs DENR to report to the ERC and the Fiscal Research Division on the resources that would be required to expand the pilot program to all counties.

Section 14 provides an exemption from the moratoria on the construction and expansion of swine farms and on lagoons and animal waste systems for swine farms. The exemption would allow the EMC to issue a permit for the construction or expansion of a swine farm and on a lagoon and animal waste system for a swine farm if, on or before 27 August 1997 (the date on which the bill that originally enacted the moratoria became law), the Soil and Water Conservation Commission allocated funds under the Agriculture Cost Share Program for Nonpoint Source Pollution Control for the construction or expansion of the otherwise prohibited swine farm or lagoon. Under existing law the moratoria will end 1 September 2003. Senate Bill 593 (Extend Swine Moratoria), introduced by Senator Albertson, would extend the moratoria on the construction or expansion of swine farms and on lagoons and animal waste systems for swine farms until 1 September 2007.

Section 15 adds a severability clause to the bill. In the event that the courts declare a section or provision of the act unconstitutional or invalid, the portion of the bill not deemed unconstitutional or invalid would remain valid.

Section 16 provides that the bill would become effective when it becomes law.

S824-SMRI-002.doc

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATT # 4
6/17/03

EDITION No. _____

H. B. No. _____ DATE 6-17-03

S. B. No. 824 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Gillespie
(Sen.)

moves to ~~amend~~ the bill on page 1, line 5 through 7

(~~4~~ WHICH CHANGES THE TITLE

by rewriting those lines:

"THE REPORTING REQUIREMENT SET OUT IN S.L. 2001-442; TO EXTEND THE PILOT PROGRAM FOR INSPECTION OF ANIMAL" and

on page 3, line 28 through page 4, line 8

by deleting those lines and renumbering the subsequent sections accordingly.

SIGNED _____

ADOPTED 17 June 03 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Att # 5
6/17/03

EDITION No. _____

H. B. No. _____ DATE 6-17-03

S. B. No. 824 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Haire
Sen.)

1 moves to amend the bill on page 4, lines 14 and 40
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "2007" where it appears on
4
5 those lines and substituting "2005".
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SIGNED Rhett Haire

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATT. # 6
6/17/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1145

Short Title:	Closure of Industrial Lagoons.	(Public)
Sponsors:	Representatives Nesbitt and Hunter (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES GOVERNING CLOSURE OF INDUSTRIAL LAGOONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-213 is amended by adding a new subdivision to read:

"(31) The term 'industrial lagoon' means a confined body of water that is designed to hold industrial waste and that is installed as part of a treatment works."

SECTION 2. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

...

(18) To adopt rules governing the maintenance, operation, closure, and postclosure care of an industrial lagoon as provided in G.S. 143-215.3E."

SECTION 3. G.S. 143-215 is amended by adding a new section to read:

"**§ 143-215.3E. Requirements for industrial lagoons.**

(a) An owner of an industrial lagoon shall establish and maintain evidence of financial responsibility satisfactory to the Department to ensure sufficient availability of funds for facility closure and postclosure monitoring and corrective measures. The Department shall establish financial responsibility requirements based on characteristics of the industrial lagoon, and closure and postclosure requirements for the lagoon. Financial responsibility may be established through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee.

(b) An owner of an industrial lagoon shall close the lagoon no later than one year after cessation of the activities for which the lagoon was permitted, or at such time as otherwise may be required by law.

(c) After closure, the owner of an industrial lagoon shall perform any remediation of the lagoon's site that may be necessary to comply with the requirements of this Article and the rules adopted by the Commission.

(d) In the event that the owner of an industrial lagoon fails to perform the closure or postclosure remediation activities required by subsections (b) and (c) of this section, the Department shall use staff, equipment, or materials under its control or shall contract with any agent or contractor it deems appropriate to perform closure or postclosure remediation activities. When the Department is required to perform closure or postclosure remediation activities for an industrial lagoon, the Department shall keep a record of all expenses incurred for the services of State personnel and for the use of the equipment and material of the State in performing those activities. The Department shall apply the amount of financial responsibility established by the owner in accordance with subsection (a) of this section to the expenses incurred by the Department to close or remediate the site. The Department may seek reimbursement for those expenses incurred that exceed the amount of financial responsibility established by the owner through any legal means available. In order to secure collection of expenses incurred by the State that exceed the amount of financial responsibility established by the owner, the State is entitled to a lien upon any industrial lagoon site where it has performed closure and remediation activities, which lien may be foreclosed in the same manner as provided by law for foreclosure of county tax liens. Any person owning land on which an industrial lagoon is or has been located or who owned the land while the industrial lagoon was in operation, or any person who disposed of waste in the industrial lagoon shall have joint and several liability to the State for any costs incurred by the State to close or remediate the site that exceed the amount of financial responsibility established by the owner."

SECTION 4. G.S. 143-215.3D(e) is amended by adding a new subdivision to read:

"(8) Industrial lagoons. – An annual fee of one thousand dollars ($1,000) shall be imposed on any treatment works for which a water quality permit is required under G.S. 143-215.1 that includes an industrial lagoon. The payment of this fee shall be in addition to any initial application fee, annual fee, or fee for a major permit modification imposed by this section."

SECTION 5. Sections 1, 2, 3, and 5 of this act are effective when it becomes law. The Commission shall adopt temporary rules pursuant to G.S. 143-215.3(a), as enacted by Section 2 of this act, by 1 September 2004. The Commission shall adopt permanent rules pursuant to G.S. 143-215.3(a), as enacted by Section 2 of this act, so that the permanent rules are subject to legislative review pursuant to G.S. 150B-21.8 by the 2006 Regular Session of the 2005 General Assembly. Section 4 of this act becomes effective 1 January 2004.

ATT 7
6/17/03

HOUSE BILL 1145:
Closure of Industrial Lagoons

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Rep. Nesbitt
Date:	17 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1145 authorizes the Environmental Management Commission (EMC) to adopt rules governing the maintenance, operation, closure, and post-closure care of industrial lagoons. The bill requires an owner of an industrial lagoon to: (1) establish and maintain evidence of financial responsibility to ensure sufficient availability of funds for facility closure and post-closure monitoring and corrective measures, (2) close the lagoon within one year of cessation of activities for which the lagoon was permitted, and (3) perform post-closure remediation activities that may be necessary to comply with applicable statutes and rules. The bill also establishes an annual fee of $1,000 for any treatment works for which a water quality permit is required that includes an industrial lagoon.***

The bill is effective when it becomes law, except that the fee provision becomes effective 1 January 2004. The EMC is required to adopt temporary rules by 1 September 2004, and permanent rules by the 2006 Regular Session of the 2005 General Assembly.

CURRENT LAW: Currently, the General Statutes and Administrative Code impose no requirements specifically applicable to the closure of industrial lagoons. These lagoons are regulated, however, if they are part of a "treatment works" for which a water quality permit is required.

BILL ANALYSIS: The bill authorizes the EMC to adopt rules governing the maintenance, operation, closure, and post-closure care of industrial lagoons. The bill requires the following:

- The Department of Environment and Natural Resources (Department) must establish financial responsibility requirements for industrial lagoons based on a lagoon's characteristics and closure and post-closure requirements.
- An owner of an industrial lagoon must establish and maintain financial assurance to ensure sufficient availability of funds for facility closure and post-closure monitoring and corrective measures. The owner may establish financial assurance through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee.
- An owner of an industrial lagoon must close the lagoon within one year of cessation of activities for which the lagoon was permitted.
- An owner of an industrial lagoon must perform post-closure remediation of the site necessary to comply with the General Statutes and rules adopted by the EMC.
- In the event the owner fails to perform closure and necessary remediation of the site, the Department is required to perform these activities. The Department must recoup costs expended for such activities through the owner's financial responsibility. If the costs expended by the Department exceed the amount of financial responsibility established by the owner, the Department may seek reimbursement through any legal means, including a lien upon the site that may be foreclosed in the same manner as a county tax lien.

The bill imposes an annual fee of $1,000 on any treatment works for which a water quality permit is required and that includes an industrial lagoon.

BACKGROUND*: The impetus for House Bill 1145 is the recent controversy concerning the shutdown of the RFS Ecusta paper mill in Transylvania County. The plant includes a 75-acre waste lagoon that holds between 300 and 400 million gallons of wastewater that contains pollutants created in the process of making paper.

Ecusta's owner closed the mill and filed for bankruptcy in 2002. In early 2003, Ecusta's attorneys announced the lay-off of the small crew left at the plant to run pollution-control systems, and also directed the staff to shut off electricity and coal-fired boilers at the plant. Loss of electrical power at the facility would have resulted in the failure of seals in tanks and pipelines containing hazardous materials and waste and would have allowed the release of tens of thousands of gallons of hazardous waste to the French Broad and Davidson rivers. In addition, electricity is needed to pump wastewater and contaminated groundwater out of a coal ash landfill on the property. If the pumps stopped due to a lack of electricity, the landfill would have become saturated and could have collapsed. Collapse of the landfill would have resulted in a release of large amount of pollutants into a stream that drains into the Davidson River and then into the French Broad and would have endangered people and property in the immediate vicinity.

Given Ecusta's financial condition, the typical mechanisms used to enforce environmental regulations (civil penalties) would be ineffectual to prevent violations. Thus, the Attorney General filed a complaint and motion for a preliminary injunction to require compliance with all environmental laws and to halt the shutdown of the plant's electricity alleging that the loss of electrical power to the facility would allow the release of pollution to the environment from several sources at the plant. The complaint also asserted that Ecusta representatives told State officials that it would leave behind thousands of chemicals when it abandoned the site. In March, a judge barred Ecusta from turning off the power to pollution control systems.

Sale of the property has been difficult given concerns of potential buyers over liability for existing environmental contamination on the property. However, on 4 June 2003, a U.S. Bankruptcy Court approved a bid for the property made by a South Carolina firm. The successful bidder is currently engaged in negotiations with the Department and the U.S. Environmental Protection Agency regarding liability for the existing contamination on the property. The buyer has agreed to assume responsibility for the plant's environmental systems until the sale is consummated, with contribution from the owner of the plant prior to the entity that recently declared bankruptcy. Operation of the plant's environmental systems is roughly estimated to cost $50,000 per week or more than $2.6 million per year. If the environmental systems at the plant are not maintained, environmental regulators believe the property would become a Superfund site. As a Superfund site, officials estimate it would cost more than $100 million to clean up the property.

EFFECTIVE DATE: The bill is effective when it becomes law, except that the fee provision would become effective 1 January 2004. The EMC is required to adopt temporary rules by 1 September 2004, and permanent rules by the 2006 Regular Session of the 2005 General Assembly.

H1145-SMRI-001.doc

*This background information was gathered from press coverage from the Asheville Citizen Times and the Durham Herald-Sun.

ATT # 8
6/17/0

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1188

Short Title:	Phase Out Swine Waste Lagoons & Sprayfields.	(Public)
Sponsors:	Representatives Luebke; Bordsen, Weiss, Parmon, Insko, Jones, and Womble.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CODIFY AND MAKE PERMANENT THE SWINE FARM ANIMAL WASTE MANAGEMENT SYSTEM PERFORMANCE STANDARDS THAT THE GENERAL ASSEMBLY ENACTED IN 1998 AND TO PHASE OUT THE USE OF THE LAGOON AND SPRAYFIELD ANIMAL WASTE MANAGEMENT SYSTEM FOR SWINE FARMS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, and Section 1 of S.L. 2001-254, is codified as G.S. 143-215.10I and reads as rewritten:

"**§ 143-215.10I. Performance standards for animal waste management systems that serve swine farms; lagoon and sprayfield systems prohibited.**

(a) ~~Moratorium Established.~~ As used in this section:

(1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802.

~~(2) 'Animal waste management system' has the same meaning as in G.S. 143-215.10B.~~

~~(3)~~(2) 'Anaerobic lagoon' means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.

~~(4)~~(3) 'Anaerobic process' means a biological treatment process that occurs in the absence of dissolved oxygen.

~~(a1) 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 September 2003. 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 permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217.~~

~~(b) Exceptions. The moratorium established by subsection (a1) 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) (7), or (8) of this subsection.~~

~~(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 for that construction or expansion under G.S. 143-215.1 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 animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this subdivision, and is designed to be the subject of a research project. The Environmental Management Commission shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that additional research is necessary to evaluate whether the animal waste treatment system will:~~

~~a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.~~

~~b. Substantially eliminate atmospheric emissions of ammonia.~~

~~c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.~~

~~d. Substantially eliminate the release of disease transmitting vectors and airborne pathogens.~~

~~e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.~~

~~(8) Construction~~ The Department shall not issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system that ~~does not employ~~employs an anaerobic lagoon as the primary method of treatment and ~~does not employ~~ land application of waste by means of a sprayfield as the method of waste disposal. ~~except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this subdivision. The Environmental Management Commission may issue permits under this subdivision only in a manner consistent with G.S. 143-215.1(b)(2).~~ The Commission ~~shall~~ may issue a permit for the ~~construction~~ construction, operation, or expansion of an animal waste management system under this ~~subdivision~~ Article only if the Commission ~~determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the swine farm for at least a year, that the animal waste management system has been evaluated for at least a year, and that sufficient data exists to establish~~determines that the animal waste management system ~~will:~~will meet or exceed all of the following performance standards:

~~a.~~(1) Eliminate the discharge of animal waste to surface ~~waters~~ water and groundwater through direct discharge, seepage, or runoff.

~~b.~~(2) Substantially eliminate atmospheric ~~emissions~~ emission of ammonia.

~~c.~~(3) Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.

~~d.~~(4) Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.

~~e.~~(5) Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

~~(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 (8) 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.~~

~~(d) Rule Making Not Required; Administrative and Judicial Review. Notwithstanding the provisions of Article 2A of Chapter 150B of the General Statutes, this section shall not be construed to obligate the Commission or the Department to adopt a temporary or permanent rule to implement this section. The Commission and the Department shall implement the provisions of this section by evaluating each application for a permit for an animal waste management system on a case-by-case basis. A decision of the Commission or the Department under this section is subject to administrative and judicial review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes.~~"

SECTION 2. This act becomes effective September 1, 2003, and applies to any application for a new permit or to modify a permit for an animal waste management system that serves a swine farm. An animal waste management system that serves a swine farm for which a permit was issued prior to September 1, 2003, and that does not meet the requirements of G.S. 143-215.10I, as enacted by Section 1 of this act, may continue to operate under, and shall operate in compliance with, that permit until the later of September 1, 2008, or 10 years from the date on which the animal waste management was first permitted or deemed permitted. The owner or operator of an animal waste management system that employs a lagoon and sprayfield system that is phased out pursuant to this act shall close all of the components of the animal waste management system in compliance with all applicable federal and State laws, regulations, and rules.

ATT. # 9
6/17/07

HOUSE BILL 1188:
Phase Out Swine Waste Lagoons & Sprayfields

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representative Luebke
Date:	17 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	1st Edition		

SUMMARY: ***House Bill 1188 would do the following: codify and make permanent certain performance standards for swine farm animal waste management systems (performance standards); delete the provision that establishes moratoria on the construction and expansion of swine farms and on lagoons and animal waste management systems for swine farms; provide that the Environmental Management Commission (EMC) may issue a permit for the construction, operation, or expansion of an animal waste management system only if the EMC determines that the system meets or exceeds the performance standards; provide that an owner or operator of an animal waste management system that employs a lagoon and sprayfield system that is phased out pursuant to the provisions of the bill must close all of the components of the animal waste management system in compliance with all applicable federal and State laws.***

The bill would become effective 1 September 2003 and would apply to any permit applications for a swine waste management system. A swine waste management system for which a permit was issued prior to 1 September 2003, and that does not meet the requirements provided in the bill may continue to operate under that permit until the later of 1 September 2008, or 10 years from the date on which the swine waste management system was first permitted.

CURRENT LAW: Moratoria on the construction and expansion of swine farms and on lagoons and animal waste systems for swine farms have been in effect since 1997. In 1998 the General Assembly established exceptions from the moratoria for swine waste management systems that meet certain performance standards. Under existing law the moratoria will end 1 September 2003.

BILL ANALYSIS: The bill would:

- Codify and make permanent performance standards for swine waste management systems. A system must meet or exceed all of the following performance standards:
  - Eliminate the discharge of animal waste to surface water and groundwater through direct discharge, seepage, or runoff.
  - Substantially eliminate atmospheric emission of ammonia.
  - Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel of land on which the swine farm is located.
  - Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
  - Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

- Delete the provision that establishes moratoria on the construction and expansion of swine farms and on lagoons and animal waste systems for swine farms.
- Provide that DENR shall not issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the method of waste disposal.
- Provide that the EMC may issue a permit for the construction, operation, or expansion of an animal waste management system only if the EMC determines that the system meets or exceeds the performance standards listed above.
- Provide that an owner or operator of an animal waste management system that employs a lagoon and sprayfield system that is phased out pursuant to the provisions of the bill must close all of the components of the animal waste management system in compliance with all applicable federal and State laws.

EFFECTIVE DATE: The bill would become effective 1 September 2003 and would apply to any permit applications for a swine waste management system. A swine waste management system for which a permit was issued prior to 1 September 2003, and that does not meet the requirements provided in the bill may continue to operate under that permit until the later of 1 September 2008, or 10 years from the date on which the swine waste management system was first permitted.

NOTE: Senate Bill 593 (Extend Swine Moratoria), introduced by Senator Albertson, would extend the moratoria on the construction or expansion of swine farms and on lagoons and animal waste systems for swine farms until 1 September 2007. The bill was received favorably by this Committee on 10 June 2003.

H1188-SMRI-001.doc

ATT # 10
6/17/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1188
PROPOSED COMMITTEE SUBSTITUTE H1188-PCS70322-RTf-31

Short Title: Phase Out Swine Waste Lagoons/Fees. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CODIFY AND MAKE PERMANENT THE SWINE FARM ANIMAL WASTE MANAGEMENT SYSTEM PERFORMANCE STANDARDS THAT THE GENERAL ASSEMBLY ENACTED IN 1998, TO PHASE OUT THE USE OF THE LAGOON AND SPRAYFIELD ANIMAL WASTE MANAGEMENT SYSTEM FOR SWINE FARMS, AND TO INCREASE THE FEES APPLICABLE TO ANIMAL WASTE MANAGEMENT SYSTEMS FOR SWINE FARMS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, and Section 1 of S.L. 2001-254, is codified as G.S. 143-215.10I and reads as rewritten:

"**§ 143-215.10I. Performance standards for animal waste management systems that serve swine farms; lagoon and sprayfield systems prohibited.**

(a) ~~Moratorium Established.~~ As used in this section:

(1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802.

~~(2) 'Animal waste management system' has the same meaning as in G.S. 143-215.10B.~~

~~(3)~~(2) 'Anaerobic lagoon' means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.

~~(4)~~(3) 'Anaerobic process' means a biological treatment process that occurs in the absence of dissolved oxygen.

~~(a1) 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 September 2003. 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 permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217.~~

~~(b) Exceptions. The moratorium established by subsection (a1) 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) (7), or (8) of this subsection.~~

~~(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 for that construction or expansion under G.S. 143-215.1 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 animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this subdivision, and is designed to be the subject of a research project. The Environmental Management Commission shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that additional research is necessary to evaluate whether the animal waste treatment system will:~~

~~a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.~~

~~b. Substantially eliminate atmospheric emissions of ammonia.~~

~~c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.~~

~~d. Substantially eliminate the release of disease transmitting vectors and airborne pathogens.~~

~~e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.~~

~~(8) Construction~~ The Department shall not issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system that ~~does not employ~~employs an anaerobic lagoon as the primary method of treatment and ~~does not employ~~ land application of waste by means of a sprayfield as the method of waste disposal. ~~except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this subdivision. The Environmental Management Commission may issue permits under this subdivision only in a manner consistent with G.S. 143-215.1(b)(2).~~ The Commission ~~shall~~ may issue a permit for the ~~construction~~ construction, operation, or expansion of an animal waste management system under this ~~subdivision~~ Article only if the Commission ~~determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the swine farm for at least a year, that the animal waste management system has been evaluated for at least a year, and that sufficient data exists to establish~~determines that the animal waste

management system ~~will:~~will meet or exceed all of the following performance standards:

~~a.~~(1) Eliminate the discharge of animal waste to surface ~~waters~~ water and groundwater through direct discharge, seepage, or runoff.

~~b.~~(2) Substantially eliminate atmospheric ~~emissions~~ emission of ammonia.

~~c.~~(3) Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.

~~d.~~(4) Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.

~~e.~~(5) Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

~~(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 (8) 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.~~

~~(d) Rule Making Not Required; Administrative and Judicial Review. Notwithstanding the provisions of Article 2A of Chapter 150B of the General Statutes, this section shall not be construed to obligate the Commission or the Department to adopt a temporary or permanent rule to implement this section. The Commission and the Department shall implement the provisions of this section by evaluating each application for a permit for an animal waste management system on a case-by-case basis. A decision of the Commission or the Department under this section is subject to administrative and judicial review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes.~~"

SECTION 2. G.S. 143-215.10G reads as rewritten:

"**§ 143-215.10G. Fees for animal waste management systems.**

(a) The Department shall charge an annual permit fee of all animal operations other than swine farms, as defined in G.S. 106-802, 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 fifty dollars ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, three hundred dollars ($300.00).

(a1) The Department shall charge an annual permit fee of all swine farms, as defined in G.S. 106-802, 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, one hundred fifty dollars ($150.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, five hundred dollars ($500.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, one thousand dollars ($1,000).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part."

SECTION 3. Section 1 of this act becomes effective 1 September 2003 and applies to any application for a new permit or to modify a permit for an animal waste management system that serves a swine farm. An animal waste management system that serves a swine farm for which a permit was issued prior to 1 September 2003 and that does not meet the requirements of G.S. 143-215.10I, as enacted by Section 1 of this act, may continue to operate under, and shall operate in compliance with, that permit until the later of 1 September 2008 or 10 years from the date on which the animal waste management was first permitted or deemed permitted. The owner or operator of an animal waste management system that employs a lagoon and sprayfield system that is phased out pursuant to this act shall close all of the components of the animal waste management system in compliance with all applicable federal and State laws, regulations, and rules. Section 2 of this act becomes effective 1 January 2004. Section 3 of this act is effective when this act becomes law.

Rep. Luebke
ATT # 11
6/17/03

NEWS&OBSERVER

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Other Opinion

Hogs: no more wasted time

BY DANIEL J. WHITTLE

RALEIGH – When the U.S. Environmental Protection Agency ordered oil refineries to take the lead out of gasoline in the 1970s, the industry resisted, saying that it couldn't be done. Research was incomplete and viable alternatives were simply not available, and such a ban would surely cost billions of dollars.

Thankfully, the EPA placed a high priority on public health and stuck to its guns. The firm ban on lead prompted the industry to develop innovative, safer alternatives at a fraction of the cost originally predicted.

This week, the General Assembly has the opportunity to exercise similar resolve on the issue of hog waste. A bill to ban hog waste lagoons permanently will be heard in the House Environment Committee on Thursday. House Bill 1188, introduced by Durham's Rep. Paul Luebke, would prevent new open-air hog waste lagoons from being built, and would phase out use of all existing lagoons on large confined hog farms by 2008. If enacted, this bill would provide a lasting solution to an almost two-decades old public health and environmental crisis.

A competing bill that has already cleared the state Senate simply extends the current moratorium on new hog lagoons for another four years. This bill leaves the door open to lagoons in the future and does nothing to curb pollution from existing hog farms.

Opponents to the Luebke bill assert that a ban on lagoons would be too costly and is premature because research on alternative technologies is still under way. Those claims are as hollow as the oil industry's claims 30 years ago.

There is no shortage of ideas for treating hog waste in a manner that reduces public health risks and eliminates air and water pollution. Anaerobic digesters can turn hog manure into electricity. Several promising technologies already used to treat other kinds of waste are being tested on hog farms by researchers at N.C. State University.

POINT OF VIEW

When lawmakers enacted a moratorium on new hog waste lagoons in 1997, they expected research to be completed within a year or two and that alternatives would be identified to quickly replace existing lagoons. When that didn't happen, the legislature extended the moratorium again and again, each time ostensibly waiting for research results before deciding what to do to. Then-Attorney General Mike Easley gave researchers a boost three years ago when he convinced Smithfield Foods to spend $15 million on technology research at N.C. State.

Six years after the initial moratorium, little has changed. The pork industry continues to defend antiquated waste lagoons and seems in no hurry for the research to be completed. But research is not an end unto itself. Good technologies already exist and should be used on hog farms now. Additional research will inevitably fine-tune and improve them, but that is no excuse to further delay their implementation.

Pollution from hog farms will not disappear if the legislature simply extends the moratorium again. Odor will still be pervasive and hog farms will continue to be a major source of water pollution. Ammonia nitrogen from hog farms will continue to rain down on the soggy coastal plain, further degrading rivers already choked with excess nitrogen. And cynicism among those living near hog farms will only grow. Many neighbors have long given up hope that their concerns rank very high in Raleigh.

That is precisely why lawmakers should act now to end the use of hog lagoons. Without a firm mandate, there will be little incentive to complete research or to implement the alternative technologies that research identifies. In fact, under the agreement between the attorney general and Smithfield Foods, only 10 percent of the state's hog farms will be required to use alternative waste technologies once they are identified. For other farms, it will be business as usual unless lawmakers take decisive action now.

An outright ban on lagoons will not spell economic catastrophe for farmers, as industry lobbyists claim. To the contrary, a ban will accelerate research, breed innovation and competition and produce affordable alternatives. For those farmers most in need, sufficient federal dollars are available under the federal Farm Bill to help them make the transition.

Another moratorium extension suggests that public health and environmental protection can wait another four years or even longer. Imposing a ban now sends a strong signal to those living downwind and downstream of hog farms that help is finally on the way.

Daniel Whittle is a senior attorney with the Raleigh office of Environmental Defense, a national advocacy group.

VISITOR REGISTRATION SHEET

EMC | June 12 - 03

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Dale Weston	New River Foundation
JOHN LONG	MARTIN MARIETTA
[illegible]	CAA
[illegible]	MCIC
Ram Carpenter	NCPC
Kim Hibbard	NCLM
Nancy Thompson	MCIC
Stephanie Simpson	NCAR
JERRY Henderson	N.C. P.C.
John Cyrus	N C State Grange
Jim Blackburn	County Commissioners Assoc.
Jeremy Wilson	Intern - Haire
Chad Essick	Edmisten + Webb
Angie McMillan	TNC
Wendy Rutter	TNC
Sabina Jangi	David Knight.
Ross M Smith	PCS PHOSPHATE
Robin Smith	DENR
Kari Boursess	DENR
TOM MATTISON	River Keeper
RICK DOVE	WATERKEEPER ALLIANCE
DON Webb	A.R.S.I Alliance for a Responsible Swine I
Carroll Lawson	NC Trial Lawyers Coalition
Alan Briggs	Save Our State
Steve Hall	Conservation Council
Kirsten Collings	CCNC
Lisa Page	Conservation Council

VISITOR REGISTRATION SHEET

ENR. 6-12

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Elizabeth Ouzts	NCPIRG
R Wilkinson	Carlton Lobbying Firm
John McAlister	Duke Energy

VISITOR REGISTRATION SHEET

Envr. — 6-12

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
David Knight	NC Sierra Club, NCWF
Jimmy Peyre	NC Conservation Network
Lisa Walter	SELC
Gordon McNeill	N.C. Coastal Natural
Dustin Taylor	SELC
Michael Edwards	SELC
Amy Vukovich	SELC
CHARLOTTE MITCHELL	SELC
Lauren Boers	NC Sierra Club
Ghassan Hamra	NC Sierra Club
[illegible]	DAVID KNIGHT
Tyler Hunstrild	NC Enviro Def
[illegible]	NASW
MATTHEW HANCHEY	SELC
Greg Harper	
Chris Thornburg	Environmental Defense
Karen Black	CWMTF
Dan Fry	Environmental Defense
Chris Brook	Environmental Defense
Courtney Washburn	NC Sierra Club
Tom BEASLEY	NC ENVIRO DEFENSE
Michelle Nowlin	SELC
Brian Harrison	Beaufort NC
Molly Diggins	Sierra Club
Martha Glenn	NCDAICS
DENNIS RAMSEY	DENR/DWQ
R. ROGERS	DENR
Dan Whittle	ENV. DEFENSE

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Gibson** (Chair) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☐ Committee Substitute for
S.B. 824 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

Bill reported from Comm 6/17/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 824*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S824-PCS35327-RT-52

Short Title: Amend Environmental Laws-1. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES; TO AMEND THE REPORTING REQUIREMENT SET OUT IN S.L. 2001-442; TO EXTEND THE PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS INITIALLY ESTABLISHED BY SECTION 15.4 OF S.L. 1997-443; AND TO ESTABLISH AN EXCEPTION TO THE MORATORIUM INITIALLY ESTABLISHED BY SECTION 1.2 OF S.L. 1997-458 FOR FACILITIES THAT WERE APPROVED FOR FUNDING UNDER THE AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL AT THE TIME THE MORATORIUM WAS ESTABLISHED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-44.8(a) reads as rewritten:

"(a) The State of North Carolina offers unique archaeologic, geologic, biological, scenic, and recreational resources. These resources are part of the heritage of the people of this State. The heritage of a people should be preserved and managed by ~~those~~ the people for their use and for the use of their visitors and descendants."

SECTION 2. G.S. 113-173(e) reads as rewritten:

"(e) Replacement RCGL. – The provisions of ~~G.S.~~ G.S. 113-168.1(h) apply to this section."

SECTION 3. Article 13A of Chapter 113 of the General Statutes (G.S. 113-145.1 through G.S. 113-145.8) is recodified as Article 18 of Chapter 113A of the General Statutes (G.S. 113A-251 through G.S. 113A-259). The Revisor of Statutes is authorized to correct any reference in the General Statutes to the statutes that are recodified by this section.

SECTION 4. G.S. 113A-232(a) reads as rewritten:

"(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by ~~that~~ the Department. The purpose of the Fund is to stimulate the use of conservation easements and conservation tax credits, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements."

SECTION 5. G.S. 130A-309.14(a1)(3) reads as rewritten:

"(3) The Department of Administration and the Department of Transportation shall each provide by 1 October of each year to the Department of Environment and Natural Resources a detailed description of the respective Agency's review and revision of bid procedures and purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The information provided by the Department of Administration and the Department of Transportation to the Department of Environment and Natural Resources shall also be included in the report required by G.S. 130A-309.06(c)."

SECTION 6. G.S. 143-215.107B reads as rewritten:

"**§ 143-215.107B. Statewide goals for reduction in emissions of ~~nitrogen oxides;~~ oxides of nitrogen; report.**

It shall be the goal of the State to reduce emissions of ~~nitrogen~~ oxides of nitrogen (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each ~~year beginning 1 October 2000.~~year."

SECTION 7. G.S. 143-215.108(a) reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to cause air ~~pollution;~~pollution.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause ~~such~~ any air-cleaning device to be constructed, installed, or operated."

SECTION 8. G.S. 143-726(d)(4) reads as rewritten:

"(4) The Secretary of ~~the Department of~~ Environment and Natural Resources."

SECTION 9. G.S. 143B-428 reads as rewritten:

"**§ 143B-428. Department of Commerce – declaration of policy.**

It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; ~~to promote the management of North Carolina's energy resources and the development of a State energy policy;~~ and to assure throughout State government, the coordination of North Carolina's economic development efforts."

SECTION 10. Section 7 of S.L. 2001-442 reads as rewritten:

"**SECTION 7.** Beginning 1 ~~March 2002,~~ September 2003, the ~~Department~~ Secretary of Environment and Natural Resources shall submit ~~a semiannual~~ an annual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M."

SECTION 11. Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, and Section 1.1 of S.L. 2002-176, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2003,~~ 2005, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these three counties at least once a year to determine whether any animal waste management 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. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in

each of these three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the three counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 12. Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254 and Section 1.2 of S.L. 2002-176, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than ~~15 October 1999,~~ 15 April ~~2000,~~and 15 October ~~2000, 15 April 2001, 15 October 2001, 15 April 2002, and 15 April 2003~~of each year beginning 15 October 1999 and shall submit a final report no later than ~~1~~ 15 October ~~2003~~2005 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. ~~143-215.10F.~~ 143-215.10F and the resources that would be required to expand the pilot program to all counties. The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the ~~2003~~ General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals."

SECTION 13. The moratorium established by Section 1.2 of S.L. 1997-458; as amended by Section 3 of S.L. 1998-188, Section 2.2 of S.L. 1999-329, Section 2 of S.L. 2001-254; and Section 2 of Senate Bill 593 if Senate Bill 593 becomes law; on new swine farms and lagoons and on the expansion of existing swine farms and lagoons shall not apply to any swine farm or lagoon that would otherwise be prohibited by the moratorium if, on or before 27 August 1997, the Soil and Water Conservation Commission allocated funds under the Agriculture Cost Share Program for Nonpoint Source Pollution Control established pursuant to G.S. 143-215.74 for the construction or expansion of the otherwise prohibited swine farm or lagoon. The Environmental Management Commission may issue a permit for an animal waste management system, as defined by G.S. 143-215.10B, or for a new swine farm or lagoon or the expansion of an existing swine farm or lagoon, as defined in G.S. 106-802, that is authorized by this section.

SECTION 14. 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 15. This act is effective when it becomes law.

2003-2004 Standing Committees

Box

Box Contents

4	2003 House Finance
	2003 House Finance - 2nd Extra Session, Dec. 9