2003-2004

SENATE AGRICULTURE, ENVIRONMENT & NATURAL RESOURCES

COMMITTEE MINUTES

SENATE AGRICULTURE COMMITTEE - 2003-2004 SESSION

MEMBER	LOCATION	PHONE	LEGISLATIVE ASST.
Albertson, Charles W. **Chairman**	525-LOB	3-5705	Cindy Brooks **Committee Assistant**
Lucas, Jeanne, **Vice Chair**	620-LOB	3-4599	Bernie David-Yerumo
Weinstein, David, **Vice Chair**	2108-OB	3-5651	Dee Bagley
Kinnaird, Ellie, **Vice Chair**	2115-LB	3-5804	Kathie Young
Allran, Austin, **Vice Chair**	516-LOB	3-5876	Carol Walker
Horton, Hamilton, **Ranking Minority**	1117-LB	3-7850	Genie Clark
Clodfelter, Dan	406-LOB	5-8381	Wanda Joyner
Gulley, Wib	408-LOB	5-3036	Carol Resar
Jenkins, Clark	409-LB	5-3040	Carolyn Gooden
Queen, Joe Sam	2111-LB	3-3460	Katie Gooch
Reeves, Eric	1028-LB	5-6400	Margie Penven
Thomas, Scott	622-LOB	3-6275	Susanne Gunter
Hargett, Cecil	620-LOB	5-3034	Surena Henderson
Holloman, Robert	522-LOB	5-3032	Irma Avent-Hurst
Bingham, Stan	2117-LB	3-5665	Judy Chriscoe
Brock, Andrew	1101-LB	5-0690	Tabatha Walker
Garwood, John	1118-LB	3-5742	Phyllis Porter
Hartsell, Fletcher	518-LOB	3-7223	Gerry Johnson
Smith, Fred	1026-LB	3-5850	Allen Bean
Webster, Hugh	1119-LB	3-5745	Darrell Malcolm
Tillman, Jerry	628-LOB	3-5870	Yvonne Hall

Committee Counsel

Givens, George	**LOB-545**	**3-2578**
Hudson, Jeffrey	**LOB-545**	**3-2578**
Riley, Barbara	**LOB-545**	**3-2578**
Dodge, Tim	**LOB-545**	**3-2578**
Jennifer L. McGinnis	**LOB-545**	**3-2578**

Feb. 2004

2003-2004 Biennium

Leg. Day: H-102/S-102

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0047	Baker	ADOPT CAROLINA LILY AS STATE WILDFLOWER.	*SR	Ch. SL 2003-426	04-02-03	07-08-03
H0727	Culp	SOIL AND WATER CONSERVATION COMMISSION.	SR	Ch. SL 2003-198	05-15-03	06-03-03
H0831=	Gibson	COASTAL RECREATIONAL FISHING LICENSE/FUND.	*S	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	07-19-03	
H0868=	Culpepper	IMPROVE ENVIRONMENTAL ENFORCEMENT.	*S	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	05-05-03	
H0897=	Gibson	UNDERGROUND STORAGE TANK PRGM. AMENDS.	*SR	Ch. SL 2003-352	05-05-03	07-08-03
H0974	Hill	PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK.	*SR	Ch. SL 2003-367	06-11-03	06-24-03
H0974	Hill	PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK.	*SR	Ch. SL 2003-367	06-26-03	07-08-03
H0978=	Cole	VETERINARY BD. AGREEMENTS/IMPAIRED VETS.	*SR	Ch. SL 2003-139	04-24-03	05-21-03
H0987	Wainwright	AMEND FISHERIES PROCLAMATION PROCESS.	*SR	Ch. SL 2003-154	05-05-03	05-13-03
H0996=	Preston	MONITOR COASTAL WATER QUALITY.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-24-03	
H1025	Jeffus	HAW RIVER STATE PARK.	SR	Ch. SL 2003-108	05-01-03	05-13-03
H1028	K. Williams	EROSION CONTROL STUCTURES.	*SR	Ch. SL 2003-427	06-18-03	06-24-03
H1062	McLawhorn	LOCAL WATER SUPPLY PLANS.	*SR	Ch. SL 2003-387	04-28-03	06-10-03
H1062	McLawhorn	LOCAL WATER SUPPLY PLANS.	*SR	Ch. SL 2003-387	06-17-03	06-24-03
H1078	Gibson	MAYO RIVER STATE PARK.	*SR	Ch. SL 2003-106	05-05-03	05-13-03
H1082=	Gibson	ENVIRONMENTAL REPORTS CONSOLIDATION.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-24-03	
H1083=	Gibson	ENVIRONMENTAL TECHNICAL CORRECTIONS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-24-03	
H1100	Parmon	PROTECT MASTER SETTLEMENT FUNDS.	*S	Ref To Com On Rules, Calendar, and Operations of the House	04-28-03	07-16-03

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2003-2004 Biennium
Leg. Day: H-102/S-102

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1112	Gibson	AMEND ENVIRONMENTAL LAWS-2.	*S	Re-ref Com On Agriculture/ Environment/ Natural Resources	05-01-03	06-18-03
H1112	Gibson	AMEND ENVIRONMENTAL LAWS-2.	*S	Re-ref Com On Agriculture/ Environment/ Natural Resources	06-18-03	06-19-03
H1112	Gibson	AMEND ENVIRONMENTAL LAWS-2.	*S	Re-ref Com On Agriculture/ Environment/ Natural Resources	06-25-03	
H1134=	Preston	EXTEND CHPP ADOPTION DEADLINE.	SR	Ch. SL 2003-111	04-28-03	05-13-03
H1158	Daughtridge	HUNTING WITH PISTOLS.	SR	Ch. SL 2003-160	04-24-03	05-21-03
H1205	McComas	FRANCHISE NOT REQ. SMOKESTACKS LANDFILLS.	SR	Ch. SL 2003-37	04-23-03	04-29-03
S0220	Hamilton C. Hort	WINERY WASTEWATER MANAGEMENT.	*S	Re-ref Com On Finance	02-26-03	03-26-03
S0245	David F. Weinste	CONTROLLED HUNTING/NO IMPORTATION OF COYOTES.	*SR	Ch. SL 2003-96	02-27-03	03-25-03
S0307	Charles W. Alber	CONTAGIOUS ANIMAL DISEASES/EXTEND SUNSET.	*SR	Ch. SL 2003-6	03-05-03	03-11-03
S0322	Fletcher L. Hart	INTERCONNECTION OF PUBLIC WATER SYSTEM.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	03-06-03	
S0591=	Clark Jenkins	DISAPPROVE SWIFT CREEK RECLASSIFICATION.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	03-31-03	
S0593	Charles W. Alber	EXTEND SWINE MORATORIA.	*SR	Ch. SL 2003-266	03-31-03	04-15-03
S0624	Eric Miller Reev	DENR/LOCAL ENVIRONMENTAL HEALTH SPECIALISTS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-01-03	
S0626	Charles W. Alber	EXPAND MARINE INSPECTOR ENFORCEMENT AUTH.	S	Re-ref Com On Agriculture/ Environment/ Natural Resources	04-07-03	
S0627=	Charles W. Alber	STATE NAT. & HIST. PRESERVE ADDS. & REMOVALS.	*SR	Ch. SL 2003-234	04-01-03	04-08-03
S0627=	Charles W. Alber	STATE NAT. & HIST. PRESERVE ADDS. & REMOVALS.	*SR	Ch. SL 2003-234	06-09-03	06-10-03
S0628	Charles W. Alber	FEDERAL ENFORCEMENT BY MARINE INSPECTORS.	S	Re-ref Com On Agriculture/ Environment/ Natural Resources	04-07-03	
S0684=	David F. Weinste	COASTAL RECREATIONAL FISHING LICENSE/FUND.	S	Ref to Agriculture/ Environment/	04-02-03	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Natural Resources. If fav, re-ref to Finance		
S0715	Fletcher L. Hart	LOCAL WATER SUPPLY PLANS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-02-03	
S0723	Eleanor Kinnaird	I-40 BILLBOARD MORATORIUM.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0730=	Charles W. Alber	AMEND SHELLFISH STATUTES.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0731	Charles W. Alber	FERTILIZER PACKAGING NUTRIENT GUARANTEES.	SR	Ch. SL 2003-71	04-03-03	04-10-03
S0732=	Charles W. Alber	UNDERGROUND STORAGE TANK PRGM. AMENDS 2003.	S	Ref To Com On Environment and Natural Resources	04-03-03	05-01-03
S0733=	Charles W. Alber	GEN. NONDISCHARGE PERMITS/ANIMAL OPERATIONS.	*SR	Ch. SL 2003-28	04-03-03	04-17-03
S0751	Kay R. Hagan	CIVIL PENALTIES/FOOD, DRUG AND COSMETICS.	*SR	Ch. SL 2003-389	04-03-03	04-22-03
S0756	Linda Garrou	BROWNFIELDS AMENDMENTS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
763=	Wib Gulley	NC CLEAN VEHICLES.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0765=	Scott Thomas	LIMIT SHELLFISH LEASE AREA IN CORE SOUND.	*SR	Ch. SL 2003-64	04-03-03	04-17-03
S0790	Joe Sam Queen	MOUNTAIN TROUT ENHANCEMENT STUDY.	S	Re-ref Com On Rules and Operations of the Senate	04-03-03	04-22-03
S0791	Joe Sam Queen	FARMLAND AND FORESTLAND PRESERVATION.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0793	Joe Sam Queen	BEAR/WILD BOAR DOG-HUNTING LICENSE.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0822	Charles W. Alber	LIMIT IMPERVIOUS SURFACE OF PARKING LOTS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0823=	Charles W. Alber	ENVIRONMENTAL TECHNICAL CORRECTIONS.	S	Ref To Com On Environment and Natural Resources	04-03-03	04-15-03
S0824=	Charles W. Alber	AMEND ENVIRONMENTAL	*SR	Ch. SL 2003-340	04-03-03	04-15-03

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		LAWS				
S0825	Charles W. Alber	PROTECT CERTAIN REPTILES AND AMPHIBIANS.	*SR	Ch. SL 2003-100	04-03-03	04-22-03
S0826	Charles W. Alber	AMEND ENVIRONMENTAL HEALTH LAWS - 1.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0827	Charles W. Alber	AMEND ENVIRONMENTAL HEALTH LAWS - 2.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
$ S0828=	**Charles W. Alber**	**FARM FUTURES PILOT PROGRAM.**	**S**	**Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Appropriations/ Base Budget**	**04-03-03**	
S0829	Charles W. Alber	STORMWATER COMPLIANCE.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0830	Charles W. Alber	ESTABLISH FISHERIES VIOLATION POINTS SYSTEM.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0831	Charles W. Alber	CLEAN WATER MGT. TRUST FUND BOARD TERMS.	*SR	Ch. SL 2003-422	04-03-03	04-17-03
$ S0833	**Charles W. Alber**	**SWEET POTATO WEEVIL CONTROL FUNDS.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**04-03-03**	**05-01-03**
$ S0834	**Charles W. Alber**	**FOOD SAFETY AND SECURITY FUNDS.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**04-03-03**	**05-27-03**
S0835	Charles W. Alber	AMEND NATURAL RESOURCES LAWS - 1.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0836	Charles W. Alber	AMEND NATURAL RESOURCE LAWS - 2.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0837	Charles W. Alber	AMEND ENVIRONMENTAL LAWS - 1.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0838	Charles W. Alber	MARINE FISHERIES STUDIES.	*S	Re-ref Com On Rules and Operations of the Senate	04-03-03	06-05-03
S0839=	Joe Sam Queen	COMMUNITY BLDGS/ EXEMPT FROM FOOD RULES.	S	Ref To Com On Agriculture/ Environment/	04-03-03	

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				Natural Resources		
S0848=	Wib Gulley	VETERINARY BD. AGREEMENTS/IMPAIRED VETS.	*S	Ref To Com On Occupational Safety and Health	04-03-03	04-22-03
S0856	Stephen M. Metca	EMC TO DEVELOP REGULATIONS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
$ S0859	**Daniel G. Clodfe**	**CATAWBA RIVER BASIN BI-STATE ADVISORY COMM.**	***S**	**Ref To Com On Environment and Natural Resources**	**04-03-03**	**06-12-03**
S0863=	Daniel G. Clodfe	NC CLIMATE ACTION REGISTRY.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0883=	Fletcher L. Hart	DACS TO REGULATE FARMED CERVIDS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0888	Robert A. Rucho	ALTER WATERFLOW/ IMPACT ON ADJACENT PROPERTY.	*S	Re-ref Com On Agriculture/ Environment/ Natural Resources	04-30-03	05-01-03
S0888	Robert A. Rucho	ALTER WATERFLOW/ IMPACT ON ADJACENT PROPERTY.	*S	Re-ref Com On Agriculture/ Environment/ Natural Resources	05-01-03	
S0898	Hugh Webster	PRODUCTION AND SALE OF DOMESTICATED RABBIT.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0907=	Fletcher L. Hart	CERTIFICATION OF WASTEWATER SITE EVALUATORS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0908=	Fletcher L. Hart	GROUNDWATER PROTECTION ACT.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0911=	Daniel G. Clodfe	IMPROVE ENVIRONMENTAL ENFORCEMENT.	*S	Re-ref Com On Finance	04-03-03	04-30-03
S0927=	Stephen M. Metca	CERTIFY ON-SITE WASTEWATER CONTRACTORS.	S	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	04-03-03	
S0945	David W. Hoyle	AIR QUALITY PERMITS.	*SR	Ch. SL 2003-428	04-03-03	06-05-03
S0959=	Scott Thomas	MONITOR COASTAL WATER QUALITY.	SR	Ch. SL 2003-149	04-03-03	04-10-03
S0979	Charles W. Alber	AMEND ASMFC APPOINTMENT.	*SR	Ch. SL 2003-92	04-03-03	04-15-03
$ S0981=	**Stephen M. Metca**	**CLEAN AIR TRUST FUND.**	**S**	**Ref to Agriculture/ Environment/**	**04-03-03**	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Natural Resources. If fav, re-ref to Appropriations/ Base Budget		
S0989	Eric Miller Reev	WATER AND SEAFOOD PROTECTION ACT.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0990	Eric Miller Reev	EXTEND SWINE MORATORIA/CONTROL PHOSPHORUS.	S	Ref To Com On Agriculture/ Environment/ Natural Resources	04-03-03	
S0999	Larry Shaw	DEVELOP REGIONAL WATER SUPPLIES.	S	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Appropriations/ Base Budget	04-03-03	

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AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, February 25, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Introduction of Members and Staff

Presentation by Sec. Ross, Division of Environment & Natural Resources

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

February 25, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, February 25, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and welcomed all members to the committee. He thanked Sen. Basnight for allowing him to chair this committee another session. He told members how important our committee is and how it affects the entire state. Each member went around the room and introduced him or herself. Mr. George Givens, senior staff counsel, introduced his staff from the Research Division. The chairman then introduced the Sega rent-At-Arms staff.

Secretary Bill Ross, Division of Environment and Natural Resources (DENR) addressed members. He gave a brief overview of their agenda for the year. A cleaner, environment, healthy lives, and a stable economy are among their main agenda items. Must find ways to develop and coordinate land and water improvements. Identify and make progress on environmental problems; water and water supplies; pollution & water pollution; improve effectiveness of regulatory permits and problem of accelerating of consumption of open land. He summarized areas and focus points they hope to address and work on.

Sen. Webster thanked him for a good presentation. He then asked about abandoned tanks. Sec. Ross responded. Sen. Horton asked about new businesses obtaining permits. Sec. Ross explained. Sen. Allran also thanked him for his good presentation and questioned if they do anything with litter on the highways or was that for DOT only. Sec. Ross and Mr. George Givens, staff counsel addressed his question/comments. Sen. Kinnaird feels that there is not enough staff at DENR to address all the issues of the state. Sen. Jenkins commented on how it is difficult to enforce litter laws. There is a need for officers to be able to write citations and have a higher price to litter. Sec. Ross addressed his comments.

The meeting adjourned at noon.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

VISITOR REGISTRATION SHEET

Agriculture — 2-25-03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	Consent Council
Shelley Welt	Conservation Council
Robert Shaw	UNC law student
Craig Deal	NC DENR
Don Reuter	NC DENR
Donna Moffitt	DENR - Coastal Mgmt.
Cindy McCabe	Conservation Network.
Kari Barsness	NC DENR
Martha Glass	NC DACS
John McHugh	GOV OFFICE
Molly Diggins	NC Sierra Club

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Knight Dr. Evil K	NC Sierra Club, NC Wildlife Fed
Anita Watkins	NCLM
[signature]	NRA
F. Carlyle Teague	Co-op Council of NC
Doug Howey	NC PMA
Bill Weatherspoon	NC Petroleum Council
Gary Harris	NC PMA
Giovanni Masucci	Capitol City Consulting, LLC Raleigh
Percy Harrison	Beaufort NC
Angie McMillan	TNC
Ruth Cook	

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Slocum	NC Forestry Association
Ross M. Smith	PCS Phosphate
Preston Howard	NCJC
Crissy Porter	Smith Anderson
Kim Hibbard	NCLM
Catherine Davis	Electricities
Chris Nichols	Hunton + Williams
Sharon Miller	CUCA
Jerry Hardesty	NC Pork Co.
John Cyrus	NC State Grange
Alan Briggs	S.O.S.

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Wilson	CHPH
Steve Woodson	NCFB
Theresa Kostrzewa	CAA
Nancy Thompson	NMCIC
Doug Lassiter	NC STA
Roger Bone	Bone and Assoc
Jim Dunn	Omega Protein
BERRY Jenkins	CAROLINAS AGC

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 11, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB-307	Contagious Animal Diseases/Remove Sunset	Sen. Albertson
Guest Speaker	James L. Oblinger, Dean NC State University	
Guest Speaker	Alton Thompson, Dean NC Agriculture & Technical State Univ.	

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 11, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 11, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were seventeen members present.

Sen. Albertson called the meeting to order and recognized the Pages. He called upon Sen. Weinstein to chair while he presented a bill. Mr. George Givens, chief staff counsel, explained the new Senate Rules to members about adopting proposed committee substitutes for discussion and how they must vote to discuss a bill that has a PCS but have not been given a 24-hour notice. Sen. Albertson made his comments into a motion. Sen. Weinstein seconded, the vote was taken and passed.

SB-307 – CONTAGIOUS ANIMAL DISEASES/REMOVE SUNSET – Sen. Albertson explained. Sen. Horton moved for a favorable report. No discuss. Vote taken and passed.

Sen. Albertson resumed chairing.

Dr. James Oblinger, NCSU, was introduced to members. Dr. Oblinger made a presentation (copy attached). After his presentation Sen. Albertson asked about funding for research and Dr. Oblinger told members how the cost of research had increased and funding has decreased but they are getting more grants now because they don't receive allocated funds like they used to.

Dr. Alton Thompson, Dean of NC Agriculture & Technical State University - He too gave his presentation (copy attached). He complimented Dr. Oblinger for the great work at NCSU.

The meeting adjourned at noon.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, February 11, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **307** Contagious Animal Diseases/Remove Sunset.

Draft Number:	PCS35088
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 307
PROPOSED COMMITTEE SUBSTITUTE S307-PCS35088-RT-1

Short Title: Contagious Animal Diseases/Extend Sunset. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET PROVISION OF THE ACT THAT STRENGTHENED THE AUTHORITY OF THE STATE VETERINARIAN TO PREVENT AND CONTROL AN OUTBREAK OF FOOT-AND-MOUTH DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2001-12 reads as rewritten:

"**SECTION 11.** This act is effective when it becomes law and expires ~~April 1, 2003.~~1 October 2005."

SECTION 2. This act becomes effective 1 April 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 307

Short Title:	Contagious Animal Diseases/Remove Sunset.	(Public)
Sponsors:	Senators Albertson; Dorsett, Garrou, Gulley, Hoyle, Jenkins, Kerr, Malone, Moore, and Purcell.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET PROVISION OF THE ACT THAT STRENGTHENED THE STATE VETERINARIAN'S AUTHORITY TO PREVENT AND CONTROL AN OUTBREAK OF FOOT-AND MOUTH-DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND MADE OTHER TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2001-12 reads as rewritten:

"**SECTION 11.** This act is effective when it becomes ~~law and expires April 1, 2003.~~law."

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

SB 307:
Contagious Animal Diseases/Remove Sunset

BILL ANALYSIS

Committee:	Senate Ag and Nat'l Resources	**Introduced by:**	Senator Albertson
Date:	March 5, 2003	**Summary by:**	Barbara Riley
Version:	PCS		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 307 would extend the sunset provisions of S.L. 2001-12 (SB 779) which authorized the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, to implement emergency procedures when necessary to combat the outbreak of an infectious animal disease. The act was originally set to expire April 1, 2003. The committee substitute would extend the sunset to October 1, 2005.***

CURRENT LAW: S.L. 2002-12 (SB 779) was enacted during the 2001 General Assembly in response to the concerns raised by the severe hoof and mouth outbreak in Europe. The legislation gave authority to the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, to implement emergency procedures determined necessary to prevent an outbreak of an infections animal disease having the potential for very serious and rapid spread, that is of serious economic and public health consequence, or is of major importance in the international trade of animals and animal products. The emergency measures that may be implemented include restrictions of the transportation of potentially infected animals, emergency disinfectant procedures at portals of entry into the State, the right to enter onto property to examine animals believed to be infected or exposed to disease, inspections without warrants of individuals and motor vehicles, quarantine of animals, and the destruction of animals where necessary to control a contagious disease outbreak.

Persons who willfully violate the statute are guilty of a Class 2 Misdemeanor. The law also prohibits the knowing or willful concealment of animals subject to quarantine and the failure to report an occurrence of a disease for which a quarantine is in effect. Knowing or willful concealment or failure to report may result in an administrative penalty not to exceed $10,000 per violation.

BILL ANALYSIS: The original act, passed in April of 2001 contained a sunset provision effective April 1, 2003. The proposed committee substitute for Senate Bill 307 would extend the sunset provisions of the act to October 1, 2005.

BACKGROUND: S.L. 2001-12 was enacted in response to concerns about North Carolina's ability to respond to an outbreak of Foot and Mouth Disease similar to that which was occurring in Great Britain at the time. Foot and Mouth disease is considered one of the most devastating livestock diseases because it if extremely contagious and can infect multiple species.

VISITOR REGISTRATION SHEET

Agriculture — March 11, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
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Johnny Wynne	NC State Univ.
Ken Esbenshade	N.C. State University - College of Agriculture & Life Sciences
Jon Ort	NC. State Univ.
JAMES L. OBLINGER	NC STATE
JERRY HARDESTY	NC. PORK CO.
BETH ANNE MUNFORD	NC Pork Council
Ken Melton	Alley Associates
Doug Lassiter	NC Septic Tank Assoc.
[illegible]	CAA
John Cyrus	N.C. State Grange

VISITOR REGISTRATION SHEET

Agriculture — 3/11/03

Name of Committee — **Date**

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	Philip Morris
Roger Bone	Bone Assoc.
David Meredith	NC State Grange
Martha Glass	NCDA&CS
David Marshall	NCDA&CS
David McLeod	NCDA&CS
Joan Troy	NCWRC
DICK HAMILTON	NCWRC
	NCRA
B L Stevens	NC Forestry Assoc

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Matt Harrison	Raleigh NC

State Matching Funds for Agricultural Research and Cooperative Extension North Carolina A&T State University

Dr. Alton Thompson, Dean
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Introduction

With the passage of the Hatch Act (Section 3(d)) in 1889 and the Smith Lever Act (Section 3(e)) in 1914 that created the State Agricultural Experiment Stations and the Cooperative Extension Service, respectively, each state began to receive federal funds to conduct agricultural research and to provide for Cooperative Extension work in terms of diffusing useful and practical information on subjects related to agriculture, home economics and rural energy. However, these legislative acts further stipulated that "no payments from the allotment shall be made to a State in excess of the amount that the State makes available out of non-Federal funds." Simply stated, each State was required to provide a dollar for dollar match for the federal funds allocated to support agricultural research and Cooperative Extension. In addition, any State that failed to comply with the federal requirement to provide matching funds would lose the difference between the federal allocation and the amount of matching funds actually provided by the State.

Most 1862 land-grant universities, including North Carolina State University, receive more funding from their state governments than they do from federal funding. Accordingly, North Carolina State University and other 1862 universities do not have difficulties in matching federal funds with required state dollars. Unfortunately, the 1890 land-grant universities, including North Carolina A&T State University, have not enjoyed the same level of state support. For example, in FY 2001, the ratio of state matching funds to the federal allocation of funds for the agricultural research and Cooperative Extension programs at North Carolina State University was 6:1 while the corresponding ratio for North Carolina A&T State University was 0.48:1.

The Need for State Matching Funds at North Carolina A&T State University

In 1998, the Agricultural Research, Extension and Education Reform Act of 1998 (Section 1449) amended the National Agricultural & Research, Extension and Teaching Policy Act (Sections 1444 and 1445) to require that each state with an 1890 land grant institution provide monies to match the federal funds for programs in agricultural research and Cooperative Extension. In FY 2000, the required federal match was 30%, in FY 2001, the required federal match was 45%, and in FY 2002, the required federal match was 50%. The corresponding state dollars needed for North Carolina A&T

State University to meet this matching requirement were, respectively, $1,500,992, $2,377,366 and $2,808,870. Failure to meet this federal mandate results in discontinuation of federal appropriations for the Agricultural Research Program and Cooperative Extension Program at North Carolina A&T. In effect, these programs will cease to exist.

For FY 2000, the University only received $750,000 in state matching funds; however, the United States Department of Agriculture granted the University a waiver. For FY 2001, the University received the state matching funds to meet the 45% federal matching requirement. For FY 2002, the University received $2,502,208 from the N. C. General Assembly, resulting in a shortfall of $306,662. Thus, at present, the University is not in compliance with the federal matching requirement. The U.S. Congress has not approved the FY 2003 federal appropriations for agricultural research and Cooperative Extension; however, a 6% increase has been recommended.

On May 13, 2002, President Bush signed the "Farm Security and Rural Investment Act of 2002" into law. This new Farm Bill includes several programs and provisions directly involving the land grant universities. Regarding nonfederal matching funds, the new Farm Bill requires that beginning in FY 2003, each state with a 1890 land grant institution must increase the matching percentage by 10% per year until a maximum of 100% is obtained in FY 2007.

We understand the seriousness of the budget crisis in North Carolina. But the current agricultural and environmental challenges we face in North Carolina dictate that this is exactly the right time to support these programs dedicated to tackling these difficult and important challenges.

Concluding Remarks

The administrators, faculty, staff and students at North Carolina A&T State University would like to express our gratitude for the opportunity to articulate our need for state matching dollars to strengthen our programs in agricultural research and Cooperative Extension. Presently, the School of Agriculture and Environmental Sciences is focusing resources on six major interdisciplinary program initiatives: human and community development; biotechnology and biodiversity; agromedicine, nutrition and food safety; small-scale agriculture; soil and water quality; and international trade and development. These six initiatives emanated from reviews of the national goals of the United States Department of Agriculture, the needs of the State, faculty expertise and interest. These initiatives were also selected for their significant potential for establishing mutually beneficial partnerships with businesses, corporations, foundations, industry, governmental agencies, and with the College of Agriculture and Life Sciences at North Carolina State University. We look forward to a continued dialogue on this and other issues affecting agriculture and higher education in our state.

Testimony of
Alton Thompson, Ph.D.
Dean & Executive Director of Agricultural Programs
School of Agriculture and Environmental Sciences
North Carolina A&T State University

Agricultural Issues in North Carolina
Senate Committee on Agriculture, Environment and Natural Resources
544 LOB
March 11, 2003

Mr. Chairman, vice-chairpersons, ranking minority member, and members of the Senate Committee on Agriculture, Environment and Natural Resources, on behalf of Dr. James C. Renick, Chancellor of North Carolina A&T State University, and the administration, faculty, staff and students of the School of Agriculture and Environmental Sciences, I would like to thank you for this opportunity to testify. I am Alton Thompson, Dean and Executive Director of Agricultural Programs at North Carolina A&T State University.

I would like to begin by associating myself with the testimony and remarks of my colleague, Dr. James L. Oblinger, who is the Dean and Executive Director of Agricultural Programs at North Carolina State University. Dr. Oblinger is a valued and trusted colleague and I concur with Dr. Oblinger's statements regarding agricultural issues in the State. I also recognize that this is a very difficult budget year; however, programs in academics, research, and extension are critically important at both North Carolina A&T State University and North Carolina State University. I urge continued support for these programs as they help to maintain the competitiveness of North Carolina agriculture, and American agriculture as well.

Key Agricultural Issues for the State

There are seven key issues that I would like to address:

1. Farm Financial Crisis
2. Food, Agricultural and Biosecurity
3. Farm and Food Safety
4. Water Quality/Waste Management
5. Alternative Agricultural Enterprises for Displaced Tobacco Farmers
6. Declining Farm Numbers and Accompanying Decline of Small-scale Farmers
7. Increase State Matching Requirements for North Carolina A&T State University

Farm Financial Crisis

North Carolina is heavily dependent upon agriculture. In fact, Agriculture is a $62.6 billion industry and accounts for 19 percent of North Carolina's income. The 107th Congress adjourned without appropriating any disaster money to help our farmers; however, the 108th Congress approved an Omnibus spending bill that allocated $3.1

billion in disaster payments for the nation's farmers. These federal funds will provide much needed help for our farmers (farmers who suffered crop damage of more than 35 percent), but these disaster payments will be too little too late for many of our farmers. The most recent crop statistics point out the declines in production from 2001 to 2002. The production of cotton, corn for grain, soybean and peanuts are estimated to drop by 53, 26, 30 and 41 percent, respectively.

The farmers we serve tell us they are suffering because of multiple causes, including, but not limited to, significant losses because of one of the harshest droughts this summer, which was followed by heavy autumn rains; low and declining commodity prices, increased foreign competition, federal policies, the business recession, terrorism, and too much debt. The farm crisis in North Carolina is primarily a debt crisis. During the late-1990's, both the marketplace and the government gave strong signals to farmers to increase production. Credit was easy to obtain and real interest rates were low. Bankers, including the federal farm credit system, encouraged farmers to expand farm size and make loans based on inflated equities, especially in land. The conventional wisdom was that land prices would continue to rise. Lenders and borrowers paid too little attention to farmers' cash flow needed to repay loans. Today, however, farmers' equity position is eroding and the most highly leveraged farmers are becoming insolvent. Farm income (cash flow) is not sufficient to service the massive debt accrued over the past two or three years.

Access to credit is also problematic and critically important to farmers as they agonize over how to secure credit to plant their 2003 crops. Many farmers, particularly small and minority farmers, that I have talked to are already at their borrowing limits.

Food, Agricultural and Biosecurity

While agriculture adds significantly to our state's economy (22%), it is vulnerable to forces beyond the producer's control. Biosecurity issues facing the agricultural production and food-processing sector is a serious threat to North Carolina agriculture industry. This is a new subject that demands new research to enable our State, and the nation, to prevent and prepare for terrorist attack. A purposeful introduction of biological attacks on our plant and animal species will spread quickly and from many different locations. Immediate recognition that there is an unnatural outbreak of a disease in multiple locations is critical if the spread of the disease is to be contained. Modeling and communication tools need to be developed that will facilitate early detection and recognition of unnatural outbreaks. The food and fiber production process opens up many opportunities where purposeful contamination could occur. Most existing safeguards were not designed to protect against intentional attacks. The private sector, the federal government, North Carolina state government, North Carolina A&T, North Carolina State, and other universities will need to develop new standards and protocols to: (1) improve detection and monitoring practices through processing and distribution system; (2) develop a communication system that alerts appropriate agencies and points of entry that a problem exist, with guidance on appropriate actions; (3) improve the ability to trace

contamination back to its source; and (4) enhance communication networks with public health agencies, law enforcement agencies and state and local officials. It would remiss not to point out that the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) did an excellent job during the threat of Food and Mouth Disease to North Carolina agriculture.

Equipment and materials used in farming and ranching can be used as agents for terrorist activities. Fertilizers can be used in bombs and crop dusting planes can be used to spread bioweapons. The Cooperative Extension Service need to develop a variety of agriculture and forest security programs for agricultural producers, natural resource managers, processors, suppliers and retailers to help them prevent, detect and respond to agroterrorism. Cooperative Extension needs to work in partnership with state and local agencies and private operations to help them understand and implement protocols to prevent the abuse of these tools and materials.

Producers, processors, suppliers, retailers, farmers, ranchers, and consumers may be the first responders to an agro-terrorist attack and thus play a pivotal role in quickly containing contamination. The Cooperative Extension Service can provide educational programs to the private sector on how to secure their operations. Specialized training in agrosecurity for Extension agents is needed so that as "first responders" they have the ability to recognize possible threats and that they are trained in the appropriate protocols for working with local and federal law enforcement and health agencies. Local communities, including farming communities, will need assistance in developing and implementing plans to improve their ability to anticipate and respond to acts of agroterrorism. Just as the Department of Health and Human Services needs to help strengthen the ability to state and local health agencies to plan and prepare, so does NCDA&CS need to work with local agricultural agencies, universities and rural community leaders to plan and prepare.

Farm and Food Safety

Farming is second only to mining as the most dangerous occupation in the United States. Farming alone brings over $9.0 billion a year to North Carolina's economy and employs 20 percent of North Carolina's work force. Each year in North Carolina, about 50 people die from farm injuries and 2,000 are disabled. Sixty-five percent of those who die are heads of households. Farmers, their family members, and their employees, including migrant and seasonal workers are at risk of work-related fatal injury, amputation, cumulative trauma, skin cancer, hearing loss, chronic respiratory diseases due to inhalation of particulates and chemical exposure and other illnesses, such as depression and anxiety. Farm families and workers are at high risk for illness and injury due to factors such as the longer growing season, hot climate, and older more poorly maintained equipment. The North Carolina health care cost from farm-related injuries, exceed $195 million.

Currently, faculty at North Carolina A&T, in collaboration with faculty associated with the North Carolina Agromedicine Institute, are involved in two projects related to heat stress among agricultural workers statewide and another on farm injury prevention among youth in agricultural communities. In addition, the Cooperative Extension Program at North Carolina A&T is involved in outreach activities designed to improve farm safety and environmental protection.

An estimated 76 million people contract foodborne illnesses every year in the U.S. Altogether foodborne illnesses cause $6.9 billion in medical costs and loss of productivity annually in the U.S. This cost will continue to rise as Americans demand and consume more convenient, ready-to-eat and minimally processed foods. As a consequence, the federal government has given high priority and allocated additional funding for research and outreach efforts to safeguard the nation's food supply.

In November 2002, as part of a national effort in the wake of the September 11th terrorist attacks, a special performance review by the state auditor's office revealed that North Carolina's food safety system is fragmented and understaffed, under-equipped and has limited enforcement powers for violations. In addition, this report found that (1) only 25 agriculture food specialists are available to inspect 8,163 facilities statewide; (2) there are inconsistencies in the frequency of inspections and sample collections; (3) some venues that serve food, such as private clubs, boarding housing and continental breakfasts served at hotels are not required to be inspected; (4) people who prepare food in their homes for sale to the public do not receive annual inspections; (5) laboratory equipment is outdated and inspectors have few laptop computers and cell phones to improve efficiency; and (6) there are no bilingual food specialists, despite the increase in ethnic food outlets with employees with limited abilities in English. State Auditor Ralph Campbell stated that these issues should be brought to the attention of the General Assembly and the public, including security issues in the trucking industry.

To address these health and safety challenges in North Carolina and find solutions specifically tailored to the needs of underserved communities, the School of Agriculture and Environmental Sciences initiated the "Agromedicine, Nutrition and Food Safety" as a major program area. The initiative builds on the strength of existing multi-institutional collaboration structures such as the North Carolina Agromedicine Institute, and the Southern Coastal Agromedicine Center (headquartered at East Carolina University).

Currently, there are eight ongoing research projects on food safety issues at North Carolina A&T such as early detection of foodborne pathogens, biopreservation of foods using beneficial bacteria, safety of vegetable processing, thermal inactivation of common foodborne pathogens, antibiotic resistance of poultry pathogens, control of antibiotic resistant *E. coli* O157:H7 in foods, microbiological quality and shelf-life extension of farm-raised fish, and use of probiotics to control foodborne pathogens in farm animals. There are also two food safety outreach projects dealing with food safety behavior of hard-to-reach consumers in the southeastern United States and an agricultural biotechnology program for minority farmers and underserved consumers in North Carolina.

Water Quality/Waste Management

Water is essential for life. During the last 50 years, a wide array of federal and state laws and regulations has been enacted to protect and improve the nation's water resources. The Clean Water Act and Safe Drinking Water Act are aimed at providing a clean, safe, reliable source of water for multiple uses such as drinking water supplies, swimming, fishing, industrial and agricultural uses. Under the Clean Water Act, states are required to develop standards that describe the maximum "load" of a potential pollutant (e.g. sediment, nutrients, and pesticides) that a stream or water body can sustain without impairing the quality of the water resource. The 1998 amendments to the Safe Drinking Water Act require these assessments of potential pollutants from agriculture (as well as other land uses) that drain to public water supplies.

Federal, state and local governments have spent billions of dollars on water quality protection from agricultural activities. These activities include fertilizer and pesticides application on cropland, animal manure and sewage sludge applications on land, tillage practices, row cropping, adoption of non-buffer strips, and others, which have increased water pollution across the nation.

Concentrated animal feed operations have largely contributed to the ability of North Carolina producers to meet growing demand for the production of meat, milk, poultry and eggs, with nearly 60 percent of the gross farm income in North Carolina coming from animal agriculture. There is also a great deal of public pressure to prevent the pollution of air, soil and water resources from animal production facilities. Managing manure and other waste products produced by livestock in a sustainable, ecologically sensitive manner that is respectful of the community's right to a healthy, odor and pollution-free animal is a challenge for farmers. Traditional management practices for livestock waste have in some cases resulted in overloading soils with nutrients and trace materials, in the pollution of surface and groundwater. Alternatives to traditional practices for waste treatment are needed, particularly those appropriate to small-scale and resource-limited farmers. In most cases, farmers lack the capital to install highly technical and expensive treatment systems, as well as the expertise and training to operate and maintain them.

Thus, in light of the preceding, conserving groundwater sources and ensuring surface water quality is a major issue in North Carolina. There is a critical need for a comprehensive state program that addresses the host of issues associated with protecting and improving the state's water resources—particularly those in agriculture environments. This state program needs to be put in place to better assist farmers in adopting best agricultural management practices to reduce phosphorous runoff from their fields and pastures, better able to meet new federal environmental guidelines, and better able to take advantage of government incentives for implementing conservation practices. In addition, this state program should provide a sound science base for decision-making and should provide critical support for technology transfer and education.

Currently, the Constructed Wetlands Research and Educational Program at North Carolina A&T, with support from the USDA/Agricultural Research Service station in Florence, SC, provides training for graduate students and workshops for field technicians and Extension agents. The end result of this research is to develop a system to assist small to medium-sized farmers in dealing with swine waste.

Alternative Agricultural Enterprises for Displaced Tobacco Farmers

The tobacco industry remains important to North Carolina's economy, with exports in 2001 totaling more than $430 million. Together, tobacco manufacturing, processing and farming in North Carolina make up 39 percent of total U.S. production and 65 percent of flue-cured production. However, North Carolina's tobacco industry, along with the individuals and communities that depend on it, are facing a set of powerful, converging forces—forces that will forever change the role that tobacco plays in the state's economy (The Rural Center, 2002). Among these forces are a number of multibillion dollar lawsuits either decided or pending against the tobacco industry—in particular the $206 billion settlement signed in November 1998 between the cigarette manufactures and the states' attorney generals. Along with these lawsuits come additional federal cutbacks in tobacco allotments, a decline in cigarette exports, increased competition from other countries (e.g. Brazil), an increased excise tax, and an increasing tough regulatory environment. In addition, the federal tobacco support program may soon be defunct and direct contracting between cigarette firms and farmers is rapidly increasing.

Tobacco production occurs in 82 counties within the state with concentrations in the east, north Piedmont and mountain west. For these communities, tobacco is not only a source of economic prosperity, but it is also a long established way of life. Among the top North Carolina flue-cured tobacco producers are Pitt, Johnson, Robeson, Columbus, Wilson, and Nash counties. Madison, Buncombe, Yancey and Haywood counties are the leading counties for burley production. In these counties where tobacco remains a significant part of the local economy, the economic impact will be difficult and long-term. Significant income declines can be expected in these tobacco-dependent communities.

Researchers and Extension specialists at North Carolina A&T are working to wean small farmers from tobacco to alternative, but profitable enterprises, including goat meat, edible and medicinal mushrooms (anti-cancer, anticholesterol effects and increased immune protection), medicinal herbs, upscale pork, aquaculture and galax. Central to this effort is a research-base, supported by a strong outreach and educational component. Selected enterprises are being used to demonstrate the development of a total portfolio of best management practices, which integrate the functions of marketing, financial management effort, resource allocation and cost management for a single enterprise. Funds from the Golden LEAF Foundation have been very important in this effort to develop specialty enterprises.

Declining Farm Numbers and Accompanying Decline of Small-scale Farmers

Despite the growth in population and increased demand for agricultural products, supply sources and individuals engaged in agriculture have declined worldwide. The U.S. has experienced a relatively steady decline in farm numbers, but an increase in size of farms since the end of World War II. Acreage of land in farms has decreased by more than 55 million acres in the last 15 years, yet productivity per acre has increased. New production methods have changed how farm work is organized, how food and fiber are produced, as well as the structure of the demands for farm labor.

The state witnessed a five percent decline in the number of farms from 1997 to 2001 and 4.2 percent decline in the total acreage in farms and 3.9 percent increase in total acreage with sales over $100,000. In "A Time to Act", The National Commission on Small Farms reported the following, "Small farms contribute more than farm production to our society. Small farms embody a diversity of ownership, cropping systems, landscapes, biological organization, culture, and traditions." Since the majority of farmland is managed by a large number of small farm operators, the responsible management of soil, water, and wildlife encompassed by these farms produces significant environmental benefits. Decentralized land ownership produces more equitable economic opportunity for people in rural communities, and offers self-employment and business management opportunities.

Small scale integrated crop and animal systems have contributed positively to net farm income for generations of small farms in North Carolina. Former Commissioner of Agriculture, Dr. James Graham, said it this way, "Every time we lose a small farmer, we stand the chance of not having enough to eat." In less than one generation (< 25 years>, North Carolina has lost over 20,000 small-scale hog farmers (< 100 hogs) and with it, their knowledge base. North Carolina A&T researchers are working diligently to revitalize the small-scale pork industry in our State. Small farmers may be able to promote different "upscale" pork by using breeds that will focus on flavor and taste, similar to the Certified Angus Beef Program (a breed noted for intra-muscular fat). Consumer demand for high quality pork and concerns about raising animals may invigorate small farmer production.

North Carolina A&T provides training in cash flow, farm management, environmental stewardship, and alternative market development. We train small farmers to access new and alternative markets for their crops and animal commodities. This program has had a dramatic impact on increasing the economic viability and sustainability of these small and limited resource farmers. This critical program should be sustained and strengthened and other small farm programs should be established as a safety net for all such farmers in this category. Comparatively, this group of farming clientele has been vertically ignored in terms of specially targeted programs.

Increase State Matching Requirements for North Carolina A&T State University

In 1998, the Agricultural Research, Extension and Education Reform Act of 1998 (Section 1449) amended the National Agricultural & Research, Extension and Teaching Policy Act (Sections 1444 and 1445) to require that each state with an 1890 land grant institution provide monies to match the federal funds for programs in agricultural research and Cooperative Extension. In FY 2000, the required federal match was 30%, in FY 2001, the required federal match was 45%, and in FY 2002, the required federal match was 50%. The corresponding state dollars needed for North Carolina A&T State University to meet this matching requirement were, respectively, $1,500,992, $2,377,366 and $2,808,870. Failure to meet this federal mandate results in discontinuation of federal appropriations for the Agricultural Research Program and Cooperative Extension Program at North Carolina A&T. In effect, these programs will cease to exist.

For FY 2000, the University only received $750,000 in state matching funds; however, the United States Department of Agriculture granted the University a waiver. For FY 2001, the University received the state matching funds to meet the 45% federal matching requirement. For FY 2002, the University received $2,502,208 from the N. C. General Assembly, resulting in a shortfall of $306,662. Thus, at present, the University is not in compliance with the federal matching requirement. The U.S. Congress has recently approved the FY 2003 federal appropriations for agricultural research and Cooperative Extension; a 6% increase is forthcoming.

On May 13, 2002, President Bush signed the "Farm Security and Rural Investment Act of 2002" into law. This new Farm Bill includes several programs and provisions directly involving the land grant universities. Regarding nonfederal matching funds, the new Farm Bill requires that beginning in FY 2003, each state with a 1890 land grant institution must increase the matching percentage by 10% per year until a maximum of 100% is obtained in FY 2007.

We understand the seriousness of the budget crisis in North Carolina. But the current agricultural and environmental challenges we face in North Carolina dictate that this is exactly the right time to support these programs dedicated to tackling these difficult and important challenges. For FY 2004, North Carolina A&T State University needs an increase of approximately $1.7 million to meet the federal matching requirements for programs in agricultural research and cooperative extension.

Investing in the Future

Let me end where I began. I would like to thank the Committee for the opportunity to testify here today. I am aware of the challenges, but the faculty and staff at North Carolina A&T State University look forward to working with you and our colleagues at North Carolina State University as we endeavor to improve the lives of people and communities in North Carolina through learning partnerships that put knowledge to work. I urge you to embrace this moment, this opportunity, to invest in the state's land grant university system.

Agricultural Issues in North Carolina

Senate Committee on Agriculture, Environmental and Natural Resources
Dean Allen Thompson, PhD



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Key Agricultural Issues

- Farm Financial Crisis
- Food, Agriculture and Biosecurity
- Farm and Food Safety



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Key Agricultural Issues

- Alternative Agricultural Enterprises
- Declining Farm Numbers and Declining Small Farmers
- Water Quality/Waste Management



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Key Agricultural Issues

- State Matching Requirements for North Carolina A&T State University



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Farm Financial Crisis

- Vagaries of the weather
- Low commodity prices
- Increased foreign competition
- Business recession



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Farm Financial Crisis

- Federal policies
- Terrorism
- Debt crisis
- Access to credit



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Food, Agricultural and Biosecurity

- Purposeful introduction of biological attacks on our plant and animal species
- Agricultural production and food processing sector
- Need to develop new standards and protocols



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Food, Agricultural and Biosecurity

- Importance of training for first responders
- Importance of the N.C. Cooperative Extension Service



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Farm and Food Safety

- Agriculture is the second most dangerous occupation
- Cost of food borne illnesses
- State Auditor's Report
- North Carolina Agromedicine Institute



North Carolina A&T State University
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Water Quality/ Waste Management

- Clean Water Act
- Safe Drinking Water Act
- Protection from agricultural activities
- Concentrated Animal Feed Operations



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Water Quality/ Waste Management

- Need for comprehensive state program
- Need a sound science base for decision making
- Constructed Wetlands Research and Educational Program



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Alternative Agricultural Enterprises

- Converging forces affecting the tobacco industry
- Alternative Enterprises
  - Goats
  - Edible and medicinal mushrooms
  - Pastured pork
  - Pastured poultry
  - Aquaculture



North Carolina A&T State University
School of Agriculture & Environmental Sciences

Declining Farm Numbers and Small Farmers

- Importance of small farms
- Consumer driven agriculture
- Programs at N.C. A&T State University

North Carolina A&T State University
School of Agriculture & Environmental Sciences

State Matching Requirements

- Agricultural Research, Extension, and Education Reform Act (1998)
- Farm Security and Rural Investment Act (2002)
- Thanks for previous support
- FY '04 need for N.C. A&T
  - $1.7 million

North Carolina A&T State University
School of Agriculture & Environmental Sciences

Investing in the Future

- Thanks for previous support
- Collaboration to improve lives
- Learning partnerships that put knowledge to work
- Invest in the State's land-grant university system

North Carolina A&T State University
School of Agriculture & Environmental Sciences

North Carolina A&T State University

SAES Departments/ Majors

Department of Agribusiness, Applied Economics and Agriscience Education
Agricultural Economics, BS
Agricultural Economics, Agricultural Business, BS
Agricultural Education, Secondary Education, BS
Agricultural Education, Agricultural Professional Services, BS
Agricultural Education, MS
Agricultural Economics, MS

Department of Animal Sciences
Animal Science, BS
Animal Science, Animal Industry, BS
Laboratory Animal Science, BS
Animal Health Science, MS

Department of Human Environment and Family Sciences
Family and Consumer Science-Fashion Merchandising and Design, BS
Family and Consumer Science Education, BS
Child Development, BS
Child Development: Early Education and Family Studies, BS
Food and Nutritional Sciences (Dietetics, Food Science), BS/MS

Department of Natural Resources and Environmental Design
Agricultural Science, Earth and Environmental Sciences (Earth and Environmental Science, Landscape Horticulture Design, Plant Science, Soil Science), BS
Agricultural Science - Natural Resources (Plant Science), BS
Bioenvironmental Engineering, BS
Landscape Architecture, BS
Plant and Soil Science, MS

To find out more about us, check our website

www.ag.ncat.edu

School of

Agriculture & Environmental Sciences

Finding, Preparing, Implementing Solutions

The School of Agriculture and Environmental Sciences (SAES) at N.C. A&T State University provides professional education for a wide range of career opportunities in food, agricultural, environmental and family and consumer sciences. Students prepare for careers in business, government, public service agencies, retail and service industries, health-related fields, financial institutions, youth development agencies, conservation and environmental organizations, farming, research, extension and education.

SAES sets high expectations and provides students with the resources and personal support they need to take charge of their own education. Most SAES classes are taught by full-time faculty and are small enough for students to get to know their professors.

If you thought careers in the School of Agriculture & Environmental Sciences was just about farming, now is the time to find out what you've been missing. While farmers are the producers of food, they are only a small piece of the bigger machine. A machine that feeds, clothes, protects and preserves - a machine that runs the world.

Why consider SAES?

- *It's challenging, highly rewarding and multi-faceted.*
- *The demand for technically qualified men and women in the field continues to grow.*
- *Our work is a large part of everyone's life because it affects food, water, shelter, clothing, air, earth, economics, society, aesthetics and recreation.*
- *A wide range of career choices can be pursued through a major in SAES.*









Solutions *for* North Carolina

North Carolina Cooperative

Extension Program at

North Carolina A&T

State University



Cover (top to bottom):
Benjamin Deitz;
Robert Caldwell;
Davonte Hewett,
Yolanda Palmer,
and Demarea Hewett

When the four young students from North Carolina A&T State University sat at that lunch counter in 1960, they recognized a problem and came up with a solution. Thirty-two years later, the Cooperative Extension Program at N.C. A&T is doing the same thing – offering solutions.

Cooperative Extension is offering solutions to the complex and diverse problems facing North Carolina's citizens. We identify local needs and develop quality, research-based, educational programs that are relevant and needed in our communities. Whether it's offering solutions to improve the health of the state's minority citizens, many who suffer disproportionately from illness and disease; to finding ways to help our state's farmers adopt new technology to operate their farms profitably, to helping community residents develop leadership skills, the Cooperative Extension Program offers answers.



Alton Thompson and M. Ray McKinnie

Our programs use a variety of delivery methods from one-on-one instruction to videoconferences and computer training. We find a way to help improve the quality of life for the limited-resource audiences we serve.

As you turn the pages of this publication, you will read the stories of some of the people we have helped. This booklet highlights only a few of the successes from the many programs we offer. Once you read the stories, I hope they will inspire you to ask how Cooperative Extension can help you bring about change in your counties, towns and communities. For more information on the programs, contact any of the 101 Cooperative Extension Centers, which are operated as a partnership with N.C. A&T, North Carolina State University and local county governments. Because we know we can't do it alone, we are also partnering with other agencies, groups and individuals looking to help our state's citizens.

It's always been our mission to find the answers to those issues and problems plaguing our citizens and to implement the solutions. The technology has changed, but our mission remains the same — we are in the business to help people put knowledge to work.

Alton Thompson, *Dean, School of Agriculture and Environmental Sciences*
M. Ray McKinnie, *Associate Dean, Administrator, Cooperative Extension Program*

Successful Solutions

Back to Life – Reenergized an under-utilized farmers' market enabling 15 farmers to increase produce sales by $150 a week. Assisted farmers in another county to write a grant to build a new farmers' market.

It's Our Home – 31 families who participated in debt reduction and economic literacy sessions purchased homes as part of Charlotte's IDA Program.

Mini-Grants – Awarded $170,000 in innovative grants to 12 Extension Centers across the state to test solutions to problems facing their communities.

Making the Switch – A&T is helping farmers switch from tobacco to other enterprises like growing fruits and vegetables. One farmer increased his income by $31,000 by switching to sweet potatoes.

Planting seeds for good nutrition



Kim McDuffie reads to 13 month-old Keri Hennesse as she eats.

HICKORY, N.C. - When her mother popped the top on a Coke, little Madison quickly spoke up — with authority far beyond her four years.

"Now Mama, you can have that," she said, "in *mod-er-ation*, but water really is healthier."

The Nutrition Lady had taught her well.

With puppets, songs, games, skits and — most importantly — food samples, the information presented from Cooperative Extension made a strong impression on some little minds at Kim McDuffie's home daycare in Catawba County.

"The program was just awesome," McDuffie says. "She would do things that were just really neat for these guys and they just loved her. They'd say 'The Nutrition Lady's here!' They would get so excited."

The program, Nutrition Education for Limited Resource Children, funded by the Cooperative Extension Program at N.C. A&T, helps in-home daycare providers teach nutrition to their pre-school students.

McDuffie related Madison's story as just one piece of evidence testifying to the program's effectiveness.

"It wasn't in one ear and out the other," said McDuffie, who learned right along with the children. "They were really taking it in."

They got introduced to an array of new foods, including star fruit.

"I didn't know there was such a thing," McDuffie says. "My kids got to taste things that they had never had at home."

Today, McDuffie has incorporated what she learned from Cooperative Extension into her own curriculum — and new tastes are regularly on her menu.

"It might not always go over too well, but at least they've been offered and they know what different foods are," she says. "I really feel like the program was such a gift for these kids because they don't get a lot of that at home."

EVERGREEN, N.C. - With some new favorite foods and a commitment to exercising everyday, John Jones' future is looking a lot brighter than his recent past.

A former welder weighing in at 460 pounds, Jones recently became disabled.

"I have a situation called narcolepsy," he says, referring to a condition that causes sufferers to frequently and suddenly fall asleep. "It was brought on by severe sleep apnea, which in turn was brought on by the weight."



John Jones

The good news is that he was in the right place at the right time. Concerned about an epidemic of obesity in Columbus County, Cooperative Extension had recently begun a program targeting the elderly and disabled.

Project Eat Right Add to Life — funded by the Cooperative Extension Program at N.C. A&T and a USDA grant from the Food & Nutrition Service — provides nutritional information including healthy recipes and cooking techniques. Jones believes the program saved his life.

"I can't say too much good about it," he says, remembering the facts of his life before. "I was confined to the chair. I couldn't get up and do for myself. Now I can get up and walk. I walk twice a day on the treadmill and I get out and chop my own wood now."

Through home visits, Teresa Thompson, a nutrition paraprofessional, first taught Jones exercises he could do in his chair. Once he got up and around she taught him how to cook meals with reduced fat, sodium and sugar. He's loving what he learned.

"I love that stir fry," he says.

And what were his favorite foods before?

"Anything fried," he says. Plus, "I was hung on sodas."

Jones, 36, says he never thought adopting a healthy lifestyle would be so simple, a sentiment echoed by many other program participants. Thompson says she's serving about 150 people at 11 sites, which quickly grew from a part-time position into a full-time job.

"Every time I go out to do a class I can almost give you a success story out of it," she says, adding that Jones has done an especially good job. "He quit drinking caffeine and quit eating pork — that's the kind of stuff that you just want to hear."

Successful Solutions

Project Eat Right, Add to Life — This nutrition outreach program made 61,845 contacts, which includes 58,174 student contacts through public school partnerships and community-based youth groups.

Healthy Taste Buds Bloom — 210 home daycare children ages 3-4 in Catawba County, and 715 daycare children in Project Eat Right Add to Life were introduced to healthy eating.

Never to Late for Healthy Eating — 3,773 contacts, including people from all ethnic groups and the elderly, received information promoting healthy eating and food safety.

Multiplier Effect – 44 teachers across the state were trained in nutrition education to support Project Eat Right Add to Life.



■ **BOLIVIA, N.C.** - Yolanda Palmer wasn't expecting much from the parenting education course the Department of Social Services (DSS) ordered her to take.

"I was like, 'I've been a parent since I was 19,'" she says she thought. " 'What can they teach me that I don't know?'"

That was then. Now, the mother of 7- and 6-year-old sons is an advocate of Cooperative Extension's Family and Consumer Science Program Assistant Stephanie Jones.

"It was very inspiring," Palmer says now. "I learned a lot of interesting things that I never thought were possible to learn. And it put a lot of light on what I already knew. It was very helpful."

The parenting program is an eight-week series, which Jones offers continuously in Brunswick County to an audience that consists largely of parents referred by DSS or the courts.

An accident landed Palmer in the program. She was more fortunate than most of her classmates, who included many whose families had been shattered by drug abuse, domestic violence or other circumstances.

In addition to teaching skills, Jones says the program also has a valuable social support component that's healing for most of her students.

"It is a very emotional time for them, a very stressful time," she says. "They get in a group and they discover that they are not the only ones going through this kind of thing."

The series starts with a segment that helps parents identify their own strengths, and ends with one on taking advantage of available support resources.

To go with the last session, Jones created a 105-page parenting resource directory that lists resources.

Palmer said she's a better parent and has a better relationship with her sons now that she's adapted the program's teachings to her life.

For instance, while she learned that "that 1-2-3 time out stuff" doesn't work on her children, she's found that taking away privileges does.

"Now, if I have to spank them, it's a last resort," she says. "In the beginning it used to be the first resort."



Yolanda Palmer wipes sand off her son Demarea Hewett, age 7.

"It is a very emotional time for them, a very stressful time, they get in a group and they discover that they are not the only ones going through this kind of thing."

— Stephanie Jones

Successful Solutions

The Parenting Prescription — 400 families in Brunswick and Robeson counties participated in ...urt-mandated or Department of ...cial Services-referred parenting education training.

Parents, Again — 200 custodial grandparents in Forsyth and Rockingham counties participated in programs that examined legal issues, stress management skills, locating resources and managing finances.

Less Debt. More Cash — 1,273 low-to-moderate-income families used goal setting and debt reduction strategies. They reduced their debt by $163,868.

Life Strategies for Youth — 64 teen mothers in Rockingham County are involved in Becoming A Mother (BAM). Ninety teens attended workshops that focused on building self-esteem, life strategies and career choices.



Jacqueline McIntyre and Don Mebane talk at the Winston-Salem Housing Authority.

■ **WINSTON-SALEM, N.C.** - Jacqueline McIntyre couldn't come up with a good answer to the question Cooperative Extension Community Resource Development Agent Donald Mebane asked her:

"Why *not* you?"

Why were she and other residents of the Winston-Salem Housing Authority's Kimberly Park Terrace looking outside themselves for direction?

The answer now is that they're not — thanks to "Community Voices," a leadership-training program Cooperative Extension provided as part of the Hope VI project that's rebuilding their community.

McIntyre was a struggling mother of seven who had just moved into Kimberly Park when Winston-Salem won the federal Hope VI grant. Five years later, she's a full-time student who also represents residents on the Housing Authority's Board of Directors.

She attributes much of her own and her neighbors' success to Mebane and his training.

"It's motivated a lot of us to prepare for change," she says. "Unless we get prepared for change, we won't go through it in a good manner."



Mebane (left standing) and McIntyre visit a computer room during a tour of the senior citizen complex on Derry St. in Winston-Salem by Faye Brice (far right), service coordinator case manager for the senior component of the Hope VI Project. Susie Forbes (seated), a resident was using one of the computers.

Now 49 with all of her children grown, McIntyre is immersed in working for change — work she never had time for in the past.

"I didn't really feel qualified," she said. "And I was so busy trying to raise my children and just go through life. I was just never one who was involved in a lot of community affairs."

She attended the leadership training at the encouragement of Hope VI administrators who were pushing to get residents involved. She's glad she did.

"We went through a lot of scenarios and little trial runs," she says. "They gave us information as to what makes a good leader, various types of informative pieces such as that — so you could pretty much see yourself and know where you fit."

With the training came valuable personal encouragement, she says: "They really pushed me and just encouraged me to do all I could do and to be who I wanted to be."

"I think the greatest thing that I've learned from Mr. Mebane and other people is that people can make a difference," she says. "But it's up to us."

"I think the greatest thing that I've learned from Mr. Mebane and other people is that people can make a difference. But it's up to us."

— Jacqueline McIntyre

Successful Solutions

Communities Take Charge — More than 1,500 non-traditional leaders used leadership skills they veloped through leadership aining. They address 155 issues and saved $128,500 using community-based resolutions.

Leaders Provide Solutions — Community Voices graduates in the Northwest Community Organization are now participating in Voices Reaching Visions. They obtained their 501 (c) 3 non-profit status and opened a community Food Pantry, which has registered 223 families and donated 3,500 meals. The pantry is manned by community volunteers and funded by churches, mini-grants and civic organizations.

Community Voices Heard at Home and on the Hill — Two Nash County leaders say that the training gave them confidence to appear before the House of Representatives to discuss Hurricane Floyd.



Tammy Edwards

■ **BURNSVILLE, N.C.** - For now, tobacco is the main crop Mike and Tammy Edwards grow on their Yancey County farm.

For the future, they don't want that to be the case.

"They keep cutting the tobacco quota," says Tammy Edwards. "They keep cutting it back so in order to farm so that you don't have to go out and get a public job, you've got to find something else to grow."

Galax, an ornamental in demand by florists, just may turn out to be the profitable "something else" for which they and other farmers in the economically struggling county are searching.

The Edwards farm is among several participating in a Cooperative Extension project that seeks to domesticate the plant, which grows wild in the region and gave Galax, Virginia, its name.

"It's still in the experimental stages, but in some of our sites it looks very impressive," says Cooperative Extension agricultural technician Claude Deyton. "We're hoping that with the loss of jobs that we're having here in our county, this will be able to offer them a little better way of life."

In a perfect world, Yancey County farmers wouldn't have to worry about jobs at all. They'd all be as fortunate as the Edwards's, who quit their jobs in a machine shop to farm full time when their daughter was born.

"This way we can spend more time together as a family," she says. "When she's not in school, she's in the field with us."

While most of the county's farm families aren't so lucky, all have benefited financially from money-saving, resource-pooling efforts coordinated by Cooperative Extension.

"Without Cooperative Extension, probably most of the farmers in Yancey County wouldn't even exist," she says. "Claude Deyton, I'll tell you, he's just been wonderful in getting the farmers to work together."

That history helps create support for the galax project.

"We don't really know anything about it right now — we're just trying it," she says. "We don't know, but we're hoping."

Helping Small-Scale Farmers Succeed

■ **TURKEY, N.C.** - Early in his farming enterprise, Sampson County farmer Robert Caldwell was uncertain about what his farming operation cost to maintain and what he could expect in return.

In the years since, Caldwell has come to rely on a record-keeping system developed by the Cooperative Extension Program at N.C. A&T.

"I couldn't really tell where I was going as far as finances go," said Caldwell. "James helped me by getting me going on this record-keeping system, and that has provided me peace of mind and a better chance at profitability.

Farm Management Agent James Hartsfield meets with Caldwell twice monthly to review the farm's financial health and to determine courses of action to improve or maintain it.

"Record-keeping and financial planning are often overlooked aspects of farming. With so much labor-intensive work to do and so little time and resources to do it, many small-scale farmers have difficulty giving sound business practices such as these the attention they deserve," said Hartsfield. "Unfortunately for these farmers, the success of a farming enterprise is directly tied to its paperwork."

Hartsfield and Caldwell rely on "The Cash Flow Farm Record System," as a tool to document the Caldwell farm's income and expenditures. This ledger-like resource is a repository where appropriate records are kept and can be used in financial planning.

"You can't accurately gauge the health of a farming operation if you don't know how much the farm is bringing in and how much it is spending on operations," said Hartsfield. "Furthermore, you can't project the farm's cash flow. Without cash flow projections, a farmer can find himself frequently short on funds to pay bills. When he can't pay bills, he can't operate, and all of this hurts his chances of obtaining credit, when that is necessary."

With The Cash Flow Farm Record System, Caldwell is able to use records from previous years to predict when he will need to purchase inputs, such as seed and fertilizer, and how much of these inputs he needs and what they might cost. By anticipating these expenses, he is able to reserve enough cash to purchase them, allowing him to avoid using credit.

"It's tough enough to make it as a small-scale farmer," says Caldwell. "Adding the expenses and anxiety of financing just makes it that much tougher. If I can avoid that, I can come out further ahead at harvest time."

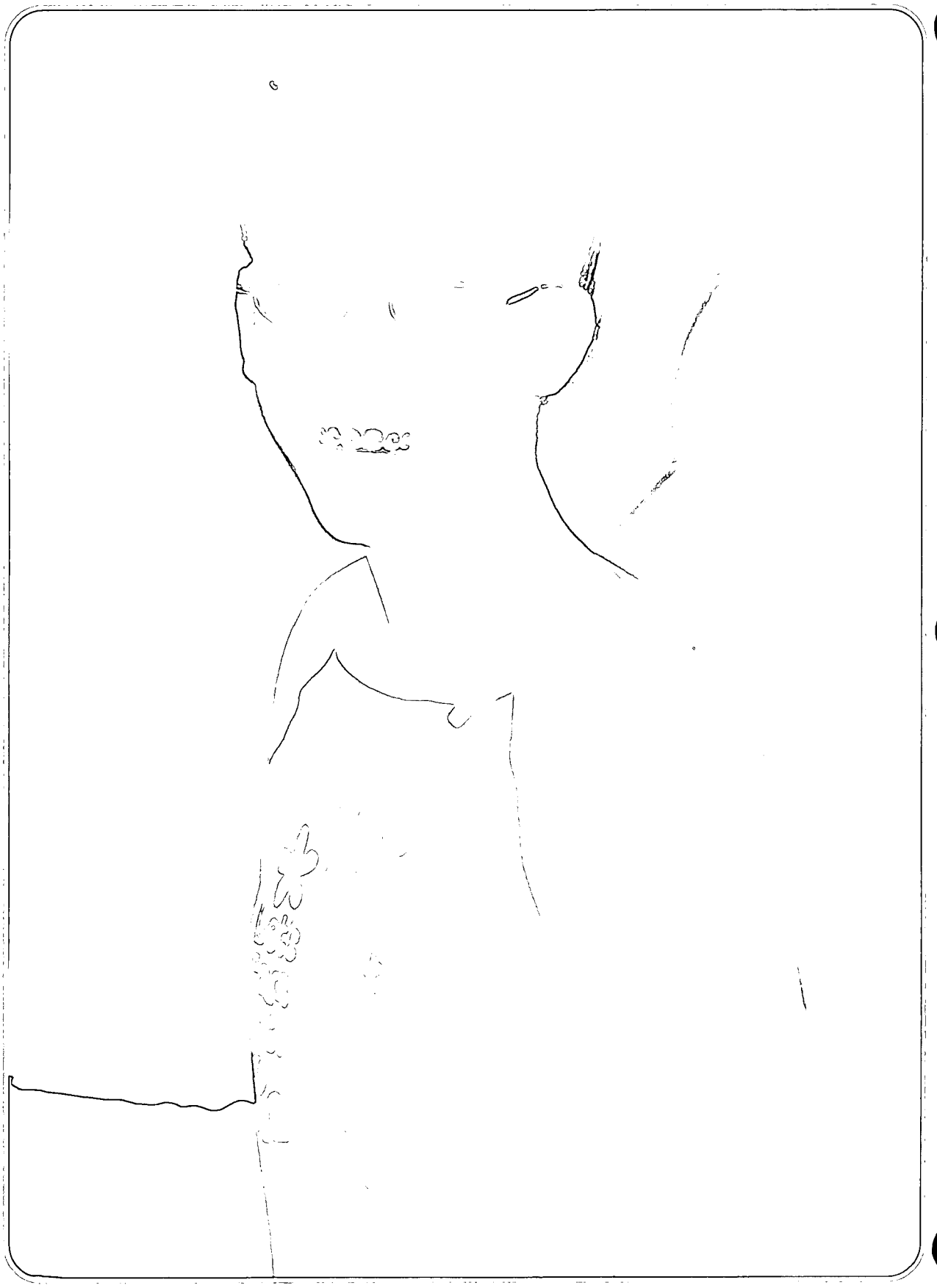
Successful Solutions

Worth a Try — 40 small-scale producers experiment with alternative income-producing vities.

Working Together — Small farmers in Yancey County, brought together by Extension, saved $100,000 by buying farm products and supplies as a group.

Galax Green Equals Economic Security — Seven on-farm tests have been installed to relocate galax from natural conditions to controlled production. A successful project could mean millions for 3,000 farmers.

To Market, to Market — A&T helped 40 goat producers organize a cooperative and pass certification tests and USDA inspections. Now they are selling to a grocery chain that caters to ethnic markets.



Tiffany Edwards rehearsing with an afterschool program step team.

■ **GATESVILLE, N.C.** -Tiffany Dent is only in the 8th grade, but she knows where she's going and what she wants to do with her life. With help from Cooperative Extension, she's on the honor roll and on track to a positive future.

Tiffany was a participant in Camp Wannagoma, a summer day camp designed to give students concentrated time to develop life skills, like goal setting, teambuilding and conflict management. The nine-week camp was a combination of fun and learning. Each camper was encouraged to set his or her own personal goals and to develop strategies for attaining the goal. Tiffany set a lofty goal. She wanted to raise her grades enough to join the Junior Beta Club and to be on the honor roll. Feats she has accomplished, but not without hard work and sacrifice.

"I set out to do it and I did," Tiffany said. "The support I got at camp helped me reach my academic goals."



Tiffany helps her six-year-old sister Tangela read.

To reach her goal, Tiffany decreased her weekday television time and increased the amount of time spent studying and even gave up some extra curricular activities. As well, Tiffany reinforced her studies by helping other students in one-on-one tutoring sessions. She was also selected as a member of her school's Quiz Bowl.

Tiffany, 13, says her favorite subject is math, "because I like solving problems." She also loves babies, and is planning a career as a pediatric nurse.

In the meantime, she also finds time to play the clarinet and do community service work, including serving as a mentor to younger students — and her younger siblings.

As the oldest daughter of Phyliss and Jeffrey Dent, she is known as sister/tutor to 3-year-old Jeffrey Jr. and 11-year-old Teressa.

It's a big sister thing.

"I just enjoy it a lot. I get to help them a lot," she says. "Most of the time they ask me questions, and they're like, 'Thank you for helping me.'"

I Have A Dream

I have a dream that violence will end • And the world will have peace once again.
I have a dream that people will see • The beauty that lies within you and me.
I have a dream that people will be a community • Where this nation and others will live in unity.
I have a dream where parents and children love • And acknowledge God as their Saviour up above.
I have a dream that principals and teachers love one another • And let each other know, you're my sister, my brother.
"Free At Last, Free At Last," • I hope my dream will come to pass. — *Tiffany J. Dent*

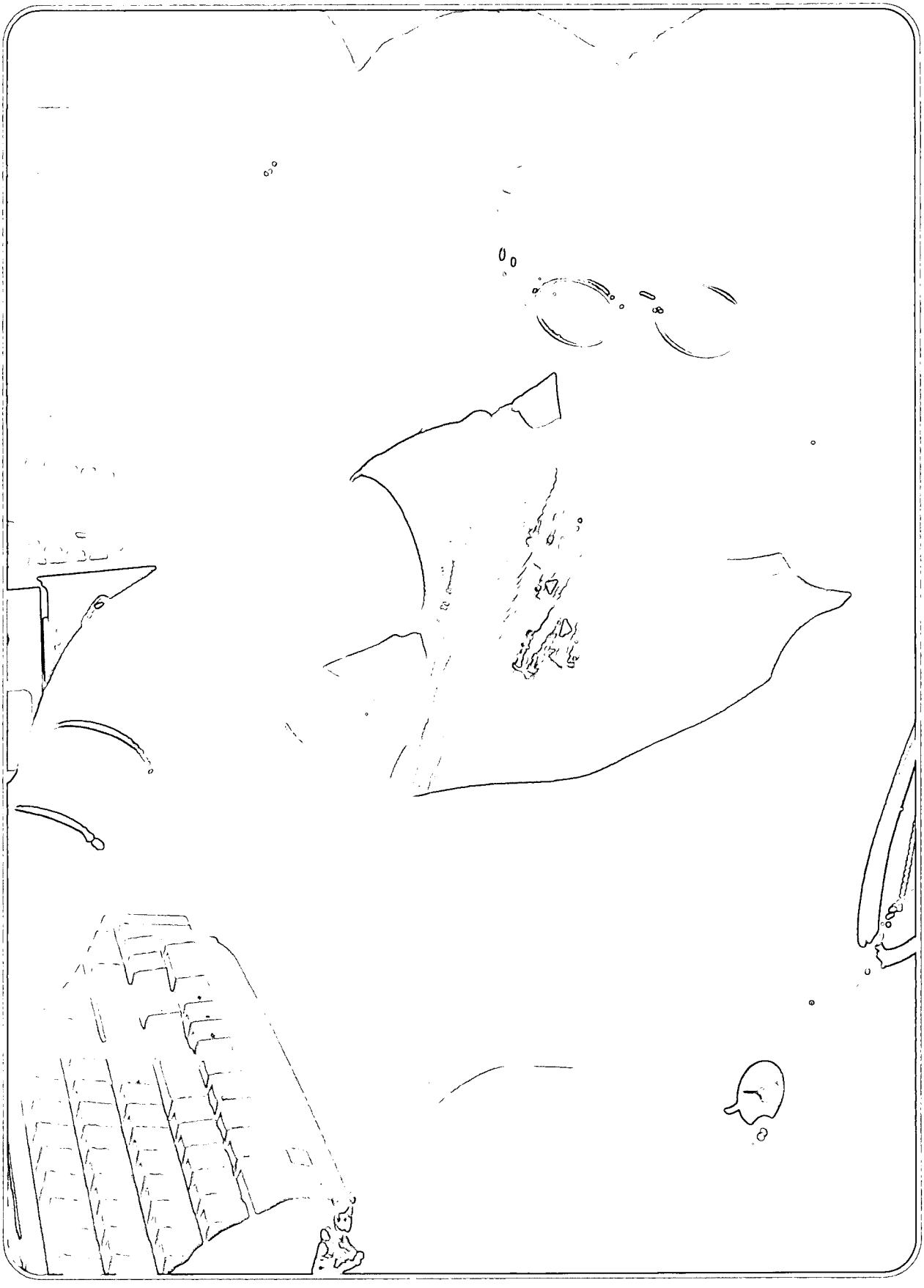
Successful Solutions

Youth Get Down to Business — 700 youth from public housing communities developed and ticed "real world" entrepre- rship skills by participating in the Mini-Society Project.

Building Study Skills — 235 youth at the Cherokee Reservation participated in a study skills enrichment camp, supported by 16 newly recruited volunteers.

4-H Clubs Sprouting for Children 5-8 Years Old — 124 new 4-H clubs targeting 5-8 year olds were formed in 51 counties. Seventeen of these clubs exist in public housing communities and reached 992 youth.

Community Voices for Children – Two Hispanic leaders in Wake County are using their leadership skills to train other parents how to advocate for their children.



left to right: Danielle Powell, 16; Angela Huff, 13; Afina Henry, 13; and Manika Fleming, 14

■ **ROANOKE RAPIDS, N.C.** - Before YouthTech, the eight young pilot participants were on the rough side of the digital divide.

Without computers at home, their rides down the information highway were few and far between. Their only access was through computers at school, which could feel like having no access at all.

"They're always occupied," says 13-year-old Afina Henry. And "at our public library, you have to be 18 to use the Internet."

These days, the girls — ages 13-16 — are all topnotch Web designers and leaders in a new 4-H club thanks to the technical training, career and leadership development, and brand new home computers and printers provided to allow them to continue developing their computer skills.

The 17-week program was developed by Extension Family and Consumer Agent Regenia Walden as a collaboration with the Roanoke Rapids Housing Authority and Cooperative Extension Program at N.C. A&T.



Although the YouthTech program ended, the Housing Authority computers the girls learned on (and even learned to take apart and rebuild) are still being used in the Housing Authority's after-school program, and soon will be put to use in the evening classes that program coordinator Sheree Anderson is planning for adults.

"The computers are being well-used and well-appreciated by many hands," Anderson says, adding that "her" YouthTech graduates also are doing "very, very, very well."

And the girls are using their home computers to continue to sharpen their skills and to introduce the computer and their skills to other family members.

Cooperative Extension had similar results throughout the state with FACT — Farmers Adopting Computer Training. By giving them computers and training, FACT is helping a diverse group of farmers stay competitive by using the Internet for purchases and handling their business electronically.

Through YouthTech and FACT, as well as a project that's teaching basic computer skills to senior citizens in Princeville, Cooperative Extension has created excitement about and access to technology for youths, adults and elders alike.

Timothy Bazemore, a 79-year-old Bertie County farmer had a major change in his attitude thanks to FACT.

"I didn't even want to touch a computer or turn it on, " Bazemore said.

As Bazemore is transitioning from farming to retirement, he's using the computer to keep track of his farm records. Some of his property is being used as rental property and he's helping to transact his business with HUD using the computer.

Through YouthTech and FACT, as well as a project that's teaching basic computer skills to senior citizens in Princeville, Cooperative Extension has created excitement about and access to technology for youths, adults and elders alike.

Successful Solutions

It's a FACT — 20 farmers are using computers to manage their farm business, as part of Farmers ...pting Computer Training ...CT).

From 7 to 70 — Senior citizens are introduced to computer technology in community centers in the Dunbar community in Edgecombe County while youth use the computers for homework and skill enrichment in Rockingham and Halifax counties.



Dr. James C. Renick, *Chancellor*
Dr. Alton Thompson, *Dean, School of Agriculture and Environmental Sciences*
Dr. M. Ray McKinnie, *Associate Dean, Administrator, Cooperative Extension Program*

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1.

Senate Agriculture, Environment and Natural Resources Committee
11 a.m. March 11, 2003
Raleigh, North Carolina
Dean James L. Oblinger

Thank you for this opportunity to talk about many of the ways that NC State's College of Agriculture and Life Sciences is working to address challenges affecting agriculture, the environment and natural resources.

With me today are our College's three associate deans: Ken Esbenshade, director of Academic Programs; Johnny Wynne, director of the North Carolina Agricultural Research Service; and Jon Ort, director of the North Carolina Cooperative Extension Service.

2. In your packet, you have a handout, prepared this month by our Agricultural Economist Dr. Mike Walden, that outlines the significance of agriculture and agribusiness in NC: Taken together, food, fiber and forestry remain our state's top industry, accounting for 22% of our gross state product and 20% of our jobs.

3. But agriculture is very much at a crossroads. Domestic and foreign policies, coupled with changes overseas, have led to thin profit margins -- or no-profit margins -- for certain commodities. The situation is exacerbated here in North Carolina, of course, by historically low tobacco quotas the past few years.

4. If producers are to remain competitive, profitable and environmentally sustainable, they need new research and technology, access to an expanding knowledge base, and a menu of viable alternative enterprises. The College of Agriculture and Life Sciences helps meet these needs through academic, research and extension programs.

5. Our mission shared here is quite broad. I'll let you read this but suffice it to say:

6. Our College approaches agriculture from the life sciences perspective, recognizing that the same science, engineering and technology that helps produce a more plentiful, nutritious and safe food supply can lead us to better ways to protect the environment and to enhance animal, plant and human health.

7. This integrated approach is reflected in our College's organizational structure. This chart (you have copies in your folder) -- shows relationships and connections that exist within, and beyond, the College. Our disciplines, represented in 22 departments, range from animal science to zoology, from biochemistry to genetics and toxicology. Of particular note would be our interdisciplinary work with other colleges on our campus, other universities in the system and numerous state and federal agencies as described in the footnotes and boxes.

Our faculty and staff work:

8. on the N.C. State campus,

9. at 10 university field laboratories in the Raleigh area,

10. and at 16 outlying research stations operated in partnership with the state Department of Agriculture and Consumer Services. These stations and the activities they support are also highlighted in your packet.

11 We also have a network of 101 Extension centers across the state. Very recently we have launched a pilot project aimed at expanding the scope of our university's engagement with local communities, using nine centers that have been designated as NC State University Gateway Centers.

12. Our academic programs prepare students for a lifetime of achievement in agricultural, biological and environmental sciences careers as well as for further studies in graduate school or in the professional schools of medicine, dentistry, veterinary medicine, and pharmacy.

We are proud that all 100 North Carolina counties as represented in our College's student body.

13. Overall, we have:

- Over 300 students in 10 highly practical degree programs in our two-year Agricultural Institute;
- Over 3,400 in our four-year programs;
- and some 725 students in our master's and doctoral programs.

14. The College's research arm is the North Carolina Agricultural Research Service. By **pushing the frontiers of science**, and applying that research we have created new economic opportunities for agriculture and for other areas of our economy, while at the same time maintaining traditional allegiances to agricultural production and rural communities.

Whether involved in the agricultural or life sciences, our research faculty and staff derive their salaries from the Agricultural Programs line in the budget in the Office of the President of the University of North Carolina.

15. Helping ensure that our citizens and industries have access to a rapidly expanding research knowledge base is the role of the North Carolina Cooperative Extension Service. Cooperative Extension field faculty work in every county of this state, directly linked to their research, teaching and extension colleagues stationed in Raleigh.

16. In many cases, our faculty members have joint research, extension and teaching appointments, and this strengthens our efforts by ensuring that our focus is on high-priority, real-world solutions.

17. In North Carolina, Cooperative Extension is a joint partnership between N.C. State and N.C. A&T State University.

Like our researchers, Extension's faculty, field faculty and staff, both on-campus and off-campus, derive their salaries from the Agricultural Programs line I mentioned previously. Our field faculty also derive salary support from county governments. I should also mention the U.S. Department of Agriculture, which also provides funding for our research and extension programs.

18. I want to provide you with a thumbnail sketch of several programs that we feel are particularly important to our state's economic development as well as agricultural and environmental sustainability. There is a sheet in your packet that lists the programs I'm going to mention.

19. Our scientists and educators take a multidisciplinary approach to solving agricultural and environmental problems. An example is **our Neuse Education Team,** which approaches its applied research, demonstration and educational programs from a basinwide perspective that reaches producers, builders, community leaders, school children, homeowners and others in rural and urban areas. The team has won national awards for its impact in enhancing the environment, and it has proven invaluable in helping growers meet regulations aimed at reducing nitrogen levels in the Neuse River.

20. The College is also addressing concerns related to another nutrient, **phosphorus.** New Natural Resources Conservation Service regulations -- intended to reduce the likelihood of excess phosphorus reaching rivers and estuaries -- affect several thousand producers. While other states use soil test phosphorus levels or rule-of-thumb indexing methods in response to the new nutrient management standard, the potential impact in North Carolina required a much stronger, science-based approach.

21. Our faculty is nearing completion of a software tool that will consider site-specific parameters such as soil type and slope to help producers manage nutrients in ways that protect both their bottomline and the environment. This work is being done by several of our faculty in conjunction with NRCS and the state departments of Environment and Natural Resources and Agriculture and Consumer Services.

22. Such partnerships are also important to other College **water-quality** initiatives. To develop **effective restoration technologies** for wetlands, streams and buffers that comply with federally mandated mitigation requirements, we work with the North Carolina Wetlands Restoration Program, the Wildlife Resources Commission and the Department of Transportation. And our Extension faculty demonstrates and trains environmental professionals, agency personnel and others on these techniques. You may have seen the News and Observer front page article this past Sunday describing such an effort in Carteret County.

23. We take a similar approach to issues of **stormwater management** and **sedimentation control,** working with DENR, DOT and local governments to develop technologies for meeting federal and state requirements to reduce sediment runoff from construction sites as well as nutrients and other pollutants in urban stormwater.

24. Protecting water quality is also one of the aims of the College's waste management efforts. Our **Animal and Poultry Waste Management Center** is developing and testing alternative waste-management systems for livestock and poultry industries and the Center works with extension agents to provide producers with economically viable, and environmentally sound solutions.

Under a $17.3 million agreement involving industry and state government, the center is testing 18 promising alternative waste management technologies. Many recover nutrients in waste for use as a value-added product, such as products that can be added to the soil to improve fertility or used in animal feeds. In other cases, technologies are designed to recover fuel as a value-added product.

25. You have a handout in your packet that gives an update on the status of each technology under study as well as a handout indicating where these projects are located and their construction status. This map gives you an idea of where on-farm evaluations are taking place.

26. Here's Dr. Mike Williams discussing key features that our researchers look for as they assess these technologies:

> Dr. Williams:
> "They must address issues such as odor emissions, ammonia emissions, pathogens emissions and nutrient-loading to soil and groundwater. They must also meet economic feasibility criteria. So for a technology to be determined again, quote-unquote, environmentally superior per the conditions of these agreements, they have to meet all of these conditions. It's clear that if they do, we will have technologies that should satisfy the industry, the regulators as well as the environmental and community concerns that have surrounded this very controversial issue."

27. Also aimed at ensuring economic and environmental sustainability is our College's work to develop and help growers implement **integrated pest management techniques** and **precision agricultural production.** These practices enable producers to apply nutrients, or pesticides, only when and where needed. This saves money, and it improves **water quality.**

We estimate that North Carolina growers who adopted integrated pest management strategies in 2002 reduced pesticide use by more than 200,000 pounds of active ingredient and saved $3.8 million.

28. These efforts to protect natural resources are especially critical as state population growth puts additional pressures on the environment. Renewed popularity of living in rural areas has created new employment opportunities, increased land values and broader taxpayer bases--but it also creates a greater strain on infrastructure and sometimes leads to farm-rural-city conflicts.

29. Public issues education programs, like our **Natural Resources Leadership Institute**, help to equip citizens and local leaders to work together to address such contentious issues in productive ways.

30. Ensuring that the public and producers have the latest and best information is also important in the area of **biotechnology**. Worldwide, we are seeing double-digit growth in the adoption of transgenic crops--in the United States in 2002--75% of our soybeans, 34% of our corn and 71% of our cotton were transgenic.

Our producers need to know when and how to adopt this technology, and our citizens need reliable, science-based information on the safety of the products of agricultural biotechnology.

31. You may have heard about the new Tobacco Genome Initiative, which is designed to map the genetic makeup of tobacco. Data derived from the industry-funded project will be important to scientists working not just with tobacco but also related plants and plant products. Dr. Charlie Opperman explains:

> **32. Dr. Opperman:**
> "So Philip Morris has funded this project over four years for $17.6 million for gene discovery in tobacco, and as I mentioned tobacco is a very important model species in the plant community. It is important to note that in this grant, the data is going out into a public database. And this is one of the larger plant genome projects that are on the horizon.... This can be a platform for many, many researchers to do things that could result in economic benefit to the state of North Carolina, the nation, agriculture, tobacco, industry - even the pharmaceutical industry."

As Dr. Opperman suggests, gene discovery can lead to research with many potential applications.

33. That's certainly the case with the work of our **Fungal Genomics Laboratory**. Thanks to the efforts of Dr. Ralph Dean and his partners at other institutions, we have mapped the genome of rice blast, which destroys enough rice to feed more than 60 million people annually. The fungus was recently recognized by the Centers for Disease Control and Prevention as a potentially significant biological weapon that could be used for **agricultural terrorism.**

34. And that leads me to another issue of increasing importance to North Carolina agriculture: **biosecurity.** Our research and extension efforts to eliminate poult enteritis mortality syndrome (PEMS), which caused millions of dollars in losses here in North Carolina, focused on the importance of biosecurity, and the protocols developed to stem that widespread disease also work to prevent the spread of other biological agents, whether natural or manmade.

35. While our scientists study new ways to protect agriculture from foot-and-mouth disease, bioterrorism and other threats, our Extension agents and specialists are working with producers to lower their risk. Our work in this area involves partnerships with state and county animal response teams, the state's Emergency Management division, our State Department of agriculture, and USDA's Animal and Plant Health Inspection Service, which is housed on our university's Centennial Campus.

36. Another way the College strengthens agriculture is by developing promising alternative enterprises, such as **agri-tourism** and **aquaculture**. Today, aquaculture's annual farm-gate value is more than $25 million, and more growth is possible, thanks to our research and demonstration efforts in recirculating water technologies and flounder production. We work with mountain trout, talapia, stripped bass, as well as some catfish producers.

37. **Value-added** and **customized crops** that can be created through traditional plant breeding as well as biotechnology also bring additional income to our state's farmers. College soybean breeders have developed food-grade varieties that can be exported or sold to the growing Asian population right here in North Carolina.

38. Organic crops also are promising. Our **Center for Environmental Farming Systems** in Goldsboro is home to one of the nation's largest organic research units. It is a partnership among N.C. State, N.C. A&T and the state Agriculture Department.

39. Here's the center director, Dr. Nancy Creamer:

> **Dr. Creamer:**
> We do research and extension education and student education in sustainable agriculture -- so, an agriculture that protects the environment and is profitable for farmers and supports rural communities ... An example is organic agriculture, which has grown about 24% over the last 12 years and at the same time North Carolina is importing about 85% of the organic products, so there's a tremendous opportunity -- the profit potential in organic systems is quite high.

40. Another high-growth area is the **green industry,** which includes nursery and greenhouse production as well as turfgrass. Our new **Center for Turfgrass Environmental Research and Education** focuses on finding better ways to manage the 2.2 million acres of turfgrass that contribute to an industry worth $3.8 billion annually in North Carolina. Dr. Fred Yelverton is one of three center directors:

41. Dr. Fred Yelverton
"We've long known that turfgrasses are very friendly environmentally because they're effective filters and so forth. But at the same time we have to intensively manage our turfgrasses. So what we're trying to do is make sure that our management practices are environmentally sound and, of course, economically feasible for our turfgrass managers. So the focus of our center is on environmental research and finding new ways and improved ways to manage turfgrasses so that we can ensure that their impact remains positive on the environment."

42. The **North Carolina Specialty Crops Program** has been particularly successful in identifying and developing new commodities and value-added products. The program takes a turnkey approach -- from discovery to applied research, marketing research, technical assistance and outreach and then followup evaluation. A partnership of our College and NCDA, the program has been successful with seedless red watermelons and the Oriental sprite melon and is making progress on medicinal and culinary herbs, chrysanthemums grown for a natural insecticide and super-hot chili peppers for industry.

43. The Golden LEAF Foundation has provided support for some of these specialty crops efforts, along with our work in meat goats, sweetpotato genomics, organic crops and aquaculture.

Golden LEAF funding also has allowed us to form unique partnerships between our Agricultural Foundation and various commodity organizations and for-profit corporations to bring about economic results. This table illustrates these partnerships:

You have a copy of this table in your packet.

44. Golden Leaf Foundation Projects Through the Agricultural Foundation

Project Name	Partnering Group
Sustainable Agricultural Solutions Manufactured from Waste Management	Novovita Inc.
Alternative Markets for NC Grain Growers	Grain Growers Cooperative
Marketing and Marketing Capacity Development for Carolina Organic	Carolina Organic Growers
Development and Production of Value-Added Egg Products/A Value-Added Egg Processing Facility for NC	Carolina Egg Development Corp.
Development of market for naked oat variety 'NC Hulless'	NC Foundation Seed Producers Inc.
Communication and Education Improvement Initiative	Tobacco Growers Association of NC
Entrepreneur Assistance Program for Value-Added Agricultural Commodities and Products	NC Agricultural Foundation Inc. on behalf of alliance with NCDA&CS, CALS and other agribusiness service providers
Equipment Needs to Process and Sell Natto and Tofu Soybeans	NC Foundation Seed Producers Inc.
Farmer-Owned Value-Added Processing Initiative	Eastern Foods Cooperative
Production of High Capsaicin Pepper as an Alternative Crop	Natural Pest FX Inc.
Biochemical Product for Horticulture	Milsanna Bioprotectant (KHH BioSci Inc.)
Terra Ceia Compost (soil amendment)	3-B Family Farms Inc.

Given the increasingly complex changes our state faces in terms of economic development and the sustainability of our environment, I think that these sorts of partnerships will continue to be of utmost importance. As we work to achieve our mission of advancing this great state, our College depends on longstanding partnerships that allow us to leverage funding provided by the General Assembly with additional dollars from federal and county governments, private industry and non-profit organizations.

45. CLOSING

Together, we share the common goal of advancing our economy by ensuring the long-term viability of our agricultural and life sciences industries, and at the same time protecting the environment, providing quality education, and improving the quality of life for all North Carolinians.

If you have any questions, the directors and I will be happy to try to answer them.

Thank you for your kind attention today, and for all you do on behalf of our college, our university, and our state.

SELECTED PROGRAMS IN
THE COLLEGE OF AGRICULTURE AND LIFE SCIENCES

- ✓ **Neuse Education Team: Water Quality**
- ✓ **Phosphorus Management Tools**
- ✓ **Restoration Technologies**
- ✓ **Stormwater Management/Sedimentation Control**
- ✓ **Animal and Poultry Waste Management Center**
- ✓ **Integrated Pest Management**
- ✓ **Precision Agriculture Techniques**
- ✓ **Natural Resources Leadership Institute (NRLI)**
- ✓ **Biotechnology**
- ✓ **Genomics**
- ✓ **Agricultural Terrorism/Biosecurity**
- ✓ **Agri-Tourism**
- ✓ **Aquaculture**
- ✓ **Value-Added/Customized Crops**
- ✓ **Center for Environmental Farming Systems**
- ✓ **Green Industry**
  - ✓ **Center for Turfgrass Environmental Research and Education**
- ✓ **Specialty Crops Program**
- ✓ **Golden Leaf Foundation Funding**

James L. Oblinger
Dean and Executive Director for
Agricultural Programs

NC STATE UNIVERSITY

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NC STATE UNIVERSITY College of Agriculture and Life Sciences

agriculture and agribusiness

North Carolina's Number 1 Industry

Agriculture and **agribusiness** — food, fiber, and forestry — account for more than one-fifth of the state's income and employees. Twenty-two percent, or $62.6 billion, of $282 billion gross state product is contributed by food, fiber, and forestry industries. These industries account for 771,000 of the state's 3.9 million employees. The following are the value-added incomes derived from the state's agricultural sector for 2000.

Total Income

Agriculture/Food Industries
total income ..... $46.3 billion
share of N.C. income 16.4%

Natural Fiber Industries
total income ..... $6.1 billion
share of N.C. income 2.2%

Forestry Industries
total income ..... $10.2 billion
share of N.C. income 3.6%

Agriculture: Food, Fiber, and Forestry Industries
total income ..... $62.6 billion
share of N.C. income 22.2%

Total N.C. Income for 2000
Gross State Product ..... $282 billion

Agricultural Employment

771,000, or 20 percent, of North Carolina's 3.9 million total employees work in agriculture.

Fiber Industries

including natural fiber based manufacturing, wholesaling, and retailing

Manufacturing ..... $4.4 billion
(including textile mill and apparel products)

Wholesaling ..... $0.7 billion
(including apparel, piece goods, and notions)

Retailing ..... $1.0 billion
(including apparel and accessory stores)

Total ..... $6.1 billion

Forestry Industries

including farm production and the manufacture of furniture, lumber, wood, and paper products

Farm ..... $1.6 billion
(including total income from farm and commercial forestry)

Manufacturing ..... $8.6 billion
(including furniture and fixtures, lumber and wood products, and paper and allied products)

Total ..... $10.2 billion

Agriculture/Food Industries

including farming, manufacturing, wholesaling, and retailing firms

Farming ..... $9.0 billion
(including crops, livestock, aquaculture, ornamentals, and turf)

Manufacturing ..... $25.3 billion
(including food and tobacco products, and agricultural chemicals)

Wholesaling ..... $3.5 billion
(including food and tobacco, and farm supplies and products)

Retailing ..... $8.5 billion
(including food stores and restaurants)

Total ..... $46.3 billion

The figures reflect **value-added income** for 2000. At the farm level, value added is sales. At the manufacturing, wholesale, and retail levels, value added is sales minus the cost of non-labor inputs. Value added does not include the value of non-North Carolina produced inputs, and value added avoids the multiple-counting of a product used several times in the production chain.

Prepared by
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College of Agriculture and Life Sciences, North Carolina State University

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Agriculture and Life Sciences
James L. Oblinger, Dean, and Executive Director for Agricultural Programs

- Assistant Dean for Administration — K.B. Perry
- Assistant to the Dean and Director of Commodity Relations — vacant
- Executive Director, College Advancement — K.D. Oakley
  - Alumni Society
  - College Relations
  - Development and Foundations
- Coordinator, International Programs[a] — L.A. Nelson, Interim
- Coordinator, Student Diversity Programs — B.P. Alston-Mills
- Chief Fiscal Officer — M.T. Cross
- Director of Personnel — H.L. Lineberry, II

Sixteen Branch Research Stations
Cooperative with North Carolina Department of Agriculture and Consumer Services
Nine University Field Laboratories

United States Department of Agriculture — Cooperative State, Research, Education, and Extension Service

101 Extension Centers and County Extension Personnel[b]
Six 4-H Education Centers

Academic Programs
K.L. Esbenshade, Associate Dean and Director

- *Undergraduate Programs*[c]
- *Graduate Programs*
- *Agricultural Institute*
- *Student Advising, Recruitment and Retention*
- *Scholarships and Awards*
- *Honors and Scholars Programs*
- *Career Services Office*
- *Student Organizations*
- *College Academic and Administrative Technology*

Agricultural Research Service[d]
J.C. Wynne, Associate Dean and Director

- *Agriculture and Life Sciences*
- *Forestry*[1] *and Natural Resources*
- *Human Environmental Sciences*[2]
- *Animal Health*[3]
- *Environmental Initiatives*
- *Program and Project Development*
- *Grants and Contracts*

Cooperative Extension Service[d]
J.F. Ort, Associate Dean and Director and Assistant Vice Chancellor for Extension and Engagement

- *Agriculture and Natural Resources*
- *Community Development*
- *4-H Youth Development*
- *Family and Consumer Education*
- *Environmental Initiatives*
- *Forestry Extension*[1]
- *Extension Information Technology*

Departments (Academic Programs – Research – Extension)[e]

- **Agricultural and Extension Education**[e] — J.L. Flowers
- **Agricultural and Resource Economics**[4] — J.A. Brandt
- **Animal Science** — R.L. McCraw, Interim
- **Biological and Agricultural Engineering**[6] — J.H. Young
- **Botany** — M.E. Daub
- **Communication Services** — W.M. Gray
- **Crop Science** — H.T. Stalker
- **Entomology** — J.D. Harper
- **Environmental and Molecular Toxicology** — D. Shea
- **Family and Consumer Sciences** — S.A. Zaslow
- **Food Science** — K.R. Swartzel
- **4-H Youth Development** — T.T. McKinney, Interim
- **Genetics** — S.E. Curtis
- **Horticultural Science** — T.J. Monaco
- **Microbiology** — H.M. Hassan
- **Molecular and Structural Biochemistry**[5] — D.T. Brown
- **Plant Pathology** — J.W. Moyer
- **Poultry Science** — G.B. Havenstein
- **Sociology and Anthropology**[7] — W.B. Clifford
- **Soil Science** — J.L. Havlin
- **Statistics**[5] — S.G. Pantula
- **Zoology** — T.L. Grove

Jointly administered with:
[1]College of Natural Resources
[2]UNC at Greensboro
[3]College of Veterinary Medicine
[4]College of Management, Graduate Program
[5]College of Physical and Mathematical Sciences
[6]College of Engineering
[7]College of Humanities and Social Sciences

[a]International Programs coordinated with departmental efforts in Teaching, Research and Extension.
[b]Administered cooperatively with county governments.
[c]Graduate programs administered through departments. Interdepartmental programs in Bioinformatics, Biotechnology, Genomic Science, Immunology, Nutrition, Physiology and Plant Physiology.
[d]Cooperative with NC A&T State University.
[e]Includes NC Association of FFA.

COLLEGE OF
AGRICULTURE and LIFE SCIENCES
ORGANIZATIONAL CHART
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2/03

College of Agriculture and Life Sciences
NORTH CAROLINA STATE UNIVERSITY

North Carolina Agricultural Research Stations

North Carolina's 18 agricultural research stations are essential to research and extension efforts in the College of Agriculture and Life Sciences at North Carolina State University. These efforts are designed to support the state's farmers and ensure that agriculture remains a strong segment of the state's economy. North Carolina is a geographically diverse state. Areas like the Sandhills, the Piedmont, the Tidewater, the Coastal Plain and the Mountains differ considerably in terms of climate, soils and other factors. If agricultural scientists are to develop crops adapted to North Carolina conditions, test crops for their suitability in North Carolina, work with livestock under North Carolina conditions, and create and test strategies for producing and protecting both traditional and alternative crops in North Carolina, they must have access to North Carolina conditions. The research stations, located across North Carolina so that they represent the geographic and environmental conditions in the state, provide that access. Agricultural research stations enable the College of Agriculture and Life Sciences to give farmers the kind of information they need to be successful. The research stations provide sites for field tests and other research that enable College researchers to tell a farmer what to expect from a new crop, a new livestock enterprise or a new pest management strategy.

College of Agriculture and Life Sciences researchers work at all 18 stations. Six stations are owned by North Carolina State University; the other 12 by the North Carolina Department of Agriculture and Consumer Services. Two stations, the Mountain Horticultural Crops Research Station at Fletcher and the Tidewater Research Station at Plymouth, also have research and extension centers on their grounds. The centers provide lab and office space for the North Carolina Agricultural Research Service and the North Carolina Cooperative Extension Service. At the Vernon James Research and Extension Center at Plymouth and at the Mountain Horticultural Crops Research and Extension Center at Fletcher, Research Service scientists and Extension specialists are available to work with area farmers and other citizens. Because they are permanently stationed at these two sites, scientists and specialists are better able to respond to the needs of these two areas of the state. Also included among the stations is the Center for Environmental Farming Systems at Goldsboro. A partnership with the North Carolina Department of Agriculture

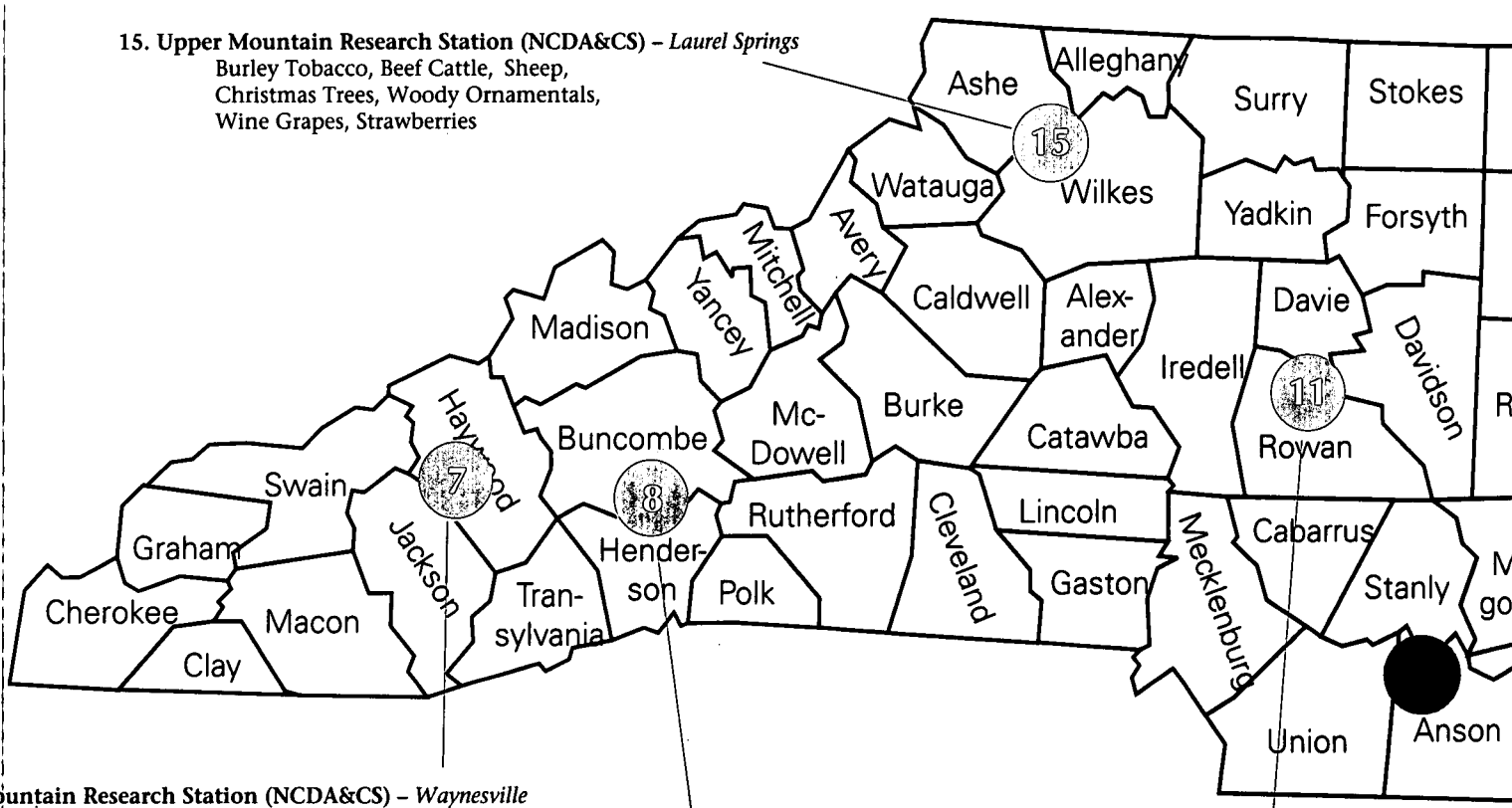
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North Carolina Agricultural Research Stations

Station ownership (either North Carolina State University or the North Carolina Department of Agriculture and Consumer Services) is indicated in parenthesis and is followed by the station location and a list of crops that are the focus of research at the station.

16. Upper Piedmont Research Station (NC State) – *Reidsvi*
Tobacco, Corn, Wheat, Soybeans, Ba
Cucumbers, Blackberries, Raspberries,
Blueberries, Strawberries, Wine Grapes,
Black Angus Beef Cattle (a pure-bred herd is
located at this station)

15. Upper Mountain Research Station (NCDA&CS) – *Laurel Springs*
Burley Tobacco, Beef Cattle, Sheep,
Christmas Trees, Woody Ornamentals,
Wine Grapes, Strawberries



7. Mountain Research Station (NCDA&CS) – *Waynesville*
Christmas Trees, Burley Tobacco,
Beef Cattle, Sheep, Goats,
Tomatoes, Blueberries, Brambles,
Forage Crops, Small Grains

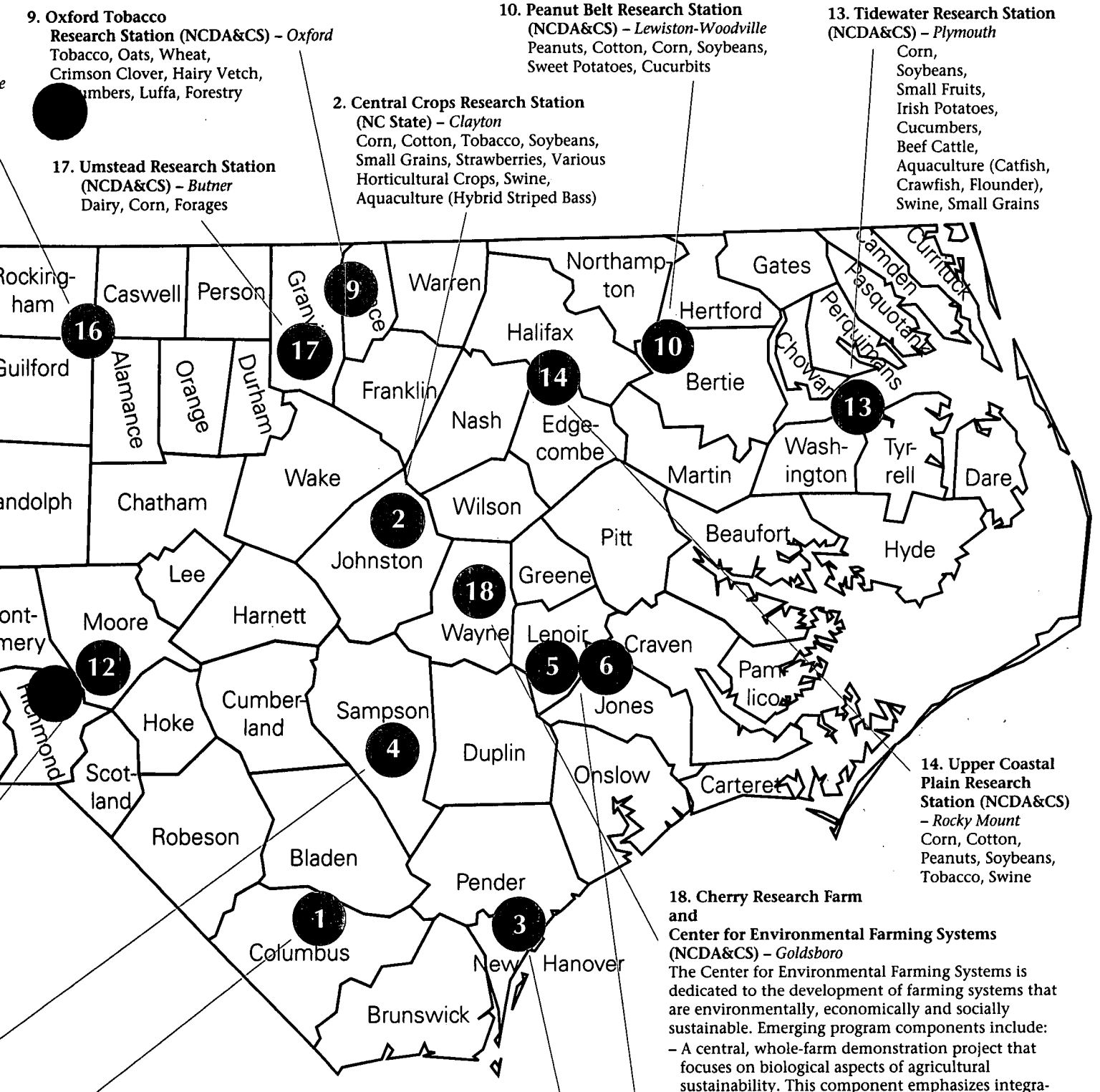
11. Piedmont Research Station (NCDA&CS) – *Salisbury*
Dairy Cattle, Poultry (Layers and Broiler
Breeders), Corn, Soybeans, Blueberries,
Brambles, Strawberries, Canola, Forage Crops,
Pastures, Small Grains

8. Mountain Horticultural Crops Research Station (NC State) – *Fletcher*
Apples, Blueberries, Brambles, Strawberries,
Tomatoes, Cabbage, Potatoes, Peppers, Broccoli,
Cauliflower, Alternative Crops (such as Herbs,
Spices, Garlic, Mushrooms and Ginseng), Native
Ornamentals (such as Rhododendron, Azalea
and Mountain Laurel), Aquaculture (Mountain Trout)

12. Sandhills Research Station (NC State) – *Jackson Springs*
Peaches, Nectarines, Plums, Apples, Blueberries,
Brambles, Strawberries, Persimmons, Peppers,
Cucumbers, Soybeans, Small Grains, Peanuts,
Turfgrass

4. Horticultural Crops Research Station (NCDA&CS) – *Clinton*
Cucumbers, Sweet Potatoes, Tomatoes, Peppers,
Squash, Strawberries, Watermelons, Asparagus, Onions
Cole Crops, Corn, Soybeans, Oil Seed Crops

1. Border Belt Tobacco Research Station (NCDA&CS) – *Whitevill*
Tobacco, Cotton, Peanuts, Soybeans



9. Oxford Tobacco Research Station (NCDA&CS) – *Oxford*
Tobacco, Oats, Wheat, Crimson Clover, Hairy Vetch, Cucumbers, Luffa, Forestry

17. Umstead Research Station (NCDA&CS) – *Butner*
Dairy, Corn, Forages

2. Central Crops Research Station (NC State) – *Clayton*
Corn, Cotton, Tobacco, Soybeans, Small Grains, Strawberries, Various Horticultural Crops, Swine, Aquaculture (Hybrid Striped Bass)

10. Peanut Belt Research Station (NCDA&CS) – *Lewiston-Woodville*
Peanuts, Cotton, Corn, Soybeans, Sweet Potatoes, Cucurbits

13. Tidewater Research Station (NCDA&CS) – *Plymouth*
Corn, Soybeans, Small Fruits, Irish Potatoes, Cucumbers, Beef Cattle, Aquaculture (Catfish, Crawfish, Flounder), Swine, Small Grains

14. Upper Coastal Plain Research Station (NCDA&CS) – *Rocky Mount*
Corn, Cotton, Peanuts, Soybeans, Tobacco, Swine

18. Cherry Research Farm and Center for Environmental Farming Systems (NCDA&CS) – *Goldsboro*
The Center for Environmental Farming Systems is dedicated to the development of farming systems that are environmentally, economically and socially sustainable. Emerging program components include:
- A central, whole-farm demonstration project that focuses on biological aspects of agricultural sustainability. This component emphasizes integration of crop and livestock production enterprises;
- A no-till (or conservation tillage) program focusing on optimizing crop production efficiency and profitability in reduced tillage cropping systems;
- An organic production system designed to develop farming strategies that do not use conventional agrochemicals.

3. Horticultural Crops Research Station (NC State) – *Castle Hayne*
Blueberries, Grapes, Strawberries, Sweet Potatoes, Cucumbers, Irish Potatoes, Various Ornamentals, Greens, Cabbage, Cucurbits

5. Caswell Research Station (NCDA&CS)
Dairy, Soybeans, Goats, Forages
and
6. Cunningham Research Station (NC State) – *Kinston*
The College of Agriculture and Life Sciences' Specialty Crops Program, a partnership with the North Carolina Department of Agriculture and Consumer Services designed to identify and determine how best to grow high-value specialty crops such as fruits and vegetables and to market the crops, is headquartered here.
Specialty Melons, Fruits (including new Peach varieties and Brambles), Lettuce, Asparagus, Sweet Potatoes, Tobacco, Small Grains, Corn, Soybeans, Cotton, Christmas Trees

North Carolina Agricultural Research Stations

(continued from first page)

and Consumer Services and North Carolina A&T State University, the center is reserved for research on sustainable and organic farming systems.

As important as the state's research stations have been to the work done in the College of Agriculture and Life Sciences, it appears likely they will become more important in the future. Most observers see the structure of American agriculture changing. The farms that specialize in traditional crops such as corn, cotton and soybeans are becoming larger. Smaller farmers will find it increasingly difficult to compete with these larger farms unless they diversify and begin producing different crops. Indeed, it appears likely that crops will be grown for niche markets and for use as nutraceuticals and nutritional supplements. If College of Agriculture and Life Sciences researchers are to do the research necessary to produce the information farmers need to successfully diversify, they must have continued access to the different climates, geographic conditions and soils found across North Carolina. That access is being threatened as North Carolina grows and various interests seek the land on which research stations are located for other purposes.

Agriculture has been and continues to be one of the building blocks of North Carolina's economy. If the College of Agriculture and Life Sciences is to continue to provide the kind of research that bolsters North Carolina agriculture, the College must continue to have access to the diversity of environments provided by our state's agricultural research stations.

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NC STATE UNIVERSITY

Environmentally Superior Technology Demonstration Project Status

Technology	Location	Construction	Operational
In-ground Ambient Temperature Digester	Barham Farm, Johnston County	complete	yes
Thermophilic Anaerobic Digester	Upper Coastal Plain Research Station, Rocky Mount	May 2004	Fall 2004
Solids Separation/Constructed Wetlands	Howard Farm, Onslow County	complete	yes
Sequencing Batch Reactor	Andrews Hunt Farm, Wilson County	August 2003	December 2003
Ekokan Upflow Biofilter	Murphy-Brown Farm #93, Bladen County	complete	yes
Super Soil Systems, USA	Goshen Ridge Farms, Duplin County	complete	yes
Belt Manure Removal/Gasification	Grinnels Laboratory, NC State University	belt is complete	gasification operational April 2003
Ultrasonic Plasma Resonator	Lake Wheeler Road Field Laboratory, NC State University	portable unit being fabricated in Germany	
Manure Solids Conversion to Insect Biomass (Black Soldier Fly Project)	Lake Wheeler Road Field Laboratory, NC State University	complete	yes (weather dependent)
Solids Separation/Reciprocating Water	Corbett Farm #2, Duplin County	complete	yes
Microturbine Co-Generation	Vestal Farm, Duplin County	December 2003	Spring 2004
Belt System for Manure Removal	Lake Wheeler Road Field Laboratory, NC State University	complete	yes
Second Generation Bion System	Kilpatrick Finishing Farm, Duplin County	August 2003	Winter 2003
ISSUES (project involves three sites)	Vestal Farm, Harrell's Farm, Carroll's #2529 (all Duplin County)	December 2003	Spring 2004
Dewatering/Drying/Desalinization System	N/A	portable unit being fabricated in Texas	
Solids Separation/Gasification/Ash Recovery	Corbett Farm #1,3,4	Spring 2003	Summer 2003
ORBIT High Solids Anaerobic Digester	Hickory Grove, Sampson County	complete	Spring 2003
AgriClean	Bobby Harris Farm, Pitt County	December 2003	March 2004

Animal and Poultry Waste Management Center
COLLEGE OF AGRICULTURE AND LIFE SCIENCES

NC STATE UNIVERSITY

LOCATION MAP

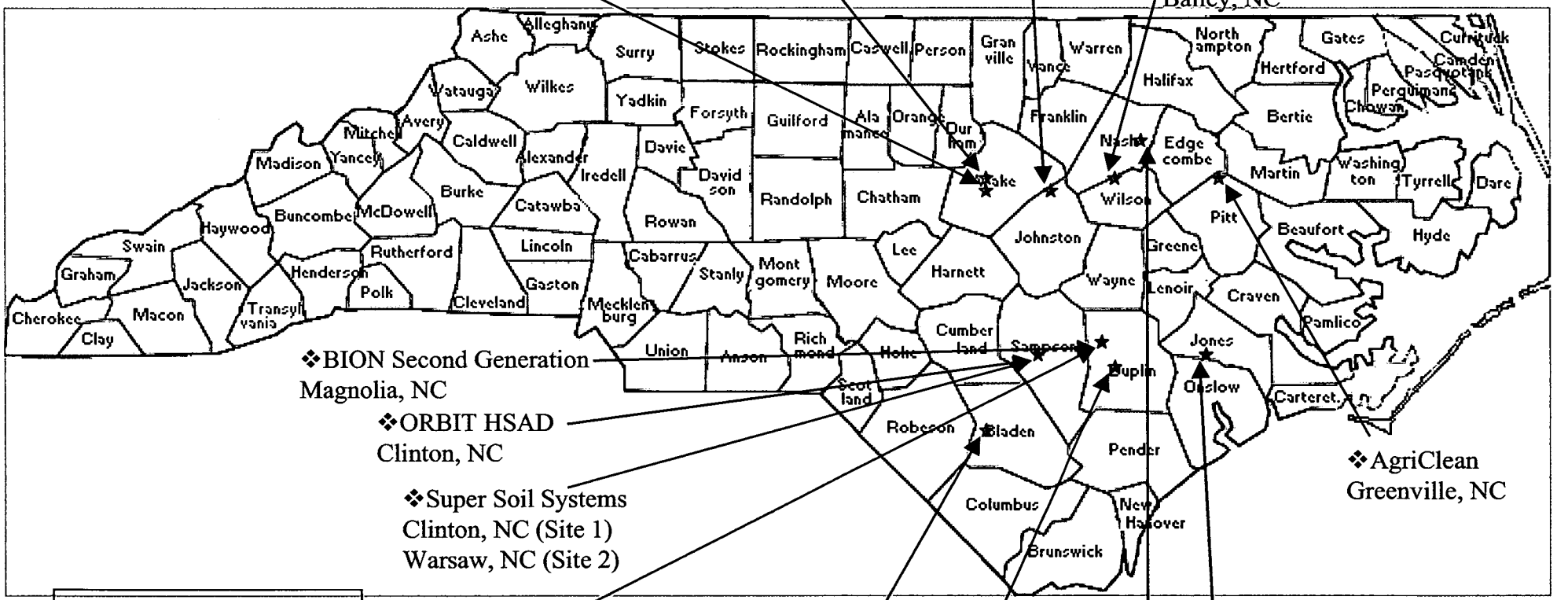
Environmentally Superior Technology Demonstration Projects

•Black Soldier Fly Larvae
•Belt System
•Ultrasonic Plasma Resonator
•Desalinization System
NC State University
Lake Wheeler Road Field Laboratory

•Gasification / Belt System
NCSU Grinnells Labs

➢Ambient Digester
Clayton, NC

➢Sequencing Batch Reactor
Bailey, NC



❖BION Second Generation
Magnolia, NC

❖ORBIT HSAD
Clinton, NC

❖Super Soil Systems
Clinton, NC (Site 1)
Warsaw, NC (Site 2)

❖AgriClean
Greenville, NC

❖ISSUES / IESS / Microturbine
Magnolia, NC (Site 1)
Kenansville, NC (Site 2)
Warsaw, NC (Site 3)

❖BEST / RECIP
Rose Hill, NC

➢Constructed Wetland
Richlands, NC

➢EKOKAN
Upflow-Biofilter
Bladenboro, NC

➢Thermophillic Anaerobic Digester
Rocky Mount, NC

LEGEND	
★	Project Location
➢	First Round Technology
❖	Second Round Technology
•	On-Campus Project

Note: Projects are listed by name(s), then by location to nearest city.

Golden Leaf Foundation Projects Through the Agricultural Foundation

Project Name	Partnering Group
Sustainable Agricultural Solutions Manufactured from Waste Management	Novovita Inc.
Alternative Markets for NC Grain Growers	Grain Growers Cooperative
Marketing and Marketing Capacity Development for Carolina Organic	Carolina Organic Growers
Development and Production of Value-Added Egg Products/A Value-Added Egg Processing Facility for NC	Carolina Egg Development Corp.
Development of market for naked oat variety 'NC Hulless'	NC Foundation Seed Producers Inc.
Communication and Education Improvement Initiative	Tobacco Growers Association of NC
Entrepreneur Assistance Program for Value-Added Agricultural Commodities and Products	NC Agricultural Foundation Inc. on behalf of alliance with NCDA&CS, CALS and other agribusiness service providers
Equipment Needs to Process and Sell Natto and Tofu Soybeans	NC Foundation Seed Producers Inc.
Farmer-Owned Value-Added Processing Initiative	Eastern Foods Cooperative
Production of High Capsaicin Pepper as an Alternative Crop	Natural Pest FX Inc.
Biochemical Product for Horticulture	Milsanna Bioprotectant (KHH BioSci Inc.)
Terra Ceia Compost (soil amendment)	3-B Family Farms Inc.

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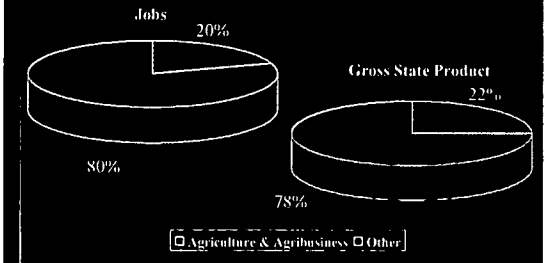
Senate Agriculture, Environment and Natural Resources Committee

James L. Oblinger, Dean
College of Agriculture and Life Sciences
March 11, 2003

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Academic Programs Extension Research

Agriculture & Agribusiness North Carolina's #1 Industry



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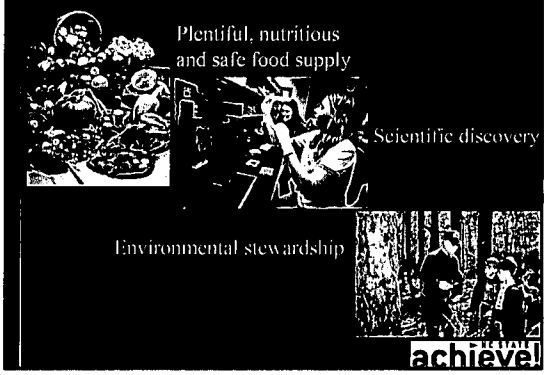
Mission

The College of Agriculture and Life Sciences discovers, develops, teaches, and applies knowledge and technology that enables students, clientele, and citizens of North Carolina and others to improve the quality of their lives and to enhance the agricultural, economic, environmental, and social well-being of the state and world and to create and extend new knowledge through scientific research and extension in agriculture and the life sciences.



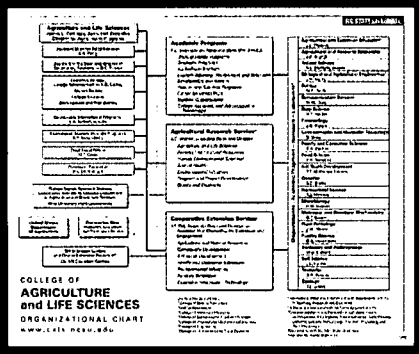
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Academic Programs Extension Research



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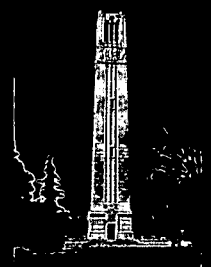
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People and Programs
On-Campus



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Academic Programs Extension Research



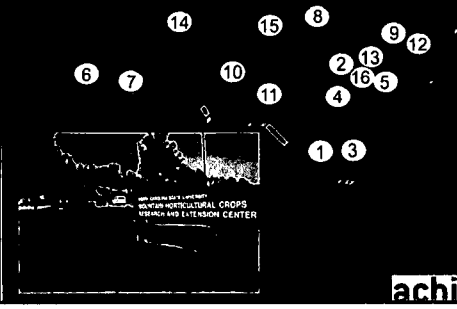
Field Laboratories



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Academic Programs Extension Research

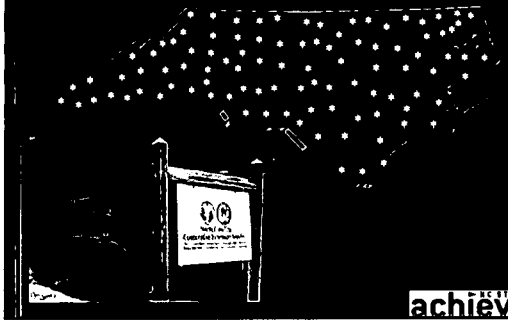
Research Stations



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Academic Programs Extension Research

101 Extension Centers



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Academic Programs Extension Research

Academic Programs



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Academic Programs

- 311 students in 10 Associate degree programs in the Agricultural Institute
- 3,439 in 40 Baccalaureate programs
- 726 in 26 Master's and Doctoral programs

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Academic Programs Extension Research

Agricultural Research Service



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Academic Programs Extension Research



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Academic Programs Extension Research



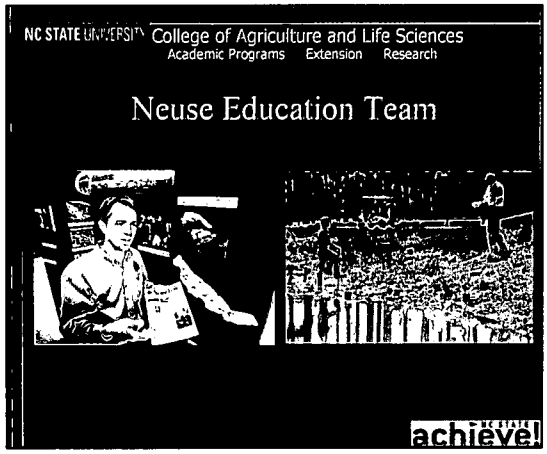
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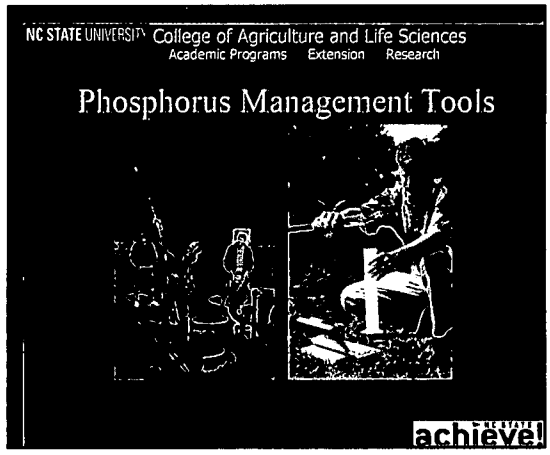
NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research

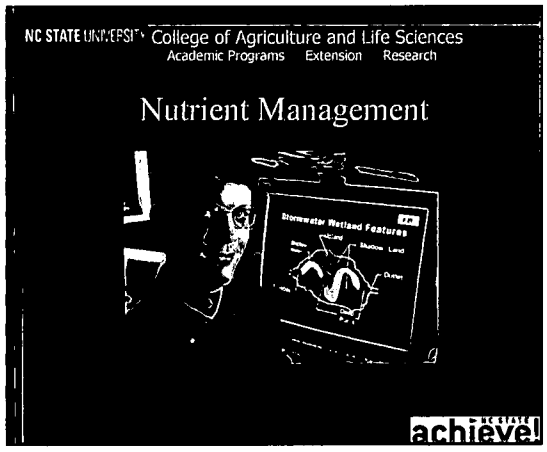
Selected Programs

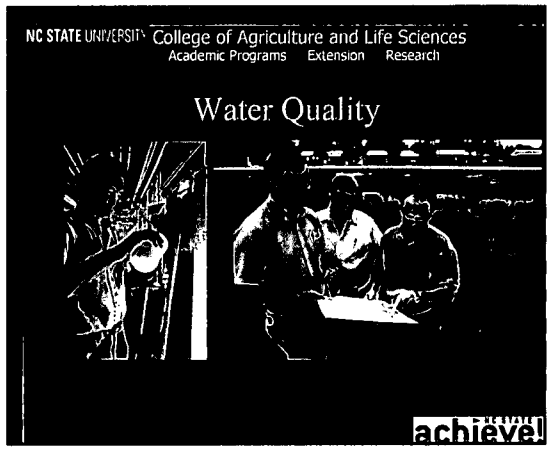
- Neuse Education Team: Water Quality
- Phosphorous Management Tools
- Restoration Technologies
- Stormwater Management / Sedimentation Control
- Animal and Poultry Waste Management Center
- Integrated Pest Management and Precision Agriculture
- Natural Resources Leadership Institute (NRLI)
- Biotechnology
- Genomics
- Agricultural Terrorism / Biosecurity
- Agri-Tourism
- Aquaculture
- Value-Added / Customized Crops
- Center for Environmental Farm Systems
- Green Industry - Center for Turfgrass Environmental Research & Education
- Specialty Crops Program
- Golden Leaf Foundation Funding

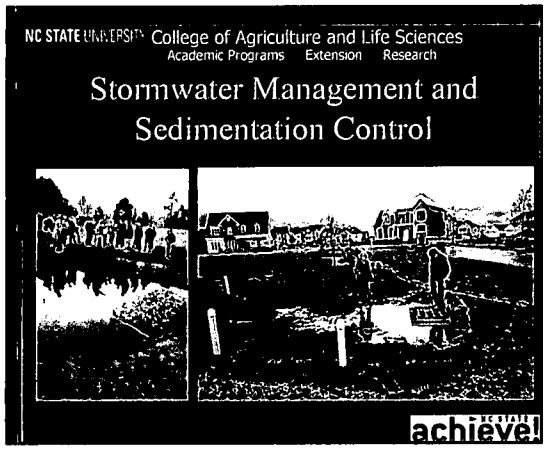
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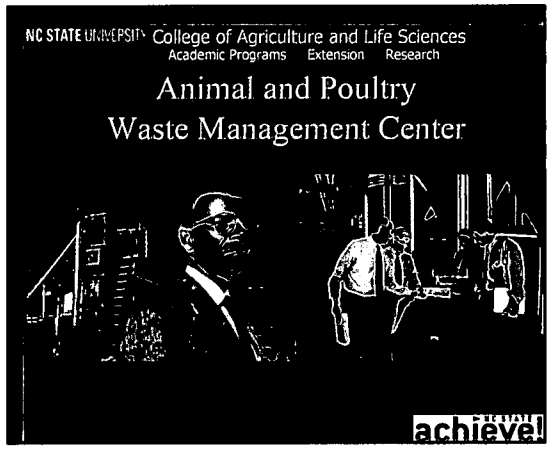

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Neuse Education Team
achieve!

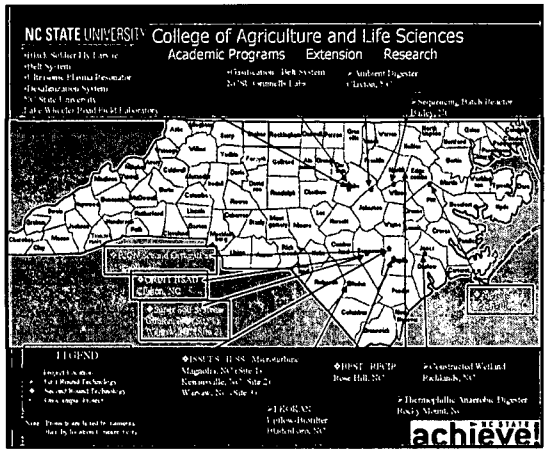

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Phosphorus Management Tools
achieve!

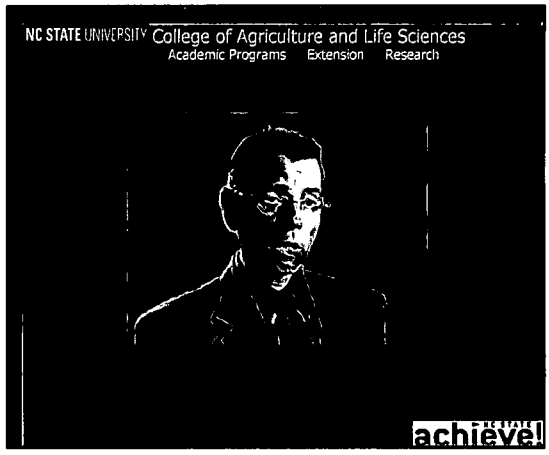

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Nutrient Management
Stormwater Wetland Features
achieve!

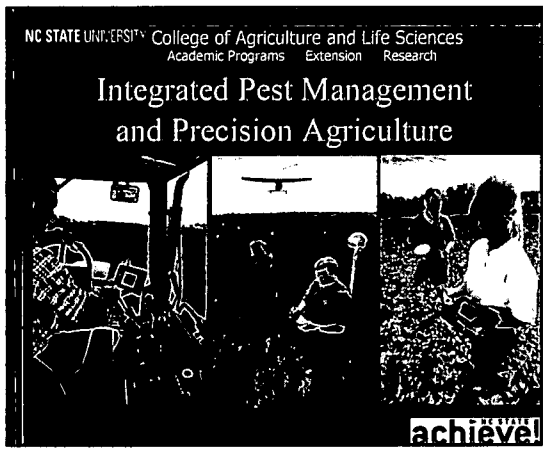

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Water Quality
achieve!

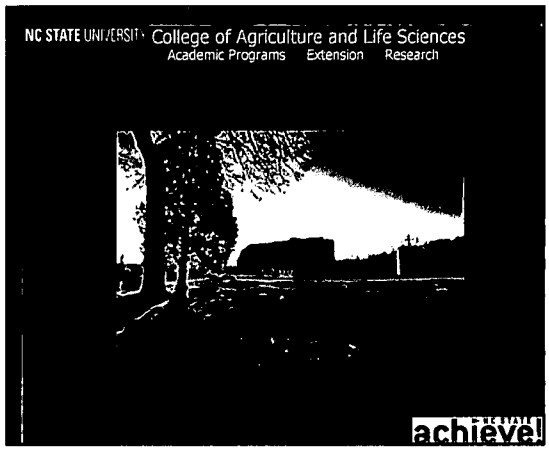

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Stormwater Management and
Sedimentation Control
achieve!

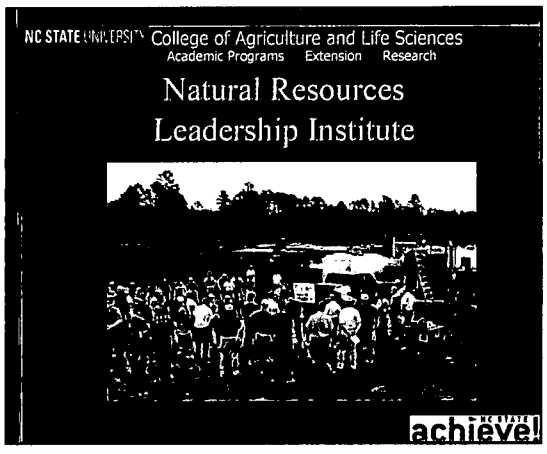

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Animal and Poultry
Waste Management Center
achieve!

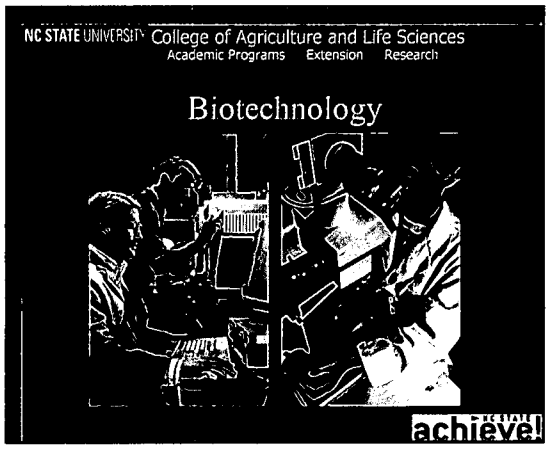

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
achieve!

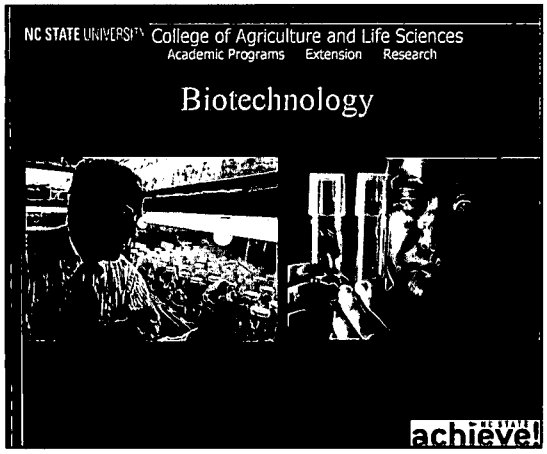

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
achieve!

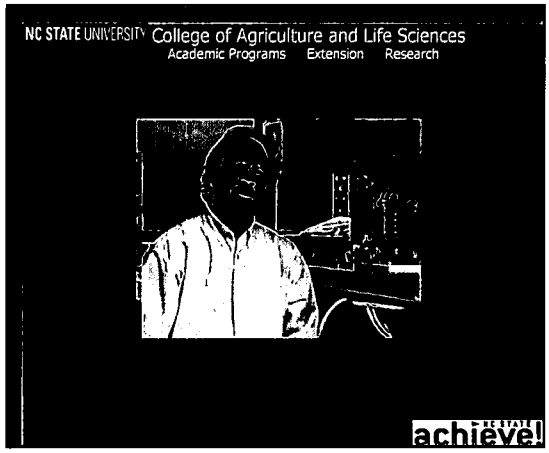

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Integrated Pest Management
and Precision Agriculture
achieve!

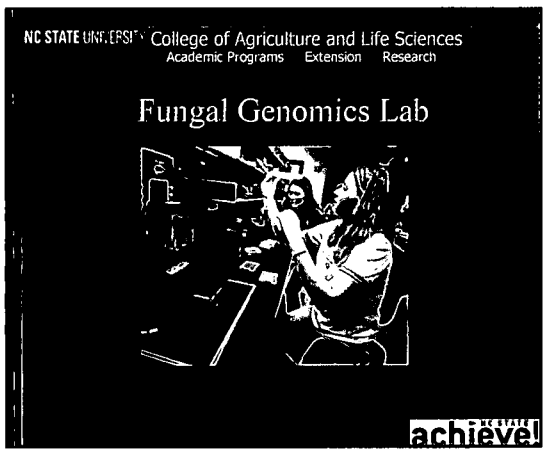

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
achieve!

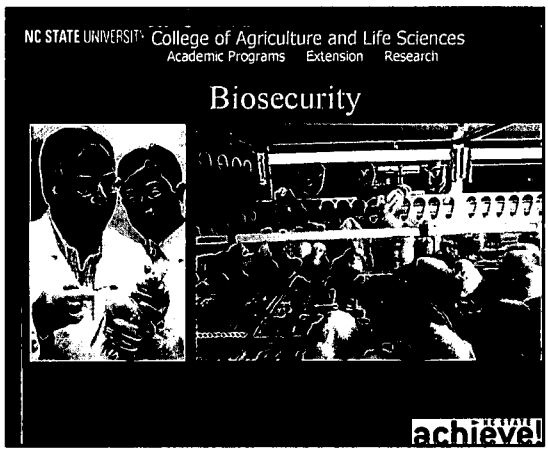

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Natural Resources
Leadership Institute
achieve!

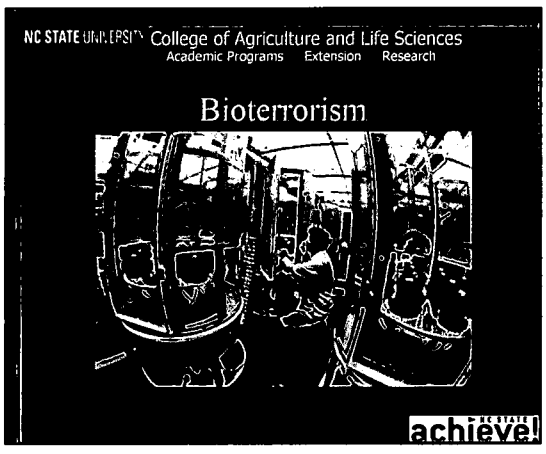

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Biotechnology
achieve!

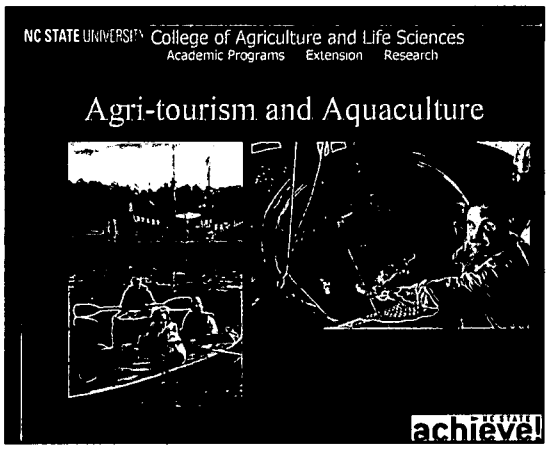

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Biotechnology
achieve!

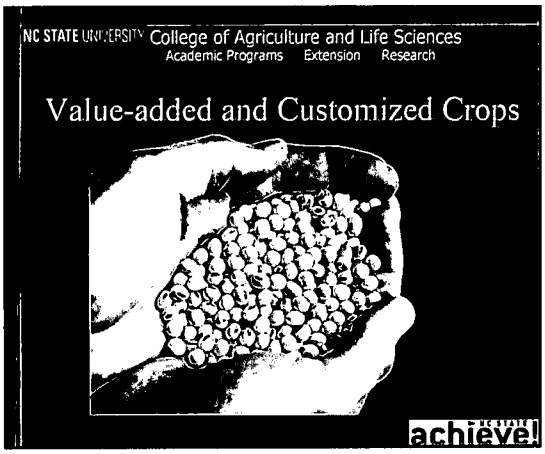

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
achieve!

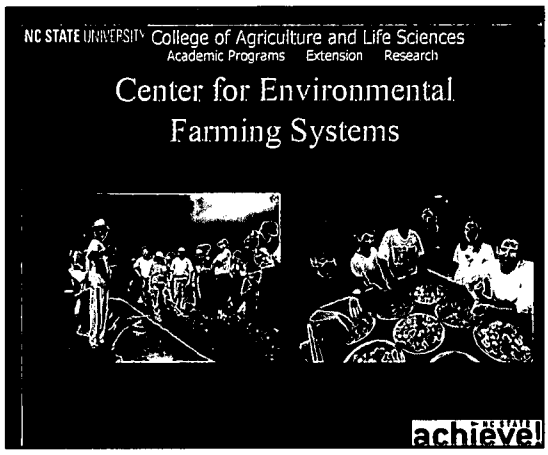

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Fungal Genomics Lab
achieve!

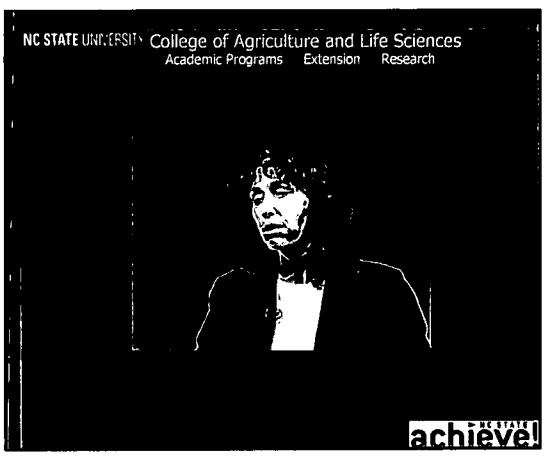

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Biosecurity
achieve!

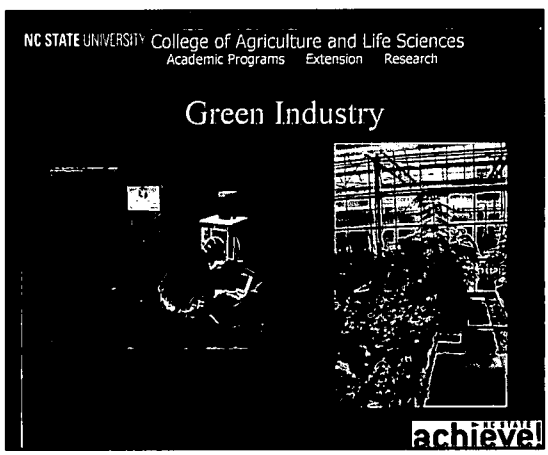

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Bioterrorism
achieve!

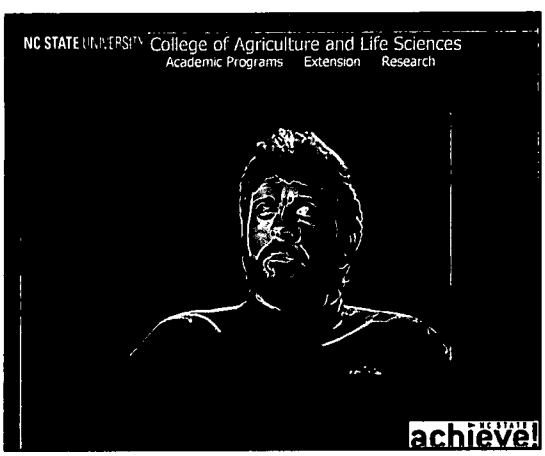

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Agri-tourism and Aquaculture
achieve!

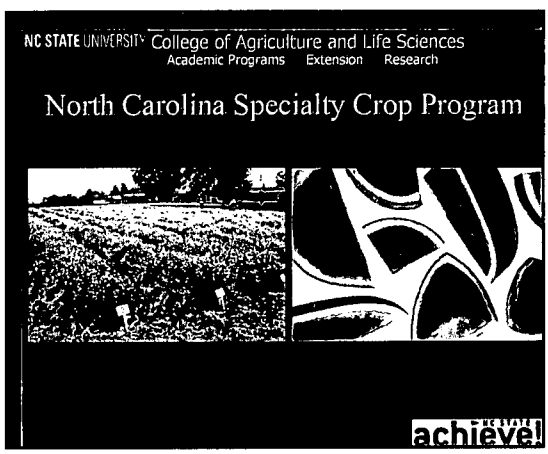

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Value-added and Customized Crops
achieve!

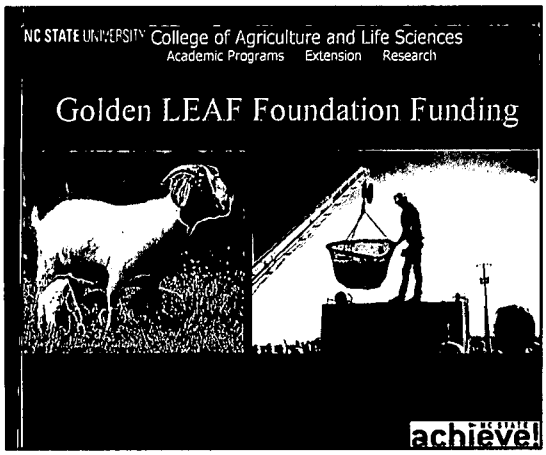

NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
Center for Environmental Farming Systems
achieve!

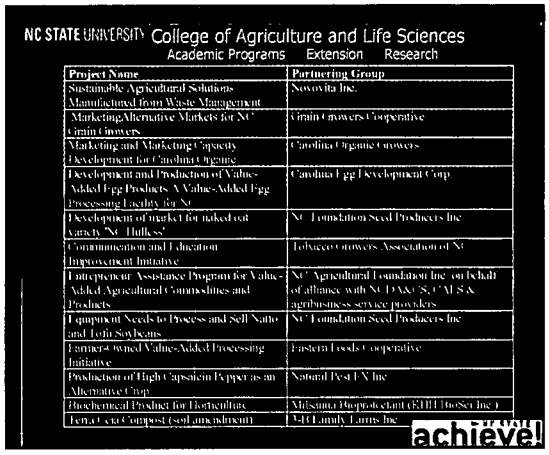

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Academic Programs Extension Research
achieve!


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Academic Programs Extension Research
Green Industry
achieve!

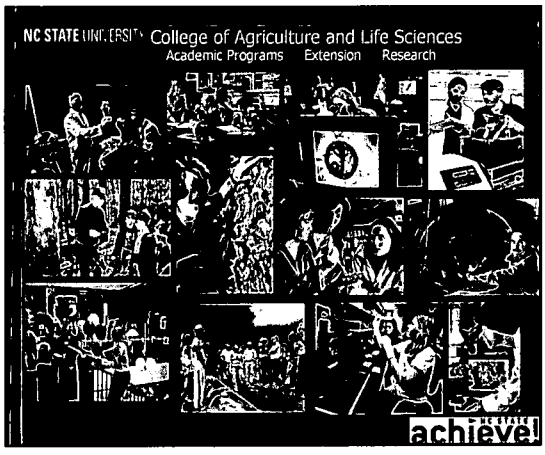

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Academic Programs Extension Research
achieve!


NC STATE UNIVERSITY College of Agriculture and Life Sciences
Academic Programs Extension Research
North Carolina Specialty Crop Program
achieve!





Project Name	Partnering Group
Sustainable Agricultural Solutions Manufactured from Waste Management	Novovita Inc.
Marketing/Alternative Markets for NC Grain Growers	Grain Growers Cooperative
Marketing and Marketing Capacity Development for Carolina Organic	Carolina Organic Growers
Development and Production of Value-Added Egg Products: A Value-Added Egg Processing Facility for NC	Carolina Egg Development Corp.
Development of market for naked oat variety 'NC Hulless'	NC Foundation Seed Producers Inc.
Communication and Education Improvement Initiative	Tobacco Growers Association of NC
Entrepreneur Assistance Program for Value-Added Agricultural Commodities and Products	NC Agricultural Foundation Inc. on behalf of alliance with NCDA&CS, CMS& agribusiness service providers
Equipment Needs to Process and Sell Natto and Tofu Soybeans	NC Foundation Seed Producers Inc.
Farmer-Owned Value-Added Processing Initiative	Eastern Foods Cooperative
Production of High Capsaicin Pepper as an Alternative Crop	Natural Pest FX Inc.
Biochemical Product for Horticulture	Mid-state Bioproducts (EHH BioSci Inc.)
TerraCycle Compost (soil amendment)	3-H Family Farms Inc.



AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 18, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

Dr. Leslie Alexander
NC Biotechnology Center

Commissioner Meg S. Phipps
NC Department of Agriculture

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

March 18, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, March 18, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fourteen members present.

Sen. Albertson called the meeting to order and recognized the Pages. He told members that today is a day of guest speakers and presentations.

Dr. Leslie Alexander, NC Bio Tech Center of North Carolina made her presentation. (Copy attached)

NC Commissioner of Agriculture, Meg Scott Phipps made her presentation. (Copy attached)

Time expired and the meeting adjourned at noon.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

The Impact of Biotechnology On North Carolina

Remarks to the North Carolina Senate Committee on Agriculture, Environment and Natural Resources

Leslie Alexandre, Dr. P.H.
President and CEO, North Carolina Biotechnology Center
March 18, 2003



North Carolina Biotechnology Center

15 T.W. Alexander Drive • P.O. Box 13547 • Research Triangle Park, NC 27709-3547
919-541-9366 • fax 919-990-9544 • www.ncbiotech.org

Thank you, Mr. Chairman, Vice Chairmen and members of the committee. I appreciate the opportunity to speak to you today about biotechnology and its growing role in agriculture, the environment and natural resources, and in economic development and job creation in our state. Accompanying me today is Dr. Ken Tindall, our Senior Vice President for Science and Business Development.

When I think of biotechnology, I am reminded of those clever BASF commercials on TV. The ones that say, "We don't make a lot of the things you use; we make a lot of the things you use better." For biotechnology is much the same. It doesn't make a lot of the things we use, but it does make a lot of the things we use better. It makes our crops better able to resist insects and viruses. It allows farmers to be better stewards of their land through less reliance on pesticides. It allows us to produce better medicines, diagnostics and vaccines. It enables us to better detect, monitor and clean up polluted air and water. It gives us better tools for convicting the guilty and clearing the innocent of crimes.

Biotechnology is seldom seen but is increasingly present in the food we eat, the water we drink, the medicines we take, the clothes we wear, and the everyday products we use. From blue jeans to gene therapy, biotechnology is touching our lives in ways great and small.

What exactly is this powerful and pervasive technology? There are plenty of buzzwords that hint at a definition: genetic engineering (or recombinant DNA), monoclonal antibodies, genomics, proteomics, gene therapy, cloning, stem cells, DNA fingerprinting, and so on. These are among the many tools and techniques of biotechnology. What do they have in common? They all involve the use of living organisms and their molecules to make products or solve problems. That is how we define biotechnology.

Biotechnology promises our state a better future. A future filled not only with better crops, foods, medicines and other products, but also with new jobs and economic opportunities.

Look around our state and you'll see that great things are already happening in biotechnology:

- Just last week a small company in Durham named Trimeris gained FDA approval of Fuzeon, an important new drug for the treatment of AIDS that was discovered at Duke.

- In Research Triangle Park, Embrex — another home-grown company — has revolutionized the way chickens and turkeys are hatched and grown through its automated egg injection system and the biologics that go with it.

- In Clayton, Bayer operates the world's largest blood plasma-products plant, employing 1,300 people in the production of proteins for the treatment of lung disease, hemophilia, burns, cancer and other conditions.

- In Pittsboro, Biolex is using a common aquatic plant called duckweed as a production system for pharmaceutical proteins.

- In Raleigh, BioResource International is developing enzymes that can convert poultry feathers into animal feed and can inactivate the agent that causes Mad Cow Disease.

- In Winston-Salem, Targacept is developing new nicotine-like drugs for the treatment of Alzheimer's disease, Parkinson's disease and other serious afflictions.

- In Greensboro, EcoGenomix has spun out of the University of North Carolina at Greensboro to develop technology for detecting chemical and biological contaminants in water supplies.

- In the fields you passed while driving to Raleigh, North Carolina farmers are growing genetically modified crops that either resist insects or tolerate environmentally friendly herbicides. One-third of the corn, two-thirds of the soybeans and three-fourths of the cotton in this state are genetically modified. There is similar potential for enhancing our forests through biotechnology to yield trees that grow faster and resist disease.

Yes, we're off to a great start in North Carolina. Our state has more than 150 biotechnology companies employing 18,000 people and generating about $3 billion in annual revenues. And there are tens of thousands of other high-paying jobs — clean and safe jobs, I would add — in fields that support biotechnology. These include contract research and testing services, architecture, construction, engineering, instrumentation, supply, consulting, staffing, real estate, law, and finance.

This critical mass of commercial activity puts North Carolina first in the South and among the top five states in the country in biotechnology. In agricultural biotechnology, North Carolina ranks second only to California with 16 companies employing 2,500 people.

How did our state achieve its early success in biotechnology? By having visionary leaders who recognized nearly two decades ago that the combination of world-class research universities and abundant natural resources made it likely that with the right sorts of investments, North Carolina could reap the long-term economic

benefits of what was then barely a fledgling industry. To help fulfill that vision, in 1984 State leaders created the North Carolina Biotechnology Center.

The Biotechnology Center is a private, not-for-profit organization established, and largely funded, by the General Assembly. Our mission is to provide long-term economic and societal benefits to North Carolina by supporting biotechnology research, business and education statewide. We do so by making focused investments on behalf of the State in university and company research, technology commercialization, industrial recruitment and workforce training and education. Over the years, these relatively small investments have been leveraged very effectively by their recipients to generate subsequent research funding and equity investments totaling hundreds of millions of dollars.

For example, since its inception the Center has provided about $8 million in loans to 62 startup companies for research and development of new products. These loans have helped the companies raise more than $460 million from other public and private sources. Among those companies are two I mentioned earlier: Trimeris and Embrex. With the help of a $250,000 Center loan about 10 years ago, Trimeris has raised $23 million in venture capital and $171 million in public stock offerings. Some analysts predict that Trimeris' first product, Fuzeon, could generate a billion dollars a year in revenue within a few years. Similarly, Embrex was able to parlay $221,000 in Center assistance into $16 million in venture capital and $27 million in public stock offerings. Today Embrex is profitable, employs 140 North Carolinians and has broken ground for a new vaccine-production plant in Laurinburg that will hire 40 additional workers.

While these success stories are heartening, the afterglow must be tempered. The race for biotechnology development has barely begun, and the field is getting crowded. Coveting the job creation and economic growth this industry is bringing, at least 40 other states have followed North Carolina's lead and created biotechnology initiatives of their own. Many of these states are investing heavily in biotech, often using proceeds from the federal tobacco settlement. Investments range from the tens of millions to fully $1 billion each by Michigan and New York. And the competition is not limited to our national borders. Many countries, particularly throughout Europe and Asia, are vying to become international leaders in biotechnology.

At a time when we face unprecedented competition from other states and nations, North Carolina must demonstrate a renewed commitment to biotechnology development. A world-class scientist thinking of joining a North Carolina university, a biotechnology executive thinking of relocating his company to the state, or an entrepreneur wanting to start a new enterprise here should be confident that North Carolina will provide the best opportunity for success.

How can North Carolina ensure such a positive environment? We must continue to invest – and invest more where possible – in the science, business and education infrastructure that this complex industry requires.

Biotechnology begins at universities that are strong enough to conceive and develop new ideas and technologies. How can we make our universities more capable and competitive?

- We must increase funding for university research, especially early stage research, which provides a huge economic return. Over a 14-year period, the State invested $10.7 million in 382 early stage research projects via the Biotechnology Center. Subsequently, these projects collectively received nearly $160 million in federal research funding.

- We must support the recruitment of world-class faculty to universities throughout North Carolina. These scientists bring in the most federal and industrial research funding, attract and train the best graduate students, create new technologies, and provide scientific and technical expertise to companies.

- We must provide university faculty with state-of-the-art equipment, facilities and intellectual-exchange opportunities for carrying out research with other universities and industrial partners. Without the appropriate infrastructure, North Carolina universities cannot compete successfully for federal and private research funding.

Biotechnology would be useless to the public if not transferred from the university laboratory to the marketplace by companies. How can we move biotechnology from mind to market more effectively?

- We must facilitate the formation of new companies and new jobs based on university discoveries. Companies originating from North Carolina universities account for about a third of the state's biotechnology industry.

- We must provide greater financial support to entrepreneurial companies. The most urgent need is for the State to create tax incentives conducive to entrepreneurship and the formation of venture capital in North Carolina. The state has at least a dozen young biotechnology companies on the brink of failure due to the lack of venture capital to move their products from the lab to the marketplace.

- We must create favorable tax policies for biotechnology research and development. To encourage investment in innovation, various states have adopted tax policies ranging from allowing the monetization of tax credits to

exempting purchases of research equipment and supplies from the state sales tax. Similar policies should be considered in North Carolina.

Biotechnology companies will locate and grow in states that understand their needs and work to meet them. How can we put North Carolina on every company's short list?

- We must intensify our industrial recruitment, retention and expansion efforts. This is particularly true for biomanufacturing, which will provide much of the job creation in biotechnology in the 21st century. A recent industry survey by the Biotechnology Center indicates that thousands of new jobs in biopharmaceutical manufacturing will be created in the next three years, most of them well-paying scientific and technical positions. Bioprocess technician jobs pay $25,000 to $30,000 at the entry level and progress to $50,000 after five years.

- We must encourage a coordinated, statewide strategy for obtaining, tracking and pursuing company-recruitment leads. With our respective expertise in economic development and biotechnology, the Department of Commerce and the Biotechnology Center should lead this effort.

- We must aggressively promote North Carolina to the worldwide biotechnology community as a capable, supportive, and preeminent location for biotechnology research, business and manufacturing. One of every six biotechnology companies in the state is internationally owned and there are many more international companies seeking to establish or expand their presence in the U.S.

Having a trained work force is crucial to building and sustaining a successful biotechnology industry. How can we ensure North Carolina has such a workforce?

- We must strengthen biotechnology education statewide by supporting teacher training so our citizens are biotech-literate and better prepared for careers in this rapidly growing industry.

- We must offer the BioWork course for bioprocess technicians at more of the state's community colleges. This introductory course helps biomanufacturing companies pre-qualify new hires and shortens their in-company training time.

- We must establish a statewide training program to prepare employees at all levels – from high school graduates to Ph.D. scientists – for jobs in the fast-growing biomanufacturing sector. North Carolina does not have enough trained scientists, technicians and engineers to meet current or projected industry needs. A training center would give North Carolina a unique

competitive advantage over all other states in recruiting, retaining and expanding biomanufacturing companies and in capturing the high-paying jobs these companies create.

Progress in biotechnology development should bring economic and societal benefits to all of North Carolina, not just to the technology-rich Research Triangle region. To assist different geographic areas of the state in achieving their full potential with respect to biotechnology development, the Biotechnology Center has initiated the Project to Strengthen Biotechnology Across North Carolina. Through this initiative, Center staff is working with partners in four areas – the East, the West, greater Charlotte and the Piedmont Triad – to build on each area's unique strengths and capabilities for biotechnology development. Cooperation among all regions of the state is essential to ensure that North Carolina can meet the growing competitive challenge from other states and nations.

North Carolina's future success in creating biotechnology jobs will depend heavily on strong partnerships among all organizations involved in biotechnology-related economic development throughout the state. The Biotechnology Center, the Department of Commerce, the university system, the community colleges, regional partnerships, chambers of commerce and many other organizations must work closely together, without duplication of effort, to ensure that biotechnology benefits one North Carolina.

The economic opportunities and societal benefits that lie ahead in biotechnology will eclipse those realized to date. But past investments cannot ensure future growth, particularly in a much more competitive environment. Expecting North Carolina to remain a global leader in biotechnology without large and sustained investment in university research, technology commercialization, industrial recruitment and workforce training is like expecting Duke to remain the ACC basketball champion without continued investment in talented players and coaching staff.

Although biotechnology cannot solve all of the state's current economic woes, it is one of the few industries growing in a slow economy. As the State's lead organization for biotechnology development, the Biotechnology Center is prepared to work with the state's leadership to ensure a bright biofuture for North Carolina.

The North Carolina Department of Agriculture and Consumer Services:

Working for YOU!

Presentation to the Senate Agriculture Committee

March 18, 2003

NCDA&CS
Mission Statement

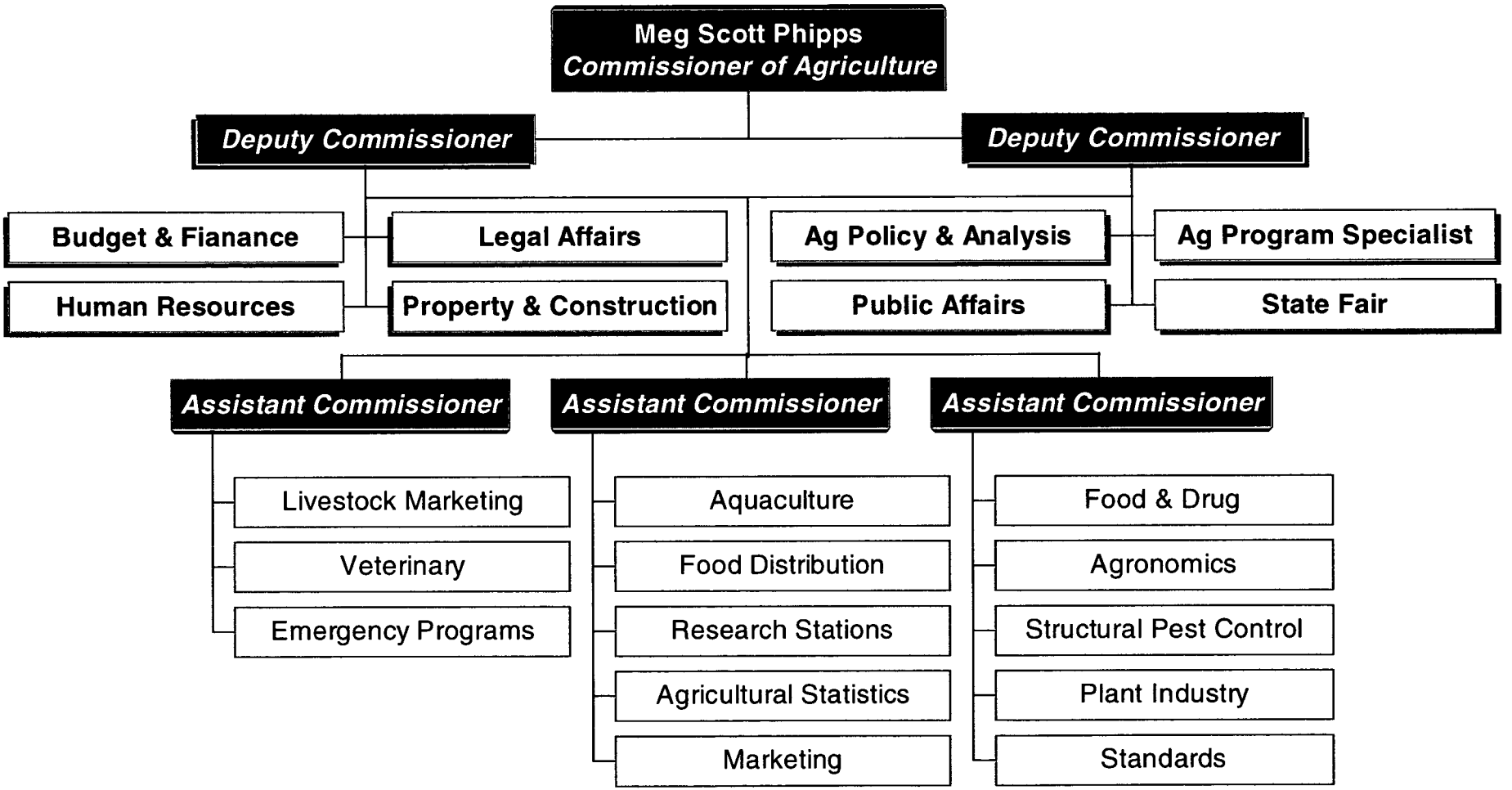
The Department of Agriculture operates regulatory and service programs that ensure the availability of life-sustaining food and natural fiber, free of adulteration and contamination, and produced in a manner consistent with environmentally sound production practices.

Programs are operated to benefit consumers and agricultural producers, and to protect the environment, health and economic well-being of all North Carolina citizens and business enterprises.

Five Goals of NCDA&CS

- To maintain and enhance agriculture's ability to provide an adequate, wholesome supply of food and natural fiber
- To protect consumers from unwholesome food products
- To protect the social and economic wellbeing of N.C. citizens
- To preserve agricultural and natural resources, and to protect the environment for the benefit of future generations
- To carry out departmental programs in a professional and cost-effective manner

Organizational Chart



North Carolina's #1 industry

Contributes $62.6 billion annually to North Carolina's economy

North Carolina's #1 industry

1 - Hogs	$1,710,000,000
2 - Broilers	$1,681,000,000
3 - Greenhouse/Nursery	$1,021,000,000
4 - Tobacco	$686,000,000
5 - Turkeys	$452,000,000
6 - Cotton	$412,000,000
7 - Chicken Eggs	$232,000,000
8 - Cattle & Calves	$228,000,000
9 - Dairy Products	$196 ,000,000
10 - Soybeans	$190,000,000

Chatham County

120 million in cash receipts
956 farms with 112,923 acres
20 Nurseries on 70 acres
16 Nursery dealers
1 aquatic dealer
1 operating fish farm
Ranks 10th in the state in livestock cash receipts; 20th overall

Services provided by NCDA&CS

- 53 service stations
- 736 fuel dispensers
- 10 propane delivery trucks
- 14 commercial bulk storage facilities
- 9 domestic storage locations
- 25 calibration services
- 25 wholesale food establishments
- 35 retail food establishments
- 3 medicated feed mills
- 1 feed mill
- 63 bee colonies
- 80 seed lots during 29 visits to 27 dealers
- 223 acres trapped for boll weevils
- 165 traps to monitor for gypsy moth
- 3 animal welfare inspections
- 99 livestock inspections
- $148,246 worth of USDA food

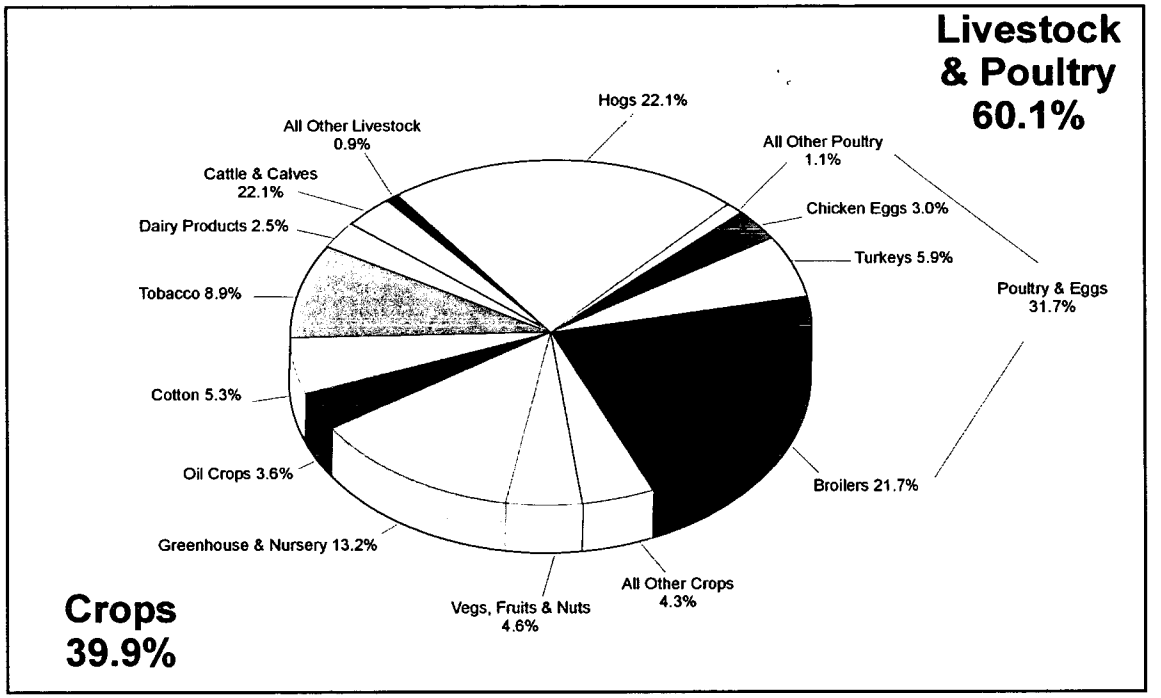
Mecklenburg County

$131 million in cash receipts
295 farms with 20,680 acres
25 Nurseries on 344 acres
168 Nursery dealers
30 aquatic dealer
1 fish farm
Ranks 3rd in the state in crop cash receipts; 19th overall

Services provided by NCDA&CS

- 311 service stations
- 7,304 fuel dispensers
- 20 propane delivery trucks
- 13 commercial bulk storage facilities
- 3,022 calibration services
- 212 wholesale food establishments
- 440 retail food establishments
- 2 pet food companies
- 22 wholesale drug distributors
- 6 retail drug distributors
- 105 bee colonies
- 8 domestic storage locations
- 1,620 seed lots during 119 visits to 248 dealers
- 123 traps to monitor for gypsy moth
- 29 animal welfare inspections
- 9 MPIS inspected meat & poultry establishments
- 16,432 daily sanitation & processing inspections
- 1,792 scales, 188 scanning systems in 382 retail establishments
- $3,149,043 worth of USDA food
- 25 GGINC members

Agricultural Statistics



- Collects, prepares and disseminates a regular series of official crop, livestock and price estimates, along with other statistics relative to agriculture in North Carolina and the nation

Ag Policy

- Focuses on critical policy and legislative issues that affect the department and agricultural industry on state and national levels



<u>Projects include</u>

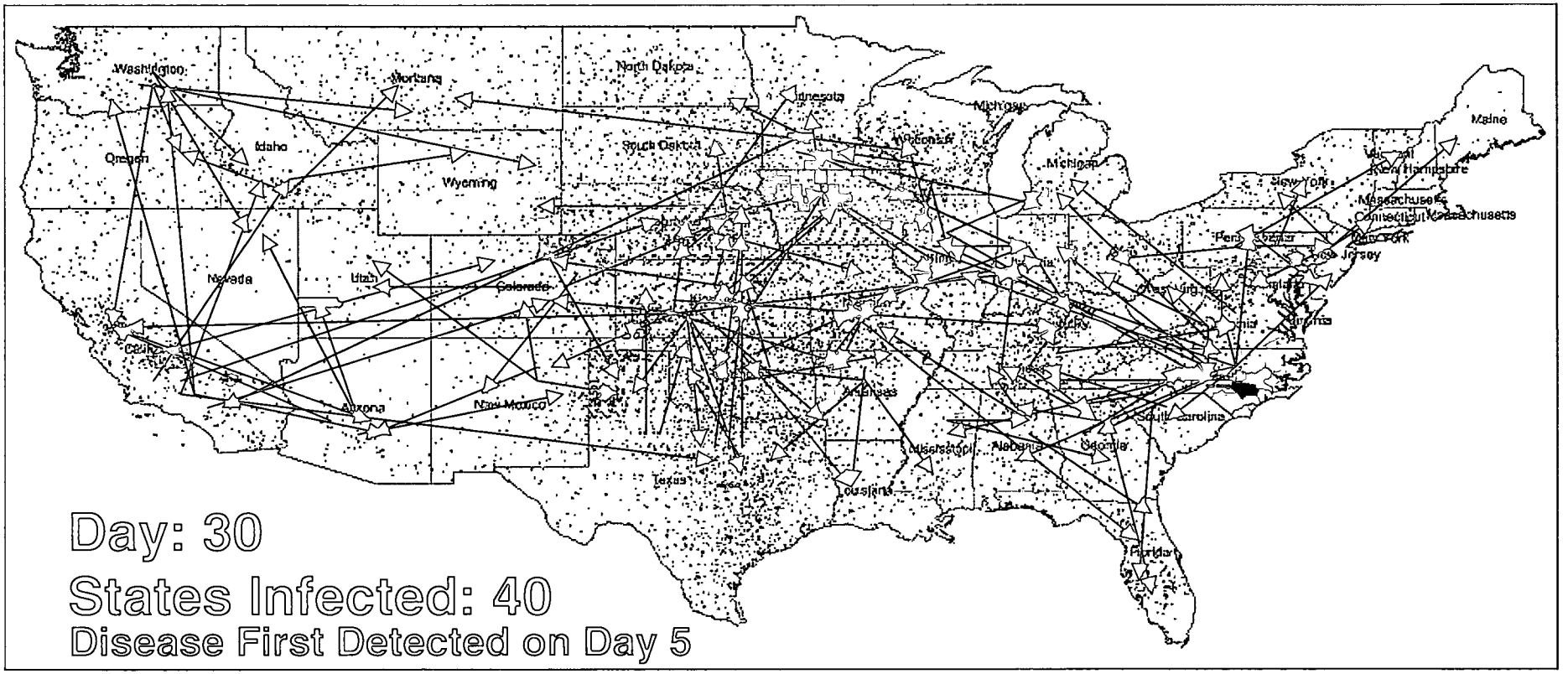
- Hay Relief Program
- Ag Innovation Alliance
- Tobacco buyout
- Farm Futures
- Commissioner's Ag Forum
- Develop GM-tobacco protocol

Emergency Programs

- Enacts plans to protect and prepare for any Foreign Animal Disease, multi-hazard disaster, terrorist act or intentional or unintentional introduction of a dangerous chemical, physical agent, or biological threat
- Coordinates efforts with SBI, Dept. of Crime & Public Safety, DHHS, and federal agencies
- Conducts national level training on Homeland Security

Potential FMD Disease Spread

After a simulated terrorist attack at 5 Locations



Potential Impact: **Even if a national "stop movement" of all susceptible animals is ordered on Day 8, by the time the disease is eradicated the nation could lose 23.6 million animals!**

Marketing Division



- Promotes the sale of North Carolina products
- Develops and expands markets
- Reports farm market prices on major commodities
- Determines and certifies official grades of farm products
- Operates state farmers' markets in Asheville, Charlotte, Greensboro, Lumberton and Raleigh
- Maintains the Goodness Grows program

Aquaculture

- Provides information to individuals interested in the commercial production of fish and shellfish
- Licenses aquacultural operations
- Provides financial planning assistance to other aquaculturalists



Food Distribution Division

- Requisitions, stores and distributes USDA donated foods
- Distributes products to schools, food banks, disaster relief agencies, charitable institutions and needy households



Livestock Marketing

- Grades live animals
- Develops special livestock sales
- Coordinates buyers and sellers
- Provides assistance with genetic selection
- Develops/manages livestock shows, public auctions and demonstrations



Structural Pest Control

- Protects public health and safety by regulating the structural pest industry and pesticide products used
- Licenses and certifies both commercial and non-commercial operators
- Administers laws governing the industry
- Provides training for industry certification

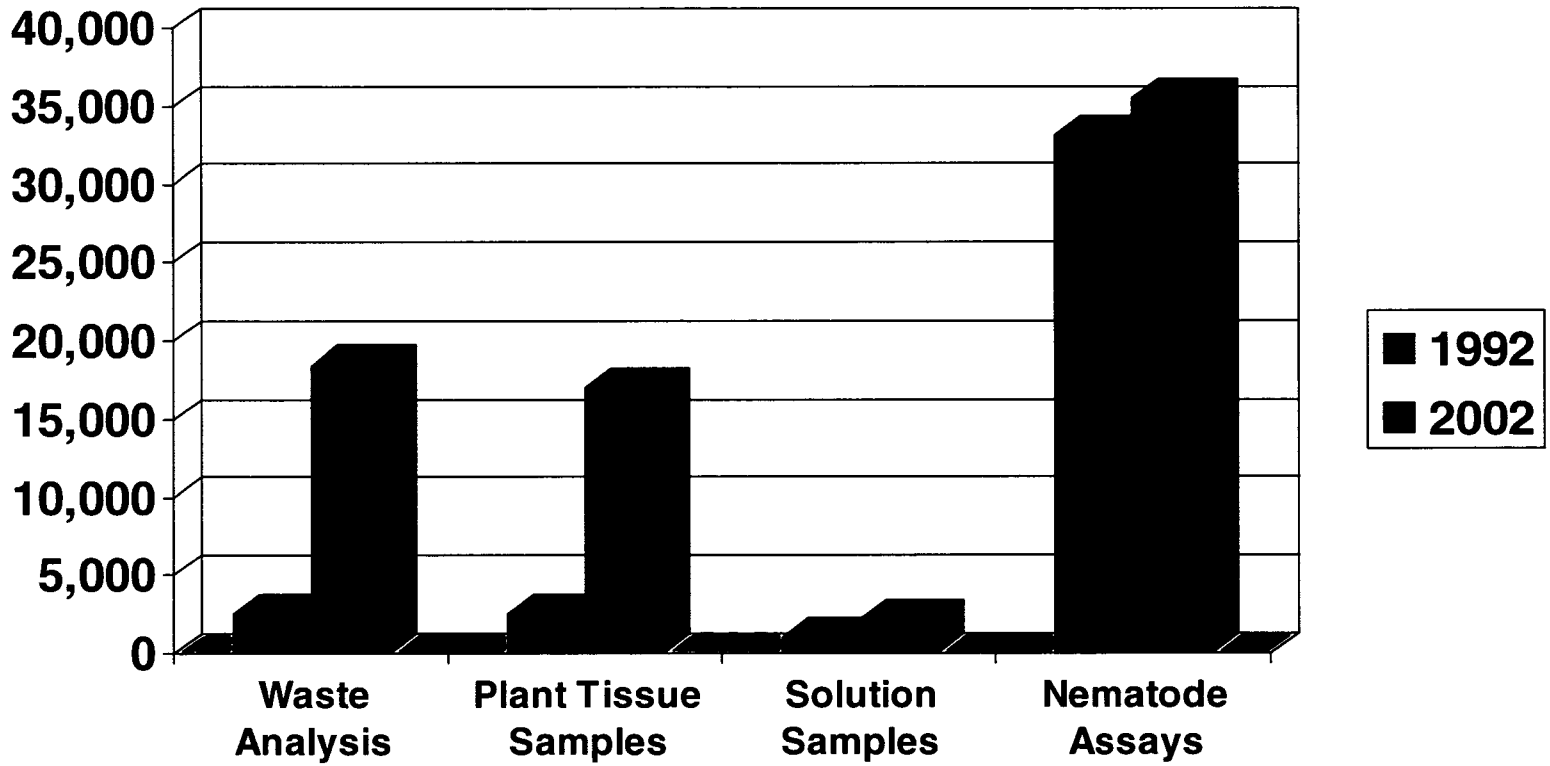
Agronomics Division

Offers four services:

- Soil Testing
- Nematode Assay
- Field Services
- Plant/Waste/Solution Analysis



Agronomic Workload Increases



Plant Industry Division

- Ensures that seeds offered for sale are truthfully labeled
- Assures the quality and quantity of all fertilizer, liming material, land plaster and soil additives sold in N.C.
- Protects plants, plant products and beneficial organisms from the adverse effects of pests
- Conserves endangered or threatened plants
- Enhances honey bees and other beneficial organisms



Plant Industry Workload

Seed Section



Standards Division

Responsible for:

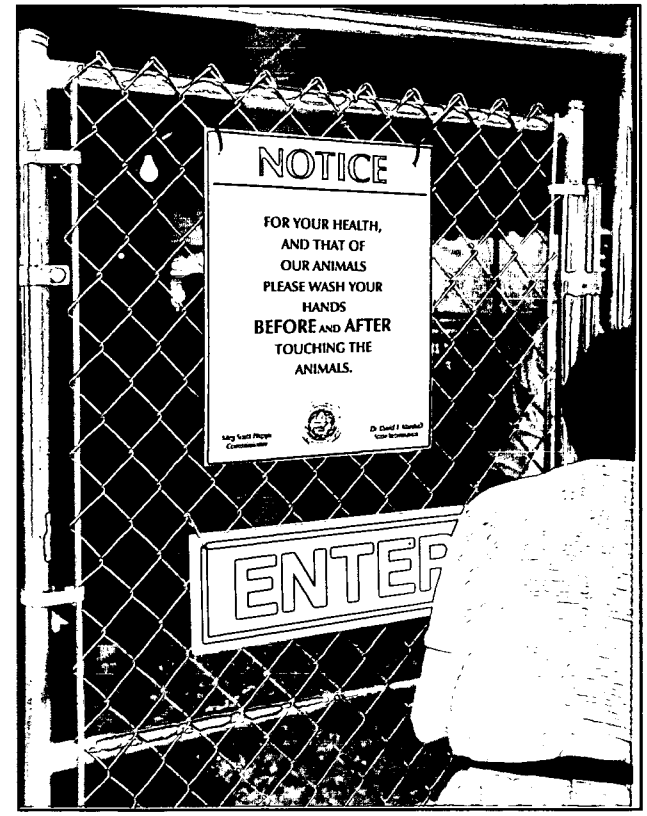
- Testing commercial weighing and measuring devices
- Inspecting price scanning systems
- Checking packages for stated net contents
- Testing motor fuels
- Inspecting LP-Gas and anhydrous ammonia installations for compliance



Veterinary Division

- Inspects processing and slaughtering facilities
- Monitors animal diseases
- Administers Animal Welfare Act





Research Stations

- Manages 18 crop and livestock facilities that serve as a platform for agricultural research to make farming more efficient, productive and profitable with support from NC State University, NC A&T University and USDA



Food & Drug Protection



Inspects

- Food
- Feeds
- Drugs & Cosmetics
- Pesticides

to be sure they are safe, wholesome and properly labeled.

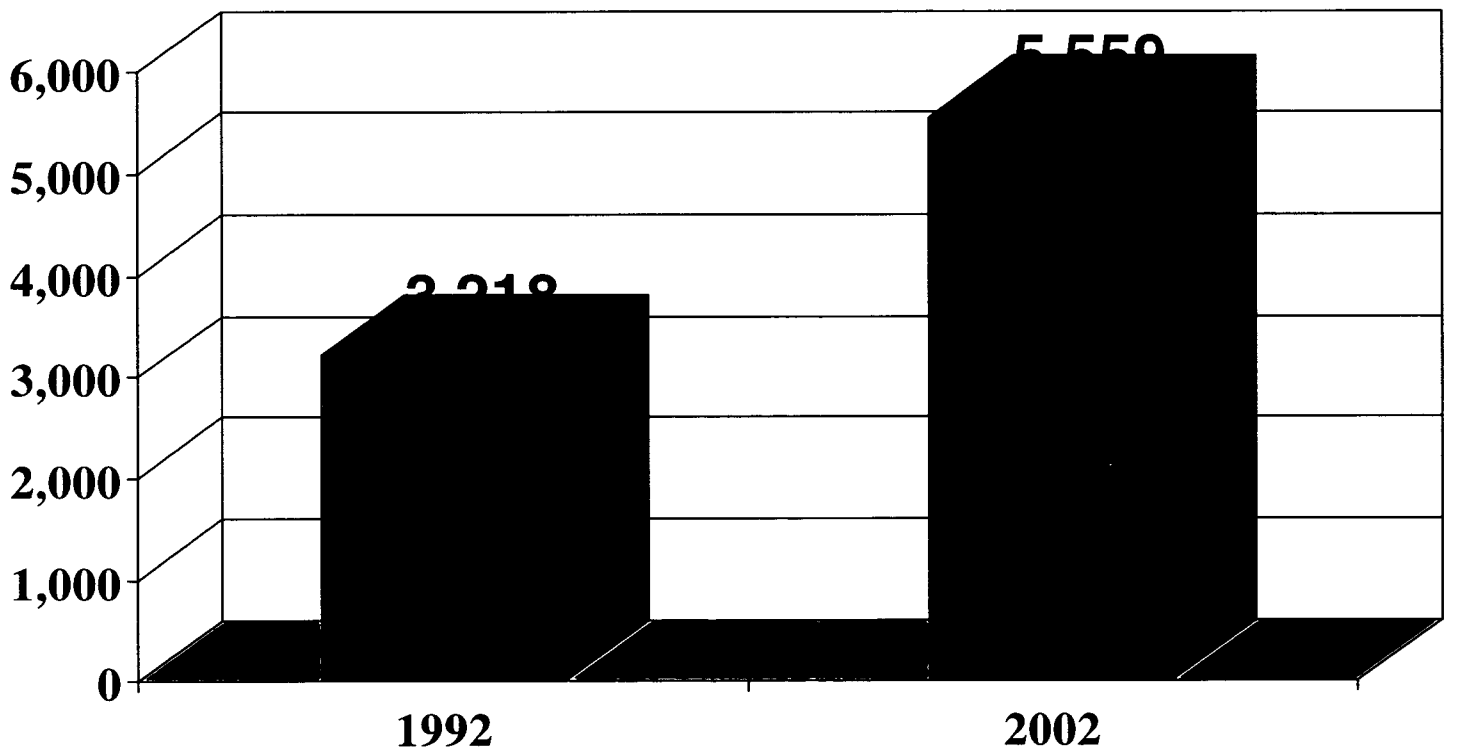
Food Safety & Security

More than 8,000 facilities inspected

- Retail grocery stores
- Beverage manufacturers
- Food additives
- Candy manufacturers
- Food warehouses
- Food banks
- Food salvage firms
- Retail frozen desserts
- Sandwich & salad processors
- Bakeries
- Fish & seafood products
- Snack foods
- Canneries
- Manufactured milk products

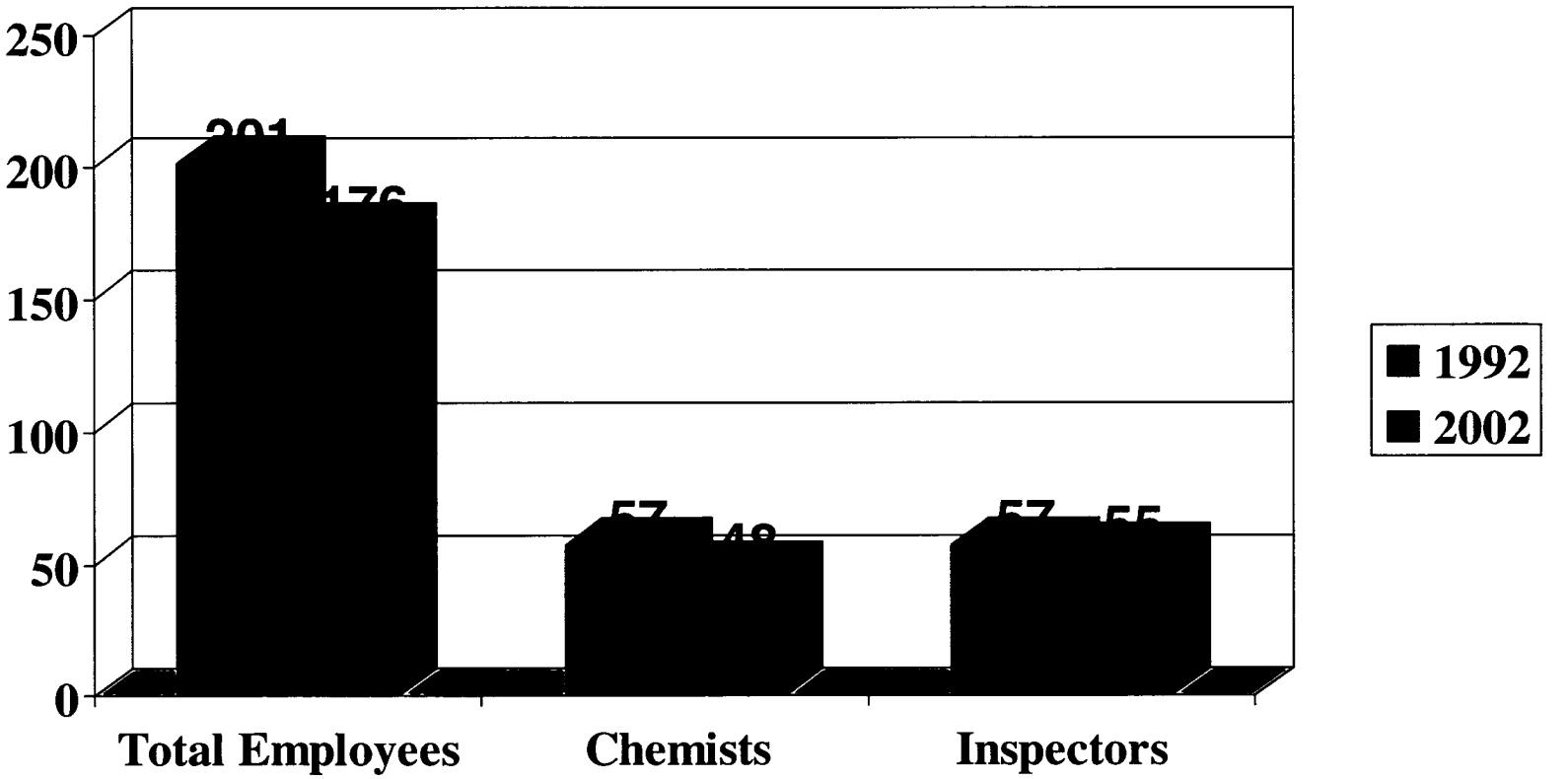
Food Safety & Security

Retail Establishments Inspected



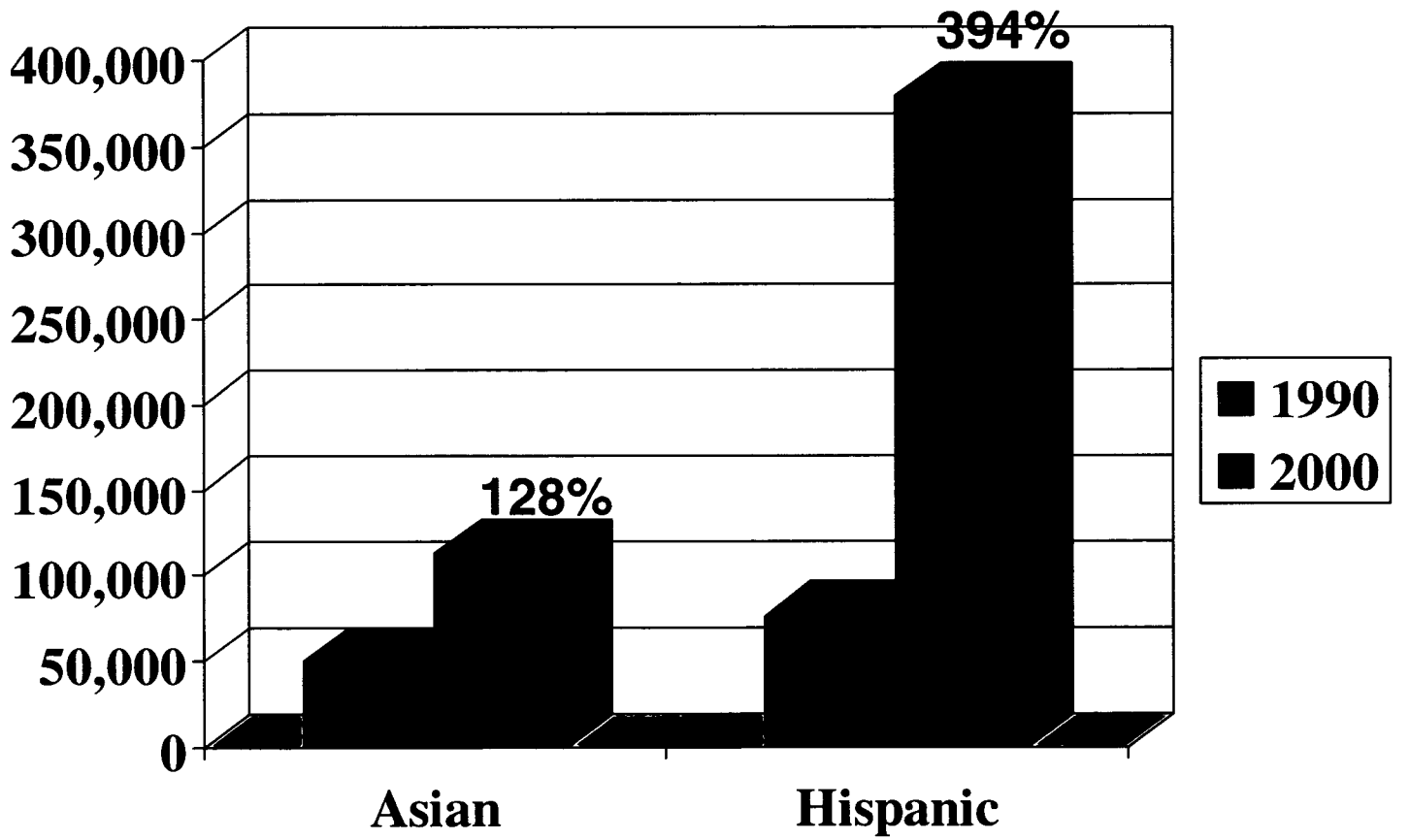
Food Safety & Security

Personnel changes



Food Safety & Security

Ethnicity Increases



New Initiatives since 2001

- Ag Innovation Alliance
- Appalachian Food Ventures
- Agribusiness Development
- Tobacco Buyout
- Genetically Modified Protocols
- Food Policy Council
- Emergency Programs
- Ag Policy Division
- Terrorism threat ID & reduction
- Farm Futures
- Ag Finance Task Force

Farm Futures

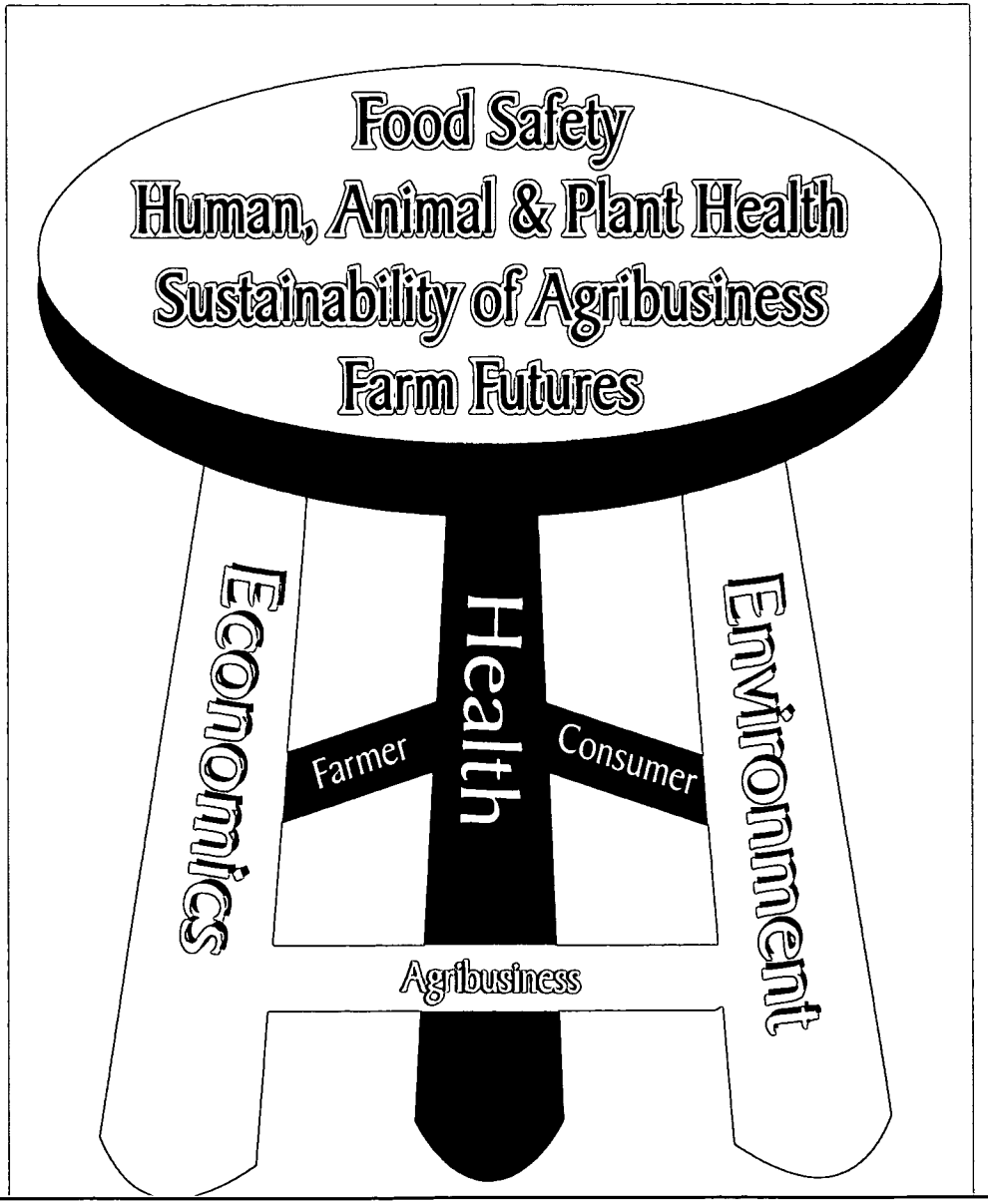
Farmland Protection Program
Apprenticeships for young farmers
Reinvestment in the Family Farm
Marketing Opportunities

Funding for training & education
Umbrella of agency, university & private resources
Transition to new production opportunities
Utilize partnerships for program implementation
Research & development
Encourage young families to return to the farm
Stewardship

2003 Legislative Initiatives

- Food safety & security
- Farm Futures
- State Veterinarian authority
- Budget issues
- Agribusiness development

NCDA&CS Core Initiatives



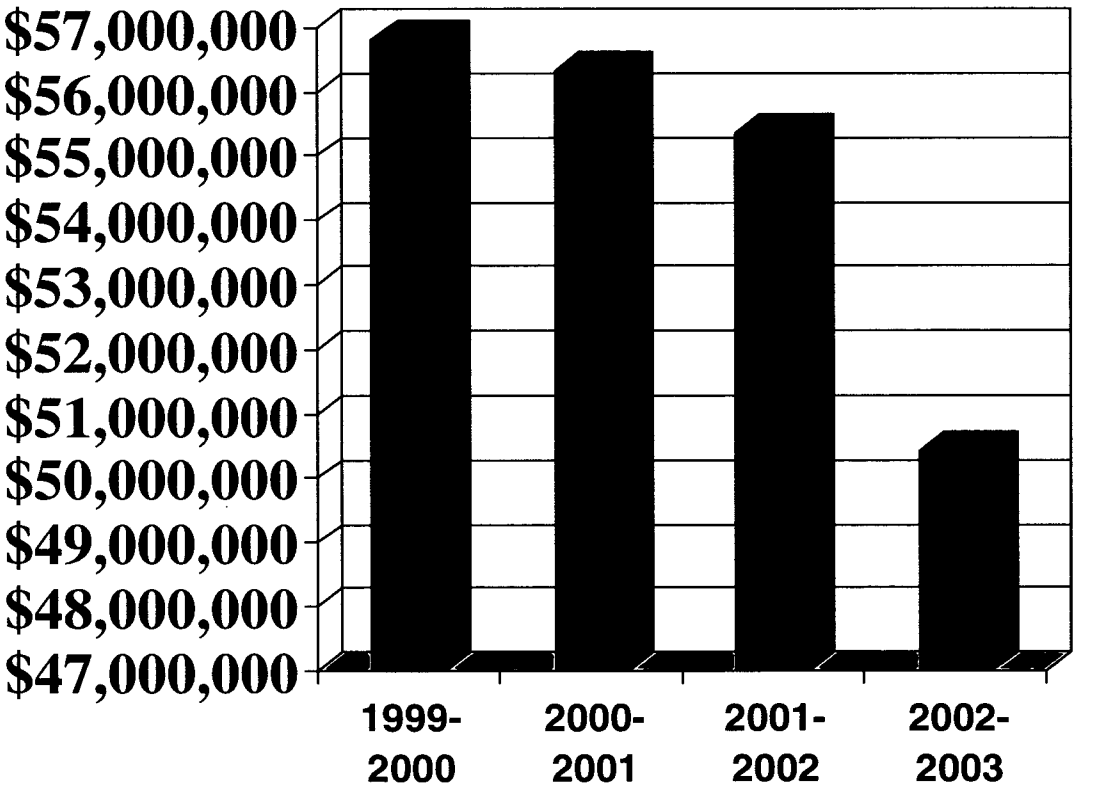
Laws adminstered by NCDA&CS

Core Initiative	Name of Law	General Statute	Division
Economic	Agricultural Development Act	Chapter 106, Article 52	Marketing
Economic	Agricultural Fairs	Chapter 106, Article 45	Marketing
Economic	Agricultural Statistics	Chapter 106, Section 24	Ag. Statistics
Economic	Aquaculture Development Act	Chapter 106, Article 63	Aquaculture
Economic	Bee & Honey Act	Chapter 106, Article 55	Plant Industry
Economic	Biological Organism Act	Chapter 106, Article 4D	Plant Industry
Economic	Cotton Gins, Warehouses and Merchants	Chapter 106, Article 38B	Fiscal Management
Economic	Distribution of Food & Surplus Commodities	Chapter 143, Section 64.5	Food Distribution
Economic	Egg Law	Chapter 106, Article 25A	Marketing
Economic	Egg Promotion Tax	Chapter 106, Article 25B	Fiscal Management
Economic	Fallow Deer and Red Deer	Chapter 106, Article 49H	Veterinary
Economic	Feed Advisory Service	Chapter 106, Section 21.1	Food & Drug
Economic	Fertilizer Law	Chapter 106, Article 56	Plant Industry
Economic	Gasoline & Oil Inspection Law	Chapter 119, Article 3	Standards
Economic	Grain Dealer Licensing	Chapter 106, Article 53	Fiscal Management
Economic	Grape Growers Council	Chapter 106, Article 62	Marketing
Economic	Handlers of Fruits & Vegetables	Chapter 106, Article 44	Marketing
Economic	Horse Industry Promotion Act	Chapter 106, Article 69	Fiscal Management
Economic	Leaf Tobacco Sales	Chapter 106, Article 40	Marketing
Economic	Leaf Tobacco Warehouses	Chapter 106, Article 39	Marketing
Economic	Liming Materials Act	Chapter 106, Article 8A	Plant Industry
Economic	Livestock Dealer Licensing Act	Chapter 106, Article 35B	Veterinary
Economic	Livestock Prompt Pay Law	Chapter 106, Article 35A	Veterinary
Economic	LP Gas Law	Chapter 119, Article 5	Standards
Economic	Marketing & Branding of Farm Products	Chapter 106, Article 17	Marketing
Economic	Milk Distributors & Processors	Chapter 106, Article 28	Food & Drug
Economic	Organic Production Program	Chapter 106, Section 22.3	Marketing
Economic	Pen-Raised Quail	Chapter 106, Article 49G	Veterinary
Economic	Pork Promotion Assessment	Chapter 106, Article 66	Fiscal Management
Economic	Preservation of Farmland	Chapter 106, Article 61	Commissioner's Office
Economic	Promotion of Agricultural Products	Chapter 106, Article 50	Marketing

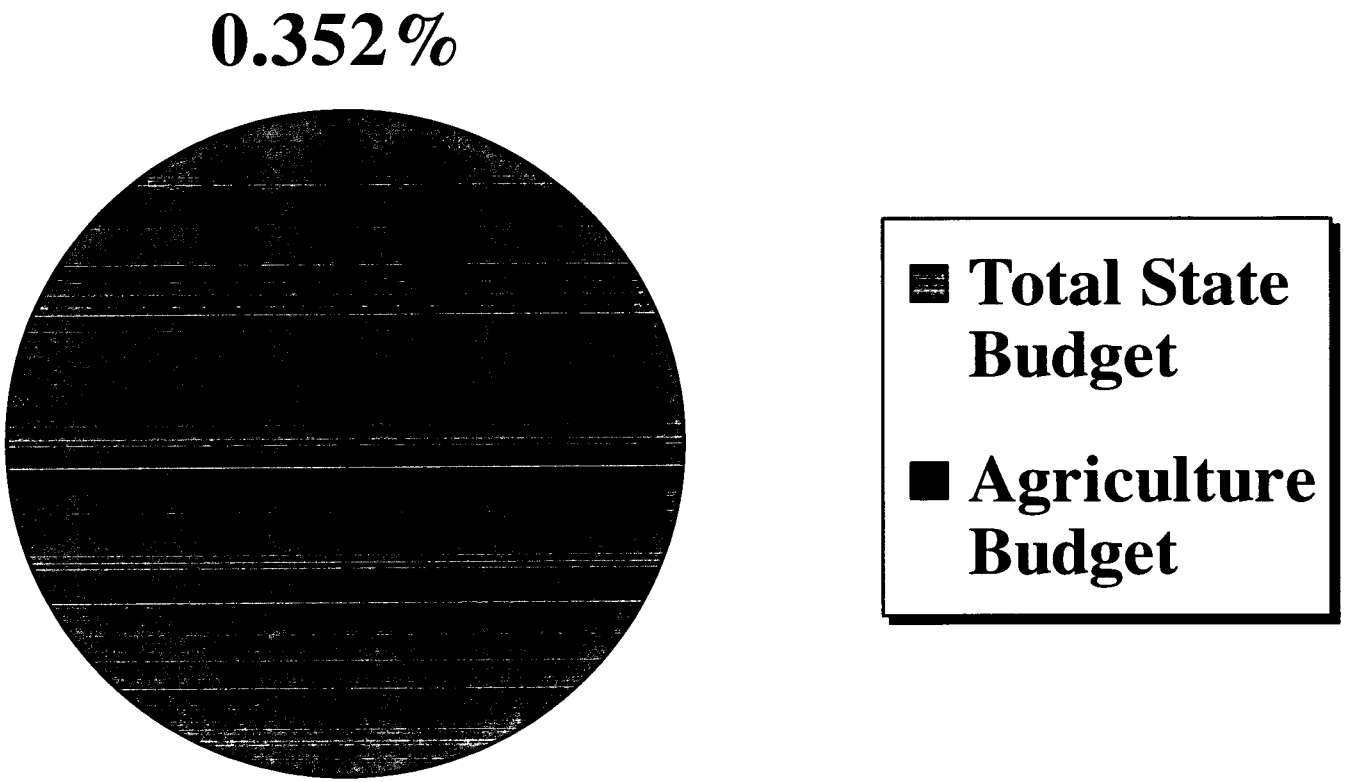
Laws adminstered by NCDA&CS

Core Initiative	Name of Law	General Statute	Division
Economic	Promotion of Agricultural Research	Chapter 106, Article 50A	Fiscal Management
Economic	Public Livestock Markets	Chapter 106, Article 35	Veterinary
Economic	Seed Law	Chapter 106, Article 31	Plant Industry
Economic	Seed Law	Chapter 106, Article 31	Plant Industry
Economic	Southern Dairy Compact	Chapter 106, Article 68	Marketing
Economic	State Farm Program	Chapter 106, Section 22.1	Research Stations
Economic	State Marketing Authority	Chapter 106, Article 47	Marketing
Economic	Strawberry Assessment Act	Chapter 106, Article 65	Fiscal Management
Economic	Uniform Boll Weevil Eradication Act	Chapter 106, Article 4F	Plant Industry
Economic	Vegetable Plant Law	Chapter 106, Article 31B	Plant Industry
Economic	Weights & Measures Act	Chapter 81A, Article 1-3	Standards
Environment	Agronomic Testing	Chapter 106, Section 22	Agronomic
Environment	Antifreeze Law	Chapter 106, Article 51A	Food & Drug
Environment	Disposal of Dead Poultry	Chapter 106, Article 49E	Veterinary
Environment	Pest Control Compact	Chapter 106, Article 4E	Plant Industry
Environment	Pesticide Law	Chapter 143, Article 52	Food & Drug
Environment	Plant Pests	Chapter 106, Article 36	Plant Industry
Environment	Plant Protection and Conservation Act	Chapter 106, Article 19B	Plant Industry
Environment	Soil Additives Act	Chapter 106, Article 2A	Plant Industry
Health	Adulteration of Grains	Chapter 106, Article 54	Food & Drug
Health	Animal Diseases	Chapter 106, Article 34	Veterinary
Health	Biological Residues	Chapter 106, Article 49F	Veterinary
Health	Biologics Law	Chapter 106, Article 58	Veterinary
Health	Commercial Feed Law	Chapter 106, Article 31C	Food & Drug
Health	Food, Drugs & Cosmetics Act	Chapter 106, Article 12	Food & Drug
Health	Grading & Testing of Milk Products	Chapter 106, Article 29	Food & Drug
Health	Inspection of Ice Cream Plants	Chapter 106, Article 26	Food & Drug
Health	Meat Inspection Act	Chapter 106, Article 49B-C	Veterinary
Health	Poultry Products Inspection Act	Chapter 106, Article 49D	Veterinary
Health	Poultry, Hatcheries and Chick Dealers	Chapter 106, Article 49	Veterinary
Health	Regulation of Rendering Plants	Chapter 106, Article 14A	Veterinary
Health	Structural Pest Control Act	Chapter 106, Article 4C	Structural Pest
Health	Wholesale Drug Distributors Act	Chapter 106, Article 12A	Food & Drug

NCDA&CS General Budget - last four years



Agriculture in the scheme of things



VISITOR REGISTRATION SHEET

Agriculture — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Haverly	N.C. Pork Co.
Laura DeVivo	DENR
Lucius Pullen	Attorney
Jack Cozort	Parker Poe
Elizabeth Dalton	Bode Associates
Chris Nichols	Hunton & Williams
John Cyrus	N.C. State Grange
Kim Hibbard	NCLM
Pam Meyer	NCACC
Nancy Thompson	NCIC
Doug Hovey	NCPMA

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Shaw	NC Forestry Assoc.
[illegible]	NCRA
Willie Riddick	DOR
Doug Lassiter	NCSTA
[illegible]	NCBC
[illegible]	Altria
Sam Taylor	NCBIO
[illegible]	Grain Dlrs of N.C. Agriculture Alliance of N.C
David Huskins	Motorola
Carol Lamb	EGHS
Virginia Hebert	Sen. Kinnaird's office

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carl Tart	NCDA&CS
BRUCE THOMPSON	FARMER FOR FARMS & [illegible]
Grady McMillin	N.C. Conservation Network.
Steve Wall	Conservation Council
Patricia Young	LLPP
Pricy Harrison	Beaufort NC

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, March 25, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

• SB-220	Winery Wastewater Management	Sen. Horton
• SB-245	Controlled Hunting/No Importation of Coyotes	Sen. Weinstein

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 10, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 10, 2003, at 9:00 a.m. in Room 1124, Legislative Building. Senator Albertson, chairman presided and there were fourteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB-245 CONTROLLED HUNTING/NO IMPORTATION OF COYOTES – Sen. Weinstein spoke on the bill. Mr. Dick Hamilton, NC Wildlife Division gave additional remarks. Sen. Albertson asked staff to explain Class I misdemeanor charges. Mr. Jeffrey Hudson, staff counsel explained. Sen. Albertson asked how we had gotten so many coyotes and Mr. Hamilton explained. Mr. Pete Warren, Eastern Fox Hunters Association addressed members. They thanked the sponsor and members for this bill. Sen. Webster moved for a favorable report. No further discussion, vote taken and passed.

SB-220 WINERY WASTEWATER MANAGEMENT - Sen. Horton explained his bill. He sent forth an amendment and moved for adoption. The vote was taken and the amendment passed. Sen. Webster asked the sponsor if there are restrictions of feeding waste to hogs. Sen. Horton explained the process and told of no restrictions. Sen. Albertson told members that the Departments of Agriculture and DENR were in support of this legislation. Ms. Collen Sullens, DENR spoke in favor. Sen. Horton moved to incorporate the amendment into a new PCS, moved for adoption and be referred to the Committee on Finance. The vote was taken and passed as moved.

Having no further business the meeting adjourned at 11:25 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, March 25, 2003

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

FAVORABLE

S.B. **245** Controlled Hunting/No Importation of Coyotes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Wednesday, March 26, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **220** Winery Wastewater Management.

Draft Number:	PCS75138
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 220

Short Title:	Winery Wastewater Management.	(Public)
Sponsors:	Senators Horton; Allran, Bingham, Brock, Carpenter, Clodfelter, Dannelly, Forrester, Foxx, Garrou, Garwood, Hartsell, Kinnaird, Lucas, Metcalf, Queen, Rucho, Shaw, Soles, and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STREAMLINED PROGRAM FOR PERMITTING THE MANAGEMENT OF WINERY WASTEWATER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that it is desirable to promote and increase wine production in North Carolina while ensuring the protection of the water resources of the State. It is the intention of the General Assembly to promote a cooperative and coordinated approach among the agencies of the State in the management of winery wastewater, with an emphasis on reasonable regulatory controls so as to minimize regulatory burdens, as appropriate, and maximize the protection of the quality of the waters and the health of the citizens of the State.

SECTION 2. The Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources shall jointly prepare technical assistance information on the management of winery cleaning and process wastewater. This information shall emphasize local means of addressing winery cleaning and process wastewater management, including both on-site subsurface wastewater systems, permitted by county health departments, and connection to publicly owned treatment works. Furthermore, the Department of Environment and Natural Resources, in consultation with the Department of Agriculture and Consumer Services, shall develop design criteria for the management of winery cleaning and process wastewater through nondischarge land application systems. The technical assistance information shall be completed by April 1, 2004, and shall be made available to the public. The design criteria shall be completed by July 1, 2004.

SECTION 3. G.S. 143-215.1 is amended by adding two new subsections to read:

"(d2) A wastewater management system for the treatment and disposal of cleaning and process wastewater from a winery that produces 200 or more gallons of wine per

year that cannot dispose of its wastewater through an on-site subsurface wastewater system or connect to a publicly owned treatment works may be permitted in accordance with subsection (d) of this section provided all of the following conditions are met:

(1) The use of treated winery cleaning and process wastewater for irrigation is restricted to vineyards, pastures, or landscape irrigation areas under the ownership or control of the winery owner and designated in the permit.

(2) Treated winery cleaning and process wastewater is applied so that it does not exceed the needs of the vegetation or the absorptive capacity of the land.

(3) Treated winery cleaning and process wastewater is applied so that ponding or runoff of the wastewater does not occur.

(4) Measures are taken to prevent breeding of insects and creation of other hazards to public health.

(5) For a land area onto which treated winery cleaning and process wastewater is applied, setbacks from a property boundary shall not be required if the wastewater is applied so that it does not drift off-site of the property owned by the winery and signs are posted every 200 yards along the winery property boundary stating, "Winery cleaning and process wastewater being reused to irrigate lands."

(6) For a winery that employs a drip irrigation disposal system and does not comply with the requirements of subdivision (5) of this subsection, the drip irrigation disposal system shall be located at least 50 feet from any property boundary, unless a waiver is granted by the owner of the adjoining property for a reduction in the setback.

(7) For a winery that employs a spray irrigation disposal system and does not comply with the requirements of subdivision (5) of this subsection, the spray irrigation disposal system shall be located at least 150 feet from any property boundary, unless a waiver is granted by the owner of the adjoining property for a reduction of setback.

(8) Notwithstanding any other subdivision of this subsection, the use of treated winery cleaning and process wastewater for irrigation shall not occur within 100 feet of any drinking water well or other source of potable water.

(9) Notwithstanding any other subdivision of this subsection, an impoundment of treated winery cleaning and process wastewater shall not be located within 100 feet of any drinking water well or other source of potable water.

(d3) A wastewater management system for the treatment and disposal of cleaning and process wastewater from a winery that produces less than 200 gallons of wine per year shall be deemed permitted provided all of the following conditions are met:

(1) No winery cleaning and process wastewater is discharged to surface waters.

(2) The winery cleaning and process wastewater does not degrade the groundwater of the State.

(3) The winery shall not create any water quality condition that would constitute a nuisance that affects an adjoining property owner."

SECTION 4. G.S. 143-215.3D(a) is amended by adding a new subdivision to read:

"(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. –

. . .

(9) Winery Wastewater Management Systems. – The annual fee for a winery wastewater management system permit issued pursuant to G.S. 143-215.1(d) and (d2) shall be:

a. One hundred dollars ($100.00) for wineries that produce less than 10,000 gallons of wine annually.

b. Three hundred dollars ($300.00) for wineries that produce 10,000 or more gallons of wine but less than 100,000 gallons of wine annually.

c. Six hundred seventy-five dollars ($675.00) for wineries that produce 100,000 or more gallons of wine annually."

SECTION 5. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall jointly prepare and submit an interim report to the Environmental Review Commission on progress in developing and distributing the technical assistance information on the management of winery cleaning and process wastewater and in developing the design criteria for the management of winery cleaning and process wastewater required by Section 2 of this act on or before April 1, 2004, and shall submit a final report to the Commission on or before September 1, 2004.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 220
PROPOSED COMMITTEE SUBSTITUTE S220-PCS75138-RT-2

Short Title: Winery Wastewater Management. (Public)

Sponsors:

Referred to:

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STREAMLINED PROGRAM FOR PERMITTING THE MANAGEMENT OF WINERY WASTEWATER.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that it is desirable to promote and increase wine production in North Carolina while ensuring the protection of the water resources of the State. It is the intention of the General Assembly to promote a cooperative and coordinated approach among the agencies of the State in the management of winery wastewater, with an emphasis on reasonable regulatory controls so as to minimize regulatory burdens, as appropriate, and maximize the protection of the quality of the waters and the health of the citizens of the State.

SECTION 2. The Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources shall jointly prepare technical assistance information on the management of winery cleaning and process wastewater. This information shall emphasize local means of addressing winery cleaning and process wastewater management, including both on-site subsurface wastewater systems, permitted by county health departments, and connection to publicly owned treatment works. Furthermore, the Department of Environment and Natural Resources, in consultation with the Department of Agriculture and Consumer Services, shall develop design criteria for the management of winery cleaning and process wastewater through nondischarge land application systems. The technical assistance information shall be completed by April 1, 2004, and shall be made available to the public. The design criteria shall be completed by July 1, 2004.

SECTION 3. G.S. 143-215.1 is amended by adding two new subsections to read:

"(d2) A wastewater management system for the treatment and disposal of cleaning and process wastewater from a winery that produces 200 or more gallons of wine per year that cannot dispose of its wastewater through an on-site subsurface wastewater

system or connect to a publicly owned treatment works, and that would otherwise be permitted under subsection (d) of this section, may be permitted in accordance with subsection (d) of this section provided all of the following conditions are met:

(1) The use of treated winery cleaning and process wastewater for irrigation is restricted to vineyards, pastures, or landscape irrigation areas under the ownership or control of the winery owner and designated in the permit.

(2) Treated winery cleaning and process wastewater is applied so that it does not exceed the needs of the vegetation or the absorptive capacity of the land.

(3) Treated winery cleaning and process wastewater is applied so that ponding or runoff of the wastewater does not occur.

(4) Measures are taken to prevent breeding of insects and creation of other hazards to public health.

(5) For a land area onto which treated winery cleaning and process wastewater is applied, setbacks from a property boundary shall not be required if the wastewater is applied so that it does not drift off-site of the property owned by the winery and signs are posted every 200 yards along the winery property boundary stating, "Winery cleaning and process wastewater being reused to irrigate lands."

(6) For a winery that employs a drip irrigation disposal system and does not comply with the requirements of subdivision (5) of this subsection, the drip irrigation disposal system shall be located at least 50 feet from any property boundary, unless a waiver is granted by the owner of the adjoining property for a reduction in the setback.

(7) For a winery that employs a spray irrigation disposal system and does not comply with the requirements of subdivision (5) of this subsection, the spray irrigation disposal system shall be located at least 150 feet from any property boundary, unless a waiver is granted by the owner of the adjoining property for a reduction of setback.

(8) Notwithstanding any other subdivision of this subsection, the use of treated winery cleaning and process wastewater for irrigation shall not occur within 100 feet of any drinking water source or surface water.

(9) Notwithstanding any other subdivision of this subsection, an impoundment of treated winery cleaning and process wastewater shall not be located within 100 feet of any drinking water source or surface water.

(d3) A wastewater management system for the treatment and disposal of cleaning and process wastewater from a winery that produces less than 200 gallons of wine per year shall be deemed permitted provided all of the following conditions are met:

(1) No winery cleaning and process wastewater is discharged to surface waters.

(2) The winery cleaning and process wastewater does not degrade the groundwater of the State.

(3) The winery shall not create any water quality condition that would constitute a nuisance that affects an adjoining property owner."

SECTION 4. G.S. 143-215.3D(a) is amended by adding a new subdivision to read:

"(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. –

. . .

(9) Winery Wastewater Management Systems. – The annual fee for a winery wastewater management system permit issued pursuant to G.S. 143-215.1(d) and (d2) shall be:

a. One hundred dollars ($100.00) for wineries that produce less than 10,000 gallons of wine annually.

b. Three hundred dollars ($300.00) for wineries that produce 10,000 or more gallons of wine but less than 100,000 gallons of wine annually.

c. Six hundred seventy-five dollars ($675.00) for wineries that produce 100,000 or more gallons of wine annually."

SECTION 5. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall jointly prepare and submit an interim report to the Environmental Review Commission on progress in developing and distributing the technical assistance information on the management of winery cleaning and process wastewater and in developing the design criteria for the management of winery cleaning and process wastewater required by Section 2 of this act on or before April 1, 2004, and shall submit a final report to the Commission on or before September 1, 2004.

SECTION 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE March 25

S. B. No. 220 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Horton
Sen.)

moves to amend the bill on page 2, line 2

( ) WHICH CHANGES THE TITLE

by inserting, between the words "works" + "may", the following, and:

"That would otherwise be permitted under ~~subsection~~ paragraph (d) of this section

AMD 34 and ~~those lines~~

by, on lines 33, by changing ~~that line~~ to Read:

"ocean within 100 feet of any drinking water source or surface water."

AMD 38 and ~~those lines~~

on line 37 by changing ~~that line~~ to read:

"not be located within 100 feet of any drinking water source or surface water."

SIGNED _____

GP Given

ADOPTED 25 March 03 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 245

Short Title:	Controlled Hunting/No Importation of Coyotes.	(Public)
Sponsors:	Senators Weinstein; Albertson, Holloman, Jenkins, and Soles.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HUNTING OF COYOTES IN CONTROLLED HUNTING PRESERVES AND TO MAKE IT UNLAWFUL TO IMPORT LIVE COYOTES INTO THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-273(g) reads as rewritten:

"(g) Controlled Hunting Preserve Operator License. – The Wildlife Resources Commission is authorized by rule to set standards for and to license the operation of controlled hunting preserves operated by private persons. Controlled hunting preserves are of two types: one is an area marked with appropriate signs along the outside boundaries on which only domestically raised game birds other than wild turkeys are taken; the other is an area enclosed with a dog-proof fence on which foxes and coyotes may be hunted with dogs only. A controlled fox and coyote hunting preserve operated for private use may be of any size; a controlled hunting preserve operated for commercial purposes shall be an area of not less than 500 acres or of such size as set by regulation of the Wildlife Resources Commission, which shall take into account differences in terrain and topography, as well as the welfare of the ~~foxes.~~ wildlife.

Operators of controlled fox hunting preserves may purchase live foxes and coyotes from licensed trappers who live-trap foxes and coyotes during any open season for trapping them and may, at any time, take live foxes from their preserves for sale to other licensed operators. The controlled hunting preserve operator license may be purchased for a fee of fifty dollars ($50.00), and is an annual license issued beginning August 1 each year running until the following July 1."

SECTION 2. G.S. 113-294 is amended by adding a new subsection to read:

"(o) Any person who willfully transports or attempts to transport live coyotes (Cania latrans) into this State for any purpose is guilty of a Class 1 misdemeanor, and upon conviction the Wildlife Resources Commission shall suspend any controlled hunting preserve operator license issued to that person for two years."

SECTION 3. Section 2 of this act becomes effective October 1, 2003, and applies to acts committed on or after that date. The remainder of this act becomes effective October 1, 2003.

SB 245:
Controlled Hunting/No importation of Coyotes

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Weinstein
		Summary by:	Barbara Riley Committee Counsel
Date:	March 24, 2003		
Version:	1st Edition		

SUMMARY:

Senate Bill 245 would amend the existing wildlife laws allowing the hunting of foxes with dogs on controlled preserves to include the hunting of coyotes in the same manner. The act also bans the importation of coyotes into the State.

CURRENT LAW:

G.S. 113-273 authorizes the Wildlife Resources Commission to set standards for the operation of controlled hunting preserves. Such preserves are of two types: one is an area properly marked in which only domestically raised game birds may be taken. The other type is an area enclosed by a dog proof fence in which foxes may be hunted only with dogs. Private preserves may be any size. Commercial preserves must be at least 500 acres or of a size set by rule by the WRC. Operators of such preserves may purchase live fox from licensed trappers during any open season for trapping them.

G.S. 113-294 sets out a number of specific violations of the wildlife laws and the penalties for their violation.

BILL ANALYSIS:

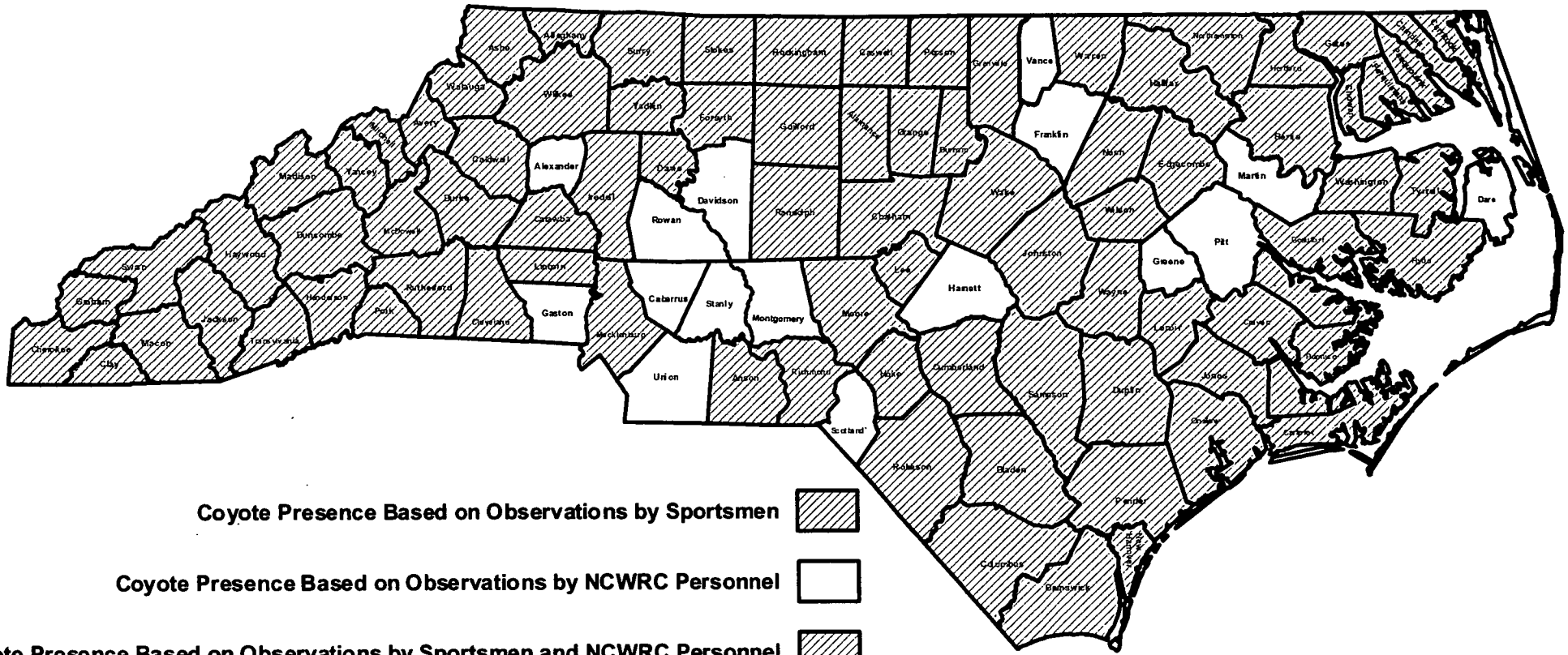
Section 1 of SB 245 would allow the hunting of coyote with dogs on controlled hunting preserves.

Section 2 of the bill makes it a Class 1 misdemeanor to import a live coyote into the State. In addition, those persons convicted of importing a coyote shall also have their controlled hunting preserve operator's license suspended for 2 years.

The bill becomes effective October 1, 2003. Section 2 applies to acts committed on or after that date.

2002 NORTH CAROLINA COYOTE DISTRIBUTION

During January and February of 2003, the North Carolina Wildlife Resources Commission (NCWRC) held a series of 9 public hearings across the state. At these hearings, sportsmen and women in attendance were asked if they had observed coyotes in the counties where they live and/or hunt. Based on their responses, the following coyote distribution map merges sportsmen observation data with data of coyote specimens and sightings that have been confirmed by NCWRC personnel.



Coyote Presence Based on Observations by Sportsmen

Coyote Presence Based on Observations by NCWRC Personnel

Coyote Presence Based on Observations by Sportsmen and NCWRC Personnel

No Reported Coyote Observations

VISITOR REGISTRATION SHEET

Agriculture — March 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Wilson	NCRA
Martha Glass	NCDA&CS
Nancy Thompson	MCIC
Steve Woodson	NC Farm Bureau
Kari Barsness	NCDENR
R. Rogers	NCDENR
Linda Sewell	DEH, DENR
David Meredith	NC State Grange
John Cyrus	N.C. State Grange
Terry Hoadley	N.C. Pork Council
Beth Anne Mumford	NCPC

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Brinchek	NC Fox Hunters Assoc. Johnston County Houndsmen Club
Tommy Dail	NC Running Hound Assoc.
Don Webb	ARSI
Stan Hall	Conservation Council
Tim Minton	NC Home Builders
Johnny Corbett	Yadkinville Hunt Club Albemarle Houndsmen Assoc
Chris North	NC Wildlife Federation
Grady McCallie	N.C. Cattlemen's Assoc.
Ken Melton	Allen Associates, Inc

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrice Rawls	NCACC
Leon Dawson	Altria Corp.
Kim Hubbard	NCLM
Virginia Hebert	Sen. Kinnaird
Taylor Francis	Sen. Purcell
Sarah Cross	NC Wildlife Resources Commission
Angie McMillan	TNC
Dick Hamilton	NC Wildlife
Robert H Harris	A.H.A.
Donald E. Ragland	EMCEA
Pete Wawer	EMCEA

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 8, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. **Welcome and Opening Remarks**

II. **Bills to be Considered**

SB-627	**Extend CHPP Adoption Deadline**
SB-831	**Clean Water Mgt. Trust Fund Board Terms**

III. **Other Business**

IV. **Adjournment**

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 8, 2003

The Senate Agriculture/Environment/Natural Resouces Committee met on Tuesday, April 08, 2003, at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were ten members present.

SB-831- CLEAN WATER MGT. TRUST FUND BOARD TERMS

It was requested that this bill be removed from the agenda until all names of appointees could be verified.

Chairman Albertson asked Sen. Weinstein to preside while he explained the next bill.

SB-627 – EXTEND CHPP ADOPTION DEADLINE

Sen. Albertson explained his bill. Sen. Clodfelter asked why 18 months was necessary. Mr. Michael Buhl, Deputy Director NC Division Marine Fisheries, addressed members. He explained the need to extend the deadline. Sen. Reeves questioned the starting date of the program and Mr. Buhl explained that this was a new program but it had been delayed due to the initial funding getting into place and this caused them to get off to a slow start.

Sen. Hargett moved for a favorable report.

Sen. Jenkins inquired as to when the committee could review the General Statues for this. Mr. Jeff Hudson, staff councel, responded and explained that the Seafood and Acquaculture Commission reviews the annual report from these programs. Sen. Albertson assured Sen. Jenkins that the S &A Commission had worked with the Fisheries on this new program. He added that this is something we should be proud of in North Carolina.

The vote was taken and given a favorable report.

Having no further business, the meeting adjourned at 11:20 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, April 08, 2003

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

FAVORABLE

S.B. **627** Extend CHPP Adoption Deadline.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

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.

SENATE BILL 627:
Extend CHPP Adoption Deadline.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Jeff Hudson Committee Counsel
Date:	April 8, 2003		
Version:	First Edition		

SUMMARY: ***Senate Bill 627 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 of 1997. 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 Management 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 831

Short Title:	Clean Water Mgt. Trust Fund Board Terms.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IMPROVED STAGGERED TERMS OF THE MEMBERS OF THE CLEAN WATER MANAGEMENT FUND BOARD OF TRUSTEES, TO INCREASE THE NUMBER OF MEMBERS OF THE BOARD, AND TO MAKE APPOINTMENTS TO THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-145.5 reads as rewritten:

"**§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be ~~independent, but for administrative purposes shall be~~ administratively located ~~under~~ within the Department of Environment and Natural ~~Resources.~~Resources but shall be independent of the Department.

(b) Membership. – The Clean Water Management Trust Fund Board of Trustees shall be composed of ~~18 members. Six members shall be appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.~~ 21 members appointed to four-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 four.

(2) 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 four.

(3) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(4) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(5) 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 four.

(6) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(7) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(8) 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 four.

(9) 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 four.

(10) 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 four.

(11) 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 four.

(12) 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 four.

(13) 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 two years those years that are evenly divisible by four.

(14) 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 two years those years that are evenly divisible by four.

(15) 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 four.

(16) 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 four.

(17) 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 four.

(18) 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 four.

(19) 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 four.

(20) 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 two years those years that are evenly divisible by four.

(21) 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 two years those years that are evenly divisible by four.

(b1) Qualifications. – The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Acquisition and management of natural areas.
(2) Conservation and restoration of water quality.
(3) Wildlife and fisheries habitats and resources.
(4) Environmental management.

(c) ~~Initial Appointments.~~ Chair. ~~– Each appointing officer shall designate two of the officer's initial appointments to serve two-year terms, two to serve four-year terms, and two to serve six-year terms. Thereafter, all appointments shall be for four years, subject to reappointment. All initial appointments shall be made on or before January 1, 1997.~~ The Governor shall appoint one ~~Trustee~~ member to serve as Chair of the ~~Board.~~Board of Trustees.

(d) Vacancies. – ~~If a vacancy occurs, other than by the expiration of term, of a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be filled by the appointing official in the original manner.~~An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in

appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(e) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(e1) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(f) Per Diem and Expenses. ~~The Trustees~~ Each member of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair."

SECTION 2. In order to alter the schedule of staggered terms of four years for the Board of Trustees of the Clean Water Management Trust Fund so that, as nearly as possible, the same number of terms will expire each year and to provide for an orderly transition in membership of the Board of Trustees to the terms specified in G.S. 113-145.5, as amended by Section 1 of this act, the following provisions shall apply:

(1) Joseph M. Hester, Jr. shall serve in the position established by G.S. 113-145.5(b)(1) through 1 July 2003.

(2) William McPhatter, Sr. shall serve in the position established by G.S. 113-145.5(b)(2) through 1 July 2003.

(3) Caroline B. Ansbacher shall serve in the position established by G.S. 113-145.5(b)(3) through 1 July 2004.

(4) John McMillan shall serve in the position established by G.S. 113-145.5(b)(4) through 1 July 2004.

(5) Leland McKinley Simmons shall serve in the position established by G.S. 113-145.5(b)(5) through 1 July 2005.

(6) Edwin G. Wilson, Jr. shall serve in the position established by G.S. 113-145.5(b)(6) through 1 July 2006.

(7) The Governor shall appoint a member to serve in the position established by G.S. 113-145.5(b)(7) through 1 July 2006.

(8) Alex MacFadyen of Wake County is appointed to the position established by G.S. 113-145.5(b)(8) to serve through 1 July 2007.

(9) Johnnie Mosley shall serve in the position established by G.S. 113-145.5(b)(9) through 1 July 2007.

(10) William E. Hollan, Jr. shall serve in the position established by G.S. 113-145.5(b)(10) through 1 July 2004.

(11) William J. Brooks, III shall serve in the position established by G.S. 113-145.5(b)(11) through 1 July 2005.

(12) Dickson McLean, Jr. shall serve in the position established by G.S. 113-145.5(b)(12) through 1 July 2005.

(13) Claudette Weston shall serve in the position established by G.S. 113-145.5(b)(13) through 1 July 2006.

(14) Jerry W. Wright shall serve in the position established by G.S. 113-145.5(b)(14) through 1 July 2006.

(15) C. Leroy Smith shall serve in the position established by G.S. 113-145.5(b)(15) through 1 July 2003.

(16) Charles R. Wakild shall serve in the position established by G.S. 113-145.5(b)(16) through 1 July 2004.

(17) Karen Cragnolin shall serve in the position established by G.S. 113-145.5(b)(17) through 1 July 2004.

(18) Robert Dare Howard shall serve in the position established by G.S. 113-145.5(b)(18) through 1 July 2005.

(19) Margaret B. Markey shall serve in the position established by G.S. 113-145.5(b)(19) through 1 July 2005.

(20) Allen Holt Gwyn shall serve in the position established by G.S. 113-145.5(b)(20) through 1 July 2006.

(21) The Speaker of the House of Representatives shall appoint a person to serve in the position established by G.S. 113-145.5(b)(21) through 1 July 2006.

SECTION 3. This act becomes effective 30 June 2003.



One North Carolina *Naturally*

Partnerships In Conservation





Why Coordinate Conservation?

Public agencies and private organizations are working hard to protect the state's natural heritage. But these existing good works could be amplified and strengthened through better cooperation and coordination. Faced with budget shortfalls, adequate funding for public conservation programs has not been provided. Yet North Carolinians strongly endorse protection of the environment (N.C. voters approved seven of nine open-space bond referenda since 1997). The state must meet these conservation challenges through innovation, collaboration and perseverance.





What is Open Space?

Open spaces are undeveloped places characterized by natural and scenic beauty. Farms, woods, parks, greenways, wetlands and historic sites are some examples. These places have great value to humans and other species, providing havens for recreation, sanctuaries for native animals and plants, and buffer zones between vital water resources and the toll of human activities.

Green Lands, Blue Waters

Private Lands, Public Benefits

Working On The Water

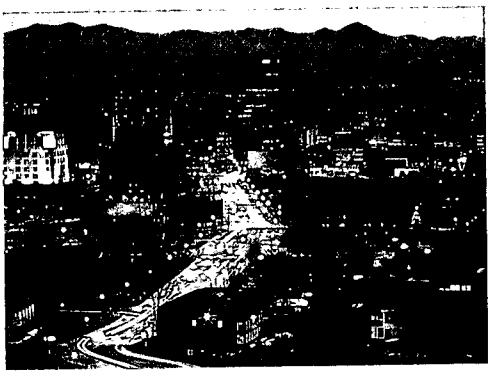
The population of North Carolina is expected to increase 35 percent in the coming two decades from 8 million in 2000 to 10.8 million by 2020.

North Carolina has the sixth highest rate of urbanization in the nation — each day 427 acres of open space are lost to development.



Thirty-four percent of the state's coastal wetlands have been altered to the point that they no longer function in protecting water quality. In addition, pollution from human activities has rendered fish and shellfish from many North Carolina estuaries unfit for consumption.

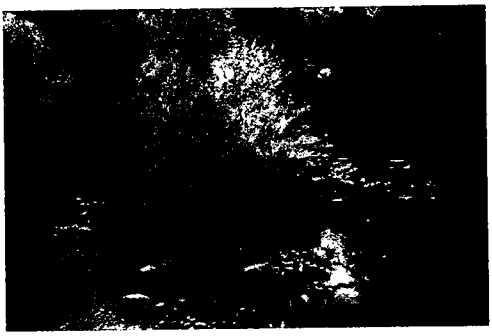
One North Carolina *Naturally*



North Carolina is blessed with one of the most diverse natural environments in the nation. The state stretches from lush mountain peaks across a rolling, green Piedmont and into a crystal blue ocean. The motivation for conserving these natural assets transcends aesthetics or ethics — conservation also is essential for quality of life, economic gain and human survival.

To sustain these natural assets and their benefits, a common vision and teamwork are needed to create one North Carolina, naturally—to conserve our state's land, water and air for current and future generations. That's why the N.C. Department of Environment and Natural Resources has launched One North Carolina Naturally, a program to make conservation more coordinated, better focused and more effective.

This initiative will build a comprehensive statewide conservation plan by determining what is already being done, how to connect and support those efforts, and how to fill in the gaps. It will achieve these goals through participation from the conservation community—landowners, government agencies, private organizations, scientists, environmentalists, developers and citizens — all of whom are vested in a healthy North Carolina.



Partnerships In Conservation

Pathways to Conservation



Healthy development, agriculture, forestry, fishing and tourism depend on careful natural resource planning and implementation. The end result is a better quality of life for every North Carolinian. The initiative will focus on these interdependent areas of emphasis:

- **Green Lands, Blue Waters** — Diverse, intact environments and ecosystems support clean air and water, wildlife habitat, unique natural communities, historic heritage, and related economic benefits (i.e., commercial and sport fishing, boating, tourism, prevention of flood damage). The program will protect and restore source waters for rivers, significant natural areas and connecting corridors.



- **Private Lands, Public Benefits** — Multiple, integrated programs often are necessary to protect traditional working landscapes while sustaining their ecological integrity. The program will advance stewardship on private and public lands, providing support and incentives for conservation.
- **Working on the Water** — Protecting and Restoring Sounds and Ocean Habitats — The program will identify and conserve our unique coastal areas and their vibrant fishery resources, ecological systems and historical and cultural heritage.

Program Goals

One North Carolina Naturally will:

- Coordinate among local governments and existing conservation plans to create a comprehensive statewide plan.
- Enhance sources of public funding for implementation of the plan.
- Successfully implement the Million Acres Initiative, a cooperative effort of the private and public sectors to protect 1 million acres of additional open space in the state by 2010.



- Inform the public about conservation of natural resources through involvement and education.
- Develop regional plans through community input and involvement.



Program Highlights



Fall 2002 — Regional meetings

- More than 500 people with a variety of interests and viewpoints attended eight regional meetings in the fall of 2002, paid for by a grant from the Z. Smith Reynolds Foundation. The participants offered their opinions on specific conservation needs and priorities. The consensus was that state government should be a conduit for information, communication between organizations, and funding.
- Participants asked the state to adopt standard methods for collecting, entering and summarizing data and to prepare a GIS (geographic information systems) map and database for each region.

April 2003 — Statewide conference

- The program will hold a conference in April 2003 to elicit statewide participation from interested parties and to offer a framework for coordinating conservation in North Carolina. A working draft plan and map identifying conserved lands and potential conservation opportunities will also be introduced for further development at the regional level.

Spring 2003 — Survey of the state's "green infrastructure"

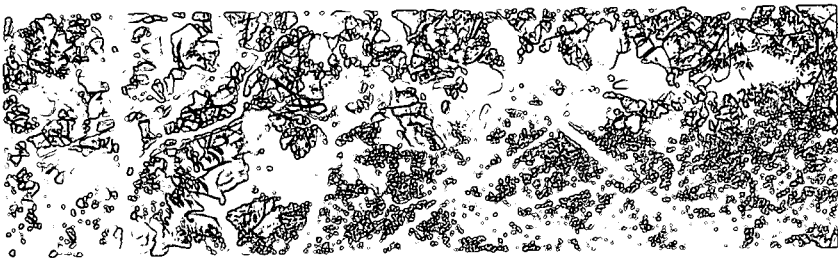
- Local governments and private organizations will be asked to use the technical and financial support of state government to develop plans and maps of existing protected spaces (such as a community's trail networks and parks) and future conservation opportunities. These can be overlapped with and incorporated into the One North Carolina Naturally map to show joint interests and encourage coordinated conservation.



One North Carolina Naturally

One North Carolina Naturally was developed by the N.C. Department of Environment and Natural Resources and is housed within the Office of Conservation and Community Affairs. For program information, call (919) 715-4152, or visit on the web at http://www.enr.state.nc.us/officeofconservation/.

Cover photo by Bill Lea
Funds provided by conference sponsors.



North Carolina is my home

Here where the Smokies rise

Here where the wind blows ocean foam

Here where the wild swan flies

Blossoms adorn the dogwood tree

Down on the old home place

Tar on my heels feels good to me

Here in my state of grace

Charles Kuralt

One North Carolina Naturally

VISITOR REGISTRATION SHEET

Agriculture — 4-8-2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Troy	NC WRC
Tom Bean	NC Environ Def
Kari Barkhess	NCDENR
Michael Buhl	NC DMF
Steve Wall	CCNC
Sheree K	CAA
Jerry Wh	NCRA
Tim Mi	NC Home Builders
Tracy Hackett	NC Pork Council
John Cyrus	N.C. State Grange
Virginia Hebert	Sen. Kinnaird

VISITOR REGISTRATION SHEET

Agriculture — 4.8.2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martha Glen	NC DA
Nancy Thompson	MCIC
Ken Melton	Alley Associates, Inc.
Lucius Pullen	Counsel NC Mining Assoc.
Roy Williams	UNC
Paul Tayloe	Hoing Council
David Knight	NC Sierra Club
Pricy Harrison	CRC

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, April 10, 2003 at 9:00 a.m.
Room 1124, Legislative Building

I. **Welcome and Opening Remarks**

II. **Bills to be Considered**

SB-731	Fertilizer Packaging Nutrient Guarantees
SB-751	Civil Penalties/Food, Drug & Cosmetics
SB-959	Monitor Coastal Water Quality

III. **Other Business**

IV. **Adjournment**

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 10, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 10, 2003, at 9:00 a.m. in Room 1124, Legislative Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB-751 CIVIL PENALTIES/FOOD, DRUG & COSMETICS – was removed from the agenda at the sponsor request.

Sen. Albertson asked Sen. Weinstein, Vice Chair to preside while he explained the next bill.

SB-731 FERTILIZER PACKAGING NUTRIENT GUARANTEES – Sen. Albertson explained the bill. Sen. Horton questioned why this was necessary. Mr. Michael Blanton, Department of Agriculture recognized Mr. Bill Dixon for further explanation. He told of the existing law that regulates the packaging size of fertilizer products. Sen. Horton asked if other products had these regulations and Mr. Dixon advised there none. Sen. Allran inquired as to whether this could have been due to phosphate and Mr. Blanton explained that no alterations to the products would be necessary. Mr. George Givens, staff counsel told members that the original bill was from 1947 and that it had been amended several times in the past 50 years but no one knows what prompted the original bill years ago. Ms. Barbara Riley, staff counsel said this current bill was for a better labeling process. Sen. Webster moved for a favorable report. No further discussion, the vote was taken and passed as moved.

Sen. Albertson presided again.

SB-959 MONITOR COASTAL WATER QUALITY – Sen. Thomas was recognized to explain the bill. Mr. Wayne Mobley, NC Section Chief of Shellfish, DENR, gave additional explanation. (See staff explanation attached) Sen. Jenkins inquired about action standards and Mr. Mobley explained. Sen. Bingham asked if we didn't do this on our own would it eventually be a federal mandate and he was told yes by Mr. Mobley. Sen. Allran questioned how the testing was done by territory and about posting signs and Mr. Mobley explained their routine. Sen. Weinstein moved for a favorable report. No further discussion, the vote was taken and passed as moved.

Having no further business the meeting adjourned at 9:20 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, April 10, 2003

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

FAVORABLE

S.B. **731** Fertilizer Packaging Nutrient Guarantees.
Sequential Referral: None
Recommended Referral: None

S.B. **959** Monitor Coastal Water Quality.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

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.

SENATE BILL 959:
Monitor Coastal Water Quality

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	Introduced by:	Senator Thomas and Moore
Date:	9 April 2003	Summary by:	George Givens, Committee Counsel,
Version:	First Edition	Jennifer McGinnis, Committee Counsel	

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 751

Short Title:	Civil Penalties/Food, Drug and Cosmetics.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THE NORTH CAROLINA FOOD, DRUG AND COSMETIC ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-124.1. Civil Penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 731

Short Title:	Fertilizer Packaging Nutrient Guarantees.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE SIZE OF PACKAGES OF FERTILIZER THAT MAY BE SOLD WITH NUTRIENT GUARANTEES STATED IN FRACTIONAL PERCENTAGES AND TO AUTHORIZE THE BOARD OF AGRICULTURE TO ADOPT TEMPORARY RULES IN ORDER TO ESTABLISH RENTAL RATES FOR THE USE OF FACILITIES OPERATED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-659 reads as rewritten:

"**§ 106-659. Minimum plant food content.**

~~Superphosphate~~ Except as provided in this section, superphosphate containing less than eighteen percent (18%) available phosphate, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphate, or soluble potash are in fractional percentages shall not be offered for sale, sold, or distributed in this ~~State; provided, however, packages~~ State. Packages of ~~16~~ 32 fluid ounces or less when in liquid form, or ~~16~~32 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but ~~such~~ these packages are not exempt from any other requirements of this Article."

SECTION 2. Pursuant to G.S. 106-6.1, the Board of Agriculture may adopt temporary and permanent rules to establish rental rates for the use of farmers markets and agriculture centers operated by the Department of Agriculture and Consumer Services.

SECTION 3. This act is effective when it becomes law. The authority of the Board of Agriculture to adopt temporary rules under Section 2 of this act expires 1 March 2004.

SENATE BILL 731:
Fertilizer Packaging Nutrient Guarantees.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	April 10, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	First Edition		

SUMMARY: ***Senate Bill 731 would increase the size of packages of certain fertilizers that may be sold with nutrient guarantees stated in fractional percentages. The bill also authorizes the Board of Agriculture to adopt temporary rules to establish rental rates for the use of farmers markets and agricultural centers operated by the Department of Agriculture and Consumer Services (Department).***

The bill would become effective when it becomes law. The temporary rule-making authority would expire on March 1, 2004.

CURRENT LAW: Current law prohibits the sale or distribution of superphosphate fertilizer containing less than 18 percent available phosphate, or any mixed fertilizer in which the guarantees for nitrogen, available phosphate, or soluble potash are in fractional percentages. Fertilizer packages containing 16 ounces or less (in liquid or dry form) may be sold in fractional percentages.

G.S. 106-6.1 authorizes the Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, to establish a rate schedule for the use of facilities operated by the Department.

BILL ANALYSIS:

Section 1 would increase the size of packages of fertilizers that may be sold with nutrient guarantees stated in fractional percentages from 16 ounces or less to 32 ounces or less.

Section 2 would allow the Board of Agriculture to adopt temporary and permanent rules to establish rental rates for the use of farmers markets and agriculture centers operated by the Department.

EFFECTIVE DATE: The bill would become effective when it becomes law. The temporary rule-making authority would expire on March 1, 2004.

S731-SMSY-001

VISITOR REGISTRATION SHEET

Agriculture — 4.10.03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Blanton	NCDA & CS
Bill Dickerson	NCDA + CS
David McLeod	NCDA + CS
Malcolm Blalock	DENR / DEH Consultant
J. D. Potts	DENR / DEH / Shellfish Sanitation & Recreational W.Q.
WAYNE MOBley	DENR/DEH/Shellfish Sanitation & Recreational W.Q.
Martha Glass	DA & CS
Julie Allen	NC Statewatch
Steve Wall	Conservation Council
Elizabeth Ouzts	NCPIRG
Grady McCallie	N.C. Conserv.

VISITOR REGISTRATION SHEET

Agriculture — 4.10.03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Harbeson	NC Pork Council
Kim Hibbard	NCLM
Linda Sewell	DEH/DENR
Kari Barsness	DENR
David Knight	NC Sierra, NC Wildlife Fed
John McAlister	Duke Energy

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, Arpil 15, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

•	SB-593	Extend Swine Moratoria	Sen. Albertson
•	SB-831	Clean Water Mgt. Trust Fund Board Terms	Sen. Albertson
•	SB-979	Amend ASMFC Appointment	Sen. Albertson

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 15, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 15, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were eleven members present.

Sen. Albertson called the meeting to order and recognized the Pages.

Sen. Allran presided while Sen. Albertson explained his bill.

SB-593 – EXTEND SWINE MORATORIA – Sen. Albertson moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Albertson explained. Sen. Kinnaird spoke in favor of the bill. Sen. Horton spoke on the four-year extension and asked if we are getting closer to a solution. Sen. Albertson responded. Mr. Franklin Freeman, Office of the Governor, spoke on behalf of the Governor and told members how they are in full support of this. Mr. Freeman then read a Press Release done by the Governor that morning. He commended Sen. Albertson and Sen. Reeves for work they have done on waste spills, animal and municipal. Ms. Molly Dickens, Sierra Club, spoke. They would like to see in the future of moving forward the removal of the moratoria and installing new lagoons. She gave examples of overflows and problems caused by heavy rains. They hope to see a permanent ban on lagoons in NC and find new technologies to help solve these problems. Sen. Clodfelter moved for a favorable report for the PCS, unfavorable as to the original bill. Vote taken and passed as moved.

SB-979- AMEND ASMFC APPOINTMENT – Sen. Albertson moved for adoption of the PCS for discussion. So moved. Sen. Albertson explained. Mr. Jeff Hudson, staff counsel made additional comments. He told that this is to correct a problem detected by the marine fisheries last year. Sen. Kinnaird moved for a favorable report, unfavorable to the original bill. Vote was taken and passed as moved.

SB- 823 ENVIRONMENT TECHNICAL CORRECTIONS – Mr. George Givens, staff counsel, explained. Sen. Kinnaird moved for a favorable report. The vote was taken and passed.

SB – 824 – ENVIRONMENTAL REPORTS CONSOLIDATION – Mr. Givens explained. Sen. Kinnaird moved for a favorable report. The vote was taken and passed.

Sen. Albertson presided again. He then announced that **SB-831** was being removed for the agenda for today.

No further business and the meeting adjourned at 11:35 am.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, April 15, 2003

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

FAVORABLE

S.B. **823** Environmental Technical Corrections.
Sequential Referral: None
Recommended Referral: None

S.B. **824** Environmental Reports Consolidation.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **593** Extend Swine Moratoria.
Draft Number: PCS75233
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **979** Amend ASMFC Appointment.
Draft Number: PCS65260
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 593

Short Title:	Extend Swine Moratoria.	(Public)
Sponsors:	Senators Albertson; Allran, Apodaca, Bingham, Blake, Brock, Carrington, Clodfelter, Dalton, Dorsett, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Hargett, Hartsell, Horton, Jenkins, Kinnaird, Lucas, Malone, Moore, Purcell, Queen, Rand, Rucho, Shaw, Shubert, Sloan, Smith, Soles, Stevens, Swindell, Thomas, Tillman, Webster, and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

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 Waste 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 Waste 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.~~2005. 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,~~2005, 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,~~2005, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 593
PROPOSED COMMITTEE SUBSTITUTE S593-PCS75233-RT-6

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

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Whereas, the 1998 General Assembly extended these moratoria and established exceptions for animal waste management systems that meet certain performance standards; and

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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

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Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217."

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(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.

SENATE BILL 593:
Extend Swine Moratoria.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	April 15, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (S593-PCS75233-RT-6)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for 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: The PCS 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 PCS would become effective when it becomes law.

S593-SMSY-001

The Charlotte Observer

THURSDAY, APRIL 10, 2003

Dear Ellie Kennaird
hand out

N.C. TO HIT GROWERS WITH UP TO 40 CITATIONS

Heavy rains fill hog-waste lagoons close to the brim

No dikes have burst, but critics worry waterways could get contaminated

BY BRUCE HENDERSON
Staff Writer

Hundreds of N.C. hog-waste lagoons are nearly full as rain continues to fall this week, prompting renewed complaints of weak enforcement of state water-quality laws.

Rick Dove, a longtime critic of the hog industry, said he hasn't seen conditions so dire since Hurricane Floyd in 1999. Floyd flooded 50 farms, drowning 30,500 hogs and bursting three lagoons.

By Monday, the N.C. Division of Water Quality said, 345 of the state's 4,000 lagoons were within 19 inches of full. Four were within a foot of the lagoon top, which heightens the danger that a dike will rupture.

"It's when we get into the structural areas that we really get concerned," said Rick Shiver, regional water-quality chief in Wilmington.

No lagoons have burst. But animals have been removed from nine farms.

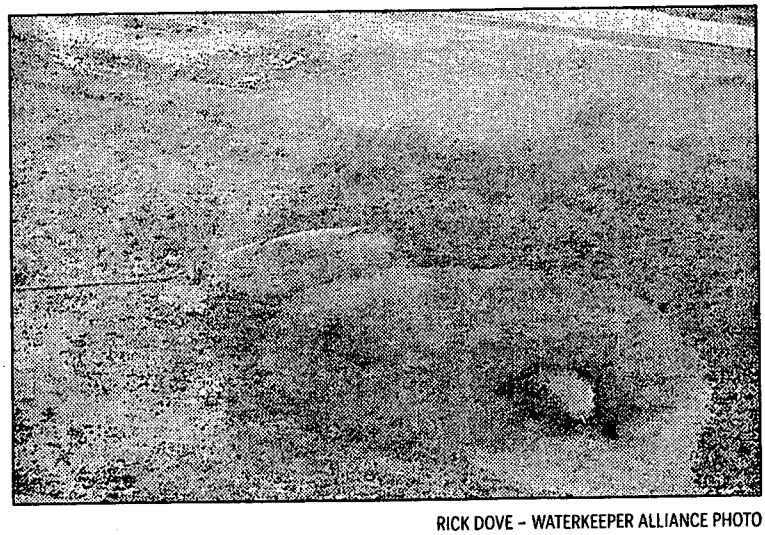
From a small airplane, Dove scans the hundreds of farms that dot the southern coastal plain for the telltale pink of hog wastes flowing into ditches, wetlands and streams.

SEE WATER | 4B

MORE COVERAGE

4B | Mecklenburg, Gaston county legislators propose bill to eliminate two environmental officials' positions

2B | Heavy rain, flash flood watches continue today



RICK DOVE – WATERKEEPER ALLIANCE PHOTO

A pipe protruding from a puddle of hog waste drains at this Duplin County farm on March 27. The N.C. Division of Water Quality says 345 of the state's 4,000 waste lagoons are nearly full. Growers face about 40 violations for not reporting lagoon problems or letting waste reach surface water.

Heavy rains fill hog-waste lagoons close to the brim

Water *from 1B*

"What I'm seeing now is as bad as what I saw in the winter and spring of 2000," said Dove, southeastern representative of the Waterkeeper Alliance, a national group. "There are so many violations, and our time is so limited in flying, that we don't even have time to document them all."

Dove, who has flown three to four days a week since March, reports problems to the N.C. Division of Water Quality. The division, which relies on public complaints and self-reporting by hog farmers to identify problems, has flown only a half-dozen times this year.

The N.C. Pork Council encourages its 2,700 members to work with state water-quality staff members when lagoons get too full, said spokeswoman Beth Anne Mumford. Lagoons are designed to accommodate heavy rains of 7 to 9 inches, she said.

"While we are concerned, the systems are operating the way they ought to be operating," Mumford said.

Liquid hog wastes held in open lagoons are sprayed onto fields planted with grass or other crops that absorb its nitrogen. But as rain fills the lagoons, desperate hog growers sometimes spray more wastes than the plants can absorb.

Dove said he's seen waste running off saturated fields, and pipes sending excess wastes straight into waterways.

Growers are supposed to report lagoons that are nearing capacity, and to file response plans. The plans usually call for spraying when weather permits. In extreme cases, growers pumped liquid from a full lagoon and truck it to an empty one.

"The response has been positive," said Don Reuter, spokesman for the N.C. Department of Environment and Natural Resources. "We'll be going after those that haven't reported."

Nineteen to 20 growers will be cited for not reporting full lagoons, state officials said. The same number will be cited for illegal discharges, most for spraying too heavily onto saturated fields.

A Duplin County grower was fined $5,664 last week for overspraying. No fines have been assessed for the other violators.

Growers know they're unlikely to get caught, Dove said, because they so outnumber state enforcers.

"Every time we get into above-average rainfall, these guys always end up doing the same thing," he said. "The (lagoon) system is designed for failure."

Shiver said the illegal discharges in his seven-county region, which has more full lagoons than any other, ranged from 400 to 1,500 gallons.

Problems emerged in December, Shiver said, and continued in March.

At the tail end of a four-year drought, many hog growers said seed didn't germinate well last fall, leaving them with sparse crops to absorb wastes. Heavy rain fell in March, but Wilmington has had 2.6 inches less rain than normal since December.

Bruce Henderson: (704) 358-5051;
bhenderson@charlotteobserver.com

THE NEWS & OBSERVER
FRIDAY, APRIL 11, 2003

Hog country gets mighty wet

BY MICHELLE B. NOWLIN

CHAPEL HILL

It's raining, it's pouring — and the hog industry is dumping waste into our rivers and wetlands. Sound familiar? It should. In the summer of 1995, North Carolina's environment took a beating when several hog waste lagoons ruptured and spewed their noxious contents into our coastal rivers. These catastrophes alerted the public that the state had become the nation's second-largest producer of hogs, with little or no regulatory structure to protect the public or the environment.

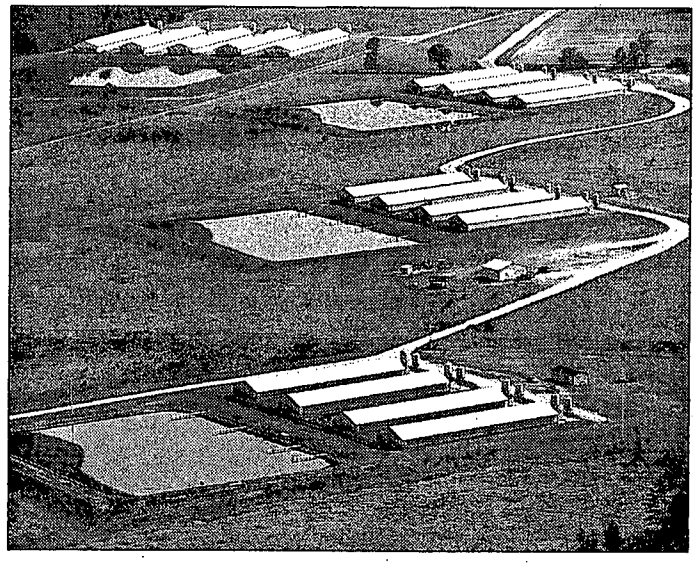
POINT OF VIEW

Change came quickly under the glare of outraged citizens. A proposal to build the world's second-biggest hog slaughterhouse in Edgecombe County was defeated (the largest hog slaughterhouse is in Bladen County). The General Assembly ordered a permit-granting and inspection program for the state's livestock industry, along with a moratorium on construction of new hog operations until the program was implemented. The Division of Water Quality hired inspectors and began enforcement actions against polluting facilities.

During the next several years, the situation improved. There were fewer lagoon breaches. Inspectors identified poorly managed facilities and provided technical assistance to resolve problems. But with every extended period of rainfall, lagoons filled, and sometimes overflowed. And the dumping continued.

The hurricanes of 1999 brought the hog industry back into sharp public focus. Overflowing lagoons flooded estuaries with untreated manure and flood waters stranded hog operations, drowning thousands of pigs. Then-Attorney General Mike Easley negotiated a landmark agreement with Smithfield Foods, the state's — the world's — largest producer of hogs, to conduct research into environmentally sound waste-treatment and disposal technologies and to phase out the primitive open-lagoon systems.

During these last three years of drought, we haven't heard much about problems on hog farms. No gross-out manure spills, no dead pigs floating in the rivers. The N.C. Pork Council mounted a multi-million dollar advertising campaign featuring pretty pictures and friendly faces to reassure the public that the industry is taking care of its problems. Public attention turned to other matters.



Hog barns and waste lagoons in Duplin County, 1998.

STAFF FILE PHOTO

But while regulators, legislators and the public looked away, the 10 million hogs concentrated in the coastal plain continue to yield serious problems. Groundwater contamination. Sullied rivers. A 400 percent increase in ammonium in the Neuse River estuary.

Now it's started to rain again. Nothing dramatic, just average rainfall for this time of year. The kind of rain that falls gently, sometimes for several days at a time. The kind of rain that heralds the arrival of spring. The kind of rain that hog lagoons can't handle.

Spraying freely

Hundreds of hog operations have again let their waste lagoons get too full and are illegally spraying their waste, night and day, in the rain, onto wet fields. More than 350 hog operations are affected. Although spraying the excess waste onto already saturated land averts catastrophic lagoon breaks— and the attendant public relations disaster — it pollutes just the same: because wet fields cannot absorb the additional liquid, the waste oozes into streams and seeps into groundwater.

Despite these dire circumstances, the pork industry continues business as usual. New hogs continue to be delivered to the farms, generating more waste. Because everyone has been affected, there's no place to haul the waste for proper and safe disposal. Only nine operations have removed hogs until they can bring the situation under control.

And the state? It has only one inspector in the Fayetteville office — the heart of hog country — who is responsible for overseeing more than 750 hog operations, not to mention hundreds of poultry and turkey operations. Other offices take days, sometimes weeks, to send inspectors to follow up on citizen reports of illegal activity. Agency officials have asked growers to submit "Plans of Action" to detail the measures they plan to take to lower their waste levels, but with budget cuts the state lacks sufficient staff to review them quickly, much less deploy inspectors to make sure the plans are being implemented.

The state now pledges to crack down on the worst facilities, but without field staff to collect waste samples and document illegal activity, the enforcement effort is unlikely to succeed. Meanwhile, citizens can tell you how the waste levels are being lowered: the waste is being dumped into the public's waters.

The situation demonstrates, once again, that lagoons and sprayfields are fatally flawed methods for waste disposal in our coastal region. It rains in North Carolina. Sometimes it rains a lot. And these facilities, no matter how well run, are ill-designed to cope. As a result, our environment suffers. We all suffer. It's time for this madness to end.

By the way, the current moratorium on building more hog lagoons is slated to end this September. Or — the General Assembly could make the moratorium permanent.

Michelle B. Nowlin is senior attorney at the Southern Environmental Law Center.

Editorial

THE NEWS & OBSERVER
SATURDAY, APRIL 12, 2003

Lagoon blues

This week's rain has done more than dampen spirits. The downpour has left Eastern North Carolina's hog lagoons brimming with waste and its farm fields too soaked to handle the stuff properly in sprayed form.

Yet, what the industry was quick to focus on in an N&O report — even as it has declared its sensitivity to the problem of rain-swollen lagoons — was that none of the lagoons had burst. That's certainly something to be thankful for. Others, however, say that they've seen illegal spraying, and the Division of Water Quality's staff no longer has enough inspectors to stop it. And no new waste-handling technology is ready to take the place of lagoons.

It's worth remembering what's happened when hog waste lagoons have burst in the past. Contaminated rivers and fish kills, to which lagoon spills certainly contributed, helped spur the moratorium on new and expanded hog farms in 1997. Then the terrible twin hurricanes of 1999 swamped scores of lagoons, turning parts of hog country into an open sewer. North Carolina must not let that happen again.

To that end, scientists at N.C. State University have 18 experiments under way (partly funded by the industry) to find a more effective system for handling hog waste. Half of those experiments are expected to be completed by the end of this year, but the rest may take as long as two years. The scientists are confident they will be able to recommend a feasible system and a way for farmers to pay for it.

But the project already has experienced delays and could experience more. Allowing the hog farm moratorium to expire, as it is set to in September, would be a serious mistake for a state struggling to cope with the hog waste already here. Hoping the rain will stop won't work for long in North Carolina.

newsobserver.com

Friday, April 11, 2003 6:35AM EDT

Rain fills hog lagoons to the brim

By WADE RAWLINS, Staff Writer

A wet spring and four days of steady rain have raised lagoon levels at hog farms across Eastern North Carolina dangerously high, threatening to burst dikes and spill pollution into rivers and streams.

The state Division of Water Quality said Thursday that 227 hog farms -- nearly 10 percent of the state total -- had lagoons that were too full. At 16 farms, lagoon levels were within a foot of their tops -- high enough to threaten rupture. State inspectors had 43 enforcement actions pending against farms: 16 for failure to report high lagoon levels and 27 for illegal spraying.

The Wilmington area has reported the most problems, with more than 80 hog lagoons nearly full. Although there are fewer problem lagoons than a week ago, environmental officials said they expect the rain this week to increase the problems next week.

"I can't remember that we've had problems like this before," said Rick Shiver, regional water quality supervisor for the Division of Water Quality in Wilmington.

Eastern North Carolina's year-to-date rainfall is only about an inch above normal, but the region has received nearly 5 inches in the first 10 days of April, according to the National Weather Service's Wilmington office.

At Brandon Howard's hog farm in northwest Onslow County, the rain has left pools of water in the fields and swirling mud on the roads leading to his hog barns.

Howard drove his white Chevy pickup around his three farm sites Thursday to check on two lagoons and a constructed wetland. The lagoon levels were high, and the fields were too wet to absorb any spraying that would lower those lagoon levels.

"We don't need any more rain in these lagoons or ponds," Howard said, standing above the wetland as drizzle pelted the water.

Prolonged rain creates disposal problems for hog farms. Farmers are not allowed to spray liquid waste from lagoons unless the fields are dry, the wind is calm and the fields have adequate vegetation or are about to be planted.

"A lot of people just don't understand Mother Nature," said Curtis Barwick, environmental manager of Coharie Farms and president of the N.C. Pork Council, an industry group.

"We definitely have to work with her. It all boils down to how she treats you and being flexible."

Barwick said hog lagoons are doing what they are designed to do: hold up to 180 days of waste and stormwater.

"Lagoons are supposed to be full at this time of year," he said. "That is what they are designed for, to hold the rain during the wettest part of the year. I don't know of any that have burst. I personally think that has been a success story."

No dikes have burst. But faced with full lagoons, farmers voluntarily thinned their herds at nine farms after discussion with environmental regulators. The hogs were moved to other farms.

Barwick said there have been few dry stretches since the first of the year to spray waste on fields.

Rick Dove of New Bern, southeastern representative of the Waterkeeper Alliance, an environmental group, said he has made frequent flights in recent months to document examples of hog farmers' spraying waste on saturated fields and during rainfall in violation of state regulations. He has sent to state regulators photos of 40 to 50 farms that he spotted with potential discharges into streams, and state inspectors responded with violation notices in some cases.

"I've seen them spraying before the rain, during the rain, after the rain, on illegal direct discharges to surface waters," Dove said. "It is so blatant right now, you are looking for the worst cases because you don't have time to document them all."

Dove said the system of applying waste on fields on the basis of average rainfall is a recipe for disaster when rainfall is above average.

"It's a system that literally cannot work," Dove said. "The farm fields being used by many of these operations were the former lowlands or wetlands of Eastern North Carolina. The more above-average rainfall we get, the more the systems break down."

Last month, Michelle Nowlin, an attorney for the Southern Environmental Law Center, wrote a letter to the N.C. Department of Environment and Natural Resources, contending that the department had failed to use its authority to respond to the threat posed by hog farmers' spraying waste on saturated fields.

"It appears that [the state] DWQ is not enforcing its policy, and is tacitly condoning the non-agronomic application of waste," Nowlin said.

Environmental officials said they had been working with hog farms to address full lagoons and bring them into compliance. They said the vast majority of farms with high waste levels reported their problems, as required by law.

Part of the problem is too few inspectors. The Division of Water Quality has 15 of them to keep tabs on 2,400 hog farms in North Carolina. And four of those positions are vacant. With so few inspectors, the state's regulatory program for hog farms depends heavily on farmers' reporting their own problems.

The search for a more environmentally friendly method of disposing of waste still appears several years away.

The General Assembly imposed a moratorium on new or expanded hog farms in 1997 and has extended it twice. It is set to expire in September. Legislators in the House and Senate have filed bills to extend it two more years.

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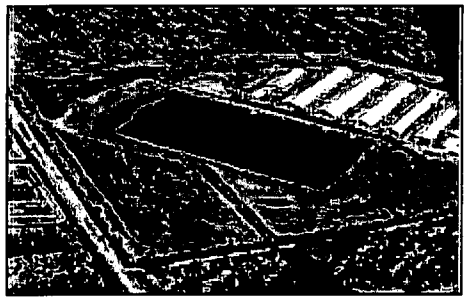
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Published on: 2003-03-11

Hog farm lagoons filling up

By Greg Barnes
Staff writer

Bob Epting tipped the wing of his small airplane to get a better view of a farmer spraying hog waste over a field Saturday.



Contributed photo
This photo, made Sunday, shows a full waste lagoon at a Bladen County hog farm.

"No standing water, that's the rule," said Epting, a Chapel Hill lawyer and environmental activist. As the plane circled the farm, ponding water began to glisten in the bright sunlight.

"As wet as it is, it would really be criminal to spray today," Epting said.

Yet many hog farmers in eastern North Carolina are left with few other options because continual heavy rains have raised the waste in their lagoons to dangerously high levels.

On Thursday, Coleen Sullins, section chief of the N.C. Division of Water Quality, said in a memo that the division has identified 80 farms in which lagoon levels have exceeded their maximum freeboard of 19 inches.

Freeboard is the level of liquid waste from the top of a lagoon. If the freeboard measures less than 12 inches, the state considers it an emergency situation.

Of the 80 lagoons identified as out of compliance, 12 were so full that "the lagoon structure is at risk," Sullins wrote. The division is investigating discharges from three farms, she said.

One of the three discharges occurred on Mike Spell's farm in Sampson County. Paul Rawls, regional supervisor for the division office in Fayetteville, said the discharge happened because hog waste was sprayed just before it rained.

The waste flowed off the field into Buckhorn Creek, which flows into the Cape Fear River. Rawls said no environmental damage, such as fish kills, was observed or reported. He said a review is under way to determine what action to take against Spell, who could not be reached for comment.

Aerial assessment

Sullins wrote in her memo that the division wants to fly over hog farms to evaluate lagoon compliance but had been unable to because of the wet, cloudy weather. Susan Massengale, a spokeswoman for the division in Raleigh, said a flight is planned for later this week.

"Farmers who have self-reported are already documented, and what we are attempting to find out is if the problem is any larger than we already have knowledge," Sullins wrote.

Epting and Rick Dove, a member of the environmental group Waterkeeper Alliance, beat the state to the air Saturday. Although they saw only one farmer spraying hog waste, they found many lagoons that appeared to be nearly full.

The effects of a lagoon overflowing or breaching its banks could be disastrous, Dove said.

He said many of the lagoons he flew over Saturday contain more than 20 million gallons of waste. Once a lagoon begins to leak, it is often impossible to stop because the liquid carves out an ever-deepening gully in a matter of minutes, he said. The lagoons are often built near a creek bed.

"This waste is highly toxic to people, wildlife, groundwater, as well as our rivers and streams," Dove said. "When the toxic hog waste reaches the stream, creek and river, it can kill everything in its path. The sediment can become impacted to the point where the consequences will last for years."

On Thursday, Rawls said his office had received 15 or 16 reports of lagoons being out of compliance in the region, which includes Cumberland, Bladen, Robeson, Harnett, Scotland and Sampson counties. By Monday, that number had grown to 50. Massengale said the division's branch in Wilmington had identified 37 noncomplying lagoons as of Monday.

Farmers' reports

In all of the cases reported to the division in Fayetteville, Rawls said, the farmers themselves did the reporting. State statutes require them to.

"Each and every time we get these notifications, we consider it something significant and we need to look into it and we do," Rawls said.

Division of Water Quality inspectors verify the reports and the farmers' plans to deal with the problem, Rawls said.

No fines have been levied, he said, but the division continues to evaluate some of the farms.

"If a farmer sees the freeboard continue to rise, other actions will be warranted," Rawls said. "We expect the farmer to take every action necessary to prevent a lagoon failure, and they do."

The fact that Epting and Dove saw only one farmer spraying waste on Saturday, Rawls said, "may be a testimonial that they are waiting for their fields to become suitable to apply waste."

He said none of the farmers who reported a problem has called the office back to say it's been remedied.

The Fayetteville office is largely dependant on farmers reporting the problems. The office now has just one inspector to oversee 756 lagoons in the region, most of which are hog operations.

The office is budgeted for three inspectors, but one resigned about six months ago and another quit about three months later, Rawls said. He said the division is about to hire another inspector. Other people in his office also check on the farms, he said.

Solutions

The farmers who do report high levels in their lagoons have few options to fix the problem.

Essentially, they can pump the waste out and haul it to another farm or a waste treatment system, or they can reduce their herds.

Sullins, who could not be reached for comment, wrote in her memo that some farms are hauling the waste away. She said she is aware of one farm that has reduced its herd.

Chuck Stokes, a Greenville hog farmer who owns a dozen lagoons, said none of the options is realistic. He said most farmers are in no position to take somebody else's waste. Reducing the herd, he said, would cripple him financially.

Regardless, Stokes said that when some of his lagoon levels exceeded the acceptable level, he obeyed the rules and called the Division of Water Quality.

"It makes it easier than them finding it themselves," Stokes said. "They can't tell you to do anything. They just tell you

good luck.

"If the rainfall keeps up, it's going to be a challenging situation."

Stokes said he doesn't think many lagoons are in danger of overflowing.

"Another week or two of this and there are going to be some issues," he said Friday.

Rainfall levels

One option the state is exploring is whether rainfall on farms in 12 counties classifies as a storm dumping more rain in 24 hours than would typically happen once every 25 years.

If that classification is made, farmers would be provided some measures of relief, Sullins said in her memo. She didn't specify what those measures would be. Rawls said it would depend on each individual farm.

Dove, of the Waterkeeper Alliance, said the state employs the same 25-year-storm measure every time the lagoons get full.

Farmers "have used this excuse to illegally discharge hog waste to our rivers and streams in huge amounts in 1995, 1998, 1999 and 2000," Dove said. "Now it appears they want to do it again.

"We have just emerged from a five-year drought, and nothing in rainfall over the past few months appeared out of the ordinary to me. This exemption is nothing short of hogwash - a joke. But there is nothing funny about it."

Heavy rains haven't been universal around the state. In Fayetteville, the average amount is down 4.28 inches from normal this year.

Dove believes the farmers have other options, including reducing their herds during the rainy season from October to March.

Farmers could find some relief soon. Application for new crops opened early this month. When the fields dry, the crops can be planted.

The weather also looks better. The forecast calls for no rain at least through Friday.

Staff writer Greg Barnes can be reached at barnesg@fayettevillenc.com or 486-3525.

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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.

SENATE BILL 823:
Environmental Technical Corrections.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Tim Dodge Research Assistant for Environmental Issues
Date:	April 15, 2003		
Version:	First Edition		

SUMMARY: ***Senate Bill 823 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.

S823-SMSY-001

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.

SENATE BILL 824:
Environmental Reports Consolidation.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Tim Dodge Research Assistant for Environmental Issues
Date:	April 15, 2003		
Version:	First Edition		

SUMMARY: ***Senate Bill 824 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: Senate Bill 824 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.

S824-SMSY-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 831

Short Title:	Clean Water Mgt. Trust Fund Board Terms.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IMPROVED STAGGERED TERMS OF THE MEMBERS OF THE CLEAN WATER MANAGEMENT FUND BOARD OF TRUSTEES, TO INCREASE THE NUMBER OF MEMBERS OF THE BOARD, AND TO MAKE APPOINTMENTS TO THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-145.5 reads as rewritten:

"**§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be ~~independent, but for administrative purposes shall be~~ administratively located ~~under~~ within the Department of Environment and Natural ~~Resources.~~Resources but shall be independent of the Department.

(b) Membership. – The Clean Water Management Trust Fund Board of Trustees shall be composed of ~~18 members. Six members shall be appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.~~ 21 members appointed to four-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 four.

(2) 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 four.

(3) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(4) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(5) 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 four.

(6) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(7) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(8) 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 four.

(9) 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 four.

(10) 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 four.

(11) 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 four.

(12) 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 four.

(13) 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 two years those years that are evenly divisible by four.

(14) 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 two years those years that are evenly divisible by four.

(15) 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 four.

(16) 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 four.

(17) 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 four.

(18) 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 four.

(19) 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 four.

(20) 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 two years those years that are evenly divisible by four.

(21) 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 two years those years that are evenly divisible by four.

(b1) Qualifications. – The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Acquisition and management of natural areas.
(2) Conservation and restoration of water quality.
(3) Wildlife and fisheries habitats and resources.
(4) Environmental management.

(c) ~~Initial Appointments.~~ Chair. ~~– Each appointing officer shall designate two of the officer's initial appointments to serve two-year terms, two to serve four-year terms, and two to serve six-year terms. Thereafter, all appointments shall be for four years, subject to reappointment. All initial appointments shall be made on or before January 1, 1997.~~ The Governor shall appoint one ~~Trustee~~ member to serve as Chair of the ~~Board.~~Board of Trustees.

(d) Vacancies. – ~~If a vacancy occurs, other than by the expiration of term, of a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be filled by the appointing official in the original manner.~~An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in

appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(e) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(e1) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(f) Per Diem and Expenses. ~~The Trustees~~ Each member of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair."

SECTION 2. In order to alter the schedule of staggered terms of four years for the Board of Trustees of the Clean Water Management Trust Fund so that, as nearly as possible, the same number of terms will expire each year and to provide for an orderly transition in membership of the Board of Trustees to the terms specified in G.S. 113-145.5, as amended by Section 1 of this act, the following provisions shall apply:

(1) Joseph M. Hester, Jr. shall serve in the position established by G.S. 113-145.5(b)(1) through 1 July 2003.

(2) William McPhatter, Sr. shall serve in the position established by G.S. 113-145.5(b)(2) through 1 July 2003.

(3) Caroline B. Ansbacher shall serve in the position established by G.S. 113-145.5(b)(3) through 1 July 2004.

(4) John McMillan shall serve in the position established by G.S. 113-145.5(b)(4) through 1 July 2004.

(5) Leland McKinley Simmons shall serve in the position established by G.S. 113-145.5(b)(5) through 1 July 2005.

(6) Edwin G. Wilson, Jr. shall serve in the position established by G.S. 113-145.5(b)(6) through 1 July 2006.

(7) The Governor shall appoint a member to serve in the position established by G.S. 113-145.5(b)(7) through 1 July 2006.

(8) Alex MacFadyen of Wake County is appointed to the position established by G.S. 113-145.5(b)(8) to serve through 1 July 2007.

(9) Johnnie Mosley shall serve in the position established by G.S. 113-145.5(b)(9) through 1 July 2007.

(10) William E. Hollan, Jr. shall serve in the position established by G.S. 113-145.5(b)(10) through 1 July 2004.

(11) William J. Brooks, III shall serve in the position established by G.S. 113-145.5(b)(11) through 1 July 2005.

(12) Dickson McLean, Jr. shall serve in the position established by G.S. 113-145.5(b)(12) through 1 July 2005.

(13) Claudette Weston shall serve in the position established by G.S. 113-145.5(b)(13) through 1 July 2006.

(14) Jerry W. Wright shall serve in the position established by G.S. 113-145.5(b)(14) through 1 July 2006.

(15) C. Leroy Smith shall serve in the position established by G.S. 113-145.5(b)(15) through 1 July 2003.

(16) Charles R. Wakild shall serve in the position established by G.S. 113-145.5(b)(16) through 1 July 2004.

(17) Karen Cragnolin shall serve in the position established by G.S. 113-145.5(b)(17) through 1 July 2004.

(18) Robert Dare Howard shall serve in the position established by G.S. 113-145.5(b)(18) through 1 July 2005.

(19) Margaret B. Markey shall serve in the position established by G.S. 113-145.5(b)(19) through 1 July 2005.

(20) Allen Holt Gwyn shall serve in the position established by G.S. 113-145.5(b)(20) through 1 July 2006.

(21) The Speaker of the House of Representatives shall appoint a person to serve in the position established by G.S. 113-145.5(b)(21) through 1 July 2006.

SECTION 3. This act becomes effective 30 June 2003.

VISITOR REGISTRATION SHEET

Agriculture — March 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Anne Mumford	NCPC
Martha Glass	NC DACS
Chris Nichols	Hunton + Williams
Rick Zechini	NC Association of Realtors
John Cyrus	N.C. State Grange
David Meredith	N.C. State Grange
Doug Lassiter	NCSTA
R. Hanby Pope	office of the Governor
Elizabeth Ouellette	NCPIRG
David Knight	NC Sierra Club
Priscilla Harrison	Beaufort NC

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Troy	NC WRC
[illegible]	CWMTF
Jim Cummings	NCDA&CS
Molly Diggins	NC Sierra Club
Tom Beason	NC Env Def
Robin Smith	DENR
Ann Millican	TNC
Amy Pasour	NC Statewatch
[illegible]	NCFB
[illegible]	CAA
Jerry Haskett	NC Pork Council

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Howell	Governor's office
Kari Barsness	NCDENR
DENNIS RAMSEY	NCDENR
Grady McCallie	N.L. Comm Act.

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, April 17, 2003 at 9:00 a.m.
Room 643, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

• SB 733	Small & Medium Animal Operations Permits	Sen. Albertson
• SB-765	Limit Shellfish Lease Area in Core Sound	Sen. Thomas
• SB-831	Clean Water Mgt. Trust Fund	Sen. Albertson

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 17, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 17, 2003, at 9:00 a.m. in Room 643, Legislative Office Building. Senator Albertson, chairman presided and there were eleven members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB-765 – LIMIT SHELLFISH LEASE AREA IN CORE SOUND - Sen. Smith moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Thomas explained and urged support. Sen. Smith asked for an explanation on shellfish cultivation and Sen. Thomas responded. Mr. Mike Marshall, Direct Manager for Marine Fisheries, Morehead City, addressed members and explained the harvesting procedures for oysters and clams. Sen. Smith followed up with questions regarding leasing fees. Sen. Hargett questioned moving the lease to 150 if he sent forth an amendment to do so. Sen. Thomas responded to both, and he prefers not to have this amended and explained why. Sen. Allran told members about a letter he had received regarding lease changing to 150 acres rather than 95. Sen. Albertson made remarks. Mr. Jerry Schill, NC Fisheries Association, addressed members and spoke in favor of the bill. Sen. Jenkins moved for a favorable report for the PCS, unfavorable as to the original bill. Sen. Webster asked for a comparision of the original bill and the PCS. Mr. Jeff Hudson, staff counsel explained. Sen. Webster asked the sponsor if this is to stop the moratiorium every 2 years. Sen. Thomas responded. He told that this is to bring a conclusion to an issue that has been around for several years. This will help fishermen be able to plan for the future further out than a couple of years at a time. Sen. Smith spoke in favor of the bill. The vote was taken and passed as moved.

Sen. Allran presided while Sen. Albertson explained the next bill on the agenda.

SB-733 – SMALL & MEDIUM ANIMAL OPERATIONS PERMITS – Sen. Albertson moved for the adoption of the PCS for discussion. So moved. Sen. Horton asked for the differences between the original and the PCS. Mr. George Givens, staff counsel, explained. Sen. Albertson made additional comments and explained the burdens of small farmers if changes aren't made. Sen. Smith moved for a favorable report for the PCS, unfavorable as to the original bill. Sen. Webster spoke on other states and the use of fencing to keep animals out of our streams. He asked why NC didn't keep animals from walking in streams. Mr. Givens explained and Sen. Albertson made additional comments. Sen. Webster spoke again regarding differences between VA and NC. He suspects they are using some of the tobacco fund money and if we

don't help our farmers, they are going to have to carry the full burden of this issue. Ms. Robin Smith, DENR, addressed members and told of new funds that will assist NC farmers. Mr. Jim Cummings, NC Department of Agriculture, told members of funds in the Soil & Water Conservation budget but not in the Department of Ag. The vote was taken on this bill and passed as moved.

SB-831 – CLEAN WATER MANAGEMENT TRUST FUND BOARD TERMS – Sen. Albertson moved for the adoption of the PCS for discussion. So moved. He then explained and Mr. Givens offered additional comments. This is due to the change in the Governor's appointments. Sen. Horton moved for a favorable report. The vote was taken and passed as moved.

The meeting adjourned at 9:40 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, April 17, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **733** Small and Medium Animal Operations Permits.

Draft Number:	PCS35242
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **765** Limit Shellfish Lease Area In Core Sound.

Draft Number:	PCS35241
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **831** Clean Water Mgt. Trust Fund Board Terms.

Draft Number:	PCS40016
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 733
PROPOSED COMMITTEE SUBSTITUTE S733-PCS35242-RT-8

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. 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) and of 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 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.

SENATE BILL 733:
Gen. Non-Discharge Permits Animal Operations

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	17 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	PCS for First Edition (S733-PCS35242-RT-8)		

SUMMARY: ***The Proposed 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 15NCAC 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.

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 expiration 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 on the 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 765

Short Title:	Limit Shellfish Lease Area In Core Sound.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Agriculture/Environment/Natural Resources.	

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 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 765
PROPOSED COMMITTEE SUBSTITUTE S765-PCS35241-SB-11

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.

SENATE BILL 765:
Limit Shellfish Lease Area in Core Sound.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Thomas
Date:	April 17, 2003	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Proposed Committee Substitute S765-PCS35241-SB-11		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 765 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.***

BACKGROUND: Core Sound is a body of water located between mainland Carteret County and Core Banks. In this area of the State there has been a great deal of conflict between individuals who lease areas underlying coastal fishing waters for shellfish cultivation and individuals who use the waters for other purposes such as the harvest of shellfish from naturally occurring shellfish beds. Currently, 95 acres of the western, mainland side of Core Sound are subject to shellfish cultivation leases.

CURRENT LAW: Under current law, there is a permanent prohibition against issuing new shellfish cultivation leases in the eastern, Core Banks side of Core Sound. There is also a temporary moratorium on issuing new shellfish cultivation leases in the western, mainland side of Core Sound. This moratorium was originally imposed by the General Assembly during the 1996 Regular Session for the period May 1, 1996, through July 1, 1997. The moratorium has been extended five times and is currently scheduled to expire July 1, 2003.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 765 (PCS) defines Western Core Sound as the same area of Core Sound that is currently under the temporary moratorium. The PCS would allow the moratorium on issuing shellfish cultivation leases to expire for Western Core Sound, but would limit the area of Western Core Sound available for shellfish cultivation leasing to the area that is subject to a shellfish cultivation lease on June 30, 2003. The effect of this provision is to limit future shellfish cultivation leasing in Western Core Sound to the 95 acres that are currently subject to shellfish cultivation leases.

The PCS would also:

- Express the intent of the General Assembly that the limitation on shellfish cultivation leasing in Western Core Sound be permanent.
- Provide shellfish cultivation leases in Western Core Sound remain transferable.
- Direct the Division of Marine Fisheries in the Department of Environment and Natural Resources to report to the Joint Legislative Commission on Seafood and Aquaculture on or before January 1, 2004, on the implementation of limitation on shellfish cultivation leasing in Western Core Sound.

EFFECTIVE DATE: The shellfish leasing provisions of this act become effective June 30, 2003. The study provision of this act becomes effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 831

Short Title:	Clean Water Mgt. Trust Fund Board Terms.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IMPROVED STAGGERED TERMS OF THE MEMBERS OF THE CLEAN WATER MANAGEMENT FUND BOARD OF TRUSTEES, TO INCREASE THE NUMBER OF MEMBERS OF THE BOARD, AND TO MAKE APPOINTMENTS TO THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-145.5 reads as rewritten:

"**§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be ~~independent, but for administrative purposes shall be~~ administratively located ~~under~~ within the Department of Environment and Natural ~~Resources.~~Resources but shall be independent of the Department.

(b) Membership. – The Clean Water Management Trust Fund Board of Trustees shall be composed of ~~18 members. Six members shall be appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.~~ 21 members appointed to four-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 four.

(2) 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 four.

(3) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(4) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(5) 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 four.

(6) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(7) One member appointed by the Governor to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(8) 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 four.

(9) 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 four.

(10) 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 four.

(11) 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 four.

(12) 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 four.

(13) 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 two years those years that are evenly divisible by four.

(14) 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 two years those years that are evenly divisible by four.

(15) 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 four.

(16) 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 four.

(17) 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 four.

(18) 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 four.

(19) 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 four.

(20) 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 two years those years that are evenly divisible by four.

(21) 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 two years those years that are evenly divisible by four.

(b1) Qualifications. – The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Acquisition and management of natural areas.

(2) Conservation and restoration of water quality.

(3) Wildlife and fisheries habitats and resources.

(4) Environmental management.

(c) ~~Initial Appointments.~~ Chair. ~~– Each appointing officer shall designate two of the officer's initial appointments to serve two year terms, two to serve four year terms, and two to serve six year terms. Thereafter, all appointments shall be for four years, subject to reappointment. All initial appointments shall be made on or before January 1, 1997.~~ The Governor shall appoint one ~~Trustee~~ member to serve as Chair of the ~~Board.~~Board of Trustees.

(d) Vacancies. – ~~If a vacancy occurs, other than by the expiration of term, of a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be filled by the appointing official in the original manner.~~An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in

appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(e) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(e1) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(f) Per Diem and Expenses. ~~The Trustees~~ Each member of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair."

SECTION 2. In order to alter the schedule of staggered terms of four years for the Board of Trustees of the Clean Water Management Trust Fund so that, as nearly as possible, the same number of terms will expire each year and to provide for an orderly transition in membership of the Board of Trustees to the terms specified in G.S. 113-145.5, as amended by Section 1 of this act, the following provisions shall apply:

(1) Joseph M. Hester, Jr. shall serve in the position established by G.S. 113-145.5(b)(1) through 1 July 2003.

(2) William McPhatter, Sr. shall serve in the position established by G.S. 113-145.5(b)(2) through 1 July 2003.

(3) Caroline B. Ansbacher shall serve in the position established by G.S. 113-145.5(b)(3) through 1 July 2004.

(4) John McMillan shall serve in the position established by G.S. 113-145.5(b)(4) through 1 July 2004.

(5) Leland McKinley Simmons shall serve in the position established by G.S. 113-145.5(b)(5) through 1 July 2005.

(6) Edwin G. Wilson, Jr. shall serve in the position established by G.S. 113-145.5(b)(6) through 1 July 2006.

(7) The Governor shall appoint a member to serve in the position established by G.S. 113-145.5(b)(7) through 1 July 2006.

(8) Alex MacFadyen of Wake County is appointed to the position established by G.S. 113-145.5(b)(8) to serve through 1 July 2007.

(9) Johnnie Mosley shall serve in the position established by G.S. 113-145.5(b)(9) through 1 July 2007.

(10) William E. Hollan, Jr. shall serve in the position established by G.S. 113-145.5(b)(10) through 1 July 2004.

(11) William J. Brooks, III shall serve in the position established by G.S. 113-145.5(b)(11) through 1 July 2005.

(12) Dickson McLean, Jr. shall serve in the position established by G.S. 113-145.5(b)(12) through 1 July 2005.

(13) Claudette Weston shall serve in the position established by G.S. 113-145.5(b)(13) through 1 July 2006.

(14) Jerry W. Wright shall serve in the position established by G.S. 113-145.5(b)(14) through 1 July 2006.

(15) C. Leroy Smith shall serve in the position established by G.S. 113-145.5(b)(15) through 1 July 2003.

(16) Charles R. Wakild shall serve in the position established by G.S. 113-145.5(b)(16) through 1 July 2004.

(17) Karen Cragnolin shall serve in the position established by G.S. 113-145.5(b)(17) through 1 July 2004.

(18) Robert Dare Howard shall serve in the position established by G.S. 113-145.5(b)(18) through 1 July 2005.

(19) Margaret B. Markey shall serve in the position established by G.S. 113-145.5(b)(19) through 1 July 2005.

(20) Allen Holt Gwyn shall serve in the position established by G.S. 113-145.5(b)(20) through 1 July 2006.

(21) The Speaker of the House of Representatives shall appoint a person to serve in the position established by G.S. 113-145.5(b)(21) through 1 July 2006.

SECTION 3. This act becomes effective 30 June 2003.

SENATE BILL 831:
Clean Water Mgt. Trust Fund Board Terms.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	April 17, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (S831-PCS40016-RT-7)		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 831 (PCS) would stagger the terms of members of the Clean Water Management Trust Fund Board of Trustees, increase the number of members of the Board, and make appointments to the Board.***

CURRENT LAW: Under current law, the Clean Water Management Trust Fund Board of Trustees (Board) is composed of 18 members: six appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Following establishment of the Clean Water Management Trust Fund in 1996, each appointing officer designated two of the officer's initial appointments to serve two-year terms, two to serve four-year terms, and two to serve six-year terms. Thereafter, all terms were for four years, subject to reappointment. This formula resulted in the expiration of the terms of 12 of the 18 members at the same time (December 31, 2002).

BILL ANALYSIS: Section 1 would stagger the terms of members of the Board to facilitate a regular interval of appointments and expirations. When fully implemented, the staggered four-year cycle will result in the expiration of five terms in each of years one through three and six terms in year four. The PCS increases the appointments made to the Board by the Governor from six to seven and increases the appointments made upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives from six to seven each. Section 1 also establishes a uniform date for the expiration of terms (July 1) and makes clarifying changes to the statutes regarding vacancies and quorum for the Board to conform to the provisions of similar appointive bodies. Section 2 adjusts the terms of some current members and some subsequent appointees so that the term of no sitting member is shortened by the legislation.

EFFECTIVE DATE: The PCS would become effective June 30, 2003.

S831-SMSY-001a

VISITOR REGISTRATION SHEET

Agriculture — April 17, 2003

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Withrow	NC State Water
Mike Marshall	NC Div. of Marine Fisheries
Jim Cummings	NCDA&CS
D. Holmes	CWMTF
Jerry Schill	NC Fisheries Association
Kim Hubbard	NCLM
Jean Harkey	N.C. Ports Council
Al Parnell	Visitor
Mike Blanton	NCDA&CS
Beth Anne Mumford	NCPC
Kari Barkness	NCDENR

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Knight	NC Sierra
DENNIS RAMSEY	DENR
Coleen Sullins	DENR
Robin Smith	DENR
Rick Zechini	NC Assoc of Realtors
Ron Gerber	League Charter Schools

Revised

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 22, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. **Welcome and Opening Remarks**

II. **Bills to be Considered**

•	SB-751	Civil Penalties/Food, Drug & Cosmetics	Sen. Hagan
•	SB-790	Mountain Trout Enhancement Study	Sen. Queen
•	SB-822	Limit Impervious Surface of Parking Lots	Sen. Albertson
•	SB-848	Veterinary Bd. Agreements/Impaired Vets	Sen. Gulley
•	SB-825	Amend Environment Laws-2	Sen. Albertson

III. **Other Business**

IV. **Adjournment**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, April 22, 2003

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

FAVORABLE

S.B. **790** Mountain Trout Enhancement Study.
Sequential Referral: None
Recommended Referral: Rules and Operations of the Senate

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **751** Civil Penalties/Food, Drug and Cosmetics.
Draft Number: PCS40024
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **825** Amend Environmental Laws - 2.
Draft Number: PCS35252
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **848** Veterinary Bd. Agreements/Impaired Vets.
Draft Number: PCS40025
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 22, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 22, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB- 751 – CIVIL PENALTIES/FOOD, DRUG & COSMETICS – Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Sen. Hagen explained. Sen. Hargett moved for a favorable report for the PCS, unfavorable as to the original bill. No further discussion. Vote taken and passed as moved.

SB-790 – MOUNTAIN TROUT ENHANCEMENT STUDY – Sen. Queen explained the bill. Mr. George Givens, staff counsel, told members this is a study bill. Sen. Smith asked if there are financial ramifications. Sen. Queen responded. Mr. Dick Hamilton, NC Dept. of Wildlife, thanked the sponsor and spoke in favor. He told that this would come out of the wildlife budget. Sen. Horton moved for a favorable report and be referred to Rules since it will be part of the Study Bill. The vote was taken and passed as moved.

SB-848 – VETERINARY BD. AGREEMENTS/IMPAIRED VETS - Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Ms. Barbara Riley, staff counsel, explained and submitted a technical amendment. Sen. Weinstein moved for adoption of the amendment. Vote taken and passed. Ms. Riley explained the amended PCS. Sen. Smith asked about funds for this bill and where they will come from. Mr. Tom Mickey, Exec. Director, NCVMB, spoke in favor of this and the funds will come from the budget. Sen. Weinstein moved for a favorable report for the PCS, unfavorable as to the original bill. The vote was taken and so moved.

Sen. Weinstein presided so the chairman could present his bill.

SB-825 –AMEND ENVIRONMENT LAWS - Sen. Albertson moved for adoption of the PCS for discussion. So moved. He then explained the bill. Staff counsel, George Givens made additional comments regarding the language change to the PCS. Sen. Webster questioned which turtles the affects. Sen. Albertson told of the various species of turtles. Mr. Dick Hamilton, NC Wildlife Commission clarified the turtles also. He explained there would be no restrictions on snapping turtles or frogs. Mr. Givens spoke again. Sen. Allran asked if there is a potential of farming these in the future. Sen. Albertson responded. Sen. Webster moved for a favorable

report for the PCS, unfavorable as to the original bill. Sen. Smith asked about the habitat protection in road building. Mr. Givens and Mr. Hamilton responded and explained how this will take care of these animals before they become endangered. Sen. Smith shared concerns about the habitat language. Sen. Hartsell asked for a clarification for the standards. Mr. Riley responded. Mr. Hamilton made additional explanations. Sen. Hartsell spoke again and he feels this is an open-ended situation for the Wildlife Commission. Sen. Kinnaird asked Mr. Hamilton if there is a limit to the snapping turtles to catch. Mr. Hamilton explained that the Wildlife Commission would go back and set up standards and limits if this passes. Sen. Jenkins questioned the sponsor about restrictions and then he spoke in favor as long as we don't cause problems for the future. Sen. Hartsell spoke again with concerns. Mr. Hamilton responded to his comments. Sen. Weinstein requested to displace this. Sen. Horton feels that some language would fix this and satisfy Sens. Hartsell, Jenkins and Smith. Sen. Horton moved to amend to insert on Line 15, Page 1, the word "habitat". Sen. Smith and Jenkins agreed. The vote was taken and passed. Sen. Albertson urged members to move forward with this as it could be amended on the senate floor if necessary. The vote was taken and passed as moved.

Sen. Albertson presided again.

SB-822 – LIMIT IMPERVIOUS SURFACE OF PARKING LOTS - The chairman announced this was for discussion only. Mr. George Givens, staff counsel, explained. Sen. Allran asked for a definition of material as impervious. Mr. Givens explained. Mr. Fred Allen, NC Aggregates, addressed members with concerns on this. He explained some of the materials used in different areas of the state. Sen. Allran spoke again and asked if this if for flood or pollutions. Sen. Albertson advised it was for water quality. Sen. Webster spoke on concerns about not counting on adjacent landscaping in these permeable areas. Sen. Kinnaird spoke. Sen. Jenkins asked if this is after the zoning board has met requirements. Mr. Givens responded. Sen. Clodfelter asked if there would be some trading off on parking lots vs. permit rules. Mr. Givens said this doesn't speak to that issue. Sen. Clodfelter and Jenkins think this should be taken into consideration. Mr. Givens spoke again. Sen. Smith shared concerns and urged that we study this further. Sen. Albertson said we would continue the discussion later.

Time expired and the meeting adjourned at 11:55 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 751
PROPOSED COMMITTEE SUBSTITUTE S751-PCS40024-RF-9

Short Title: Civil Penalties/Food, Drug and Cosmetics. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THE NORTH CAROLINA FOOD, DRUG AND COSMETIC ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-124.1. Civil penalties.**

(a) The Commissioner may assess a civil penalty of not more than two thousand dollars ($2,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No penalty shall be assessed unless the person has been given written notice of the violation and has been given a reasonable period of time in which to correct the violation; provided that a person shall not be entitled to a period of time to correct a violation before a penalty is assessed when the violation is likely to cause physical injury or illness.

(b) Training and management practices implemented for the purpose of complying with this Article shall be a mitigating factor in the assessment of a civil penalty.

(c) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act is effective when it becomes law and applies to violations of Article 12 of Chapter 106 of the General Statutes occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 751

Short Title:	Civil Penalties/Food, Drug and Cosmetics.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THE NORTH CAROLINA FOOD, DRUG AND COSMETIC ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-124.1. Civil Penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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

SB751:
Civil Penalties/Food, Drug & Cosmetics

BILL ANALYSIS

Committee:	Senate Ag, Environment & Nat'l Resources	**Introduced by:**	Senator Hagan
		Summary by:	Barbara Riley Committee Counsel
Date:	April 21, 2003		
Version:	PCS		

SUMMARY:

Senate Bill 751 provides the Commissioner of Agriculture with the authority to level a civil penalty of up to $2,000 for a violation of the North Carolina Food, Drug, and Cosmetic Act.

CURRENT LAW:

The North Carolina Food, Drug and Cosmetic Act prohibits the manufacture and sale of foods, drugs and cosmetics that are "adulterated" or "misbranded". An adulterated food, for example, would be one that contains poisonous or harmful substances that may render the food injurious to health, or a raw agricultural commodity that bears or contains an unsafe pesticide. G.S. 106-129. Drugs deemed to be adulterated include those that contain filthy or putrid substances, that are produced, packaged or held under unsanitary conditions, or whose strength, quality or purity fall below national standards. G.S. 106-134. Adulterated cosmetics include those containing poisonous or deleterious substances which may injure users. G.S. 106-136. Misbranding covers various aspects of false labeling. G.S. 106-130; 106-134; 106-137.

To enforce the Act, when an inspector from NCDA&CS finds or has reasonable cause to believe that an article is adulterated or so misbranded as to be dangerous or fraudulent, the inspector may tag and embargo the article so that it may not be sold or disposed of without the consent of the inspector. The inspector then must obtain a court order to have the product destroyed. G.S. 106-125. The Department may also seek an injunction from the court restraining an individual from violating the Act. G.S. 106-123. Violation of the Act is a Class 2 misdemeanor.

BILL ANALYSIS:

Senate Bill 751 would give the Commissioner of Agriculture the authority to impose a civil penalty of up to $2,000 for a violation of the Food, Drug and Cosmetic Act. Except in circumstances where the violation is likely to cause physical injury or illness, a person violating the Act must first be given written notice of the violation and an opportunity to correct the problem.

In setting the amount of a penalty, the Commissioner is required to consider the degree and extent of harm caused by the violation. Training and management practices implemented for the purpose of complying with the Food, Drug and Cosmetic Act shall be a mitigating factor in the assessment of a penalty.

The act is effective when it becomes law.

BACKGROUND:

NCDA&CS has the authority to impose civil penalties as an enforcement tool for many of the laws that they administer including the Gasoline and Oil Inspection Act, G.S. 119-39.1; the Meat Inspection Laws, G.S. 106-549.35; the Animal Welfare Act, G.S. 19A-40; The Bee and Honey Act, 106-644, and various Animal Health laws in Chapter 106 of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S

SENATE BILL 790

Short Title:	Mountain Trout Enhancement Study.	(Public)
Sponsors:	Senator Queen.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO STUDY METHODS FOR ENHANCING TROUT FISHING IN WESTERN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The Wildlife Resources Commission shall study the current state of trout fishing in Western North Carolina and determine methods for:

(1) Expanding the management of, and access to, trout water resources for trout production, environmental improvements, and water trails and greenway improvements;

(2) Promoting trout as an important aspect of the region's identity; and

(3) Otherwise enhancing trout fishing in the streams of Western North Carolina.

SECTION 2. The Wildlife Resources Commission shall report its findings and recommendations to the 2004 Regular Session of the 2003 General Assembly.

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

SB 790:
Mountain Trout Enhancement Study

BILL ANALYSIS

Committee:	Senate Ag, Environment & Nat'l Resources	**Introduced by:**	Senator Queen
		Summary by:	Barbara Riley Committee Counsel
Date:	April 21, 2003		
Version:	1st Edition		

SUMMARY:

Senate Bill directs the Wildlife Resources Commission to study methods for enhancing trout fishing in North Carolina.

BILL ANALYSIS:

Senate Bill 790 provides that the Wildlife Resources Commission shall study the state of trout fishing in western North Carolina and determine methods to:

1. Expand the management of and access to trout water resources for trout production, environmental improvements, water trails, and greenway improvements.
2. Promote trout as an important aspect of western North Carolina's identity.
3. Otherwise enhance trout fishing in the region.

The WRC shall report its findings and recommendations to the 2004 regular session of the 2003 General Assembly.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 822

Short Title:	Limit Impervious Surface of Parking Lots.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AREA OF IMPERVIOUS SURFACE OF CERTAIN PARKING LOTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"(d1) A parking lot for which a stormwater permit is required under G.S. 143-215.1 may not consist of more than fifty percent (50%) impervious surface area for the portion of the parking lot that is used for vehicular parking and for ingress and egress to the parking lot and parking spaces. The limitation on the amount of impervious surface shall not take into account landscaped areas associated with the parking lot. This provision shall apply only to parking lots that provide space for the parking of 10 or more vehicles."

SECTION 2. This act is effective when it becomes law and applies to all construction that is subject to any stormwater permit issued on or after 1 October 2003.

SENATE BILL 822:
Limit Impervious Surface of Parking Lots

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	22 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 822 provides that a parking lot for which a stormwater permit is required may not consist of more than fifty percent (50%) impervious surface area for the portion of the lot that is used for vehicular parking and for ingress and egress to the lot and to the parking spaces. The provision only applies to parking lots with parking spaces for 10 or more vehicles. The bill would become effective when it becomes law and apply to all construction that is subject to any stormwater permit issued on or after 1 October 2003.***

CURRENT LAW: G.S. 143-214.7 authorizes the Environmental Management Commission to develop and adopt stormwater runoff rules and programs to protect water quality in the State. G.S. 143-215.1(11) requires a permit for activities that cause or permit stormwater discharges that result in water pollution.

BILL ANALYSIS: The bill provides that a parking lot for which a stormwater permit is required and that has parking spaces for 10 or more vehicles may not consist of more than fifty percent (50%) impervious surface area for the portion of the lot that is used for vehicular parking and for ingress and egress to the lot and to the parking spaces in the lot.

BACKGROUND: Impervious surfaces reduce the infiltration of water to the soil and cause stormwater runoff. Unmanaged stormwater runoff causes down-stream flooding, streambank erosion, and pollutes surface waters. Pervious paving allows water to permeate the paved surface and reach the soil. Pervious paving products include porous concrete and asphalt, and permeable pavers.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply to all construction that is subject to any stormwater permit issued on or after 1 October 2003.

S822-SMRI-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 825*
PROPOSED COMMITTEE SUBSTITUTE S825-PCS35252-RT-17

Short Title: Protect Certain Reptiles and Amphibians. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO PROTECT CERTAIN REPTILES AND AMPHIBIANS THAT REQUIRE CONSERVATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333(a) is amended by adding a new subdivision to read:

"(6) To adopt and implement rules to limit, regulate, or prohibit the taking, possession, collection, transportation, purchase or sale of those species of wild animals in the classes Amphibia and Reptilia that do not meet the criteria for listing pursuant to G.S. 113-334 if the Commission determines that the species requires conservation measures. This subdivision does not authorize the Commission to prohibit the taking of any species of the classes Amphibia and Reptilia solely to protect persons, property, or habitat; to prohibit possession by any person of four or fewer individual reptiles; or to prohibit possession by any person of 24 or fewer individual amphibians."

SECTION 2. The commercial taking of any turtle within any of the species of turtles in the families Emydidae and Trionychidae that are the large basking and sliding turtles is prohibited until such time as the Wildlife Resources Commission adopts rules to regulate the taking of turtles within these two families of reptiles. For the purposes of this section, "commercial taking" is defined as the taking, possession, collection, transportation, purchase or sale of five or more individual turtles from either of the two families of reptiles described in this section. Any person who violates this section is guilty of a misdemeanor and is punishable as provided in G.S. 113-135. This section shall not apply to a licensed veterinarian; to a bona fide zoo operated by the federal government, the State, or a unit of local government; or to bona fide scientific, biological, medical, or veterinary education or research.

SECTION 3. Sections 1 and 3 of this act are effective when this act becomes law. Section 2 of this act becomes effective 1 July 2003 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 825*
PROPOSED COMMITTEE SUBSTITUTE S825-PCS35249-RT-16

Short Title: Protect Certain Reptiles and Amphibians. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO PROTECT CERTAIN REPTILES AND AMPHIBIANS THAT REQUIRE CONSERVATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333(a) is amended by adding a new subdivision to read:

"(6) To adopt and implement rules to limit, regulate, or prohibit the taking, possession, collection, transportation, purchase or sale of those species of wild animals in the classes Amphibia and Reptilia that do not meet the criteria for listing pursuant to G.S. 113-334 if the Commission determines that the species requires conservation measures. This subdivision does not authorize the Commission to prohibit the taking of any species of the classes Amphibia and Reptilia solely to protect persons or property, to prohibit possession by any person of four or fewer individual reptiles, or to prohibit possession by any person of 24 or fewer individual amphibians."

SECTION 2. The commercial taking of any turtle within any of the species of turtles in the families Emydidae and Trionychidae that are the large basking and sliding turtles is prohibited until such time as the Wildlife Resources Commission adopts rules to regulate the taking of turtles within these two families of reptiles. For the purposes of this section, "commercial taking" is defined as the taking, possession, collection, transportation, purchase or sale of five or more individual turtles from either of the two families of reptiles described in this section. Any person who violates this section is guilty of a misdemeanor and is punishable as provided in G.S. 113-135. This section shall not apply to a licensed veterinarian; to a bona fide zoo operated by the federal government, the State, or a unit of local government; or to bona fide scientific, biological, medical, or veterinary education or research.

SECTION 3. Sections 1 and 3 of this act are effective when this act becomes law. Section 2 of this act becomes effective 1 July 2003 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 825*

Short Title:	Amend Environmental Laws - 2.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTERS 143 AND 143B OF THE GENERAL STATUTES AND OTHER LAWS PERTAINING TO THE ENVIRONMENT.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the laws pertaining to the environment and natural resources.

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

SENATE BILL 825:
Protect Certain Reptiles and Amphibians.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Barbara Riley Committee Counsel, Tim Dodge, Research Assistant
Date:	April 22, 2003		
Version:	PCS for First Edition (S825-PCS35249-RT-16)		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 825 (PCS) amends the powers and duties of the Wildlife Resources Commission to include the authority to protect certain species of reptiles and amphibians that do not qualify as endangered, threatened, or of special concern.***

CURRENT LAW: Article 25 of Chapter 113 of the General Statutes authorizes the Wildlife Resources Commission to adopt lists of protected wildlife species, revise those lists, coordinate and implement conservation programs for protected species, and prevent the taking, sale, and collection of protected species. The Commission may place species on a protected list that are listed as endangered or threatened species under the Federal Endangered Species Act, and those species that the North Carolina Nongame Wildlife Advisory Committee proposes to add to the list. In determining whether to add a species to the list, the Advisory Committee examines the data and information available to determine if any federal, state, or private entity is working to protect the species, whether there is current or threatened destruction of habitat, if there is overutilization of the species for commercial, recreational or scientific purposes, whether there is a critical depopulation of the species, and whether other manmade factors are affecting the viability of the species.

BILL ANALYSIS: Section 1 of the PCS amends the powers and duties of the Wildlife Resources Commission to adopt rules to limit, regulate, or prohibit the taking, possession, collection, transportation, purchase or sale of species of Amphibia and Reptilia that do not meet the criteria for listing as a protected species, but that the Commission has determined do require conservation measures. The Commission may not adopt rules to prohibit the taking of species in cases of protection of person or property. The rules adopted shall allow the possession of four or fewer reptiles and 24 or fewer amphibians.

Section 2 of the PCS prohibits the commercial taking of all species of turtles in the families Emydidae and Trionychidae until the Wildlife Resources Commission adopts rules to regulate their taking. The turtles covered include the large basking turtles and sliding turtles. Commercial taking is defined as the taking, possession, collection, transportation, purchase or sale of five or more turtles from the two families. A person who violates this section is guilty of a misdemeanor, with the class of misdemeanor based on the misdemeanant's prior record of convictions. Section 2 of the PCS does not apply to a licensed veterinarian, a bona fide publicly operated zoo, or to bona fide scientific, biological, medical, or veterinary education or research.

EFFECTIVE DATE: Sections 1 and 3 of the PCS would become effective when it becomes law. Section 2 of the PCS would become effective July 1, 2003, and would apply to offenses committed on or after that date.

S825-smsy-001a

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 848
PROPOSED COMMITTEE SUBSTITUTE S848-PCS40025-RF-10

Short Title: Veterinary Bd. Agreements/Impaired Vets. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA VETERINARY MEDICAL BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-187.15. Board agreement for programs for impaired veterinary personnel.**

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those

veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired veterinary personnel peer review programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes to apply to the operation of impaired veterinary personnel programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of nonpublic information and of the process; and (ix) other necessary measures.

(d) Upon investigation and review of a veterinarian licensed by the Board or a veterinary technician registered with the Board, or upon receipt of a complaint or other information, an impaired veterinary personnel organization that enters into an agreement with the Board shall report to the Board detailed information about any veterinarian licensed or veterinary technician registered by the Board if:

(1) The veterinarian or veterinary technician constitutes an imminent danger to the public, to patients, or to himself or herself.

(2) The veterinarian or veterinary technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential information or other nonpublic information acquired, created, or used in good faith by an impaired veterinary personnel organization or the Board regarding a participant pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document by the Board pursuant to Chapter 132 of the General Statutes. No person participating in good faith in an impaired veterinary personnel program developed under this section shall be required in a civil case to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

(f) Impaired veterinary personnel activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 848

Short Title:	Veterinary Bd. Agreements/Impaired Vets.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA VETERINARY BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-187.15. Board agreement for programs for impaired veterinary personnel.**

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may

provide funds for the administration of these impaired veterinary personnel peer review programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes to apply to the operation of impaired veterinary personnel programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, post-treatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of nonpublic information and of the process; and (ix) other necessary measures.

(d) Upon investigation and review of a veterinarian licensed by the Board or a veterinary technician registered with the Board, or upon receipt of a complaint or other information, an impaired veterinary personnel organization that enters into an agreement with the Board shall report to the Board detailed information about any veterinarian licensed or veterinary technician registered by the Board if:

(1) The veterinarian or veterinary technician constitutes an imminent danger to the public, to patients, or to himself or herself.

(2) The veterinarian or veterinary technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential information or other nonpublic information acquired, created, or used in good faith by an impaired veterinary personnel organization or the Board regarding a participant pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document by the Board pursuant to Chapter 132A of the General Statutes. No person participating in good faith in an impaired veterinary personnel program developed under this section shall be required in a civil case to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

(f) Impaired veterinary personnel activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities deemed to be State directed and sanctioned shall constitute "State action" for the purposes of application of antitrust laws."

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

SB 848:
Veterinary Bd. Agreements/Impaired Vets.

BILL ANALYSIS

Committee:	Senate Ag, Environment & Natural Resources	**Introduced by:**	Senator Gulley
		Summary by:	H. Alan Pell & Barbara Riley Committee Counsel
Date:	April 22, 2003		
Version:	PCS		

SUMMARY: ***Senate Bill 848 adds a new statute that authorizes the North Carolina Veterinary Medical Board to enter into agreements with organizations that have developed programs for impaired veterinary personnel. The agreements would require the Board to disseminate relevant information to the organization; and for the organization to conduct investigations and make reports to the Board. The organization would be required to establish and maintain programs for the identification, review, and evaluation of a veterinarian or veterinarian technician to function in their occupation. The organization would also be required to establish treatment and rehabilitation programs. The proposed committee substitute corrects the name of the Veterinary board in the title and an incorrect citation in the body of the bill.***

BILL ANALYSIS: Section 1

Subparagraph (a): Authorizes the Board to enter into agreements with organization that have developed programs for impaired veterinary personnel. Activities to be covered in the agreement include: (1) investigation; (2) review and evaluation of records; (3) reports; (4) complaints; (5) litigation; and (6) information about practices of veterinarians that relate to impairment.

Subparagraph (b): The agreement must include provisions (1) for the Board to provide relevant information to the organization; (2) for the organization to conduct any investigation, review, or evaluation in an expeditious manner; (3) for the assurance of confidentiality of nonpublic information; (4) for the organization to make reports of investigations to the Board; and (5) for providing basic due process for veterinary personnel.

Subparagraph (c): The organizations must establish a program that evaluates veterinarians or veterinarian technicians for the ability to function in their occupation. The organization must also provide programs for treatment and rehabilitation. The Board may (is not required) to adopt rules pursuant to Chapter 150B to apply to the operation of impaired veterinary personnel programs.

Subparagraph (d): Organizations that have entered agreements with the Board must report to the Board detailed information concerning a veterinarian or a vet. tech. (1) who is an imminent danger to the public, to patients, or themselves; (2) who refuses to cooperate with the program; refuses to submit to treatment; or remains impaired after treatment and exhibits professional incompetence; or (3) who may be the subject of other disciplinary action.

Subparagraph (e): Confidential information concerning program participants is not discoverable in any civil case, nor subject to disclosure as a public record. No person participating in a program can be required to disclose, in a civil case, any information or opinions acquired or developed solely in the course of the program.

Subparagraph (f): Activities conducted in good faith under a program for impaired veterinary personnel are not grounds for civil action under any State law. The activities deemed to be State directed constitute "State action" for anti-trust law purposes.

Section 2: The act is effective when it becomes law.

H978-smrk-01

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 848

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

S848-ARF-13 [v.2]

Date _____,2003

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

Senator _____

moves to amend the bill on page 2, line ~~33~~ 35 by rewriting that line to read:
"laws of this State, and the activities are deemed to be State directed and sanctioned and shall"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

April 22, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brent Mortimer	NCSU
Walter B Whitaker	Western Carolina University
John Cignes	NC State Grange
Henry Hardesty	NC Pork Council
Teresa K.	CAA
B A Sloan	NC Forestry Assn
Sandra Long	Martin Marietta
[illegible]	NCVMTA
PG P	NCFB
Doug Lassiter	NCSTA
Tom Mickey	NCVMB
David Marshall	NCDA+CS

VISITOR REGISTRATION SHEET

Agriculture — April 22, 2003

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MOLLIE RASOR	NCVMA, 138 Spring Ave, Fuquay-Varina
Charles Fullwood	NC Wildlife
DICK HAMILTON	WILDLIFE
John Long	Martin Marietta
Fred Allen	NC Aggregates Assn
Francis M. Newby Jr.	DENR-DLR-LQS
Beth Anne Mumford	NC Pork Council
Rebecca Ebel	NCSU
Josh Phillips	NCSU
Josh Biesecker	NCSU
Jessie Taylor	NCSU
PAUL Meyer	NCACC
Kim Hibbard	NCLM
Lisa Martin	NC HBA

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Hofer & Caldwell, P.A.
F. Carlyle Teague	Co-op Council of NC
Brian Harrison	Beaufort NC
Gordy McArthur	NC. Cond.
Elizabeth Quats	NCPIRG
David Knight	NC Sierra, NC Wildlife Fed
Kari Barsness	NCDENR
Jeff Manning	NC DENR - DWQ
Anita Watkins	NCLM
Rick Zechini	NC Assoc. of Realtors
Martha Glass	NC DACS

VISITOR REGISTRATION SHEET

Agriculture

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Blanton	NCDA&CS
JERRY SCHILL	NC Fisheries Association
Robin Smith	NCDENR
William P. Sahono	AARP Raleigh N.C.

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, April 24, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

• SB-715	Local Water Supply Plans	Sen. Hartsell
• SB-981	Clean Air Trust Fund	Sen. Metcalf

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 24, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, April 24, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were sixteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

The chairman announced that today's meeting on the Clean Air Trust Fund bill would be for discussion only. No votes will be taken.

SB-981 – CLEAN AIR TRUST FUND – Sen. Metcalf explained the bill. Sen. Albertson asked if anyone else had done this before. Sen. Metcalf knows of none. Sen. Lucas questioned where fund would come from. The sponsor advised there probably wouldn't be any for this year but the purpose of this is to try to establish some funding and get a program set up. He advised there could be a possibility of some private funding as well. Sen. Weinstein asked if our pollution comes from other states. Sen. Metcalf told him it did come from surrounding states. Sen. Allran told the sponsor he appreciated his efforts and asked for an overall thought if he feels things are improving or getting worse. The sponsor feels there has been improvement and he thinks the smoke stack bill from last year has helped with this. Sen. Allran followed up by saying that we need to keep up the good efforts in North Carolina. Sen. Kinnaird spoke and pointed out similarities of this with the State Energy Council and she would like to see this tied in with them. Sen. Metcalf agreed with her comments and told members that they are working with them and that's one reason we will not take a vote today. Sen. Hartsell asked if this would help with federal regulations. Sen. Metcalf explained some of the things that the EPA look at that could help us get federal funding. This will be addressed again at a future meeting.

SB- 715 – LOCAL WATER SUPPLY PLANS – Sen. Hartsell moved for adoption of the PCS for discussion. So moved. Sen. Hartsell explained. He told that this comes from the request of the Department of Water Resources. Sen. Smith has a problem with the agricultural portion of this because it will affect his farmers. Sen. Kinnaird spoke about the problem of last year. The sponsor told members this would not impose another permit. Sen. Webster spoke and Sen. Hartsell addressed his comments. Sen. Jenkins asked if we could have others to speak on this at a later date. The chairman advised we could. Ms. Elizabeth Outz, NCCPRG, addressed members. She reminded them that we had a bad drought last year and we need to continue to work on this problem and inventory will be important to them so they support it. Sen. Jenkins asked Ms. Outz how many members they have and the status of the water usage. He requested

this in writing. Ms. Erica Peterson, NC Agribusiness Council, told members they oppose the agriculture portion as well. Sen. Hartsell addressed her comments. Mr. Steve Woodson, NC Farm Bureau also told of concerns they have. Sen. Bingham agrees with the intent of this but has concerns. The sponsor spoke again. Mr. John Morris, DENR, spoke on the agriculture water use. The chairman announced we would discuss this later in the session.

The meeting adjourned at 11:40 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brook, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 715*

Short Title:	Local Water Supply Plans.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLIC WATER SYSTEMS TO PREPARE LOCAL WATER SUPPLY PLANS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS, TO REPEAL THE AGRICULTURE EXEMPTION FROM WATER WITHDRAWAL AND TRANSFER REGISTRATION REQUIREMENTS, AND TO REQUIRE AN ANNUAL UPDATE OF WATER WITHDRAWAL AND TRANSFER REGISTRATION.

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 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. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

~~(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.~~

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at ~~five-year~~ one-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

SECTION 4. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 715*
PROPOSED COMMITTEE SUBSTITUTE S715-PCS35258-RT-19

Short Title: Local Water Supply Plans. (Public)

Sponsors:

Referred to:

April 2, 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, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO MAKE DROUGHT DESIGNATIONS, TO REPEAL THE AGRICULTURE EXEMPTION FROM WATER WITHDRAWAL AND TRANSFER REGISTRATION REQUIREMENTS, AND TO REQUIRE AN ANNUAL UPDATE OF WATER WITHDRAWAL AND TRANSFER REGISTRATION.

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. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

~~(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.~~

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at ~~five-year~~ one-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

SECTION 4. 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.

SENATE BILL 715:
Local Water Supply Plans.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Senator Hartsell
Date:	24 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis Committee Counsel
Version:	Summary for 1st Edition and PCS (S715-PCS35258-RT-19)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 715 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. The bill would authorize the Secretary of Environment and Natural Resources to designate areas of the State where drought conditions are impending or exist, and to designate the severity of drought conditions. The bill would also repeal the agriculture exemption from water withdrawal and transfer registration requirements and would require an annual update of water withdrawal and transfer registration.***

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.

Currently, persons who withdraw 100,000 gallons per day or more of water from surface or groundwaters or transfer 100,000 gallons per day or more of water from one river basin to another are required to register the withdrawal or transfer with the Environmental Management Commission, except that persons who withdraw or transfer water less than 1,000,000 gallons per day for various agricultural activities are exempt from the registration requirement. Persons that are required to register are required to update their registration at five-year intervals.

CHANGES IN PCS: The PCS for Senate Bill 715 contains changes from the original bill as follows:

- Section 1 of the PCS narrows the scope of the plan requirement to encompass units of local government that provide public water service or that plan to do so, and those community water systems that regularly serve 1,000 or more service connections or 3,000 or more individuals. The original bill covered units of local government that provide public water service or that plan to do so, and public water systems that regularly serve 1,000 or more individuals. The PCS also makes technical and stylistic changes to Section 1 of the original bill.
- Sections 2 and 3 are unchanged from the original bill.

- Section 4 contains changes to conform to Section 1 of the PCS, to indicate that the first water supply plans are to be prepared by "community water systems." The original bill provided that the plans were to be prepared by "public water systems."

BILL ANALYSIS:

Section 1: 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 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: The bill would authorize 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.

Section 3: Water withdrawals and transfers of less than 1,000,000 gallons per day for agricultural purposes are currently exempt from the generally applicable requirement that water withdrawals and transfers be registered with the Environmental Management Commission. Section 3 of the bill would repeal this exemption. The bill would also increase the frequency at which persons who are required to register water withdrawals or transfers must update their registration to a one-year interval.

EFFECTIVE DATE: This act is effective when it becomes law.

S715-SMRI-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 981*

Short Title:	Clean Air Trust Fund.	(Public)
Sponsors:	Senators Metcalf; and Queen.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND TO APPROPRIATE FUNDS TO IT.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Clean Air Trust Fund.

"**§ 113A-271. Purpose.**

(a) The General Assembly finds and declares that clean air is critical to the health of the citizens, economy, and environment of North Carolina. The General Assembly recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, and hydrocarbons from stationary and mobile sources cause unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition, mercury contamination, and other air pollutants.

(b) The General Assembly is committed to reducing air pollution to restore mountain air quality, to provide healthy air to urban and rural citizens of the State, to protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters, to reduce mercury contamination in fish and the environment, to enhance the travel and tourism industry, and to maintain the high quality of life of the citizens of the State.

(c) The General Assembly finds that education, technical assistance, incentives, and regulations are all needed to prevent and reduce emissions of air pollutants and to protect the environment, public health, natural resources, and the economy.

(d) The General Assembly finds that cleaner fuels, alternative fuels, energy efficiency, transit, smart growth, public education, and awareness will prevent and reduce emissions of air pollutants.

(e) The General Assembly finds and declares that an incentive-based air quality program is needed to assist local governments, State agencies, nonprofit conservation organizations, and industry to help finance projects that prevent or reduce emissions of

oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

"**§ 113A-272. Definitions.**

As used in this Article:

(1) 'Board of Trustees' means the Clean Air Trust Fund Board of Trustees.

(2) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

"**§ 113A-273. Fund established.**

(a) Fund Established. – There is established a Clean Air Trust Fund in the State Treasurer's Office that shall be used to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of Board of Trustees or its designee.

(c) Fund Purposes. – Moneys from the Fund may be used for any of the following purposes:

(1) To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.

(2) To increase efficient use of energy in State, local, and public school buildings.

(3) To encourage private and public investments in alternative energy and energy-efficient technology.

(4) To convert animal waste to alternative energy and other value-added products.

(5) To educate and encourage the public to prevent and reduce air pollution.

(6) To provide incentives to encourage pedestrian and transit oriented smart growth.

(7) To plant trees in urban and rural areas.

(8) To acquire and protect forests and open space.

(9) To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

(10) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than five percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each

fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of funds.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant or loan from the Fund for the purpose of protecting and restoring air quality and preventing and reducing emissions of air pollution:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the protection and restoration of the environment and natural resources.

(b) Grant Matching Requirement. – The Board of Trustees may establish matching requirements for grants awarded under this Article.

(c) Loans. – The Board of Trustees may provide loans to applicants.

(d) Grants and Loans Not Available to Satisfy Excess Emissions Offsets or Conformity Requirements. – No grant or loan from the Fund shall be awarded to satisfy excess emissions offsets allowed under 40 Code of Federal Regulations § 77.3 (1 July 2002 Edition) or transportation conformity requirements set out in 40 Code of Federal Regulations Part 51 and Part 93 (1 July 2002 Edition).

(e) Grants and Loans Not Available to Achieve Compliance with State Emissions Limits. – No grant or loan from the Fund shall be awarded to achieve compliance with the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out in G.S. 143-215.107D.

"**§ 113A-275. Board of Trustees established; membership qualifications; vacancies; meetings; and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Air Trust Fund Board of Trustees. The Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. – The Board of Trustees shall be composed of nine members appointed to four-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 four.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(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 four.

(4) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

description of the project, the amount of the grants or loans awarded for the project, and the total cost of the project.

"**§ 113A-278. Executive Director and staff.**

(a) The Board of Trustees shall develop and adopt an annual budget.

(b) The Board of Trustees shall hire an Executive Director who has knowledge and experience in the protection and restoration of air quality. The Executive Director serves at the pleasure of the Board of Trustees. The Executive Director may hire technical, administrative, and clerical staff and contractors, consistent with the budget adopted by the Board of Trustees, as necessary to implement the provisions of this Article.

(c) The Board of Trustees shall set the salary of the Executive Director. The salary of the Executive Director and other staff shall be paid from the Fund.

(d) The Executive Director and staff shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Expenses shall be paid from the Fund.

"**§ 113A-279. Advisory Council.**

There is established the Clean Air Trust Fund Advisory Council. The Council shall meet at least annually and shall advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund and other issues as requested by the Board of Trustees. The Council shall be composed of the following persons or their designees:

(1) The Secretary of Environment and Natural Resources.

(2) The Secretary of Commerce.

(3) The Secretary of Transportation.

(4) The Secretary of Administration."

SECTION 2. In order to provide for a system of staggered four-year terms for the members of the Clean Air Trust Fund Board of Trustees established by G.S. 113A-275, as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(1) shall be four years and shall expire on 1 July 2007.

(2) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(2) shall be five years and shall expire on 1 July 2008.

(3) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(3) shall be two years and shall expire on 1 July 2005.

(4) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(4) shall be three years and shall expire on 1 July 2006.

(5) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(5) shall be four years and shall expire on 1 July 2007.

(6) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(6) shall be five years and shall expire on 1 July 2008.

(7) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(7) shall be two years and shall expire on 1 July 2005.

(8) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(8) shall be three years and shall expire on 1 July 2006.

(9) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(9) shall be four years and shall expire on 1 July 2007.

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. The first report required by G.S. 113A-277, as enacted by Section 1 of this act, shall be due no later than 1 October 2004.

SECTION 5. There is appropriated from the General Fund to the Clean Air Trust Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement this Article. It is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement this Article. The funds in the Clean Air Trust Fund shall be used only in accordance with Article 19 of Chapter 113A of the General Statutes.

SECTION 6. This act becomes effective 1 July 2003.

VISITOR REGISTRATION SHEET

Agriculture — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Beason	Environ Defense
Theresa K.	CAA
Elizabeth Cuthrell	NCPIRG
J. Holman	CWMTF
Robin Smith	DENR
John Morris	DENR
Kari Barsness	DENR
Jim Southerland	DENR/DAQ
Molly Diggins	NC Sierra Club
Larry Bawley	LBA
Ellen Culbreth	LBA

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandra Long	Martin Marietta
Ken Melton	Alley Associates
Kim Hibbard	NCLM
Cam Cren	BPM4L
Steve Woodson	NC Farm Bureau
	NCMMA
Colleen Kochanek	Hafer & Caldwell, P.A.
Erica Peterson	NC Agribusiness Council
Mike Blanton	NCDA & CS
John McFadyen	DENR/DEH/PWSS
Angie McMillan	TNC
Jim Blackburn	Friend of Angie McMillan

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, April 29, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB-732	Underground Storage Tank Program	Sen. Albertson
SB-908	Ground Water Protection	Sen. Hartsell
SB-911	Improve Environmental Enforcement	Sen. Clodfelter
HB-1205	Franchise Not Req. Smokestacks Landfills	Rep. McComas

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

April 29, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, April 29, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were sixteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1205 – FRANCHISE NOT REQ. SMOKESTACKS LANDFILLS – Rep. Phil Haire explained. Sen. Jenkins moved for a favorable report. No further discussion, the vote was taken and passed.

Sen. Weinstein presided so the chairman could explain his bill.

SB – 732- UNDERGROUND STORAGE TANK PROGRAM – Sen. Albertson and Mr. George Givens, staff counsel explained the bill. Sen. Tillman moved for a favorable report. The vote was taken and passed.

Sen. Albertson presided again.

SB-911 – IMPROVE ENVIRONMENTAL ENFORCEMENT – Sen. Clodfelter moved for adoption of the PCS for discussion. So moved. Sen. Clodfelter explained and Mr. Givens gave additional explanation. Ms. Robin Smith, DENR addressed members and explained why they needed this legislation. Sen. Albertson questioned the penalties comparison with other states. Ms. Smith responded. Mr. Givens made additional comments. Sen. Clodfelter moved for a favorable report for the PCS, unfavorable as to the original bill. Sen. Queen questioned the penalties and Ms. Smith replied. Mr. Paul Wills, Home Builders Assoc., addressed members. He feels there is an excessive penalty in Section I regarding first day penalties. Sen. Hargett asked how repeat offenders are treated. Ms. Smith responded and explained their process. Mr. Doug Lassiter, NC Septic Tank Assoc., addressed Section 5 regarding on site wastewater and increased fees. He had concerns that Ms. Smith addressed. Sen. Horton wasn't comfortable with taking a vote on this until additional facts were known. Having no further discussion, the vote was taken and passed as moved.

SB-908 – GROUND WATER PROTECTION ACT – Sen. Hartsell moved for adoption of the PCS for discussion. So moved. Chairman Albertson told members this was not subject to the

crossover deadline. Sen. Hartsell explained the proposed committee substitute. Ms. Robin Smith, DENR spoke and told of the need for this. Sen. Albertson asked how many sites have been approved under Brownsfield. Mr. Dexter Matthews, Director of Soil and Water, DENR explained. Sen. Albertson asked for explanation of new service station owners and the site contamination issues. Mr. Matthews explained. He also told that this bill would be helpful to new or prospective owners. Sen. Bingham spoke on behalf of small storeowners and how they may not be aware of leaks or problems and how this would help them. Mr. Matthews explained how this connects with the Brownsfield Act but that is not directly under this bill. Sen. Clodfelter asked for the procedure to contest an alleged fee. Ms. Smith responded. Mr. Givens made additional comments and reminded members that this is a work in progress. Sen. Hartsell made final comments and urged members to come forward with questions or comments, as he was open to suggestions. No vote was taken.

The meeting adjourned at 11:45 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, May 01, 2003

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

FAVORABLE

S.B. **732** Underground Storage Tank Prgm. Amends 2003.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, April 29, 2003

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

FAVORABLE

H.B. **1205** Franchise Not Req. Smokestacks Landfills.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Wednesday, April 30, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **911** Improve Environmental Enforcement.

Draft Number:	PCS85226
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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.

HOUSE BILL 1205:
Franchise Not Req. Smokestacks Landfills.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Reps. McComas, Gibson, Sherrill, and Haire
Date:	29 April 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.

H1205-SMRI-001

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.

SENATE BILL 732:
Underground Storage Tank Prgm. Amends 2003.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Tim Dodge Research Assistant for Environmental Issues
Date:	April 29, 2003		
Version:	First Edition		

SUMMARY: ***Senate Bill 732 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.

S732-SMSY-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 908*

Short Title:	Groundwater Protection Act.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 908*
PROPOSED COMMITTEE SUBSTITUTE S908-PCS65284-RTf-20

Short Title: Groundwater Protection Act. (Public)

Sponsors:

Referred to:

April 3, 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~~.~~ 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.

SENATE BILL 908:
Groundwater Protection Act

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Hartsell
Date:	29 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	PCS for 1st Edition (S908-PCS65284-RTf-20)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 908 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.

S908-SMRI-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 911*

Short Title:	Improve Environmental Enforcement.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 911*
PROPOSED COMMITTEE SUBSTITUTE S911-PCS85226-RT-21

Short Title: Improve Environmental Enforcement. (Public)

Sponsors:

Referred to:

April 3, 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)~~ 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.

SENATE BILL 911:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Clodfelter
Date:	29 April 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	Summary for 1st Edition and PCS (S911-PCS85226-RT-21)		

SUMMARY: ***Senate Bill 911 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.

S911-SMRI-001

VISITOR REGISTRATION SHEET

Senate Ag & Econ. 4-29-03

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
[illegible]	CAPA
Rick Zechini	NC Assn. of REALTORS
Chris Nichols	Hunton & Williams
JERRY SCHILL	NC Fisheries Assoc
Coleen Sullins	NCDWQ
Dexter Matthews	NCENR
Doug Howey	NCPMA
Nancy Thompson	MCIC
DENNIS RAMSEY	DENR / DWQ
Alan Eckstein	NCDENR
David Vogel	DENR DSWC
Beth Anne Mumford	NCPC
Pam Mayo	NCACC
Becky Street	PPAB
Sandra Long	Martin Marietta Materials
Preston Howard	MCIC
Doug Lassiter	NCSTA
Jim Simons	NCDENR
[illegible]	NC DACS
[illegible]	J.C.L.N.A.
[illegible]	NCSU
Patsy Harmon	Beaufort Co.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Anita Watkins	NC League of Municipalities
Amy Dobson	NC Statewide
Joshua Long	Martin Marietta Mat-
Molly Diggins	NC Sierra Club
John Mallon	GOV office
Kim Hibbard	NCLM
Gary Harris	NCPMA
Tim Ward	NC Home Builders
Lisa Martin	NC Home Builders
Fred Allen	NC Agg. Assn.

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, May 1, 2003 at 9:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB-833	Amend Agricultural Laws-1	Sen. Albertson
SB-888	Allow Waterflow/Impact on Adjacent Property	Sen. Rucho

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 1, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 12003, at 9:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fourteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

Sen. Kinnaird requested that both proposed committee substitutes be heard today.

Sen. Weinstein presided so Sen. Albertson could present his bill.

SB-833 – AMEND AGRICULTURAL LAWS –1 -- Sen. Albertson moved for adoption of the PCS. So moved. He then explained. Sen. Kinnaird moved for a favorable report for the PCS, unfavorable as to the original bill and be referred to Appropriations. Sen. Albertson explained why this will go to Appropriations if approved by our committee. Sen. Allran asked how this will work after the budget has been done. Sen. Albertson and Sen. Weinstein explained. Sen. Hargett supports this because he loves sweet potatoes. The vote was taken and passed as moved.

SB-888 – ALLOW WATERFLOW/IMPACT ON ADJACENT PROPERTY – Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Sen. Rucho explained. Sen. Albertson asked about the current process. Ms. Robin Smith, DENR, explained how this works on a state level. Sen. Allran asked if this would apply to governmental authorities- i.e. Department of Transportation. Sen. Rucho explained. Mr. George Givens, staff counsel, made additional comments. Sen. Allran followed up about the adjacent property and Sen. Rucho responded. Sen. Webster and Sen. Kinnaird spoke in favor. Sen. Kinnaird asked how notification will be done to authorities and what kind of recourse other than going to court they have. Sen. Rucho explained. Sen. Clodfelter likes the concept and agrees this is a problem, but hopes to have an opportunity to work on this for a clearer explanation of notification and permit process scheduling. Sen. Rucho told members he is hopeful to get started on a statewide system of storm water control. He agrees to continue to work on this to make improvements. Sen. Queen also made suggestive comments. Sen. Rucho responded and agreed to change the effective date from July 1, to October 1, 2003. Sen. Tillman made this into a motion. So moved. Sen. Webster moved for a favorable report of the now PCS, unfavorable to the original bill. Ms. Kim Hibberd, NC League of Municipalities, expressed concerns and they want the opportunity to work with members on this too. Sen. Rucho agreed to work with them. The vote was taken and passed as moved.

The meeting adjourned at 9:35 am.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, May 01, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **833** Amend Agricultural Laws - 1.

Draft Number:	PCS40040
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

S.B. **888** Alter Waterflow/Impact on Adjacent Property.

Draft Number:	PCS35273
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 833

Short Title:	Amend Agricultural Laws - 1.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 106 OF THE GENERAL STATUTES AND OTHER LAWS PERTAINING TO AGRICULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the laws pertaining to agriculture.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 833
PROPOSED COMMITTEE SUBSTITUTE S833-PCS40040-RT-29

Short Title: Sweet Potato Weevil Control Funds. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE MATCHING FUNDS TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO BE USED TO CONTROL THE SWEET POTATO WEEVIL.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of fifty thousand dollars ($50,000) for the 2003-2004 fiscal year and the sum of fifty thousand dollars ($50,000) for the 2004-2005 fiscal year to be placed in a reserve account. Funds in the reserve account may be used only when matched with funds from the North Carolina Sweet Potato Commission, Inc. Funds in the reserve account shall be used to support efforts by the Department of Agriculture and Consumer Services to control the sweet potato weevil.

SECTION 2. This act becomes effective 1 July 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 888

Short Title:	Alter Waterflow/Impact on Adjacent Property.	(Public)
Sponsors:	Senator Rucho.	
Referred to:	Rules and Operations of the Senate.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT A PROPERTY OWNER WHOSE LAND IS ADJACENT OR DOWNSTREAM FROM A SITE ON WHICH ALTERATIONS OF THE EXISTING FLOW OF STORMWATER WILL OCCUR.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 888
PROPOSED COMMITTEE SUBSTITUTE S888-PCS35272-LH-12

Short Title: Alter Waterflow/Impact on Adjacent Property. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT A PROPERTY OWNER WHOSE LAND IS ADJACENT OR DOWNSTREAM FROM A SITE ON WHICH ALTERATIONS OF THE EXISTING FLOW OF STORMWATER WILL OCCUR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.7A. Protection of property owners adjacent to activities for which a stormwater permit is issued.**

(a) As used in this section, the term 'permitting authority' means the State agency or unit of local government agency that is legally responsible for reviewing an application for and issuing a stormwater permit pursuant to G.S. 143-214.7.

(b) In reviewing an application for a stormwater permit and accompanying stormwater plan, the permitting authority shall require an applicant to reveal any change in the drainage pattern and to provide an analysis of the volume, velocity, and direction of stormwater in the new drainage pattern. The applicant shall summarize any direct and substantial physical impacts of the new drainage pattern and provide the summary to all parties directly affected by the impacts. Any party directly and substantially affected by the changed drainage pattern may submit comments to the permitting authority within 30 days of receiving the notice of the changed drainage pattern. An applicant for a stormwater permit shall request each local government having jurisdiction over any part of the land to which the proposed stormwater permit would apply to issue a determination as to whether the local government has in effect a zoning, subdivision, land-use planning, or stormwater control ordinance and whether the proposed stormwater permit would contravene any applicable ordinance. The request to the local government shall be accompanied by a copy of the stormwater permit application and shall be delivered to the clerk of the local government personally or by certified mail. The local government shall have 15 days after receipt of the request from the applicant

to issue a determination. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, the clerk, or other official designated by the local government to make the determination and, if the local government states that the proposed stormwater permit would contravene an applicable ordinance, shall include a copy of the ordinance and the specific reasons for the determination. The local government shall forward the determination to the permitting authority. A copy of the determination shall be provided to the applicant when the determination is submitted to the permitting authority. The permitting authority shall not issue a stormwater permit if a local government issues a determination that the permit would contravene a regulation of drainage established pursuant to a local zoning, subdivision, or land-use planning ordinance. The permitting authority shall not act upon an application for a permit until it has received a determination from each local government requested to make a determination by the applicant.

(c) If the permitting authority issues a stormwater permit without resolving an objection set out in comments submitted by a directly and substantially affected party, the directly and substantially affected party may contest the action through the appeal procedures applicable to the permitting authority."

SECTION 2. This act becomes effective 1 July 2003 and applies to stormwater permit applications filed on or after that date.

SENATE BILL 888:
Alter Waterflow/Impact on Adjacent Property

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Rucho
Date:	1 May 2003	**Summary by:**	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Version:	PCS for 1ST Edition (S888-PCS35272-LH-12)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 888 requires that an applicant for a stormwater permit reveal information concerning any change in the drainage pattern to affected parties and requires that an applicant request a determination from any local government having jurisdiction as to whether the stormwater permit would contravene any local zoning, subdivision, land-use planning, or stormwater control ordinance. A permitting authority shall not issue a stormwater permit if the permit would contravene an applicable ordinance and shall not act upon an application for a stormwater permit until it has received a determination from each local government requested to make a determination. Parties directly and substantially affected by the changed drainage pattern are authorized to submit comments to the permitting authority and, if the permitting authority issues a stormwater permit without resolving an objection, may contest the permit issuance.***

CURRENT LAW: G.S. 143-214.7 authorizes the Environmental Management Commission to develop and adopt stormwater runoff rules and programs to protect water quality in the State. G.S. 143-215.1(11) requires a permit for activities that cause or permit stormwater discharges that result in water pollution.

BILL ANALYSIS: The PCS directs a permitting authority to require an applicant for a stormwater permit to reveal and provide an analysis of any change in the drainage pattern. The applicant must provide a summary of any direct and substantial physical impacts of the new drainage pattern to parties directly affected by the impacts. Parties directly and substantially affected by the changed drainage pattern are authorized to submit comments to the permitting authority and, if the permitting authority issues a stormwater permit without resolving an objection, may contest the permit issuance.

The PCS also requires that an applicant request from each local government having jurisdiction over the land to which the stormwater permit would apply that the local government issue a determination whether the stormwater permit would contravene any local zoning, subdivision, land-use planning, or stormwater control ordinance. A local government would have 15 days after receipt of the request from the applicant to issue the determination. A similar determination procedure is imposed for air quality permits (G.S. 143-215.108(f)), water quality permits (G.S. 143-215.1(c)(6)), and sanitary landfill permits (G.S. 130A-294(b1)(4)).

A permitting authority shall not issue a stormwater permit if the permit would contravene an applicable ordinance and shall not act upon an application for a stormwater permit until it has received a determination from each local government requested to make a determination by the applicant.

EFFECTIVE DATE: The bill would become effective 1 July 2003 and apply to all stormwater permit applications filed or after that date.

VISITOR REGISTRATION SHEET

Agriculture — May 1, 2003

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R Carl Wilson	NCHBA
Doug Lassiter	NCSTA
Joan Troy	NC WRC
Bean Mills	NC Metro Coalition
Martin Glass	DACS
John	NCRA
Mary Thompson	NMCIC
Steve Woodson	NC Farm Bureau
Theresa K	CAA
Lisa Martin	NC Home Builders Assn.
Kari Barsness	NCDENR
Kim Hibbard	NCLM
David Ferrell	Vandeventer Black LLP

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Julie Allen	NC Stateu
Rick Zechini	NC Assoc. of REALTORS
Tom Benn	NC Environ Def
John Phelps	NCLM
Colleen Kochanek	Hafer & Caldwell, P.A.

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 6, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

- Presentation on Junk Car Pilot Program
  Mr. Cliff Copeland- Guest Speaker

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 6, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 6 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were thirteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

PRESENTATION OF THE JUNK CAR PILOT PROGRAM - Mr. Cliff Copeland, addressed members and thanked them for allowing them the opportunity to present this presentation. Mr. Jerry Parks, Albemarle Regional Health Director, made the presentation. He explained that this is a 3-county pilot program that was very successful and they would like to see it implemented in more counties. Sen. Tillman questioned the disposal fee and how to deal with people that abandon a vehicle. Mr. Parks responded. Sen. Albertson asked how much $5.00 fee would generate statewide. Mr. Parks advised that it could be over $12 million dollars. Sen. Kinnaird spoke and agrees that this is a good program. Mr. Copeland told members they had discussed this with DMV and found that there had been cases where people hadn't paid vehicle taxes. Sen. Kinnaird asked for the process for getting rid of junk cars. Mr. Parks explained that this is a local ordinance and it will be tagged for towing orders and the owners are allowed 30 days before it will be towed. Sen. Queen told how his county allows local junkyards to pick up car that didn't show listed on property values. The junk dealer then sells them for scrapes and they didn't mind going to get them. He told members how nice this works for community beautification. Mr. Parks spoke again and said they will continue this program as long as there is funding. Sen. Bingham asked if this is for the purpose of keeping roads and neighborhoods clean. He shared a story of old vintage cars being used for parts, but they have ordinances in his district to help keep this under control. Mr. Parks agreed that ordinances do help but it also generates funding for cities and towns. Sen. Horton asked if they buried the old cars. Mr. Parks explained how they are recycled to make new vehicles. Sen. Webster asked why there were fees now when there didn't used to be. Mr. Parks explained that the scrape metal market is now depressed. Mr. George Givens, staff counsel, made additional comments regarding recycling of bottles, cans and metal. He then inquired if local ordinances will be the responsibility of the county to collect the fees and pick up the junk cars. Mr. Parks responded. Mr. Givens continued by asking if this is covered under the nuisance ordinance. Mr. Copeland explained how the nuisance ordinance works in most counties because there are no incentives for the counties so they don't enforce it as tightly. Sen. Hargett asked if unlicensed vehicles without valid licenses are considered junk. Mr. Parks responded. Sen. Kinnaird feels there need to be an appeal process built into this program. Sen. Webster would like to see receipts and expenditures

for the 3 counties with this pilot program. Mr. Parks agreed to furnish this to members if they wished. Mr. Givens spoke again on the white goods fees. Mr. Copeland spoke again and told members that he feels they could put together a good proposal for this to be a good working program.

Time expired and the meeting adjourned at 11:55 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Committee Clerk

MODEL
Statewide Advanced Disposal Fee On Title Transfers



Historically Speaking . . .

- In May 2000, citizens and county leaders identified litter and junk car problems
- The leaders reported to Senate, Agriculture, Environment, and Natural Resources Committee

Statement of Need !

- Accumulating vehicles in residential and rural areas
- Declining junk car markets
- Towing and paying for vehicles by scrap dealers had virtually stopped

Statement of Need !

- Cited health hazards
- Noted disincentives to economic development
- Equated the negative visual impact to lower property values
- Promoted a junk vehicle project modeling Advanced Disposal Fees

Advanced Disposal Fee Model

- Legislation activated advanced disposal fees on scrap tires tires and white goods (appliances)
- Funds are returned to the counties

Advanced Disposal Fee Model

- All counties now have white goods and scrap tire collection plus recycling programs
- Legislation reduced illegal disposal and funded dumpsite clean-ups

Membership of Task Force

- Town and County Managers
- Law and Code Enforcement Officers
- Interested Citizens
- County Planners
- Solid Waste Management
- Regional Health Departments

Funding

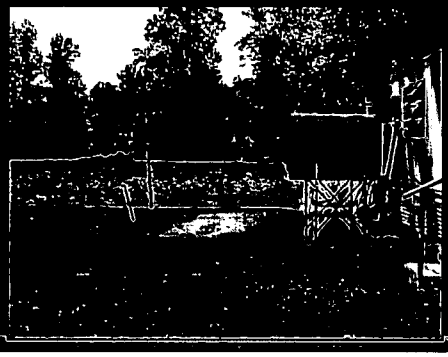
- $30,493 Grant from North Carolina Department of Environmental and Natural Resources
- Local funding, totaling $24,585, from each of the three counties, the Town of Edenton, and North Carolina's Northeast Partnership
- In-kind contributions including county labor, office space, supplies, and mileage

Junk Car Removal Statistics

- Three county project:
  - Perquimans - Chowan - Gates
- 522 vehicles towed and recycled
  - Perquimans: 189
  - Chowan: 183
  - Gates: 150
- $21,405 towing bill; averaging $41 per tow

Before and After





Before and After



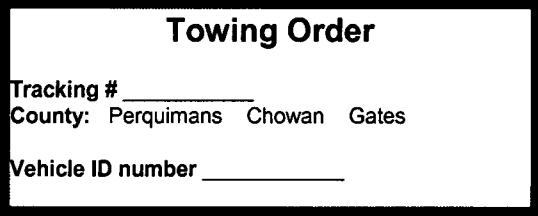


Program Organization

Task Force duties :

- Enforcement officers identify vehicles in residential and rural areas
- Officers seek owners for volunteer release of ownership
- Officers tag released vehicles

- Sheriff's Departments provide title searches
- Recycling Coordinator notifies absentee vehicle owners
- Counties pay private companies to tow vehicles



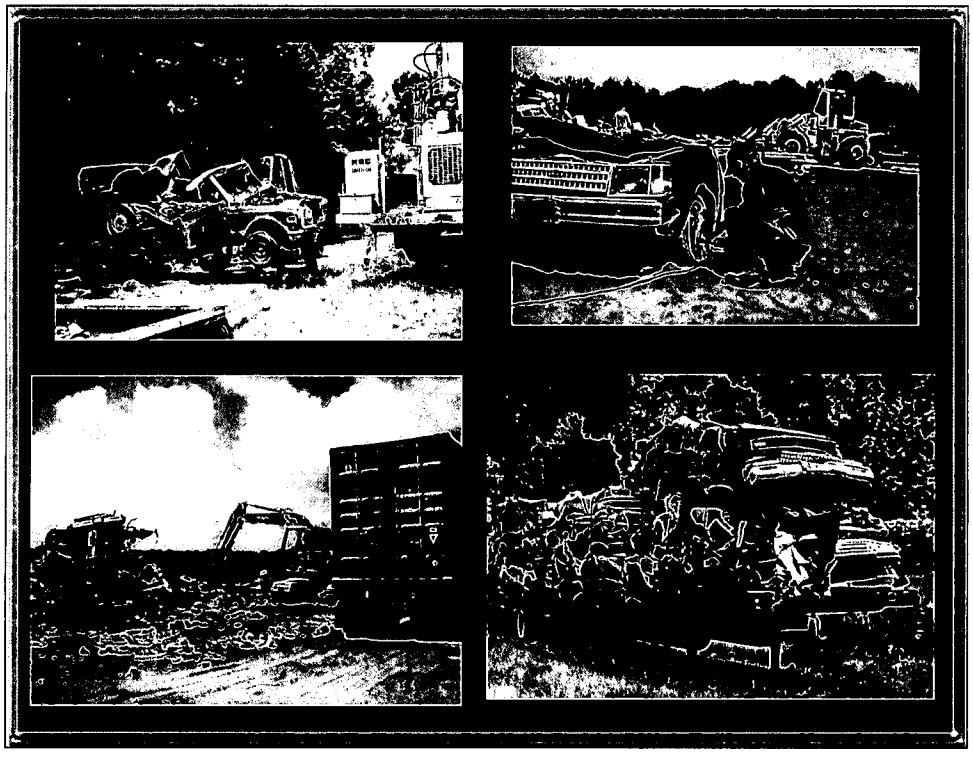
Towing Order

Tracking # _____
County: Perquimans Chowan Gates

Vehicle ID number _____



- Towed vehicles stored at Tri-County Landfill
- Landfill employees prep vehicle for crushing
- A private recycling company crushes and removes vehicles



Financial and Educational Details . . .

- Albemarle Regional Health Services manages the budget
- Regional Recycling Coordinator provides education and promotion of program
- Task Force meets to make decisions and budget monies

Educational Component

- Awareness of junk car accumulation problems
- Solution available to remove health and economic hazards
- Varied programs for all citizens in the community
- Intergenerational commitment to cleaning up communities

Project Sustainability

- Local funding donated to project
- Accountable fiscal management and evaluation by Project Coordinator
- Project continues beyond grant time frame
- Advanced Disposal Fee will assure all counties ability to participate

Proposed Statewide Advanced Disposal Fee On Title Transfers Model

- Develop similar model for junk and abandoned vehicles on public and private properties throughout North Carolina
- Assist counties in developing and passing an ordinance for advanced disposal fees

Seeking State Legislation to . .

.

- Charge a $5 fee on vehicle title transfers
- Disburse funds to the counties based on population
- Cross-reference applications for tags to search for outstanding fees on other vehicles owned by the same person
- Refuse to issue titles with outstanding taxes
- Require proof of current registration, sale, or disposal of prior tagged vehicles

County Requirements

- Enforce existing junk and abandoned vehicle rules and ordinances
- Implement a comprehensive junk and abandoned vehicle management program
- Empower enforcement department to facilitate program
- Submit semi-annual report on program results

Program Accomplishments

- The Model used innovative ideas to gain voluntary cooperation from vehicle owners to remove junk and abandoned vehicles from properties in counties with and without ordinances.

Model

By following the Advanced Disposal Fee Model, a local Task Force, with effective promotion, education, and adequate funding, accomplished and exceeded the goals for removing junk and abandoned vehicles in the region.

Titles Issued In NC, 2002

- 2,670,512 titles
- Of those:
  - 525,239 were new vehicles
  - 444,051 previously titled in another state
  - 1,311,920 previously titled in NC

Special thanks to the

Environmental Affairs Committee

And to the

Legislators for the

initial funding resources

QUESTIONS,

COMMENTS,

ANSWERS

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

May 6 - 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Beth Anne Mumford	NC Pork Council
Tommy Harris-Stop	"
Julie Allen	NC Statewatch
John Cyrus	NC State Grange
David Meredith	NC State Grange
	NC Statewatch
R. Rogers	DENR
Carolyn Mynatt	DOA
Ed Regan	N.C.A.C.C.
Tony Hanson	CH
Eugene Boone	Boone + Assoc.

VISITOR REGISTRATION SHEET

Agriculture

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beau Mills	NC Biofuels Coalition
Nancy Thompson	NCIC
A Davis	Harkers Island

Principal Clerk ____
Reading Clerk ____

2nd notice – date changed (again!)

SPECIAL JOINT MEETING – NOTE- DATE, TIME, AND ROOM

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Env./Nat. Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	May 7, 2003	11:00 –1:00	643-LOB

The following will be considered:

BILL N	SHORT TITLE	SPONSOR
•	Agricultural Advancement Consortium Overview	Mr. Larry Wooten
•	Tobacco Trust Fund Commission Presentation	Mr. Billy Carter
•	Golden LEAF Presentation	Mr. Lawrence Davenport

Senator Albertson, Chair

This is a special two-hour meeting coordinated by The Rural Center. Lunch will be provided to members of the House and Senate Ag. Committees only, complements of The Rural Center. An Agenda will be sent under a separate cover so that you may coordinate this with your other meetings during this time. We hope everyone will make arrangements to attend this special informative meeting. Thank you. Charlie & Dewey

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 7, 2003

SPECIAL JOINT MEETING

The Senate Agriculture/Environment/Natural Resources Committee met jointly with the House on Wednesday, May 7 2003, at 11:00 a.m. in Room 643, Legislative Office Building. Senator Albertson and Rep. Dewey Hill, chairmen presided and there were thirteen senate members present.

Sen. Albertson called the meeting to order, welcomed all members and guest, and recognized the Pages. Rep. Hill made welcoming remarks and also thanked members and guests.

Mr. Billy Ray Hall, NC Rural Center, Agricultural Advancement Consortium made his presentation. (Copy attached).

Mr. Billy Carter, Tobacco Trust Fund Commission made his presentation. (Copy attached)

Chairman Hill made comments on both presentations and thanked Mr. Hall and Mr. Carter. Sen. Lucas asked how they spread the word about their program. Mr. Carter recognized Mr. William Upchurch to address her inquiry. Sen. Kinnaird asked what happens when someone gets out of quota program and or out of the Commission. Mr. Carter responded. Sen. Kinnaird shared that her county had applied for a grant but wasn't awarded and should they try again. Mr. Carter explained how they have limited funds and can't always welcome every that applies and they should re-apply. Sen. Allran asked about application deadlines, how much money is available and when will decisions be made. Mr. Carter addressed his inquires. Sen. Albertson questioned if and when there is a tobacco buy-out program how will this affect the funds. Mr. Carter replied.

A catered Bar-b-que lunch was provided by the Rural Center and the meeting recessed at 11:50 for lunch.

Presentations continued after lunch by Mr. Lawrence Davenport, Board Chairman, Gold LEAF, (copy attached). Ms. Valeria Lee, President, Gold LEAF, made additional remarks. Rep. Mitchell asked about a certain type of melons and grape production. Mr. Davenport and Ms. Lee both responded. Sen. Lucas asked why individuals can qualify but how scholarships can be given. Ms. Lee explained that grants are given to community colleges, which in turn goes toward scholarships. Rep. Culp asked how goat industries get assistance. Ms. Lee explained how the co-op extension ties into this. Rep. Warren commented and gave thanks to the Gold LEAF Foundation for their hard work. Sen. Jenkins asked if loans are not permitted due to

federal regulations and Ms. Lee explained their policy is not to have any direct loans. Their business is treated as investments.

Sen. Albertson thanks members and the guest speakers again for coming today.

Time expired and the meeting adjourned at 1:00 pm.

Sen. Charlie W. Albertson, Chairman, Senate

Cindy J. Brooks, Committee Clerk, Senate

North Carolina General Assembly
Senate Chamber
State Legislative Building
Raleigh 27601-2808

SENATOR CHARLES W. ALBERTSON
10TH DISTRICT

OFFICE ADDRESS: ROOM 525, LEGISLATIVE OFFICE BUILDING
RALEIGH, NC 27601-2808
TELEPHONE: (919) 733-5705
(919) 715-8329 FAX

HOME ADDRESS: 136 HENRY DUNN PICKETT RD.
BEULAVILLE, NC 28518

COMMITTEES:

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES, CHAIRMAN
APPROPRIATIONS/BASE BUDGET, VICE CHAIRMAN
APPROPRIATIONS/NATURAL & ECONOMIC RESOURCES, VICE CHAIRMAN
FINANCE
JUDICIARY I
PENSIONS & RETIREMENT AND AGING
RULES & OPERATIONS OF THE SENATE
STATE & LOCAL GOVERNMENT & VETERANS' AFFAIRS
WAYS & MEANS

MEMORANDUM

TO: The Gold LEAF Board Members
The Tobacco Trust Fund Board Members
Sen. Marc Basnight, President Pro Tempore
Speaker Jim Black
Speaker Richard Morgan
Lt. Governor Beverly Perdue
Senate Agriculture/Env/Nat. Resources Committee Members
House Agriculture Members
Agriculture Advancement Consortium

FROM: Sen. Charlie W. Albertson, Senate Ag/Env/Nat. Resources Chairman

DATE: April 28, 2003

RE: Agricultural Investments Meeting – Joint Senate and House Ag. Members

There will be a Joint Agriculture Committee Meeting on Wednesday, May 7, 2003 from 11:00 a.m. until 1:00 p.m. in Room 643, Legislative Office Building. We are excited to have the opportunity to hear from Mr. Larry Wooten, Vice-Chair, Agriculture Advancement Consortium; Mr. Billy Carter, Commission Chairman, Tobacco Trust Fund Commission; and Mr. S. Lawrence Davenport, Board Chairman, Golden LEAF, Inc. Also present with us will be Ms. Valeria Lee, President, Golden LEAF, Inc. and Mr. William Upchurch, Executive Director, Tobacco Trust Fund Commission This will be an informative question and answer session for our members.

The Agricultural Advancement Team has worked with us in coordinating this and they will be providing a Bar-b-que lunch for us during this time. Enclosed you will find a copy of the agenda. As you can see we will be operating on a tight time frame, however, we hope that each of you will be able to come and join us. Please call my office if you should have any questions. On behalf of Rep. Dewey Hill, House Agriculture Chairman, and myself, we look forward to seeing you on Wednesday, May 7th.

Enclosure-Agenda

CC: Rolf Blizzard, Sen. Basnight's Office
Sabra Faries, Speaker Morgan's Office
Chad Lowry, Speaker Black's Office

Senate Agriculture / Environment / Natural Resources Committee
House Agriculture Committee

Presentations on Agricultural Grants and Investments

Wednesday, May 7, 2003

Legislative Office Building Room 643

Chairs:

Hon. Charlie Albertson

Hon. Dewey Hill

Agenda

11 am	Welcome	Hon. Charlie Albertson
11:10	Agricultural Advancement Consortium Overview	Billy Ray Hall
11:20	Question & Answer	Hon. Dewey Hill
11:25	Tobacco Trust Fund Commission Presentation	Billy Carter
11:45	Tobacco Trust Fund Commission Q&A	Hon. Dewey Hill
11:55	Lunch	
12:30	Golden LEAF Presentation	Lawrence Davenport
12:50	Golden LEAF Q&A	Hon. Charlie Albertson
1 pm	Adjourn	Hon. Dewey Hill

Agricultural Advancement Consortium Presentation

Presented by Billy Ray Hall
Joint Meeting of the Senate Agriculture / Environment / Natural Resources Committee
and the House Agriculture Committee
Wednesday May 7, 2003

Agricultural Advancement Consortium

Lois Britt, Chair

Larry Wooten, Vice Chair

Billy Ray Hall, Secretary / Treasurer

1

Agricultural Advancement Consortium

The consortium is a 25-member board, composed of North Carolina's foremost leadership in agriculture, business and public policy. Its purpose is to develop a shared vision for farming in North Carolina and to coordinate prudent actions to improve farming's long-term vitality.

2

Membership

Lois Britt, Murphy-Brown, LLC (Chair)
Larry Wooten, North Carolina Farm Bureau (Vice Chair)
Billy Ray Hall, Rural Center
Hon. Charles Albertson, N.C. Senate
Hon. Dewey Hill, N.C. House of Representatives
James Oblinger, Dean, NCSU College of Agriculture and Life Sciences
Alton Thompson, Dean, NC A&T College of Agriculture
Faylene Whitaker, Farmer, Randolph County
Robert Caldwell, N.C. State Grange
John Adams, Farmer, Greene County
John Ashe, Farmer, Rockingham County
Betty Bailey, Rural Advancement Foundation International - USA
Hon. Meg Scott Phipps, Commissioner of Agriculture
Jim Fain, Secretary of Commerce
Lisbeth Evans, Secretary of Cultural Resources
William Ross, Secretary of Environment & Natural Resources
Dale Bone, Farmer, Edgecombe County
John Cooper, USDA Rural Development
Lawrence Davenport, Chair, Golden LEAF
Billy Carter, Chair, Tobacco Trust Fund Commission
Ronald Jackson, Farmer, Sampson County
O.C. Jenkins, Farmer, Columbus County
Gordon Meyers, N.C. Citizens for Business & Industry
Cecil Settle, N.C. Foundation for Soil and Water Conservation Districts
Richard Jones, Wachovia Bank

Origins

In response to the recommendation of the Rural Prosperity Task Force, the N.C. General Assembly authorized the establishment of the Agricultural Advancement Consortium during its 2000 session

4

Goals

- advocate for legislation at the state and national levels that will positively affect North Carolina's farm communities
- coordinate and promote practical agricultural research and demonstration efforts with a view towards capturing opportunities and innovations in marketing and production
- document the impact of farming on North Carolina's economy, environment and culture.

5

Funding

Funding is provided by the General Assembly to cover the basic costs of staff, research, meetings and other operating expenses of the consortium.

Appropriations:

FY 01	$250,000.00
FY 02	$200,000.00
FY 03	$200,000.00
FY 04	$190,500.00

6

Staff

The consortium is staffed by the Rural Center.
For information, contact:

Charles Hall

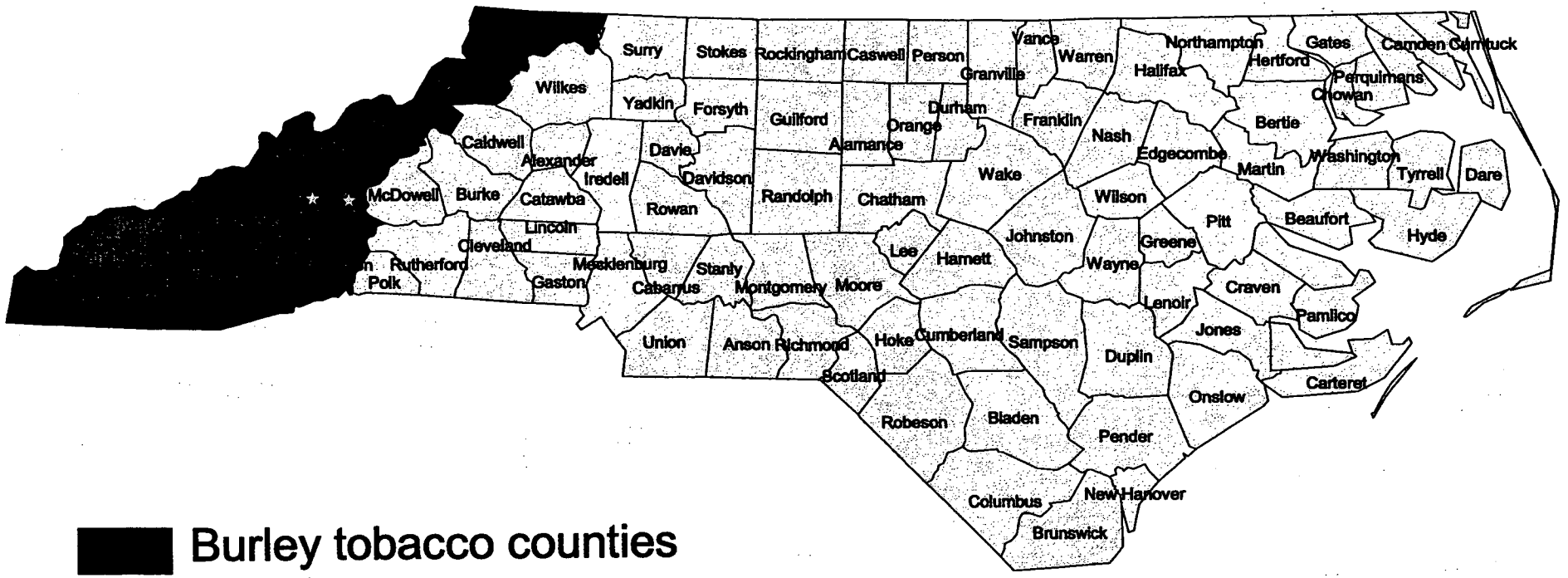
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N.C. Rural Economic Development Center
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Raleigh, NC 27610
Telephone: 919-250-4314
Fax: 919-250-4325
E-Mail: chall@ncruralcenter.org

7

Major Accomplishments

8

Burley Tobacco Production Counties



Burley tobacco counties

counties

Burley Marketing Center
Fall 2001

- Funded by a Tobacco Trust Fund Commission grant and sponsored by the Agricultural Advancement Consortium
- Two auction warehouses operated successfully in Asheville in the 2001 and 2002 seasons.
- Handled 5.4 million pounds of burley tobacco in the inaugural 2001 season and 5.2 million pounds in the 2002 season, or about 70% of the N.C. burley crop.
- In 2001 and 2002, the grant increased farmer income by nearly $700,000 that would otherwise have been paid in fees.

9

Disaster Relief
2001

- Led effort to distribute $6.6 million to farm victims of Hurricane Floyd
- Supported farm financial counseling and outreach program through:
  - Rural Advancement Foundation International –USA
  - Land Loss Prevention Project
  - North Carolina Department of Agriculture
  - Coalition of Farm and Rural Families
  - Cooperative Extension Service

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Research & Demonstration Grants

- FY 2002 – nine projects totalling $135,000
  - Specialty and alternative crops
  - Biodiesel and value-added ag products
  - Internet-based marketing strategies
  - Farmer's cooperatives
- FY 2003 – six projects totalling $120,000
  - Increased access to new or existing markets
  - Lower on-farm production costs

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FY 2002 Research Grants

North Carolina Department of Agriculture *Mountain Microgrants Specialty Crop Program*	$20,000
Carolina Farm Stewardship Association *National Organic Standard Training Seminars*	$15,000
Rural Advancement Foundation International *On-Farm Participatory Research Projects*	$25,000
North Carolina Department of Agriculture *Appalachian Food Ventures Feasibility Study*	$15,000
Central North Carolina Nursery Growers Association *Cooperative Marketing Strategy*	$20,000
Grain Growers Cooperative *Biodiesel Feasibility Study*	$10,000
NC Farm Bureau Legal Foundation *Farm Labor Procurement Non-Profit*	$15,000
Southern States Cooperative Foundation *New Generation Cooperative Development*	$15,000

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FY 2003 Research Grants

NC Department of Agriculture *Farmstead Dairy Cheese Development Program*	$20,000
New River Community Partners *New River Basin Agricultural Marketing Initiative*	$20,000
NC Christmas Tree Association *North Carolina Fraser Fir Brand Identity Promotion*	$20,000
NC Coalition of Farm & Rural Families *Improving Farm Profits by Using Plasticulture* ***And Pot-in-Pot Techniques***	$20,000
Operation Spring Plant *Market Research and Development for Small Family Farmers*	$20,000
Rural Advancement Foundation International-USA *Efficacy and Impact of Advocacy Services For Farmers in North Carolina*	$20,000

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Impacts and Leverage 2002

- FY 02 Research and Demonstration Grants –
  - $15,000 matched Advantage West funding 1:1 to produce feasibility study on a value-added food processing facility in Buncombe Co., and leveraged a further $750,00 in grants received to date.
  - $10,000 in addition to $50,000 from Golden LEAF purchased a feasibility study for a biodiesel production facility, resulting in $10 million in equity commitments.
  - $20,000 extended an initial $90,000 speciality crops microgrants program to three additional farmers.

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Impacts and Leverage 2003

- FY 03 grants –
  - $120,000 to six awards leveraged $289,500 in matching funds
  - High priority placed on developing promising agricultural enterprises

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Benchmark Report on Agriculture 2003 - 2004

- Document statewide trends in agriculture
- Examine structural changes in North Carolina's agricultural economy and culture
- Results to be released in phases beginning in Fall 2003

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Agricultural Advancement Consortium

Contents of this page:
Background : **Project overview** : **Funding** : **Members** : **Contact**

Background

Agriculture remains a vital sector of North Carolina's economy. Sales of products from the farm totaled $7.4 billion in 2000, and this figure has increased every year. The sale of farm products provides raw inputs to the state's food, fiber and forest product manufacturing industry. When the value added to North Carolina farm products by processing, manufacturing, distribution, wholesale and retail is tallied, North Carolina farms are shown to be the first link of a value chain totaling $62 billion.

The state's farming community, however, continues to be challenged by a number of powerful forces, including stagnant commodity prices, natural disasters, regulatory pressures, and events in foreign markets. As a result, the number of farms and the number of farm jobs are declining rapidly. One underlying cause may be the small percentage of the value of retail food products that is retained by the farmer – only about twenty cents on the dollar. While the value of all agribusiness-related production and distribution continues to increase in North Carolina, the farmer's share has remained relatively flat. Farm commodity prices have fallen and in some cases plummeted. In one well-known instance, hog producers saw sales drop by $800 million from 1997 to 1998. During that year, the four counties of Sampson, Duplin, Jones and Pender – the state's most productive agricultural area – experienced a $387 million loss in farm income.

The agricultural sector is dealing with fundamental changes that portend a revolution in how farmers work, produce, market and manage their crops and farms. Declines in the tobacco quota have drastically cut farm income for farmers across the state. Farmers abandon the profession at the rate of one every day. A significant change is taking place in the area of marketing. Rather than selling commodity crops locally to the highest bidder, some farmers are producing products specifically for the supply chains of major processors, wholesalers, and retailers. The products sold are typically produced according to exacting customer specifications. Farmers are discovering that changing

consumer preferences are creating niche market opportunities for new food crops and value-added products, and that farms can find profits in non-traditional, non-food products. Commodity crops are still profitable for many. Producers of these crops are learning to employ new technologies and risk management tools to avoid boom-bust cycles and to protect razor-thin margins.

Yet, farmers are not sitting idly by as the fundamental structure of agriculture changes. A growing number of farmers rely on computers and the Internet, on new product development, on business, finance and marketing plans for new ventures, and other technologies and activities commonly associated with finance or high-tech manufacturing. Farmers look to new crops and alternative market opportunities to increase sales and income. The state's agricultural leadership is keeping pace. To turn the tide of agricultural declines and to prepare for the challenges of the 21st century, the Governor's Rural Prosperity Task Force recommended in February 2000 the creation of an Agricultural Advancement Consortium to seek ways to keep farming viable.

Overview

In response to the recommendation of the Rural Prosperity Task Force, the N.C. General Assembly authorized the establishment of the Agricultural Advancement Consortium during its 2000 session.

The consortium is a 25-member board, composed of North Carolina's foremost leadership in agriculture, business and public policy. Its purpose is to develop a shared vision for farming in North Carolina and to coordinate prudent actions to improve farming's long-term vitality.

The consortium's primary goals are to advocate for legislation at the state and national levels that will positively affect North Carolina's farm communities, to coordinate and promote practical agricultural research and demonstration efforts with a view towards capturing emerging opportunities and innovations in production and marketing, and to document the impact of farming on North Carolina's economy, environment and culture.

Major Activities and Accomplishments:

Burley Tobacco Marketing Center – the center, which is funded by the Tobacco Trust Fund Commission and is sponsored by the Agricultural Advancement Consortium, handled 5.4 million pounds of burley tobacco in the inaugural 2001 season and 5.2 million pounds in the 2002 season, or about 70% of North Carolina's burley crop. Burley growers received on average $1.93 per pound in 2002, comparable to prices earned in Virginia and Tennessee warehouses. The center is located in Asheville. Without it, burley growers would have to travel to out-of-state auctions or contract receiving stations to market their crop.

Benchmark Report on Agriculture – the report will examine

the critical issues facing North Carolina farmers and farm families and explore where North Carolina's agricultural sector stands amid the transition to a new economy. The report will look at how agricultural policymakers can respond to the unique challenges facing our farmers.

Research & Demonstration Grants -- A key function of the Consortium has been to fund projects and studies that lead to new agribusiness opportunities.

In the FY 2002 grants round, the Agricultural Advancement Consortium awarded a total of eight research grants totaling $125,000 to projects that demonstrated innovations in specialty and alternative crops, provided opportunities for adding value to farm commodities, promoted the development of farmers' cooperatives, and promoted the use of on-farm internet and computer technologies.

In the FY 2003 grants round, the consortium funded six projects totaling $120,000 that enhance farm profitability by providing access to new and existing markets or by lowering on-farm production costs. FY 2003 award winners include:

N.C. Coalition of Farm and Rural Families
Project title: Improving Farm Profits Using Plasticulture and Pot-in-Pot Techniques
Operation Spring Plant
Project title: Market Research and Development for Small Family Farmers
N.C. Christmas Tree Association
Project title: North Carolina Fraser Fir Brand Identity Promotion
NC Department of Agriculture & Consumer Services, Agribusiness Development Office
Project title: Farmstead Dairy Development Program
New River Community Partners
Project title: New River Basin Agricultural Marketing Initiative
Rural Advancement Foundation International - USA
Project title: Efficacy and Impact of Advocacy Services for Farmers in North Carolina

Funding

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Home Page :: About the Center :: News and Events :: How to Contact Us :: Research & Demonstration :: Grant & Loan Programs :: Leadership Development :: Rural Data Bank :: Publications Catalog :: Resource Guide

N.C. Rural Economic Development Center
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Tobacco Trust Fund Commission Presentation

Presented by Billy Carter, Commission Chairman

TOBACCO TRUST FUND COMMISSION

May 7, 2003

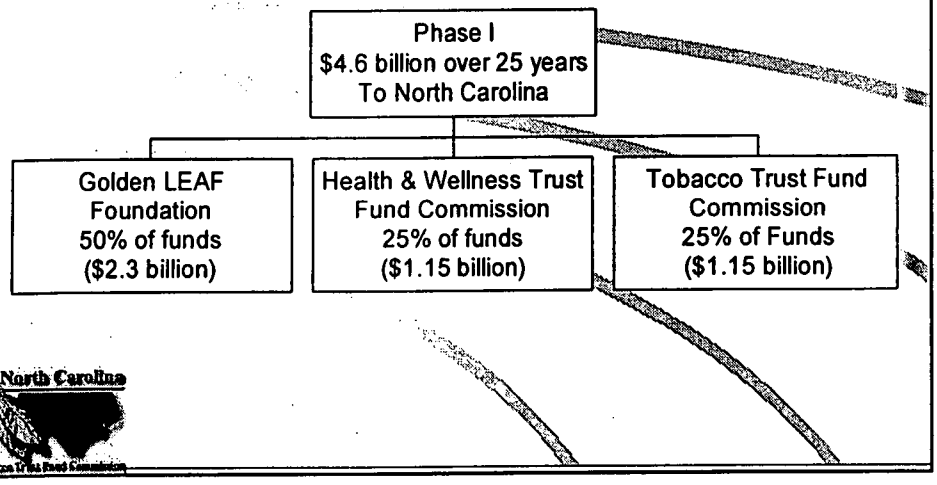


MASTER SETTLEMENT AGREEMENT "MSA"

- Completed during the Fall of 1998
- Agreement between 46 states and the tobacco companies
- $206 billion over 25 years
- Phase I of the MSA



NORTH CAROLINA PHASE I



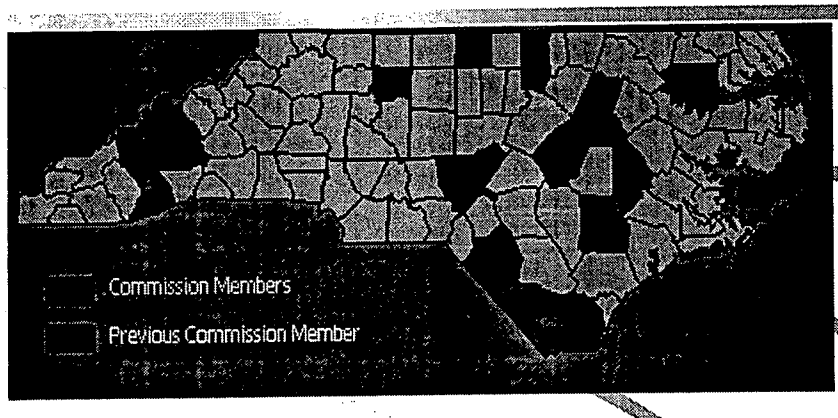
TOBACCO TRUST FUND COMMISSION

BOARD MEMBERS

- 18 member board appointed equally by the Governor, Speaker and President Pro Tem
  - 5 flue cured tobacco farmers
  - 1 flue cured quota owner who is not a farmer
  - 1 burley tobacco farmer
  - 1 burley tobacco farmer who is a quota holder
  - 1 person in or displaced from tobacco related employment
  - 9 at-large appointees



COMMISSION MEMBERS





PARAMETERS

- State Commission
- Not limited to interest earnings or reserves
- Administratively located at NCDA&CS
- Function independently of the Commissioner of Agriculture



STATUTORY PURPOSES OF THE COMMISSION

- Program that benefits the **tobacco-related segment** of the agricultural economy.
- Alleviate and avoid unemployment.
- Preserve and increase local tax base.
- Encourage the economic stability of participants in the State's agricultural economy.
- Use natural resources optimally.



EXAMPLES OF POTENTIAL PROGRAMS

- Modernization of farming equipment
- Conversion of existing equipment to comply with environmental/regulatory requirements
- Conversion/Replacement of equipment to cultivate other more profitable crops
- Etc.....



EXAMPLES OF FUNDED GRANTS



BARN RETROFIT PROGRAM

- $41 million
- Conversion to heat exchanger technology
- Lowered Tobacco-Specific Nitrosamines
- Administered by Stabilization
- ~ 68 counties / 6,540 applications / 24,377 barns



NCDA/NCSU RESEARCH STATIONS

- ~ $168,000
- Conversion of barns for experimental purposes
- Keeps research in check with industry standards



BURLEY MARKETING CENTER

- ~ $ 2 million over two years
- Opened November 13, 2001
- Last two burley auction warehouses
- Incorporates the Pros of a receiving station into an auction environment
- Put $ 1.4 million back in the farmers' pocket and the local economies.
- ~ 19 counties / 10.7 mil. lbs. / 60 - 65% of N.C. burley.



FCTCC GRANT

- $ 2.050 million for 2002 Marketing Season
- Helps alleviate a burden placed on the farmer in recent years
- Assist farmers by offsetting some of their packaging expenses (wire, slip sheets, etc..)
- Half cent per pound sold
- Checks to be mailed Spring of 2003



2002 GRANTING CYCLE

- Up to $ 3 million
- Received 42 applications for ~ $13 million
- Approved a total 12 grants for ~ $2.8 million



2002 GRANTING CYCLE

CATEGORY	AMOUNT
Diversification	$ 1,400,000
Education/Training	$ 700,000
Marketing	$ 350,000
Natural Resources	$ 350,000



2002 GRANTING CYCLE RECIPIENTS

RAFI
Columbus County
Martin Co. EDC
N.C. A&T
Carolina Farm Stewardship
N.C. Tobacco Found.
Johnston Co. Farmer's Mkt.
Stokes County
ASAP
N.C. Ag. Found.
N.C. Found. for S&W Dist.
TGANC

North Carolina
Tobacco Trust Fund Commission

N.C. FOUNDATION FOR SOIL & WATER CONSERVATION DISTRICTS



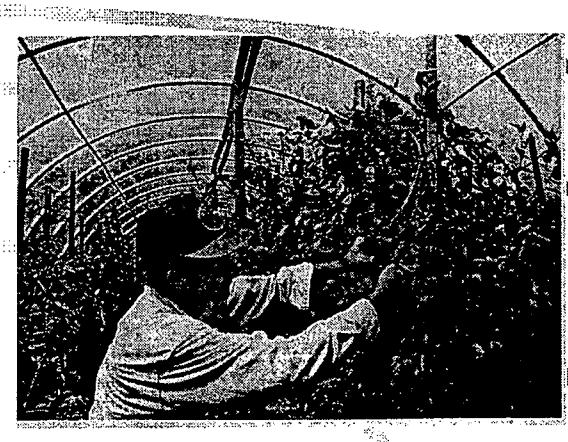
North Carolina
Tobacco Trust Fund Commission

AUTOMATION AND OUTREACH GRANT

- $350,000
- Statewide impact
- Helps farmers implement nutrient plans for control of nitrogen and phosphorus
- Provides for needed computer hardware in county offices
- Conducts outreach programs to educate farmers of the need and procedures

North Carolina

RURAL ADVANCEMENT FOUNDATION INTERNATIONAL "RAFI"



North Carolina

TOBACCO COMMUNITIES REINVESTMENT FUND

- $300,000
- In February 2003, awarded 20 cost-share grants to farmers and community groups working in 11 counties in North Carolina.
- Assists with the establishment of new enterprises, which demonstrate ways to replace lost tobacco income.
- Provides farmers and communities with an opportunity to try innovative strategies to obtain more value from agricultural production.



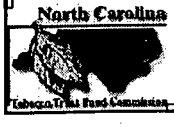
2003 GRANTING CYCLE

- Up to $4 million available for cycle
- Applications to disburse in late May 2003
- Application deadline August 1, 2003
- Awards announced in October 2003



2003 FUNDING PRIORITIES

- Agri-Economic Development
- Product and Marketing Diversification Initiatives
- Displaced Tobacco Worker Workforce Development
- Conservation of Natural Resources



PLANNING FOR THE FUTURE.....

Give the man a fish and feed him for a day.....teach him how to fish and feed him for a lifetime.



PROGRAM INITIATIVES

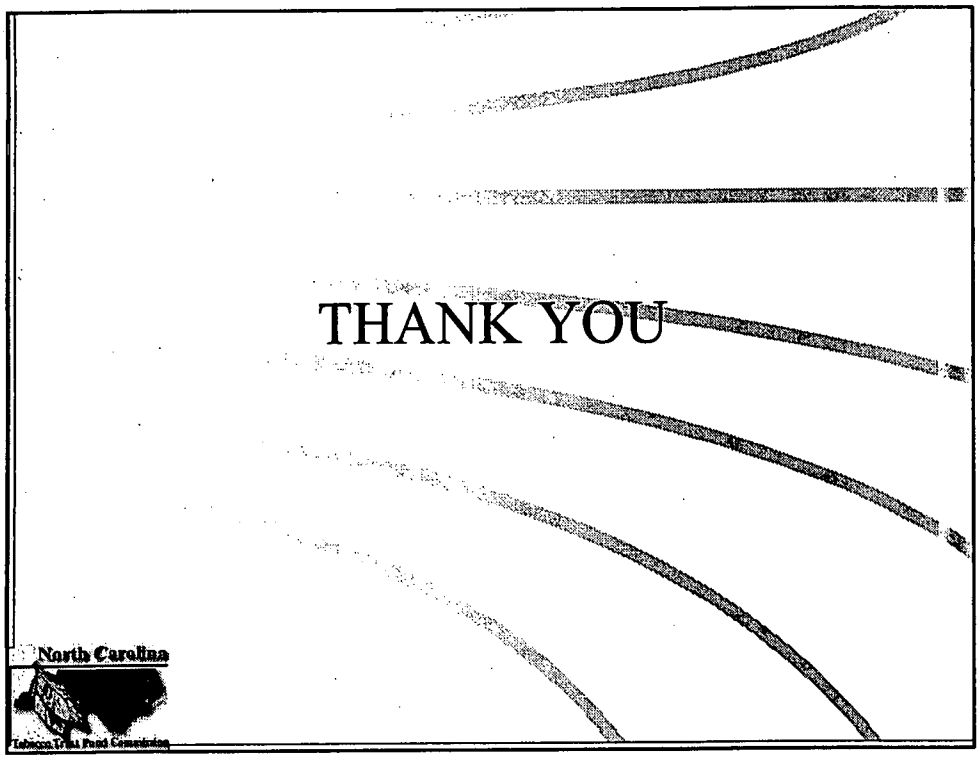
- AGRI-VENTURE FUND
- NEW MARKETS INITIATIVE
- WORKFORCE DEVELOPMENT
- CONSERVATION OF NATURAL RESOURCES

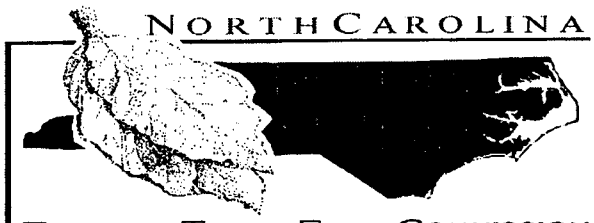


IN CONCLUSION.....

- The Commission has lost $120 million to the budget shortfall
- Placed ~ $45 million in 93 counties
- Thankful for the support by the Members in this room today
- Looking forward to serving North Carolina in the future.....




THANK YOU
North Carolina



TOBACCO TRUST FUND COMMISSION

www.tobaccotrustfund.org

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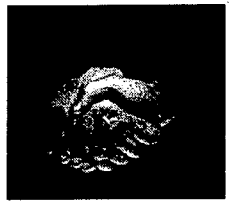
Revised-2/18/02

Golden LEAF Presentation

Presented by Lawrence Davenport, Board Chair

GOLDEN LEAF, INC

(Long-term Economic Advancement Foundation)



Rocky Mount, North Carolina

Golden LEAF Foundation

- Receives and distributes a portion of the funds from the settlement of litigation involving the manufacture of tobacco products.
- Created in 1999 as a non-profit corporation by Court Order in the consent decree resolving litigation initiated by the NC Department of Justice.
- Helps tobacco dependent counties and impacted communities deal with the long-term consequences of the decline of the tobacco industry.

Golden LEAF Foundation

Purpose

- To make grants and support organizations that promote the social welfare of North Carolina's citizens and to receive and distribute funds to lessen the economic impact of changes in our tobacco economy.
- The Foundation's objective is to assist rural communities as they adapt to changing economic conditions and as they make a transition to more diversified economic bases.

Golden LEAF Foundation

Board of Directors

- Lawrence Davenport, Chair
  Greenville
- Michael A. Almond
  Charlotte
- Erskine Bowles
  Charlotte
- Jesse Thomas Bunn
  Raleigh
- Julius Chambers
  Durham
- William Clarke
  Asheville
- Lisbeth C. Evans
  Winston-Salem
- John H. Harmon
  New Bern
- Richard Holder
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  Rocky Mount
- John D. Merritt
  Wilmington
- David T. Stephenson, III
  Lumberton
- William Ward, Jr.
  Ahoskie
- Debbie E. Worley
  Princeton

Golden LEAF Foundation

Staff

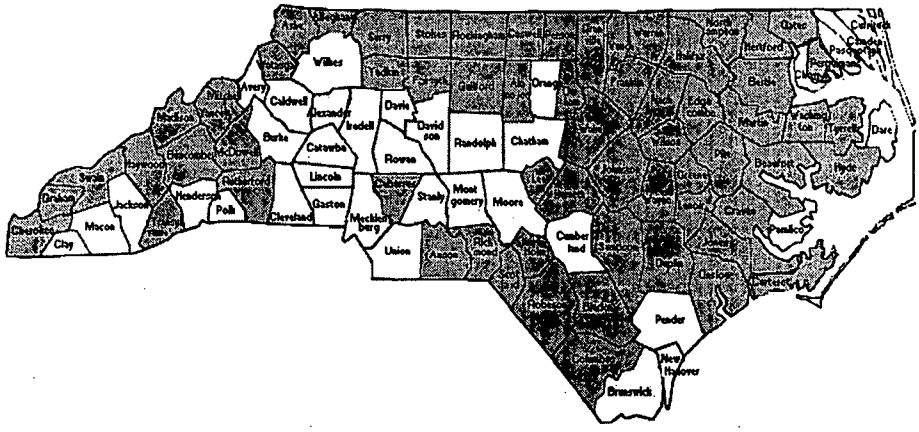
- **Valeria Lee**
  President
- **Mark Sorrells**
  Vice President of Programs
- **Joseph Gray**
  Vice President of Finance and Operations
- **Alexis Vaughn**
  Vice President of Strategic Initiatives
- **Courtney Mills**
  Program Associate
- **Rhea Barnes**
  Administrative Assistant

Golden LEAF Foundation

Serves All North Carolinians

While we serve all North Carolinians, our mandate is to assist areas which are the most dramatically affected by the change on our tobacco economy, especially tobacco dependent regions of the state.

Projects serving communities that have historically relied on tobacco and those that are economically distressed receive the highest priority.



Project Priorities

During the current funding cycle, highest priority will be given to projects in the areas of

- **Agriculture**
- **Economic Development**
- **Workforce Preparedness**

Educational activities which complement these priorities will also be of interest.

Project Objectives

We will look for projects that

- Expand market opportunities for agricultural products
- Assist farmers with cost-effective production techniques that result in increased profitability
- Support for farmers who wish to transition into alternative agricultural enterprises

Project Objectives

continued

- Economic support for initiatives that result in job creation and job retention in tobacco dependent and low wealth communities
- Support for training initiatives that target job opportunities of new and expanding industries and businesses looking to locate in tobacco dependent and economically distressed areas of the state
- Improved small business performance in tobacco dependent and economically distressed areas through responsive and effective technology and business training

Golden LEAF Foundation

Low priority will be placed on proposals seeking funding for:

- Endowments
- Capital Campaigns
- Construction Projects
- Infrastructure
- Debt
- Revolving Loan Funds

The Golden LEAF Foundation *is*

- In business to help people stay on the farm and produce needed food and fiber
- To help people forced from the farm or from tobacco-related industries to compete for and obtain jobs that ensure a high quality of life

The Golden LEAF Foundation

- *Cannot make grants to corporations and private for-profit businesses.*
- *Cannot make grants to individuals.*

Grant Proposal Guidelines

- Applicant must be 501 (c) (3) organization or a government agency
- Application must be submitted on our form (forms can be downloaded from our website, www.goldenleaf.org)
- Provide the proposal narrative & other information requested in the guidelines

We have an open-door policy.
Please call if you have questions.

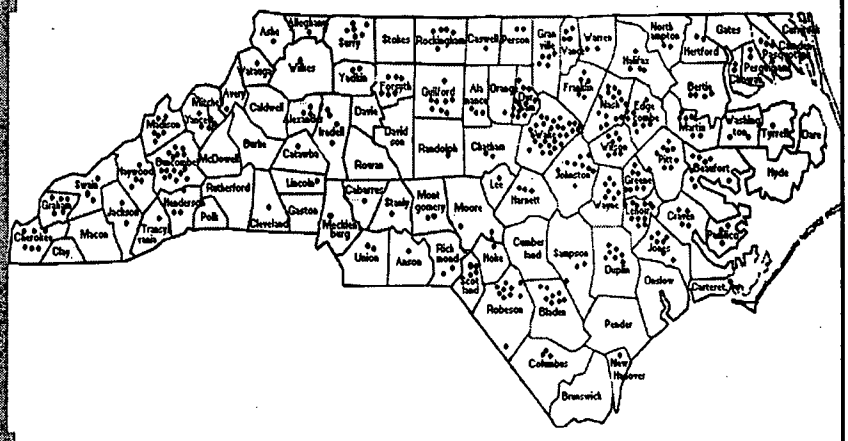
Economic Stimulus Grants

- $10 million reserved for Jobs Development Grants
- $5 million reserved for Site Certification Grants
- Application Deadlines are: May 1
  October 1
  February 1

Golden LEAF Awards

Project Area	Number	Amount
Agriculture	84	$11,191,855.08
Economic Development	45	$12,821,663.00
Workforce Preparedness	20	$ 3,115,402.46
Community Assistance & Education	35	$ 5,106,751.00
TOTALS	184	$32,235,671.54

Location of Golden LEAF Grant Organizations



Red represents Scholarship recipients

Black represents all other grantees

Golden LEAF Foundation grants already are creating jobs, providing job training, funding research on new crops, developing new markets for agricultural products, prompting economic development, and much more.

GOLDEN LEAF, INC

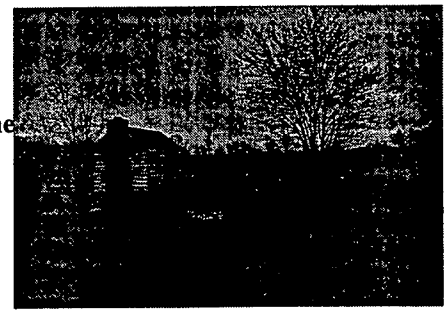
(Long-term Economic Advancement Foundation)

Support for the development of the wine grape industry in the Yadkin Valley

- Two grants totaling $280,000 have been used by Surry Community College to develop a Viticulture and Enology training program targeting area tobacco growers.
- Investment in the development of the industry has resulted in more than $10 million investment in the area, including new vineyards, restaurants, and expansions in agricultural supply businesses.
- A grant of $280,000 was made to the Old North State Winegrowers Foundation to establish a market for area wine grapes through the creation of a winery in downtown Mount Airy.

Positioning for the Future: Agriculture

- 1,791 farmers have received training in alternative crop production.
- More than 760 growers are participating in alternative crop production projects supported by Golden LEAF.
- In 2002 10 farmers grew 80 acres of Sprite melons that sold for $1,000,000.
- 7 limited resource farmers participating in upscale pork production sold 751 pigs at the first sale for $80,241.
- 8 Madison County farmers produced $121,792 in additional income from alternative crops.



Helping farm communities transition through:

- Specialty crops research – sprite melons, peppers, etc.
- Development of new nursery crops – weeping river birch, evergreen dogwood trees, stewartias, etc.
- Medicinal and edible herbs and mushroom cultivation
- Organic vegetables and fruits
- Upscale pork and goat meat production
- Ornamentals including wild crafted and new varieties
- Value-added opportunities including Biodiesel, food based businesses, entrepreneurial training, & vertical integration into value-added processing

Creating Clusters of Opportunity

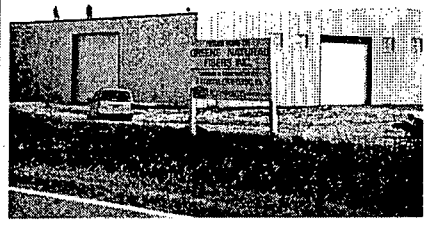
Franklin County Committee of 100 – Flextronics

- 1,900 jobs created or retained with average annual salaries of $32,240 and $20 million of new investment
- Project strengthens NC's competitiveness in the IT industry by creating a local source of electrical & optical components for RTP companies.

NC's Eastern & Northeastern Regional Partnerships

- Training for 1,450 jobs created at BSH Home Appliance and 154 jobs created from suppliers locating in eastern NC
- $241 million in new investment

Economic Development



- GLF has assisted state & local economic development agencies with creating or retaining 10,984 jobs over 3 years of grantsmaking
- New investment resulting from these activities total $654,274,503
- Self-Help Credit Union has utilized GLF funding to make 46 loans totaling $10,202,760 in 19 tobacco dependent communities that created or maintained 258 jobs.
- The Rural Center's Capital Access Program has already booked more than 200 loans through participating banks totaling in excess of $8 million and creating or retaining1,000 jobs.

Education

- 599 students from 25 community colleges serving tobacco dependent communities received scholarships to attend curriculum & continuing education classes.
- 4,695 individuals have participated in training aimed at preparing them for specific job opportunities in rural communities.
- 88 individuals received Golden LEAF scholarships to attend 13 of the 16 public universities in NC.

Golden LEAF Foundation

Lessening the economic impact of changes in North Carolina's tobacco economy

- **800 Tiffany Boulevard,**
  Suite 200
  Rocky Mount, NC 27804
- **(252) 442-7474**
  (888) 684-8404
- **www.goldenleaf.org**

GOLDEN LEAF, INC
(Long-term Economic Advancement Foundation)

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(Long-term Economic Advancement Foundation)

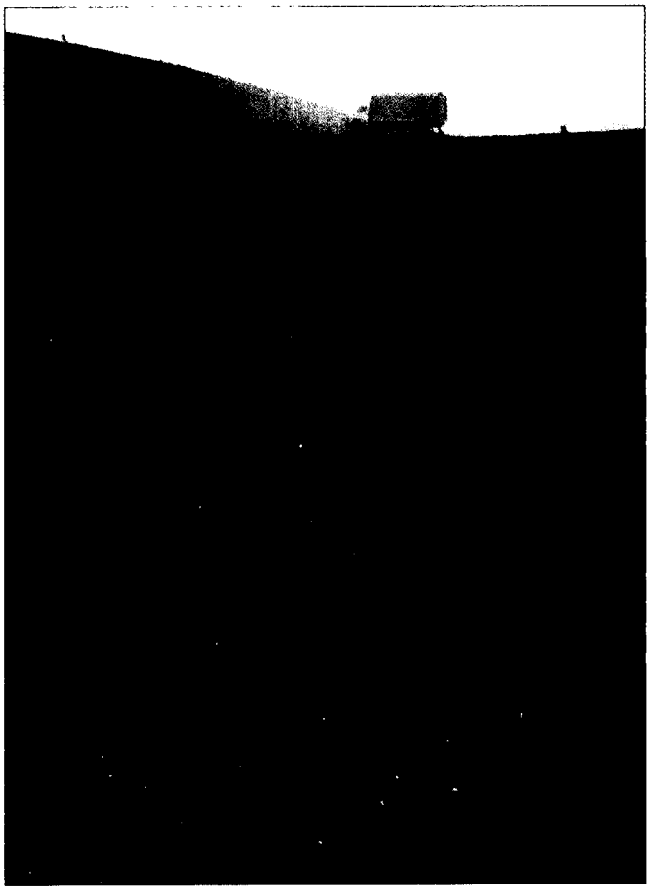


MEASURING UP



GOLDEN**LEAF**

Annual Report 2002



GOLDEN**LEAF**

Annual Report 2002



GOLDEN **LEAF**

INTRODUCTION

Golden LEAF is the only foundation of substantial size operating from a rural base in North Carolina. This is significant, at least during these formative years, because Golden LEAF is in large part about rural people, about jobs for people who have lost jobs, about preserving a way of living and a way of making a living. We are close to many of the people and communities that we serve, and where we are as we begin this Foundation's work makes a statement about who we are.

Over the years these communities have had few philanthropic resources as they have struggled to adjust to changes in the economy and agricultural practices and the continuing inequities that exist between urban and rural areas. Studies show that dollars and other assistance seldom have made their way to the countryside.

Change is inevitable in the rural parts of our state, but we can manage that change so farms continue to be farms, so people have good-paying jobs close to their roots, so "development" is a positive word, and so people remain parts of small communities that nurture them and instill succeeding generations with solid values unique to rural North Carolina—to rural America.

The decline of the tobacco economy has taken its toll in the cities also—on workers in factories, in auction houses, and elsewhere in cities like Winston-Salem and Durham. Golden LEAF is addressing problems in those areas and across the state, but for the first time a major North Carolina foundation is going about its work with its feet firmly rooted in the rich soil of the State's farmland. That says something about Golden LEAF and its mission.

MEASURING UP

As it matures—both in experience and in financial capability—Golden LEAF (Long-term Economic Advancement Foundation) remains focused on a specific purpose—helping tobacco-dependent and impacted communities deal with the consequences of tobacco's changing role in our state.

Throughout this third year of operation, Golden LEAF has maintained a commitment to the long-term advancement of North Carolina, scoring remarkable successes in investments and grants that will serve as major economic building blocks for years to come.

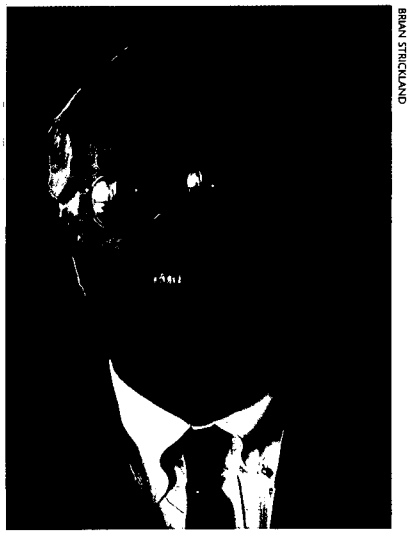
To specifically address the overall decline in North Carolina's economy, Golden LEAF reassessed our programs and approaches. The result: in August 2002, the Foundation announced an $85.4 million economic stimulus initiative of targeted investments and grants—projected to generate more than $350 million in new investments in North Carolina over the next five years, creating some 25,000 new jobs.

Building upon the Foundation's established priorities of agriculture, economic development and workforce preparedness, the economic stimulus initiative includes a major investment in venture funds which targets biotechnology companies that are developing or manufacturing products in North Carolina.

Completing our third grant cycle, the Golden LEAF Board of Directors and staff believe the Foundation truly is measuring up to our challenges—the challenges of remaining accountable to the people of North Carolina, remaining true to our mission of bolstering North Carolina's economy, and ensuring North Carolina's future competitiveness in the global marketplace.

www.goldenleaf.org

Letter from the Chairman



BRIAN STRICKLAND

On behalf of the Golden LEAF Board of Directors, we are pleased to present to you our 2002 Annual Report. As I have said numerous times, Golden LEAF was created with the future in mind. The slate of 2002 Golden LEAF grants attests to our Board's long-term vision and our willingness to accept the risks inherent in searching out and funding the best projects to attain real and permanent economic advancement in North Carolina's tobacco-dependent areas.

Golden LEAF's vision is no coincidence. It is the product of the hard work of fifteen North Carolinians, from the mountains to the coast, who take very seriously the challenge of using the resources of the Foundation most effectively. I thank our Board members, who have given their energy to an intense regimen of research, planning and meetings, putting their hearts and minds into doing what is right for North Carolina. Our Board has made excellent grants to worthy projects—projects that are beginning to pay off and will continue to reap benefits for North Carolina's rural economy.

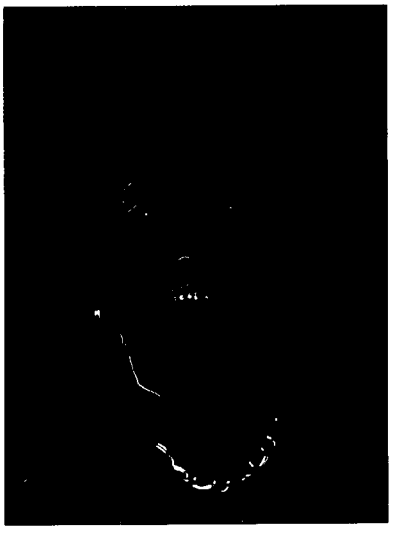
We are pleased to see positive results in the areas of alternative crops and value-added agricultural products, community college and university scholarships, and collaborations between these educational institutions and industry to train the highly skilled workforce we must have to remain competitive. Economic development is indeed a long-term investment, and a critical component of any economic development project is worker training. A trained work force is essential in attracting businesses to North Carolina. Just as important to the small entrepreneur is access to capital. We've given a big boost to hundreds of new and expanding small businesses through several exceptionally successful programs which leveraged a few hundred thousand dollars into millions in loans.

Last summer, our Board spent a great deal of time discussing the drastic decline in North Carolina's economy overall, and the role Golden LEAF could play in addressing it. In August 2002, in a temporary departure from Golden LEAF's policy of making grants only with income from invested funds, our Board introduced an economic stimulus package with two key components. First, we decided to create an $18.4 million grant package from the Foundation's principal, above and beyond our regular annual grant cycle, targeted at four critical economic development issues. Second—and after considerable research and discussion—we decided that we should give consideration to economic development with our investments of principal, as we do in our grantsmaking. For some time, Board members have discussed the tremendous economic potential the life sciences and biotechnology hold for North Carolina. Likewise, the investment potential of the biotechnology industry is exceptionally good. So, after extensive review, we decided to make investments in biotechnology a major Golden LEAF initiative.

We are very proud of our progress over the past three years. As we enter our fourth year, we pledge that Golden LEAF will continue to search out the best applications and make the best decisions possible in both our grantsmaking and our investments, so that our efforts will serve as economic building blocks for the years to come.

S. Lawrence Davenport
Chairman, Golden LEAF

Letter from the President



BRIAN STRICKLAND

As we come to the end of the third Golden LEAF grants cycle, we remain true to the mission of this Foundation. Since its inception, Golden LEAF has been especially visionary in our approach to economic development in North Carolina, looking for transformational opportunities to help tobacco-dependent or economically impacted communities.

Assessing the results of our two previous rounds of grants, we see thousands of jobs created and the tax bases of local communities strengthened. Just as importantly, we have helped farmers remain on the farm. Golden LEAF grants have helped develop alternative crops and value-added processes for existing crops and helped farmers use them to replace lost tobacco income. Workers displaced by the loss of tobacco manufacturing jobs have been provided the valuable skills they need for better jobs in new and developing industries.

These results attest to the value of the Foundation: helping improve the lives of families. Hence, we chose the theme "Measuring Up" for our 2002 annual report. Having taken measure of the needs of our state and awarded Golden LEAF grants accordingly, we are proud to report many positive outcomes.

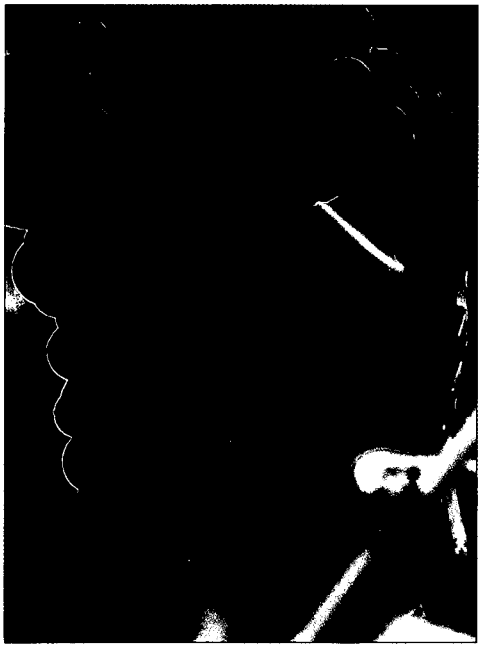
In this report you will find just a small sample of success stories from this year's 84 grants. We selected a cross-section to demonstrate the creativity and resourcefulness of organizations and institutions across the state, as they address our key priorities.

- North and west of Winston-Salem, a wine industry now flourishes in the Yadkin Valley, newly designated the state's first American Viticultural Area. Thanks to Golden LEAF, the valley's several dozen vineyards and wineries have a source for highly trained employees from the Southeast's only two-year program in enology and viticulture at Surry Community College. And a grape-growers cooperative, with many former tobacco farmers as members, is building its own winery in downtown Mount Airy.
- In Johnston County, two of the county's top three employers have teamed up with Johnston Community College and the Johnston County Schools to provide cutting-edge training. One company donated land for a training center the college will run to give workers the skills they need to succeed in the state's burgeoning biotechnology industry, and a Golden LEAF grant got it all started.
- Across the state, rural entrepreneurs are getting access to credit they may otherwise not have qualified for, thanks to Golden LEAF grants to capitalize lending programs of the Center for Community Self-Help and the Rural Economic Development Center. Leveraging grant funds as much as 20 to 1, these two programs help former tobacco farmers and workers, and others with good ideas, make their own way, and make jobs for others at the same time.

Our Foundation made its first grants in 2000, and seeing so soon this kind of impact, from these and many other projects, is enormously exciting. It also illustrates the continuing impact Golden LEAF will have, over the long term, of helping North Carolinians deal with the decline of the tobacco economy. We see the wisdom of building on projects, and we see it, too, as evidence of our success and our long-term vision, setting us apart and demonstrating that we, indeed, are making a tangible difference in creating jobs as North Carolina's agriculture and manufacturing sectors shrink.

Valeria L. Lee
President, Golden LEAF

Winemakers and grape growers **in a seven-county area of North Carolina's Yadkin Valley region recently gained recognition and an important marketing tool when the area was named the state's first American Viticultural Area—the U.S. version of the French *appellation d'origine contrôlée*. Land that once grew tobacco now grows grapes as vineyards become increasingly popular and profitable. Many winemakers consider Yadkin Valley the best *terroir*, or wine-grape climate and growing conditions, in North Carolina.**



Yadkin Valley Wine Country

The region is rapidly gaining a reputation for high quality grapes and world-class wines, with production including Riesling, Chardonnay and Viognier white wine grapes, and cabernet and merlot reds. The effort is led by modern wine pioneers—many former tobacco growers—members of the Old North State Winegrowers Cooperative, a beneficiary of Golden LEAF grants since its inception in 2001.

The burgeoning wine industry also has spawned a new academic program at Surry Community College in Dobson, where the Southeast's only viticulture degree program is offered. Dr. Frank Sells, president of the college, says Golden LEAF has been a major impetus in establishment of the program. "I don't see how we could have come this far without their grants," he said. "Our first grant from Golden LEAF helped us get started, and then with growth in student interest, their additional funding helped us expand and modify the program."

Community business leaders characterize the area's blossoming wine industry as a pursuit that has great potential for the Yadkin Valley region. "We believe vineyards will have a major impact on the agricultural economy for years to come," said Ed Shelton of Shelton Vineyards in Surry County. "With tobacco farming on the decline, this is a great way to diversify the farming industry and open doors to new industries in the area. With the development of regional wineries, the tourism industry will ultimately follow."

Dr. Sells agrees. "With the economic impact already being realized, the actual potential is on our doorstep. All

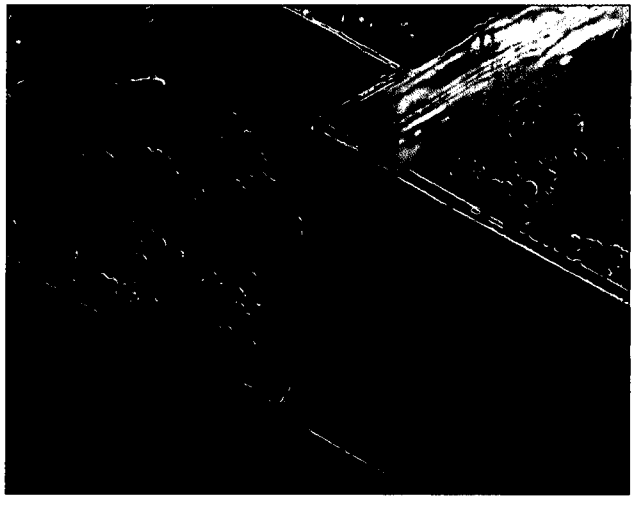
sorts of things tie into winemaking—resorts, hotels, restaurants, entertainment, farm supplies, manufacturing and other essential parts of the industry. We're only on the threshold of what wine production can do for this economy."

Golden LEAF made an initial grant to Surry Community College in 2000 to help develop the wine industry in Surry and neighboring counties. In 2002, Golden LEAF grants were used to expand the college's teaching vineyard and winery and continued development of the area's wine grape industry, including providing equipment to set up Old North State's state-of-the-art winery in downtown Mount Airy. Expected to be operational for the 2003 fall harvest and crushing, the winery will bottle wines produced from cooperative members' grapes under its Carolina Harvest label or the growers' own labels. And the winery's retail shop will also feature other local products, broadening the economic benefit of wine-related tourism to include entrepreneurial efforts in other areas.

"We believe vineyards will have a major impact on the agricultural economy for years to come."

—Ed Shelton of Shelton Vineyards, Surry County

"With the help of Golden LEAF, in a relatively short time we put together a quality program that is unique throughout the country," Dr. Sells said, noting that not only does Surry Community College offer the only viticulture degree program in this part of the country, it has its own campus winery in place to train students in the craft of fine winemaking. "This kind of progress on our part could not have been possible without the kind of support we have received from Golden LEAF," he maintains.



"We're only on the threshold of what wine production can do for this economy."

—Dr. Frank Sells, president of Surry Community College, Dobson

When western Johnston County, **a center of North Carolina's once thriving tobacco trade, found itself becoming a hub of the worldwide biomanufacturing industry, county leaders realized it was time to shift Johnston's economic focus and, ultimately, its identity.**



TANYA CASEY WELLS

Wet lab at site of Johnston Community College's BioWorks program.

Johnston County Industrial Development Corporation

Bayer's manufacturing site in Clayton, employing 1,550 people, is the world's largest plasma fractionation facility. Less than a mile down the road Novo Nordisk, with 350 employees, operates the only insulin production facility in the U.S. "Maintaining the vitality of this diverse industry can play a key role in ensuring the region's future economic health," said Charles Hayes, president and CEO of the 13-county Research Triangle Regional Partnership.

And Johnston County leaders are making sure it happens. "We believe the best incentive we have to offer business is a prepared workforce that needs less training after employment," maintains Linwood Parker, chairman of the county Economic Development Advisory Board. The Board led area business leaders, government and education officials to request funding for the Clayton Skills Training Center, a state-of-the-art biomanufacturing training facility.

Golden LEAF funding for a preliminary design report to help secure construction financing gave the idea a big boost early on. "The resulting grant allowed us to begin designing the training center," said Michael de Sherbinin, director of the Johnston County Economic Development Office. "Thanks to the Golden LEAF grant and our Board of Commissioners, we can assure these companies a reality—not false hope. The BioWorks training center will be in their back yard."

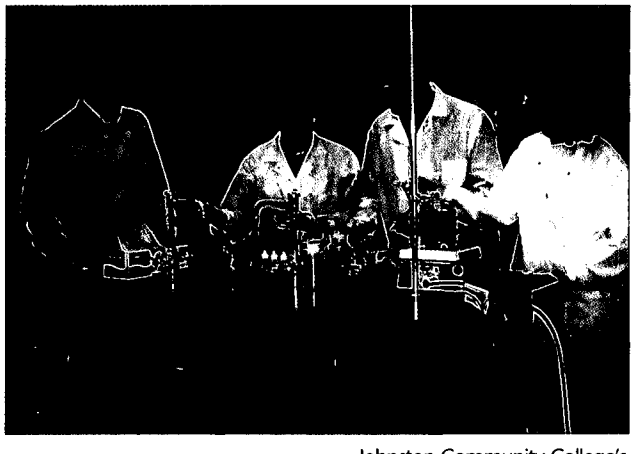
The $3 million-plus facility, being built in cooperation with Johnston Community College and Johnston County Public Schools, will occupy a 28-acre site in Clayton owned by Novo Nordisk. In addition to customized training for the likes of Bayer, Novo Nordisk and the nearby Fresenius Kabi, Johnston Community College anticipates that several other

businesses and industries are poised for significant expansion. JCC's Clayton Skills Training Center stands ready to prepare their workforce, with training at every level, from the BioWorks certificate program through bachelor's degrees offered by N.C. State University.

According to Jim Causby, superintendent of Johnston County Public Schools, a unique partnership was forged between education and the business community in planning this critical work force training facility. Dr. Don Reichard, president of Johnston Community College, adds, "All of education is important, but in terms of economic recovery, it's community colleges that are going to give you the quick turnaround." He continued, "Bayer's CEO said he was not going to hire employees with less than an associate degree. We heard that loud and clear. That's our job."

The Clayton Center: A Collaboration of Business Leaders, North Carolina's Community College and University Systems, and Public Schools

The Clayton center is expected to open in the spring of 2004. Coordinated resources offered by the community college and university system will provide general BioWorks training for new workers and skills upgrade for longtime employees, creating a competitive work force for new biotech jobs in a rural and historically tobacco-dependent community. Thinking ahead, planners designed the facility and curriculum to ensure that training for workers in other industries could also be accommodated.



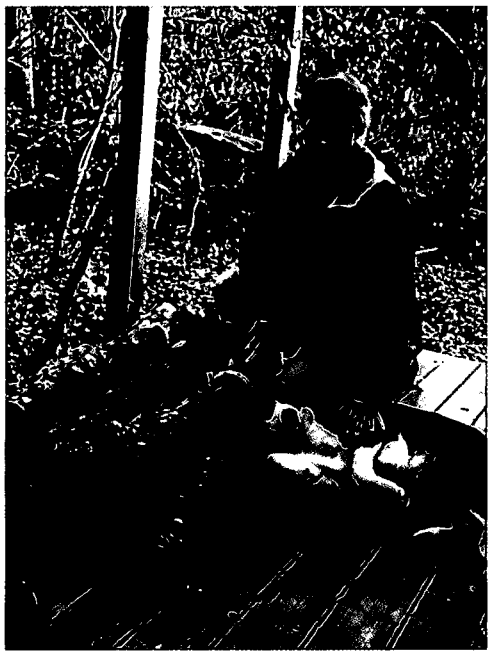
TWYLA CASEY WELLS

Johnston Community College's BioWorks program is currently offered on its Cleveland campus.

Life science, biotechnology and biomanufacturing firms have chosen Johnston County for its proximity to the Research Triangle Park and major transportation routes, affordable land and utilities, lower tax rates and skilled workers. Soon they will have another reason to locate and grow in Johnston County—the Clayton Skills Training Center, providing the link between a supply of well-skilled workers and new industry to create future prosperity.

"We believe the best incentive we have to offer business is a prepared workforce that needs less training after employment."

—Linwood Parker, chairman of the county Economic Development Advisory Board



SELF-HELP

Lea Clayton is developing an organic farm in Saxapahaw, with financing from Self-Help's Sustainable Development Initiative.

Access to Capital Leverages Economic Development

***As North Carolina's traditional industries* continue to decline, the Golden LEAF Board of Directors saw a clear economic development imperative. Disappearing jobs must be replaced, and the development of new businesses in North Carolina—particularly in rural areas—could do that.**

Further, existing small businesses must have access to capital in order to grow and prosper, and create more jobs. Banks are the most efficient and logical source of business capital, but banks generally limit their loans to those presenting the very lowest risks—putting their services out of reach of many small businesses.

Working from this premise, Golden LEAF early on saw the value of partnership with two institutions who leverage their lending to have the most impact in our target areas of tobacco-dependent and economically impacted communities. The Center for Community Self-Help provides loans and technical assistance to small businesses, in both startup and expansion phases. The Rural Economic Development Center's approach is to work with banks around the state, providing a loan loss reserve that encourages banks to make loans to microentrepreneurs they would otherwise deem too high a risk.

CENTER FOR COMMUNITY SELF-HELP

Often referred to as North Carolina's development bank, the Center for Community Self-Help is the country's first statewide, private-sector financial institution focusing on economic development in depressed communities. Golden LEAF's first grant of $200,000 to the Center allowed Self-Help to leverage more than $10 million for 46 loans in 19 counties. These loans helped create or save some 250 jobs.

A new grant in 2002 added $250,000 which Self-Help will use to continue to expand the program in areas affected most negatively by the decline in tobacco.

Self-Help's outreach goes directly to the agricultural community, including tobacco farms. "We work with partner groups in rural communities who have interacted with farm families for years," said Fred Broadwell, director of the Self-Help Credit Union Ventures Fund's Sustainable Development Initiative. "We're just beginning to see some of these projects get off the ground—ventures that collectively can transform the farm economy."

In reversal of a decades-long trend, new production and distribution models are attracting young, innovative people to farming. According to Broadwell, these farmers see themselves as stewards of the land and are happily building up North Carolina's soil and working to keep water resources clean. "We're excited to be working with farm families exploring entrepreneurial avenues to deal with the decline of the tobacco economy," Broadwell said.

"We're just beginning to see some of these projects get off the ground—ventures that collectively can transform the farm economy."

—Fred Broadwell, director of the Self-Help Credit Union Ventures Fund's Sustainable Development Initiative

RURAL ECONOMIC DEVELOPMENT CENTER

For more than a decade, the Rural Economic Development Center has worked with North Carolina's rural communities, growing businesses, expanding infrastructure, and supporting community-based organizations.

The Rural Center's Capital Access Program recognizes that although local banks are the most proficient source of business lending, banks must limit loans to those with the lowest risk. This can mean some solid business ideas from "microentrepreneurs" fail to secure financing. Phase One of the CAP involved more than 600 loans worth some $31 million.

Golden LEAF's 2002 Economic Stimulus package included a $3.4 million grant to support the CAP's second phase. The Rural Center expects to leverage this into $100 million in new loans by creating a special loan loss reserve that enables participating banks to make loans that carry a higher level of risk than allowed by conventional guidelines.

Branch Banking & Trust Company (BB&T) is one of the banks that has worked with the Rural Center on the CAP program since the beginning. BB&T's Small Business Banking manager, Lynn Harton, sees CAP as a tremendously successful program. "It's an especially successful product that has been good for the clients, the community and the bank. We now have $27 million outstanding, with 485 clients, in both phases of the CAP program in North Carolina."



In its first three months, the second phase of CAP is looking like another success story. Participating banks have made 178 loans totaling $3.7 million, creating 178 jobs, and assisting with the retention of another 511 jobs.

According to Harton, CAP has been growing at about 30 percent per year. "These are clients that we would not be able to help without this program," he said. "We are very grateful to Golden LEAF for support of this project."

Financials

Report of Independent Auditors

Ernst & Young conducted an independent audit of Golden LEAF (Long-term Economic Advancement Foundation), Inc. in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States. The audit reported an opinion from Ernst & Young that the Golden LEAF financial statements present fairly, in all material respects, the financial position of the Foundation as of June 30, 2002, and the results of its operations for the year then ended, in conformity with accounting principles generally accepted in the United States.

COMPLIANCE

"As part of obtaining reasonable assurance about whether the Foundation's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial amounts.... The results of our tests disclosed no instances of noncompliance that are required to be reported under Government Auditing Standards."

From Ernst & Young LLP's Report on Compliance, Financial Statements and Other Reports, issued to Golden LEAF (August 7, 2002)

Balance Sheet (As of June 30, 2002)

ASSETS	CURRENT ASSETS:	Cash and cash equivalents	$ 489,091
		Investments	210,286,453
		Sales tax refund receivable	5,927
		Prepaid items	18,957
	TOTAL CURRENT ASSETS		210,800,428
	FIXED ASSETS:	Equipment	38,404
		Furniture and Fixtures	23,026
			61,430
	ACCUMULATED DEPRECIATION		(26,072)
			35,358
	INVESTMENTS IN TREASURY NOTES		25,973,398
			$236,809,184
LIABILITIES	CURRENT LIABILITIES:	Accounts payable	$ 35,239
		Accrued liabilities	4,980
		Grants payable	6,077,666
	TOTAL CURRENT LIABILITIES		6,117,885
NET ASSETS	Invested in capital assets		35,358
	Unrestricted net assets		230,655,941
			230,691,299
	TOTAL LIABILITIES AND NET ASSETS		**$236,809,184**

Statement of Revenues, Expenses and Changes in Net Assets

(Year Ended June 30, 2002)

REVENUES:	Proceeds from state settlement	$87,917,940
	Investment income (losses)	(13,000,472)
	Other income	6,158
	Total revenues	74,923,626
EXPENSES:	Grant distributions	10,439,432
	Administrative costs	907,856
	Depreciation expense	18,933
		11,366,221
Excess of revenues over expenses		63,557,405
Net assets at beginning of year		167,133,894
Net assets at end of year		$230,691,299

2002 Awards

In 2002, Golden LEAF funded 84 grants totaling $16,261,429.56.

Golden LEAF is pleased to announce that the following North Carolina non-profits and government entities were awarded grants in the last grant cycle (ending November 2002).

- 30 grants were for projects that are agricultural in nature
- 19 grants were for economic development initiatives
- 35 grants were in the area of education

THE APPLICATION DEADLINE FOR FISCAL YEAR 2002-2003 IS AUGUST 1, 2003

HEATT (Heavy Equipment and Transportation Technology) for Beaufort County and Eastern North Carolina

Grantee **Beaufort County Community College**

Amount **$182,800**

Project This Golden LEAF grant will be used to support the Heavy Equipment and Transport Technology (HEATT) program at Beaufort Community College. The program seeks to prepare students with skills necessary to fill 50 new positions that will become available at local businesses over the next two years. Objectives for the project are: to strengthen the HEATT/Agricultural Systems program and implement the HEATT/Construction Equipment Systems program as a parallel concentration.

Servicing Beaufort, Hyde, Tyrrell and Washington Counties

The Carolina Commerce and Technology Center, Inc. (COMtech)

Grantee **Carolina Commerce and Technology Center, Inc.**

Amount **$155,000**

Project The purpose of this Golden LEAF grant is to provide a second year of operating support to the Carolina Commerce and Technology Center to assist with planning, outreach, marketing, management support, recruiting and infrastructure development for this technology-based approach to economic development in the region.

Servicing Robeson, Hoke, Sampson, Scotland, Cumberland, Bladen and Columbus Counties

US Eventing Championships 2003

Grantee **Carolina Horse Park Foundation**

Amount **$50,000**

Project The purpose of this Golden LEAF grant is to provide operating assistance to market and host the US Eventing Championships in the fall of 2003 at the Hoke County facility.

Servicing Hoke, Moore, Robeson and Scotland Counties

Gateway Technology Hub Facility

Grantee **Carolinas Gateway Partnership**

Amount **$315,120**

Project The purpose of this Golden LEAF grant is to assist with the development of a Gateway Technology Hub Facility to meet the needs of local employers and employees for higher educational training in business and technology.

Servicing Edgecomebe, Nash, Wilson, Halifax and Northhampton Counties

MARTEC: 21st Century Job Opportunities

Grantee **Carteret Community College**

Amount **$250,000**

Project This Golden LEAF grant will be used to purchase equipment for the new Marine Trade Technology Training Center to be constructed on the campus of Carteret Community College over the next two years. Training programs will be available to prepare individuals for job opportunities in all phases of the boating industry.

Servicing Southeast, Northeast and Eastern Regions

Homegrown Teaching Scholars

Grantee **Catawba Valley Community College**

Amount **$37,000**

Project The purpose of this Golden LEAF grant is to provide continued funding for the "Homegrown Teaching Scholars" program. The project will support the following activities: (1) select 12 candidates from Alexander County for public school teacher education (classes will begin at CVCC in 2003); (2) initiate a recruiting campaign through career exploration activities in middle schools; (3) conduct summer enrichment programs; and (4) develop case data to support the long-term sustainability of the program.

Servicing Alexander County

HMHEC—Providing Higher Education Opportunities for Workers and Employers in Transition

Grantee **Catawba Valley Community College**

Amount **$175,000**

Project The purpose of this Golden LEAF grant is to assist Catawba Valley Community College to work in collaboration with Appalachian State University and Lenoir-Rhyne College to provide expanded learning opportunities for citizens of the greater Hickory metro area to offset the loss of manufacturing jobs in Catawba County. The project will identify higher education training needs for displaced workers, target specific training to meet skills required by existing employers, and develop 15 training programs for a minimum of 450 people that will address the educational needs of workers and employers.

Servicing Alexander, Burke, Caldwell and Catawba Counties

Expanding Small Business Lending in Tobacco Dependent Counties

Grantee **Center for Community Self-Help**

Amount **$200,000**

Project This Golden LEAF grant will provide a second year of funding to the Center for Community Self-Help to be used in continuing a targeted program of lending to small businesses in rural NC, particularly those counties most affected by the decline in the tobacco industry.

Servicing Eastern and Southeast Regions; Warren, Harnett, Granville, Franklin, Yadkin, Surry, Stokes, Rockingtham, Guilford, Caswell, Halifax, Hyde, Martin, Beaufort, Johnston, Person and Vance Counties

"Our state is already recognized globally as a leader in biotechnology.... But no such leader exists in biomanufacturing—yet. I want North Carolina to stake that claim. I want North Carolina to be the leader in biomanufacturing, and I want those industries to hear me loud and clear today: North Carolina's open for business."

—Gov. Mike Easley

Corporate Office Park Expansion

Grantee City of Winston-Salem

Amount $200,000

Project The purpose of this Golden LEAF Grant is to assist the City of Winston-Salem with the retention of at least 2,825 jobs and creation of 50 new jobs from the consolidation of Sara Lee Branded Apparel. Funds are to be used for public infrastructure improvements (road widening) outside the gates of the corporate properties.

Servicing Guilford, Forsyth, Surry, Stokes, Davidson, Yadkin and Randolph Counties

Connectinc. Expansion Project

Grantee Connect Central, Inc.

Amount $75,000

Project This Golden LEAF grant will provide a second year of funding to Connectinc to expand its employment services to serve at least six new counties. Funds will be used to assist individuals seeking employment and financial self-sufficiency through the organization's call center.

Servicing Edgecombe, Greene, Jones, Lenoir, Nash, Pitt, Wayne, Wilson, Bertie, Camden, Chowan, Hertford, Hyde, Martin, Northhampton, Pasquotank, Perquimans, Tyrrell, Washington and Scotland Counties

Bladen's Bloomin' Agri-Industrial Leasing Program

Grantee County of Bladen

Amount $360,000

Project This Golden LEAF grant will assist Bladen County with the expansion of an existing industry through the Agri-Industrial Leasing Program. The project will retain 60 jobs and create over 100 new positions at Squires Hardwood. Funds will be used to construct a warehouse facility that will be leased to Squires Hardwood for the purpose of storing inventory necessary to obtain contracts with major retail outlets.

Servicing Sampson, Robeson and Bladen Counties

Institute of Aeronautical Technology Equipment Purchase Program

Grantee Craven Community College

Amount $350,000

Project The purpose of this Golden LEAF grant is to assist Craven Community College with the purchase of equipment, training aids and machinery to train Federal Aviation Administration licensed aviation maintenance technicians at the Institute of Aeronautical Technology (IAT). The IAT will prepare skilled workers for job openings at the Naval Depot at Cherry Point.

Servicing Craven County

Wirthwein AG

Grantee Craven County Economic Development Commission

Amount $107,100

Project The purpose of this Golden LEAF grant is to allow Craven Community College to provide innovative plastics injection molding training to workers required by a new Wirthwein AG facility in New Bern. The project will have positive economic impacts in Craven County and surrounding rural counties, both in direct payroll benefits to local workers and in terms of indirect benefits to local service and retail industries. Additionally, the proposed training program will serve as a model for North Carolina industry, and once implemented, will allow Craven Community College to sponsor similar training programs with other regional industries.

Servicing Craven, Beaufort, Lenoir, Pitt, Jones, Pamlico and Greene Counties

The Three R's in Improving Teaching Shortages: Recruitment, Retention and Resilience

Grantee East Carolina University School of Education

Amount $250,000

Project This Golden LEAF grant will provide a second year of funding to implement and evaluate a model teacher recruiting and retention program in eight rural eastern NC counties. The project will serve 370 first year teachers, 370 mentors, 100 principals, eight superintendents, and will impact more than 5,000 students.

Servicing Edgecombe, Greene, Jones, Perquimans, Washington and Robeson Counties

Initiation of a Fast Ferry Service from Elizabeth City, Washington and New Bern to Kitty Hawk for the First Flight Centennial Year

Grantee Elizabeth City Downtown, Inc.

Amount $200,000

Project This Golden LEAF grant will be used to demonstrate the feasibility of a high-speed passenger ferry system serving northeastern North Carolina. The service will be launched in the spring of 2003, with the initial route between Elizabeth City and Kitty Hawk. Services to other gateway cities, Washington and New Bern, will be scheduled as demand arises.

Servicing Pasquotank, Beaufort and Craven Counties

Project Branch Out/Mayland Regional Forestry and Horticulture Center

Grantee EnergyXchange

Amount $150,000

Project The purpose of this Golden LEAF grant is to expand native shrubbery production in northwestern North Carolina from four to seven counties and to carry out practical research in the development of new cash crops. Funds from this grant will be used to provide assistance to growers in the beginning stages of native shrubbery production, support an apprenticeship program, hire a greenhouse technician, and to purchase equipment for the Avery County Greenhouse.

Servicing Alleghany, Ashe, Avery, Mitchell, Watauga and Yancey Counties

Operation Service III

Grantee Farmville Development Partnership

Amount $20,000

Project The purpose of this Golden LEAF grant is to provide support to the Farmville Small Business Incubator and Training Center so that technical assistance and training programs are available to aspiring entrepreneurs and the small business community of Farmville and surrounding areas.

Servicing Greene and Pitt Counties

Oxford Wholesale Produce Auction

Grantee Granville County Cooperative Extension

Amount $52,853

Project This Golden LEAF grant will provide farmers of the region who wish to diversify into alternative crop production access to a wholesale market outlet for such crops as produce, nursery stock, bedding plants, Christmas trees and hay. Funds are to be used to purchase a forklift and refrigeration units so the auction can be expanded and thus handle a larger volume of produce.

Servicing Granville County

West Farm Site Millard

Grantee **Greater Statesville Area Committee of 100**

Amount **$150,000**

Project This Golden LEAF grant will be used for infrastructure needed for Millard Refrigerated Services' acquisition and expansion of the existing Polar Cold Storage Facility. Millard will offer cold storage, blast-freezing and distribution for the poultry industry. The program will create a minimum of 30 new jobs, help meet current and increased demands of business and industry, provide water backup for industrial needs, support job creation and retention initiatives in agri-business, work with the community college system in training to meet job market demands, and develop a workforce partnership to assure job readiness in rural Iredell and surrounding communities.

Servicing Iredell, Yadkin, Cabarrus, Guilford, Surry, Stokes, Rockingham and Alexander Counties

Thomas Built Buses Training Initiative

Grantee **Guilford Technical Community College**

Amount **$500,000**

Project The purpose of this Golden LEAF grant is to assist Guilford Technical Community College with retraining incumbent workers at Thomas Built Buses. The project will create 178 new jobs and retain 1,000 production jobs.

Servicing Alamance, Guilford, Randolph, Davidson, Forsyth, Stokes, Surry, Yadkin, Montgomery and Davie Counties

Harnett County Industrial Park Certification—Edgerton 1

Grantee **Harnett County Economic Development Commission**

Amount **$1,000**

Project This Golden LEAF grant will enable the Harnett County Economic Development Commission to obtain site certification for the Edgerton I Industrial Park, a 47-acre tract of land located outside the city limits of Dunn, NC. Certification of the site will verify for prospective clients that an in-depth analysis of the property has been completed. Site certification will increase the statewide inventory of certified sites and offer Harnett County a competitive edge in industrial recruitment. Upon certification, the Harnett County Economic Development Commission will begin marketing the Edgerton I Industrial Park as a "shovel-ready" site.

Servicing Harnett County

A Multi-Faceted Approach to Agricultural and Economic Revitalization

Grantee **Haywood County Agriculture and Activities Center Association, Inc.**

Amount **$200,000**

Project Funds from this Golden LEAF grant are to be used to complete an all-weather, multi-purpose facility as a year-round market outlet for agricultural products and a regional center for agricultural events.

Servicing Cherokee, Clay, Graham, Haywood, Jackson, Macon and Swain Counties

Opportunities for Work

Grantee **Industrial Opportunities, Inc.**

Amount **$60,000**

Project The purpose of this grant is to purchase equipment to fulfill contracts worth $1.5 million to manufacture A-22 cargo bags and extraction lines for U.S. military airdrops. The plan is to employ 30 disadvantaged workers. Focusing on dislocated older workers, this project will increase job training and variety of work offered to adults with disabilities. The project will be sustained from the sale of goods. The long-term impact is to offer additional employment opportunities to a three-county area that has lost jobs due to loss of textile plants, a furniture plant and the loss of productive farms. The equipment will be used after the life of this contract to attract other contracts that require this specialty equipment.

Servicing Cherokee, Clay, Graham and Macon Counties

Goat Milk Cheese Processing Facility Cooperative

Grantee **Johnston County Goat Producers Association**

Amount **$15,000**

Project This Golden LEAF grant is to support the development of a feasibility study for a farmer owned, goat milk cheese-processing facility in Johnston County.

Servicing Johnston, Harnett, Wake and Wilson Counties

Clayton Biotechnology and Workforce Training Center

Grantee **Johnston County Industrial Development Corporation**

Amount **$241,500**

Project The purpose of this Golden LEAF grant is to assist Johnston County Industrial Development Corporation with predevelopment costs associated with the creation of the Clayton Biotechnology and Workforce Training Center.

Servicing Johnston County

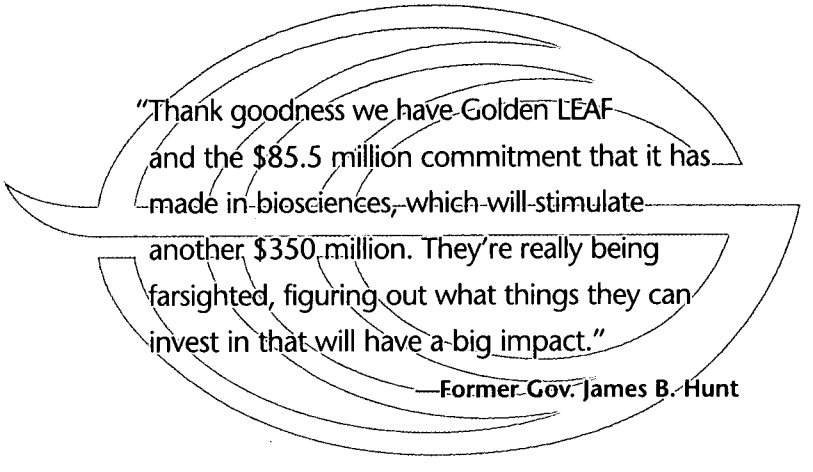
MorJobs—Morganite and JCI Partnering to Create More Jobs!

Grantee **Johnston County Industries, Inc.**

Amount **$150,000**

Project The purpose of this Golden LEAF grant is to assist Johnston County Industries with purchasing equipment and training individuals to manufacture 20,000 commutators per day under contract with Morganite. The project will create 60 new jobs and generate $16 million in new revenues for Johnston and Harnett counties.

Servicing Johnston and Harnett Counties



Mainstream Job Training

Grantee **La Grange Redevelopment Foundation**

Amount **$75,000**

Project This Golden LEAF grant will provide job training to individuals on welfare or unskilled workers to prepare them for jobs in commercial construction (framing, plumbing, electrical and finished carpentry). Students will receive on-the-job training through Lenoir Community College in restoring commercial property owned by the college foundation. The training program will prepare participants for 77 job openings that will be available over the next year at 10 contracting businesses.

Servicing Lenoir County

Cut Flower Production and Marketing in Eastern North Carolina

Grantee **Lenoir County**

Amount **$110,000**

Project This Golden LEAF grant will provide support to farmers that are interested in transitioning greenhouses, formerly used in tobacco production, into cut flower production. Grant funds are to be used for demonstration and training, to identify and develop market outlets, and support the formation of a grower's cooperative.

Servicing Greene, Jones and Lenoir Counties

Madison Farms Value-Added

Grantee **Madison County**

Amount **$75,000**

Project The purpose of this Golden LEAF grant is to increase market opportunities for farmers who are diversifying their operations through alternative crop production and value-added enterprises, and provide training in business planning, marketing and management.

Servicing Madison County

Phase II of "Martin County Economic Impact Improvement through an IST Start-Up"

Grantee **Martin Community College**

Amount **$125,000**

Project This Golden LEAF grant will provide a second year of funding to complete Phase II of the Industrial Systems (Maintenance) Technology program at Martin Community College. The program will support local industry, provide job training for recent high school graduates, and retrain displaced factory and farm workers.

Servicing Martin, Washington and Bertie Counties

Industrial Maintenance Technology Degree Program

Grantee **Montgomery Community College**

Amount **$250,000**

Project This Golden LEAF grant will assist Montgomery Community College in starting an Industrial Maintenance Technology program to meet local industry needs for skilled industrial maintenance technicians.

Servicing Montgomery County

Development and Outreach Education of Agribusiness Principles in Eastern North Carolina

Grantee **Mount Olive College**

Amount **$70,000**

Project This Golden LEAF grant will assist Montgomery Community College in starting an Industrial Maintenance Technology program to meet local industry needs for skilled industrial maintenance technicians.

Servicing Wayne, Duplin, Greene, Craven, Jones, Onslow, Pitt, Lenoir and Sampson Counties

Electric Lineman Technology Diploma Program

Grantee **Nash Community College**

Amount **$76,612.56**

Project This Golden LEAF grant will assist Nash Community College, in collaboration with three major employers of linemen, to start an Electric Lineman Technology diploma program. The program will prepare students for jobs in the field of line installers and cable splicers where overall employment is expected to grow at nine percent per year through 2006.

Servicing Statewide

Realizing Upscale Pork Markets for Small Scale Producers

Grantee **North Carolina Agricultural and Technical State University**

Amount **$225,000**

Project The purpose of this grant is to provide a second year of funding to continue the development of sustainable hog farming in North Carolina. Funds are to be used to recruit and train additional farmers in "upscale" hog production using Niman Ranch techniques, examine and demonstrate alternative hog rearing systems and methods of marketing "upscale" pork, test progeny in "upscale" boar semen, and establish a demonstration site at the Cherry Farm in Wayne County.

Servicing Statewide

Edible and Medicinal Mushroom Farming in North Carolina: A Cash Crop for the Future

Grantee **North Carolina Agricultural and Technical State University**

Amount **$355,000**

Project The purpose of this Golden LEAF grant is to provide a second year of funding to support the expansion of mushroom farming in North Carolina. Funds are to be used to expand the network of farmers engaged in commercial-scale mushroom production, establish mass production in a controlled environment, and develop the industrial processing of mushrooms to obtain beta-glucans for pharmaceutical use, and create over-the-counter retail and functional food applications.

Servicing Statewide

"One area where I hope we can agree that such investment is good for North Carolina is biotechnology. We can build on the nationally recognized teaching and research being conducted at our universities, the workforce-training capacity of our community colleges, as well as the established presence of major biotech firms to attract more jobs in biopharmaceuticals and biomanufacturing to all regions of the state."

—Rep. Richard Morgan, Co-Speaker, N.C. House of Representatives

Development of Market for Naked Oat Variety "NC Hull-less"

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount **$21,250**

Project Funds from this Golden LEAF grant are to be used to research and demonstrate the performance of livestock when fed the oat variety NC Hull-less, in comparison to regular oats, and if findings are positive, to develop and implement a marketing plan for NC Hull-less.

Servicing Statewide

Development and Production of Value-Added Egg Products

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount $87,500

Project This Golden LEAF grant will provide a second year of funding to assist with the creation of the Carolina Egg Development Corporation, a liquid egg and pre-cooked egg product processing facility.

Servicing Nash, Edgecombe, Halifax, Warren, Franklin, Wilson, Beaufort, Robeson, Tyrrell, Duplin, Hyde, Washington and Columbus Counties

Marketing and Marketing Capacity Development for Carolina Organic Growers, Inc.

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount **$95,000**

Project The purpose of this Golden LEAF grant is to support Carolina Organic Growers in creating and implementing a marketing program to expand wholesale and restaurant accounts in the Triangle, Charlotte, Wilmington, Asheville, Boone and Triad areas and thus increase sales for COG members by 15 percent over a two year period.

Servicing Statewide

Entrepreneur Assistance Program for Value-Added Agricultural Commodities and Products

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount **$125,000**

Project The purpose of this Golden LEAF grant is to develop and extend entrepreneurial training modules that address issues in developing and marketing food products, horticultural commodities and other agricultural goods.

Servicing Statewide

"The Golden LEAF is a key component of my efforts to brings jobs and economic opportunity to all corners of North Carolina."

—Rep. Jim Black, Co-Speaker, N.C. House of Representatives

Sustainable Agricultural Solutions Manufactured from Waste Materials

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount $200,000

Project The purpose of this Golden LEAF grant is to support a second year of funding for further research and product development by Novovita, Inc., of a paper-like material, manufactured from poultry wastes, to be used as crop cover, bedding and fertilizer.

Servicing Statewide

Alternative Markets for North Carolina Grain Growers

Grantee **North Carolina Agricultural Foundation, Inc.**

Amount **$300,000**

Project The purpose of this grant is to provide a third year of funding to the Grain Growers Cooperative in support of the following activities: soy biodiesel project, market development for natto soy beans, Small Grain Producers—research on red winter wheat, and a feasibility study for the Tidewater Soy Processors.

Servicing Statewide

Agri-Cultural Tourism: A Proposal for Economic Development

Grantee **North Carolina Arts Council**

Amount **$325,000**

Project The purpose of this Golden LEAF grant is to assist the North Carolina Arts Council, HandMade In America and Duplin County Cooperative Extension in developing and implementing a model agri-cultural and heritage tourism model that can be replicated statewide. The project will be multi-pronged and use proven community development models to create new sustainable tourism products.

Servicing Statewide

Biomanufacturing Workforce Development Needs and Resources Assessment

Grantee **North Carolina Biotechnology Center**

Amount **$250,000**

Project This Golden LEAF grant will be used by the North Carolina Biotechnology Center to develop, perform and analyze a bioprocess manufacturing workforce training needs assessment; conduct an inventory of current educational resources available to meet these needs; and coordinate a strategic plan for a comprehensive statewide program of biomanufacturing workforce training. The project will result in the generation of a report combining the results of the workforce training needs assessment and the inventory of current educational resources; a strategic plan based on the data obtained in the needs assessment and inventory, and an executive summary brochure that presents the major findings from the surveys, previews the strategic plan, and emphasizes the significances of this statewide initiative to economic development in North Carolina.

Servicing Statewide

A Demonstration Model for Workplace Preparedness in the Hospitality and Tourism Industry: A Continuation

Grantee **North Carolina Central University**

Amount **$200,000**

Project This Golden LEAF grant will assist NC Central with a second year of funding to partner with Alamance, Vance-Granville and Wake Technical Community Colleges to deliver hospitality training to 60 participants in one of three career tracks: food service management, lodging operations, and tourism and hospitality management. The target population will be displaced tobacco workers from JP Taylor and others.

Servicing Durham, Franklin, Granville, Orange, Person, Wake, Vance, Warren and Alamance Counties

Golden LEAF Scholars Program

Grantee **North Carolina Community College System**

Amount **$300,000**

Project This Golden LEAF grant will make available scholarships to provide job training to students attending North Carolina community colleges serving tobacco-dependent communities.

Servicing Statewide

"When it comes to the manufacturing of biotech products, that field is wide open.... This is our dream, and this is our opportunity for it to happen. It's all about jobs, it's all about employment."

—Sen. Marc Basnight, President Pro Tem, N.C. Senate

Golden LEAF Foundation Scholarships

Grantee North Carolina Independent Colleges and Universities

Amount $90,000

Project This Golden LEAF grant will be used to establish the Golden LEAF Scholars Program for North Carolina Independent Colleges and Universities. Funds will be used to provide one-year scholarships at $2,500 each for member schools (36 total scholarships—one scholarship for each school) covering tuition and fees. Eligible recipients will be students who reside in the top tobacco dependent or Tier I counties in the state. Scholarships will be need and merit based.

Servicing Statewide

Creating a Statewide Community Development Credit Union

Grantee North Carolina Minority Support Center

Amount $100,000

Project The purpose of this Golden LEAF grant is to assist the North Carolina Minority Support Center with equity capital for personal and commercial lending through a new community based financial institution, Generations Community Credit Union, that will serve families statewide.

Servicing Statewide

Sowing the Seeds and Cultivating the Soil of Entrepreneurship

Grantee North Carolina REAL Enterprises, Inc.

Amount $53,806

Project The purpose of this Golden LEAF grant is to assist North Carolina REAL Enterprises with expanding its entrepreneurial training program in seven tobacco dependent counties to support farmers and displaced workers who are in transition and interested in business ownership and expansion.

Servicing Martin, Madison, Columbus, Granville, Vance, Warren and Bladen Counties

Capital Access II

Grantee North Carolina Rural Economic Development Center, Inc.

Amount $3,400,000

Project This Golden LEAF grant will be used for the second phase of the Rural Economic Development Center's Capital Asset Program. Phase One of the CAP involved more than 600 loans worth some $31 million. Working with banks throughout the state, CAP provides a loan-loss reserve to allow banks to make loans to small businesses in rural and economically distressed areas that might otherwise not qualify for credit at a reasonable rate. The Rural Center expects this grant to leverage nearly $100 million in loans.

Servicing Statewide

Civic Ventures Fund Demonstration—Phase II

Grantee North Carolina Rural Economic Development Center, Inc.

Amount $125,000

Project The purpose of this Golden LEAF grant is to support the Civic Ventures Fund in building the capacity of rural counties to work collaboratively to plan, develop, implement and evaluate sustainable development projects that address issues of local importance and produce clear returns on investment.

Servicing AdvantageWest

Improving Marketing Opportunities for North Carolina Sweet Potatoes and In-Shell Peanuts

Grantee North Carolina State University

Amount $64,000

Project The purpose of this Golden LEAF grant is to expand market opportunities for in-shell peanuts and sweet potatoes through directed research that addresses factors that limit current market opportunities. The work will identify strategies that enhance cultivar selection, consumer appeal and purchase intent.

Servicing Eastern and Southeast Regions

Rapid Development of a Replacement Cultivar for Sprite Melon

Grantee North Carolina State University

Amount $65,488

Project The primary goal of this Golden LEAF grant is to develop new specialty melons for NC growers. Objectives include the development of inbred lines with performance at least as good as "Sprite" and testing of hybrids made by crossing complementary pairs of inbreds with the ultimate goal of releasing a replacement cultivar for the "Sprite" melon with ownership and control in NC.

Servicing Eastern and Southeast Regions, Northeast Partnership, Piedmont Triad and RTR Partnership

Use of Tobacco Transplant Houses and Other Types of Greenhouse Structures to Produce Alternative Crops

Grantee North Carolina State University

Amount $70,000

Project The purpose of this Golden LEAF grant is to identify alternative crops for both tobacco transplant and standard greenhouses. Funds are to be used to support the following activities: (1) identify and test potential contract crops for wetland restoration and water garden plants in float bed houses; (2) experiment with summer and organic hydroponic production systems for lettuce and basil; (3) set up demonstrations comparing various types of greenhouses, production systems and alternative crops; and (4) disseminate findings of the research.

Servicing Yancey, Graham, Wilson, Forsyth, Stanley, Columbus, Richmond, Robeson, Sampson, Scotland, Person, Wake, Moore, Lee, Harnett, Randolph, Polk, Union, Ashe and Burke Counties

Development of Value-Added Products and Market Opportunities for North Carolina Fruits and Their By-Products

Grantee North Carolina State University

Amount $71,000

Project The purpose of this Golden LEAF grant is to add value-added products, technologies and markets for fruit producers of the state. The project will improve technologies for blending raw materials from muscadine grapes, blueberries, apples, strawberries and peaches into juices, wines and non-alcoholic beverages.

Servicing Statewide

Developing New Nursery Crops for North Carolina

Grantee North Carolina State University

Amount $77,038

Project The purpose of this project is to continue expedited breeding efforts and controlled hybridizations for diverse nursery crops, including redbuds, dogwoods, birches, rhododendron, stewartias, styrax, sweetshrubs, stokes asters, summersweet, barberry and butterfly bushes.

Servicing Statewide

Establishment of Foundation Broodstock for Flounder Farming in North Carolina

Grantee North Carolina State University

Amount $150,000

Project The purpose of this Golden LEAF grant is to apply breeding and culture techniques developed over eight years to establish a demonstration facility for improving broodstock quality and commercial production of flounder.

Servicing Eastern Region, Northeast Partnership, Piedmont Triad and RTR Partnership

Marketing, Production and Educational Program Development for the Expansion of the Franklin County Goat Producers Cooperative

Grantee North Carolina State University

Amount $200,000

Project The purpose of this project is to expand meat goat markets and to continue research on improving the quality of meat goats and production techniques.

Servicing Statewide

Distance Diagnosis of Pest and Plant Disease Problems

Grantee North Carolina State University

Amount $209,050

Project The purpose of this Golden LEAF grant is to equip 14 county extension centers with professional quality compound and dissecting microscopes, supplies, a computer and imaging equipment where specimens can be brought for proper imaging and digital submission to NC State University faculty. The purpose of the centers will be to provide immediate access to university experts for plant problems and disease diagnosis and make available locally trained professionals who are able to use lab tools to analyze and diagnose plant and pest problems.

Servicing Harnett, Robeson, Cabarrus, Person, Clay, Henderson, Madison, Edgecombe, Wayne, Pitt, Duplin, Beaufort, Chowan and Forsyth Counties

The NC Specialty Crops Program—Keeping North Carolina Agriculture Profitable Through Innovative New Crop Research and Marketing—Year 2

Grantee North Carolina State University

Amount $280,000

Project The purpose of this Golden LEAF grant is provide a second year of funding to continue statewide expansion of the Specialty Crops Program, broaden the scope of crops, products and enterprises studied and developed, and increase educational outreach efforts.

Servicing Statewide

Revitalizing Farms and Communities through High Value Organic Production: Demonstration, Education and Marketing

Grantee North Carolina State University Center for Environmental Farm

Amount $70,000

Project The purpose of this Golden LEAF grant is to support the second year of work aimed at assisting NC farmers with the transition to high value organic production through education, demonstration and marketing activities. Direct support will be given to farmers who seek to initiate a community supported agriculture marketing program. In addition, the project will begin developing an institutional food-buying program targeting universities, hospitals and nursing homes.

Servicing Statewide

Sweet Potato Business Enhancement Program—A Long Term Initiative to Expand the Sales and Consumption of North Carolina Sweet Potatoes

Grantee North Carolina Sweet Potato Commission Foundation, Inc.

Amount $300,000

Project The purpose of this Golden LEAF grant is to devise and implement a comprehensive strategy to measurably and sustainably increase the demand for and consumption of NC sweet potatoes.

Servicing Statewide

TGANC Communication and Education Improvement Initiative

Grantee North Carolina Tobacco Foundation

Amount $34,500

Project Funds from this Golden LEAF grant will be used to assist TGANC with developing, improving, increasing and strengthening communication and educational services to over 10,000 tobacco farm families statewide.

Servicing Statewide

Agri-Bio Training in Scotland County (Project Pisces)

Grantee North Carolina's Southeast Commission

Amount $46,666

Project This Golden LEAF grant will support the location of an agri-biotech company in Scotland County as a poultry-vaccine production facility. Training provided by the NC Community College System under this project will cultivate workforce skills that will help attract additional agri-bio ventures to Scotland County. Funds will train workers in specialized areas including product development, safety, quality management and process engineering.

Servicing Scotland, Robeson, Hoke, Sampson, Cumberland, Bladen and Columbus Counties

Risk Management Training and Market Development for Limited Resource Farmers

Grantee Operation Spring Plant, Inc.

Amount $150,000

Project Funds from this Golden LEAF grant will be used to assist Operation Spring Plant in operating the Risk Management and Market Development project as part of its Rural Business Development Cooperative Program. The program will provide training to limited resource farmers in sustainable agricultural production techniques, farm planning and market development.

Servicing Martin, Hyde, Washington, Pitt, Duplin, Edgecombe, Warren, Vance, Person, Granville, Franklin, Sampson, Beaufort and Halifax Counties

Wilson County Outreach and Workforce Preparedness Program

Grantee Opportunities Industrialization Center of Wilson, Inc.

Amount $130,000

Project This Golden LEAF grant will assist OIC to recruit and train displaced tobacco workers for jobs at Cox Target Media. The program will prepare participants for 150 job openings over the next two years at Cox Media in the following areas: printing press operators, material handlers, machine operators, mail sorters, lift truck operators and clerical personnel.

Servicing Wilson County

Pamlico County SEEED Project (Sustainable Employment through Environmental and Economic Development)

Grantee Pamlico Community College

Amount $48,000

Project The purpose of this Golden LEAF grant is to support Pamlico Community College in training local businesses to market, manufacture, install and maintain affordable, environmentally friendly and permittable wastewater treatment systems in eastern NC. The project will utilize proven technology (ReCip), created by TVA, which treats wastewater sufficiently to allow permitting where a septic system cannot be used.

Servicing Pamlico County

Pitt Community College Associate Degree Program in Biotechnology

Grantee **Pitt Community College**

Amount **$161,000**

Project This Golden LEAF grant will enable Pitt Community College to implement an Associate Degree Program in Biotechnology to serve as a training program for DSM Pharmaceutical. DSM Pharmaceuticals, located in Greenville, is planning an expansion in 2003 that will require 50+ lab technicians with a biotechnology background and an associate degree. This program also will serve the needs of other area biotech-related companies. Students completing the Biotechnology Associate Degree program at Pitt Community College will have the opportunity to obtain the BS degree in Biotechnology at East Carolina University or any other UNC institution with two years of additional study.

Servicing Pitt County and Eastern Region

Creating a Healthy Future Workforce for Rural Communities

Grantee **Pitt County Memorial Hospital/University Health Systems of Eastern Carolina**

Amount **$277,646**

Project The purpose of this Golden LEAF grant is to assist The University Health Systems of Eastern Carolina, a division of Pitt Memorial, with a second year of funding to provide school nurses for Jones and Pamlico counties. The project will employ and train school nurses who will implement school health programs in both counties as well as collect and analyze data to be used to inform the public and influence policy related to school health.

Servicing Jones and Pamlico Counties

Sandhills Farm Marketing and Agritourism Development Project

Grantee **Richmond County Center of North Carolina Cooperative Extension**

Amount **$24,000**

Project The purpose of this Golden LEAF grant is to assist Richmond County Cooperative Extension with support and training for Sandhills farmers seeking alternative farm markets and region-wide promotion of agri-tourism. Training will be provided to farmers on topics such as hospitality, pricing, business management and cooperatives. Participants completing the program will be eligible to apply for low-interest loans through the USDA Rural Development program.

Servicing Richmond, Montgomery, Anson and Moore Counties

TEACHBuild

Grantee **River City Community Development Corporation**

Amount **$40,000**

Project The purpose of this Golden LEAF grant is to assist River City Community Development Corporation in offering training in financial literacy, information systems, business development and entrepreneurship to 10 to 15 at-risk youth. In addition, the CDC will implement an apprenticeship-training program that includes GED preparation, leadership training and skill development in the areas of construction or information systems technology.

Servicing Perquimans, Camden, Chowan, Currituck and Gates Counties

Edgecombe County Mixed Use/ Industrial Incubator

Grantee **Rocky Mount/Edgecombe Community Development Corporation**

Amount **$150,000**

Project The purpose of this Golden LEAF grant is to provide support for a mixed use incubator to house industrial, manufacturing, service, and technology businesses. The facility will target low-to-moderate income citizens and provide space, resources, and services to businesses and light manufacturing enterprises to assist with start-up and operations.

Servicing Nash and Edgecombe Counties

Viticulture/Enology A Growing Program

Grantee **Surry Community College**

Amount **$150,000**

Project Funds from this Golden LEAF grant will be used by Surry Community College for continued development and advancement of the wine grape industry in the Yadkin Valley region. Training programs will be offered through continuing education and curriculum classes and specialized technical assistance made available to area farmers who are transitioning into wine grape production.

Servicing Surry, Stokes, Yadkin, Wilkes, Watauga, Davie, Guilford, Alamance and Forsyth Counties

Emergency Funding for Grape Harvest

Grantee **Surry Community College**

Amount **$70,000**

Project This Golden LEAF Grant is to be used by Surry Community College to purchase materials and grapes necessary to process wine from this year's harvest of the Old North State Winegrowers Cooperative members.

Servicing Surry, Stokes, Yadkin, Wilkes, Watauga, Davie, Guilford, Alamance and Forsyth Counties

The Old North State Winery

Grantee **The Old North State Winegrowers Foundation, Inc.**

Amount **$280,000**

Project This Golden LEAF grant will enable Old North State Winegrowers Foundation to convert a 3-story, 22,000 sq. ft. building in Mount Airy into an educational and fully operational winery. The enterprise will provide training in winemaking and offer instruction in marketing, retailing and accounting to prepare students with vital technical and business skills. The grant will fund the purchase of receiving and cellar equipment and a refrigeration system; installation of a bottling line and fermentation storage racks, chillers, tanks and oak barrels; and the construction of a tasting room and office upfit.

Servicing Surry, Stokes, Yadkin, Wilkes, Watauga, Davie, Guilford, Alamance, Forsyth and Nash Counties

Southeastern Robeson County: Planting Seeds for the Future

Grantee **Town of Fairmont**

Amount **$100,000**

Project This Golden LEAF grant will support the Town of Fairmont, in collaboration with Robeson Community College, in providing adult education courses and computer training to residents of southeast Robeson County. The project will expand the existing GED program to include Adult Basic Education, Adult High School, GED and computer classes offered at the new Fairmont Community Building. Training will prepare individuals for entry-level positions and additional advanced training opportunities in the healthcare and computer industries.

Servicing Robeson County

Town of Maysville Water and Sewer Project

Grantee Town of Maysville

Amount $200,000

Project The purpose of this Golden LEAF grant is to assist the Town of Maysville with repairs to the town's wastewater collection and treatment system that are required to lift a moratorium so a 10,000 square-foot retail shopping/office plaza can be developed along Highway 17.

Servicing Jones County

The Town of Salemburg—Economic Opportunities for the Rural Community

Grantee Town of Salemburg

Amount $175,000

Project The purpose of this Golden LEAF grant is to assist Salemburg with purchasing equipment needed to open a grocery store for the area, which will be leased and operated by a private entrepreneur. The project will create 20 new jobs and result in a new market opportunity for area farmers. The store is a key piece of the town's redevelopment plan that will result in additional jobs creation.

Servicing Sampson County

Developing Our Own Resources: The D.O.O.R. Initiative

Grantee Town of Scotland Neck

Amount $50,000

Project The purpose of this Golden LEAF grant is to support Scotland Neck in implementing an initiative to assist farmers with transitioning into alternative agricultural enterprises that utilize the environmental, natural, and recreational resources of the area. In addition, the project will provide training for farmers interested in starting ecotourism-based businesses.

Servicing Halifax, Northhampton, Bertie and Martin Counties

Seagrove Economic Development Project

Grantee Town of Seagrove

Amount $89,000

Project This Golden LEAF grant will assist the Town of Seagrove with predevelopment costs to expand the town's sewer system to accommodate the relocation of Yankee Commodity Foods (94 new jobs) and expansion at Wade Technical Molding (50 new jobs and 24 retained).

Servicing Randolph County

Golden LEAF Scholars Program

Grantee University of North Carolina

Amount $347,500

Project This Golden LEAF grant will be used to provide a second year of funding for the Golden LEAF Scholars Program offered through the University of North Carolina System Office. Funds will be used to assist up to 137 students with scholarships covering UNC tuition and fees (averaging $2,500) for one year. Eligible recipients will be students who reside in the tobacco dependent or Tier I counties in the state. Scholarships will be need and merit based. All public universities will be eligible to participate in the scholarship program.

Servicing Statewide

Bioeconomic and Environmental Suitability of Two Asian Oyster Varieties for Aquaculture in North Carolina

Grantee University of North Carolina at Chapel Hill

Amount $50,000

Project Funds from this Golden LEAF grant will be used to collaborate with shell fisherman throughout eastern NC to conduct feasibility trials with three non-native oysters to evaluate their biological and economical feasibility for widespread commercial cultivation.

Servicing Jones, Beaufort, Camden, Chowan, Hyde, Martin, Perquimans, Tyrrell, Onslow, Pamlico, Dare, Pender and Craven Counties

Sustainable Solutions to Economic Distress, Tobacco Dependence, Limited Health Care Access and the Nursing Shortage: Nursing Education for Golden LEAF Counties

Grantee University of North Carolina at Chapel Hill

Amount $200,000

Project This Golden LEAF grant will be used to assist the School of Nursing to increase the number of Nurse Practitioners in tobacco dependent counties by providing Registered Nurses residing in these counties with opportunities to earn graduate nursing degrees from UNC–Chapel Hill. The program will prepare RNs for leadership positions as Nurse Practitioners while they continue to live and work in their home communities. The long-term goal is to build the healthcare infrastructure in rural, tobacco dependent and economically distressed counties of the state.

Servicing Alamance, Durham, Edgecombe, Granville, Halifax, Nash, Vance and Wilson Counties

Appalachian Food Ventures—A Shared-Use Value Added Food Processing Center

Grantee Western North Carolina Regional Economic Development Commission

Amount $350,000

Project Funds from this Golden LEAF grant will be used to assist with the creation of Appalachian Food Ventures, a non-profit, shared use, value-added food processing center at the Enka Campus of Asheville-Buncombe Technical Community College. The project will serve farm-based value added producers and food entrepreneurs through access to low-cost processing facilities, training and specialized services needed by small businesses to manufacture, process or add value to food and agricultural products.

Servicing Buncombe, Haywood, Henderson and Madison Counties

Growing a Natural Products Industry in North Carolina—Graham County Economic Diversification Program, Phase 3

Grantee Yellow Creek Botanical Institute, Inc.

Amount $100,000

Project The purpose of this Golden LEAF grant is to assist The Yellow Creek Botanical Institute and its partners in developing a vertically integrated botanical products industry in western NC. Funds will be used to help develop a streamlined supply of bloodroot for the European market, and continue providing alternative agribusiness opportunities to the historically tobacco dependent region in and around Graham County. Program implementation will result in related industry development across the western region of the state.

Servicing AdvantageWest

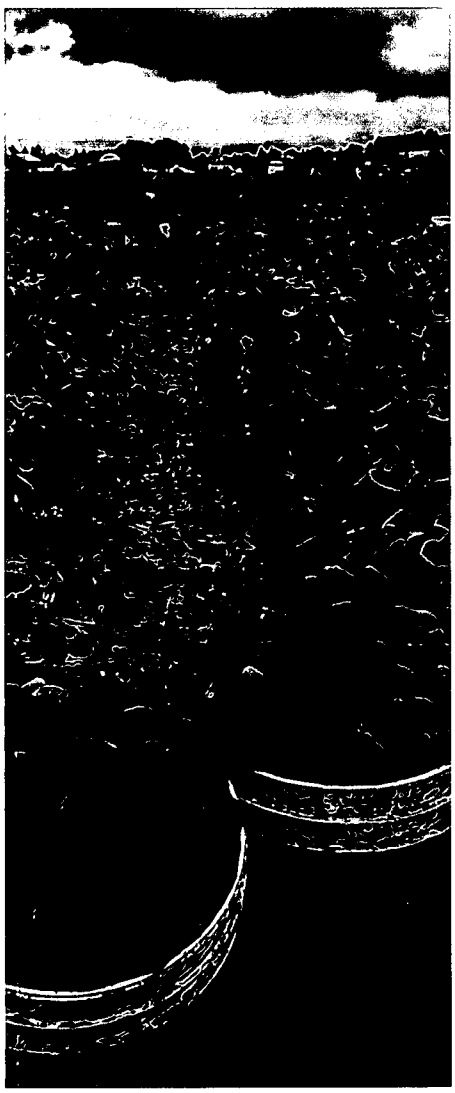
...the state's tobacco communities could face the following economic impacts over the next three to five years:

- A decline in cigarette production of nine to 17 percent
- Tobacco production declines of five to 10 percent
- A reduction in tobacco quota owner income of one to 2.4 percent
- Total direct and indirect economic impacts to the state including:
  - Lost output (sales) of $2.2 to $4 billion annually (0.6 to 1.1 percent of the state total)
  - A permanent loss of between 14,500 and 26,700 jobs (0.3 to 0.6 percent of the state total)
  - Lost annual earnings between $403 and $743 million (0.3 to 0.6 percent of the state total)

Source: NC Rural Economic Development Center, Inc.

Board of Directors

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S. Lawrence Davenport
Pactolus
Employer: J.P. Davenport and Son, Inc.
Term expires: 2005
Appointed by Speaker of the House



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Charlotte
Employer: Charlotte Regional Partnership
Term expires: 2004
Appointed by Speaker of the House

Erskine Bowles
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Erskine Bowles & Co., LLC
Term expires: 2004
Appointed by Governor

Jessie Thomas Bunn
Raleigh
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N.C. Secretary of Cultural Resources
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New Bern
Attorney
Term expires: 2005
Appointed by President Pro Tem of the Senate

Richard Holder
Kinston
Employer: Harvey Fertilizer & Gas Co.
Term expires: 2006
Appointed by Governor

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Raleigh
Employer: Progress Energy Service
Term expires: 2004
Appointed by Speaker of the House

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Rocky Mount
Employer: RBC Centura Banks, Inc.
Term expires: 2004
Appointed by Governor

John D. Merritt
Wilmington
Senior Assistant to the Governor for Policy and Communications
Term expires: 2004
Appointed by President Pro Tem of the Senate

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Lumberton
Farmer, Stephenson Farm Supply
Term expires: 2004
Appointed by President Pro Tem of the Senate

William Ward, Jr.
Ahoskie
Farmer
Term expires: 2005
Appointed by Governor

Debbie E. Worley
Princeton
Farmer
Term expires: 2006
Appointed by President Pro Tem of the Senate

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Valeria L. Lee
President

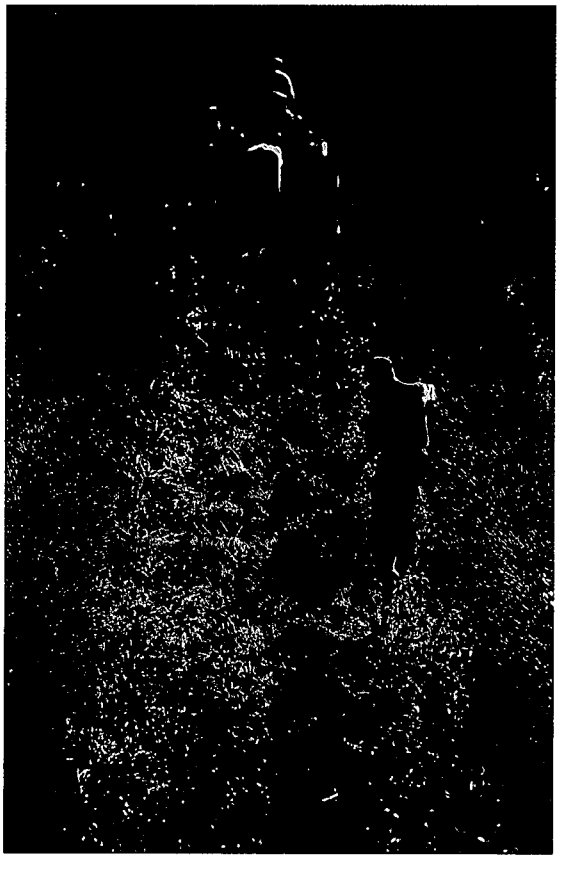
Joseph H. Gray, Jr.
Vice President of Finance and Operations

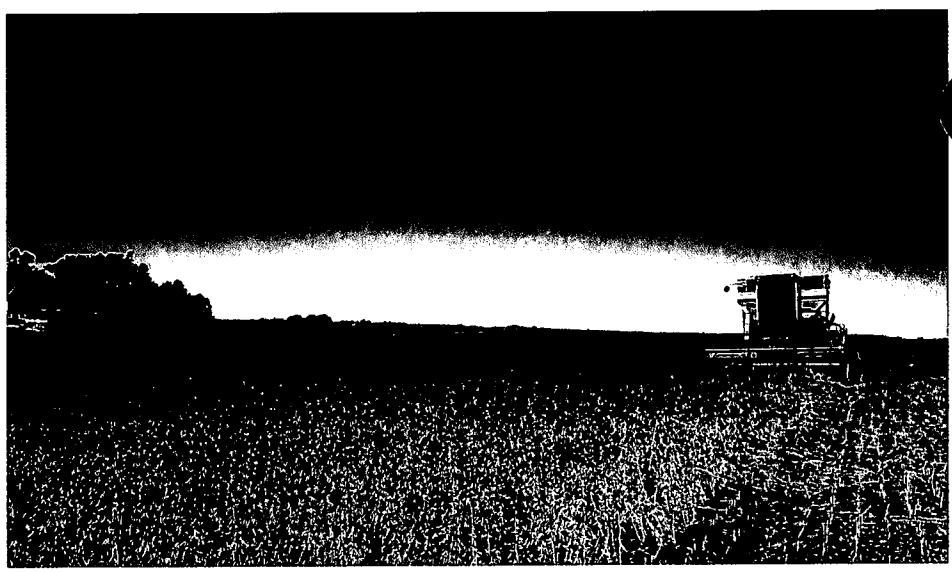
Mark Sorrells
Vice President of Programs

Alexis Vaughn
Investment Officer

Courtney Mills
Administrative Associate

Rhea Barnes
Administrative Assistant





Golden LEAF
800 Tiffany Boulevard
Suite 200
Rocky Mount, NC 27804

www.goldenleaf.org

The Golden LEAF Foundation was created in 1999 as a non-profit corporation as a result of the consent decree resolving litigation initiated by the North Carolina Department of Justice against cigarette manufacturers. It receives one half of the funds coming to North Carolina resulting from the Master Settlement Agreement and makes grants to non-profit and government agencies.

CREDITS: Creative direction, copywriting, graphic design and production: Kaye Lasater & Associates, Raleigh, NC



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Golden LEAF (Long-term Economic Advancement Foundation) is a public charitable foundation, which is exempt from federal income tax as described in section 501(c)(3) of the Internal Revenue Code. The Foundation's funds must be used for charitable, scientific, educational or exempt public purposes.

TARGET COUNTIES SERVED BY GOLDEN LEAF

MOST ECONOMICALLY DISTRESSED COUNTIES

Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Camden, Cherokee, Clay, Columbus, Duplin, Edgecombe, Graham, Halifax, Hertford, Hoke, Hyde, Jones, Madison, Martin, Mitchell, Montgomery, Northampton, Onslow, Pamlico, Pasquotank, Perquimans, Richmond, Robeson, Scotland, Swain, Tyrrell, Vance, Warren, Washington, Yancey

TOBACCO DEPENDENT COUNTIES

Alamance, Beaufort, Bertie, Bladen, Buncombe, Cabarrus, Caswell, Chowan, Columbus, Duplin, Durham, Edgecombe, Forsyth, Franklin, Granville, Greene, Guilford, Harnett, Hertford, Hoke, Johnston, Jones, Lee, Lenoir, Madison, Martin, Montgomery, Nash, Parson, Pitt, Robeson, Sampson, Stokes, Surry, Vance, Warren, Wayne, Wilson, Yadkin

(1)

Special Joint Mtg

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

May 7, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carol Lauder	EGHS
Nancy Thompson	MCIC
Steve Woodson	NC Farm Bureau
Charlie Diehl	NC Trucking Assn.
Gene Ainsworth	RJR
[illegible] Duncan	Altria
Ed Regan	N.C.A.C.C
Tommy Burns	[illegible] Growers Exporters Association
Frank Johnson	Private Citizen
Johnny Wynne	NC State Univ.
Steven Leath	NC State Univ.
[illegible]	[illegible]

(2)

VISITOR REGISTRATION SHEET

Agriculture — 05/07/03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JON ORT	NC State Univ.
JOHN COOPER	USDA - Rural Development
CECIL SETTLE	NC FOUNDATION FOR SOIL & WATER CONSERVATION DISTRICTS
Larry Owenby	Tobacco Trust Fund
Eric Spaulding	Tobacco Trust Fund
Ross M. Smith	PCS PHOSPHATE
JOHN ADAMS	EASTERN FOODS
Meg Phipps	NCDA
David Meredith	NC State Grange
Margie Spivey	N. C. State Grange
John Cyrus	nc state Grange

(3)

VISITOR REGISTRATION SHEET

Agriculture — 05/07/03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Vernon McLeod	
Betty Bailey	RAFI PO Box 640, Pittsboro NC 27312
Jason Rochrig	RAFI-USA
W David Clayton	Research Triangle Institute
Alton Thompson	NC A&T State University, School of Agriculture
Anthony Powell	NC Rural Economic Dev. Center
Steve Wall	Conservation Council
Bruce W. Andrews	N.C. Dept of Commerce
Ronnie Jackson	Ag Advancement Consort.
Lois B. Britt	Ag Advancement Consortium
Maurice Cook	Ag Advancement Consortium

(4)

VISITOR REGISTRATION SHEET

Agriculture — 05/07/03

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Harbeson	N.C. Pork Council
Beth Ann Mumford	NC Pork Council
[illegible]	[illegible]
[illegible]	[illegible]
Robin Smith	DENR
Karen Long	DOS/ Tobacco Trust Fund Commission
Mike Boswell	NCSAE
Joyce Peters	HP Assoc
Michael Bryan	RTI
Dewitt Hardee	NCDA
Erica Peters	NC Agribusiness Council

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 13, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

Who will handle Bill on Senate floor

I. Welcome and Opening Remarks

II. Bills to be Considered

• ✓HB-987	Amend Fisheries Proclamation Process	Rep. Wainwright	PCS Amended – Hagett
• ✓HB-1078	Mayo River State Park	Rep. Gibson	Berger
• ✓HB-1025	Haw River State Park	Rep. Jeffus	Berger
• ✓HB-1134	Extend CHPP Adoption Deadline	Rep. Preston	Sen. Albertson

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 20, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 20 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were twelve members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1078 – MAYO RIVER STATE PARK – Rep. Sexton explained this for the sponsor, Rep. Gibson. Sen. Albertson asked for the criteria. Ms. Carol Tingley, Division of State Parks responded as to how requirements are necessary to be a state park. Sen. Jenkins asked if there are any restrictions put on adjourning rivers. Ms. Tingley responded. Sen. Horton asked how many acres for Mayo River would be involved. Rep. Sexton and Ms. Tingley answered. Sen. Albertson asked how many rivers are at state parks. Ms. Tingley responded. Sen. Horton moved for a favorable report. Vote taken and passed.

HB-1025 – HAW RIVER STATE PARK – Rep. Jeffus explained the bill. Sen. Lucas moved for a favorable report. Sen. Albertson asked what happens when a river is recognized as a state park. Ms. Tingley responded. Sen. Tillman spoke in favor of the bill. The vote was taken and passed.

HB-987 AMEND FISHERIES PROCLAMATION – Sen. Weinstein moved for adoption of a technical amendment. Mr. Jerry Schill, NC Fisheries spoke in favor of the amendment. Vote taken and so moved. Mr. Jeff Hudson, staff counsel, explained the bill. Sen. Albertson asked if this puts a burden on fishermen in the industry. Mr. Preston Pate, NC Fisheries explained that it would not. Mr. Hudson made additional explanation. Mr. Jerry Schill spoke in favor of the legislation. Sen. Lucas asked if the Department would allow the General Assembly members to know what actions have been taken. Mr. Pate advised that a report is prepared and it will be available if requested. Sen. Jenkins asked who set quotas on fish. Mr. Pate responded. Sen. Hargett moved for a favorable report on the PCS, unfavorable to the original bill. Vote taken and passed.

Sen. Horton asked Mr. Pate about the heron production and he responded.

HB-1134 EXTEND CHPP ADOPTION DEADLINE - Rep. J. Preston, sponsor, explained the bill. Sen. Albertson made additional comments. Sen. Hargett moved for a favorable report.

Sen. Lucas spoke in support. Sen. Queen asked about the reporting process and Mr. Pate replied. The vote was taken and passed as moved.

The meeting adjourned at 11:30 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Tuesday, May 13, 2003

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

FAVORABLE

H.B. **1025** Haw River State Park.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1078** Mayo River State Park.
Sequential Referral: None
Recommended Referral: None

H.B. **1134** Extend CHPP Adoption Deadline.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **987** Amend Fisheries Proclamation Process.
Draft Number: PCS30324
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 987

Committee Substitute Favorable 4/29/03

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 987

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H987-PCS30324-SB-31

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 prohibits or 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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 987

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

H987-ASB-9 [v.1]

Date _____,2003

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

Senator Albertson

moves to amend the bill on page 4, line 40,
by adding the words "prohibits or" after the word "that" on that line.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1078*

Committee Substitute Favorable 4/29/03

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.

HOUSE BILL 1078:
Mayo River State Park

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Representative Gibson
		Summary by:	George Givens, Senior Committee Counsel; Jennifer McGinnis, Committee Counsel
Date:	13 May 2003		
Version:	2nd Edition		

SUMMARY: ***House Bill 1078 authorizes the Department of Environment and Natural Resources to add Mayo 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 Mayo River State Park would be located in northwestern Rockingham County. This region of the state is one of four areas identified in the 2000 Systemwide Plan for the NC 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 Mayo River in Rockingham County is a popular recreational river, with whitewater for canoeing, kayaking, and rafting near the Virginia state line. The river becomes calmer as it flows further south. Mixed hardwoods dominate the rough and hilly scenic corridor. Steep slopes, numerous outcrops, and a mosaic of soil types result in an unusual assemblage of plant communities. At least nine rare species are known to occur along the river, as well as the state's best example of the Piedmont calcareous mafic cliff natural community type. The river valley also has a rich cultural history.

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.

H1078-SMRI-002

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.

HOUSE BILL 1134:
Extend CHPP Adoption Deadline.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Preston
		Summary by:	Jeff Hudson Committee Counsel
Date:	May 13, 2003		
Version:	First Edition		

SUMMARY: ***House Bill 1134 would extend the deadline for the adoption of Coastal Habitat Protection Plans from July 1, 2003 to December 31, 2004.***

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.

The companion bill to House Bill 1134, Senate Bill 627, was introduced by Senator Albertson. Senate Bill 627 received a favorable report from this committee on April 1, 2003, and passed the Senate on April 9, 2003.

CURRENT LAW: Under current law, all Coastal Habitat Protection Plans must be adopted by July 1, 2003.

BILL ANALYSIS: House Bill 1134 would extend the deadline for the adoption of Coastal Habitat Protection Plans from July 1, 2003 to December 31, 2004.

EFFECTIVE DATE: This act is effective when it becomes law.

H1134-SMSB-002

VISITOR REGISTRATION SHEET

Agriculture — 5/13/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	LMCIC
JERRY SCHILL	NC FISHERIES ASSOCIATION
Kari Barbuss	NCDENR
Carol Tingley	NCDENR - Parks + Rec
Jimmy Randolph	NC Poultry Federation
Steve Wells	Conservation Council
Preston Pate	NC Marine Fisheries
John Cyrus	NC State Grange
Anita Watkins	NC League of Municipalities
Gracy McLain	Ni-Lawet
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie McMillan	TNC
David Knight	NC Sierra, NC Wildlife Fed
Martha Glass	NC DACS
Henry Jones	Attorney Raleigh
Reese Mills	NC Metro Coalition
Patsy Harrison	CRC
Ken Melton	Alley Associates
Reston Howard	MCIC
[illegible]	[illegible]
Ben Anne Lunsford	NCPC

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 20, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 978	Veterinary Bd. Agreements/Impaired Vets.	Representative Cole
HB 1158	Hunting With Pistols.	Representative Daughtridge, Jr.

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 20, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 20 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were twelve members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1158 HUNTING WITH PISTOLS – Rep. Daughtridge explained his bill. Sen. Albertson and Sen. Weinstein had questions. The sponsor responded. Staff counsel, George Givens made additional comments. Sen. Horton questioned the use of 22 caliber guns only. Rep. Daughtridge answered. Sen. Brock moved for a favorable report. Vote taken and passed.

HB-978 – VETERINARY BD. AGREEMENTS/IMPAIRED VETS – Staff counsel, Barbara Riley explained and presented a technical amendment. Sen. Weinstein moved for adoption of the amendment. So moved. Sen. Gulley moved for a favorable report as to the PCS, unfavorable to the original bill. No further discussion. The vote was taken and passed as moved.

Sen. Albertson reminded members of the Farm Bureau breakfast.

Mr. Richard Rogers, DENR introduced Ms. Cheryl Stevens, the replacement for Laura DiVivo.

No further business and the meeting adjourned at 11:20 am.

Sen. Charlie Albertson, Committee Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Wednesday, May 21, 2003

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

FAVORABLE

H.B. **1158** Hunting With Pistols.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **978** Veterinary Bd. Agreements/Impaired Vets.

Draft Number:	PCS 70324
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 978

Committee Substitute Favorable 4/23/03

Short Title: Veterinary Bd. Agreements/Impaired Vets. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA VETERINARY BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-187.15. Board agreement for programs for impaired veterinary personnel.**

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may

provide funds for the administration of these impaired veterinary personnel peer review programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes to apply to the operation of impaired veterinary personnel programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of nonpublic information and of the process; and (ix) other necessary measures.

(d) Upon investigation and review of a veterinarian licensed by the Board or a veterinary technician registered with the Board, or upon receipt of a complaint or other information, an impaired veterinary personnel organization that enters into an agreement with the Board shall report to the Board detailed information about any veterinarian licensed or veterinary technician registered by the Board if:

(1) The veterinarian or veterinary technician constitutes an imminent danger to the public, to patients, or to himself or herself.

(2) The veterinarian or veterinary technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential information or other nonpublic information acquired, created, or used in good faith by an impaired veterinary personnel organization or the Board regarding a participant pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document by the Board pursuant to Chapter 132 of the General Statutes. No person participating in good faith in an impaired veterinary personnel program developed under this section shall be required in a civil case to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

(f) Impaired veterinary personnel activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities deemed to be State-directed and sanctioned shall constitute "State action" for the purposes of application of antitrust laws."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 978

Committee Substitute Favorable 4/23/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H978-PCS70324-RF-22

Short Title: Veterinary Bd. Agreements/Impaired Vets. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA VETERINARY MEDICAL BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-187.15. Board agreement for programs for impaired veterinary personnel.**

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the

Board for the purpose of identifying, reviewing, and evaluating the ability of those veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired veterinary personnel peer review programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes to apply to the operation of impaired veterinary personnel programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of nonpublic information and of the process; and (ix) other necessary measures.

(d) Upon investigation and review of a veterinarian licensed by the Board or a veterinary technician registered with the Board, or upon receipt of a complaint or other information, an impaired veterinary personnel organization that enters into an agreement with the Board shall report to the Board detailed information about any veterinarian licensed or veterinary technician registered by the Board if:

(1) The veterinarian or veterinary technician constitutes an imminent danger to the public, to patients, or to himself or herself.

(2) The veterinarian or veterinary technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.

(3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential information or other nonpublic information acquired, created, or used in good faith by an impaired veterinary personnel organization or the Board regarding a participant pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document by the Board pursuant to Chapter 132 of the General Statutes. No person participating in good faith in an impaired veterinary personnel program developed under this section shall be required in a civil case to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

(f) Impaired veterinary personnel activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State-directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws."

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

HB 978:
Veterinary Bd. Agreements/Impaired Vets.

BILL ANALYSIS

Committee:	Senate Ag, Environment & Natural Resources	**Introduced by:**	Representative Cole
		Summary by:	H. Alan Pell & Barbara Riley Committee Counsel
Date:	May 20, 2003		
Version:	2d Edition		

SUMMARY:

Senate Bill 848 adds a new statute that authorizes the North Carolina Veterinary Medical Board to enter into agreements with organizations that have developed programs for impaired veterinary personnel. The agreements would require the Board to disseminate relevant information to the organization; and for the organization to conduct investigations and make reports to the Board. The organization would be required to establish and maintain programs for the identification, review, and evaluation of a veterinarian or veterinarian technician to function in their occupation. The organization would also be required to establish treatment and rehabilitation programs.

BILL ANALYSIS:

Section 1.

Subparagraph (a): Authorizes the Board to enter into agreements with organization that have developed programs for impaired veterinary personnel. Activities to be covered in the agreement include: (1) investigation; (2) review and evaluation of records; (3) reports; (4) complaints; (5) litigation; and (6) information about practices of veterinarians that relate to impairment.

Subparagraph (b): The agreement must include provisions (1) for the Board to provide relevant information to the organization; (2) for the organization to conduct any investigation, review, or evaluation in an expeditious manner; (3) for the assurance of confidentiality of nonpublic information; (4) for the organization to make reports of investigations to the Board; and (5) for providing basic due process for veterinary personnel.

Subparagraph (c): The organizations must establish a program that evaluates veterinarians or veterinarian technicians for the ability to function in their occupation. The organization must also provide programs for treatment and rehabilitation. The Board may (is not required) to adopt rules pursuant to Chapter 150B to apply to the operation of impaired veterinary personnel programs.

Subparagraph (d): Organizations that have entered agreements with the Board must report to the Board detailed information concerning a veterinarian or a vet. tech. (1) who is an imminent danger to the public, to patients, or themselves; (2) who refuses to cooperate with the program; refuses to submit to treatment; or remains impaired after treatment and exhibits professional incompetence; or (3) who may be the subject of other disciplinary action.

Subparagraph (e): Confidential information concerning program participants is not discoverable in any civil case, nor subject to disclosure as a public record. No person participating in a program can be required to disclose, in a civil case, any information or opinions acquired or developed solely in the course of the program.

Subparagraph (f): Activities conducted in good faith under a program for impaired veterinary personnel are not grounds for civil action under any State law. The activities deemed to be State directed constitute "State action" for anti-trust law purposes.

Section 2:

The act is effective when it becomes law.

H978-smrk-01

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 978

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

H978-ARF-15 [v.1]

Date 5/20 ,2003

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

Senator _____

moves to amend the bill on page1, line 2, by adding after the word "VETERINARY", the word "MEDICAL";

and further amends the bill on page 2, line 33 by rewriting that line to read: "laws of this State, and the activities are deemed to be State directed and sanctioned and shall".

SIGNED Loud F. Weinstein
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1158

Short Title:	Hunting With Pistols.	(Public)
Sponsors:	Representatives Daughtridge; A. Williams and K. Williams.	
Referred to:	Wildlife Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW SPECIFYING THE TYPE OF PISTOLS THAT MAY BE USED FOR HUNTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1 reads as rewritten:

"(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a pistol of .22 caliber with a barrel not less than ~~six inches in length and loaded with long rifle ammunition.~~ five and one-half inches in length. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods."

SECTION 2. This act becomes effective October 1, 2003.

HB 1158:
Hunting with Pistols

BILL ANALYSIS

Committee:	Senate Ag, Environment & Natural Resources	**Introduced by:**	Representative Daughtridge
		Summary by:	Barbara Riley Committee Counsel
Date:	May 20, 2003		
Version:	1st Edition		

SUMMARY:

House Bill 1158 amends G.S. 113-291.1(g) which provides for the taking of rabbits, squirrels, possums, raccoons and other fur-bearing animals with .22 caliber pistols having a barrel length of not less than 6 inches. The amendment would allow the use of pistols with a minimum barrel length of 5 ½ inches. According to the Wildlife Resources Commission, the standard barrel length on a pistol is 5 ½ inches. Pistols with barrels of 6 inches or more must be special ordered.

The act becomes effective October 1, 2003.

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

May 20, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	nc state Change
Beth Anne Mumford	NCPC
Jerry Hibbard	NCPC
Jim Lowery	NC Utility Contractors Assn.
Jerry Schill	NC Fisheries Association
Ari Fleisher	White House
Doug Lassiter	NCSTA
Kim Hibbard	NCLM
S. Henri McClees	McClees Consulting, Inc.
Harry Tsumas	Amity Development
PGP	NCFB

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheryl Stephens	DENR
Kari Burgess	NCDENR
Angie McMillan	TNC
Grady McNeer	N.C. Cattle Co.
THOMAS Mickey	NORTH CAROLINA VETERINARY MEDICAL BOARD
George Heaton	N.C. Veterinary Medical Board
Marlin Glass	NC DACS
Mary Thomas	Friends of Carolina
David Brewer	First Carolina Corporate CU

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 27, 2003	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 834	Amend Agricultural Laws - 2.	Senator Albertson

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 27, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 27 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were thirteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB-834 AMEND AGRICULTURAL LAWS – 2 - Sen. Horton moved we accept to hear this bill since we didn't have a 24-hour bill notification notice on the proposed committee substitute. So moved. Mr. Mike Blanton, Deputy Director, Department of Agriculture, was recognized to give an update on the mad cow disease. Dr. David Marshall, State Vet, also spoke to members. Sen. Albertson questioned the compliance of the feeding plan between the US and Canada and if a terriorist can use this to get into the US. Dr. Marshall responded. Sen. Hargett asked about infected cows in Canada and he responded. Sen. Weinstein asked if the disease can be passed on to calves and Dr. Marshall explained. Sen. Weinstein then asked about a poultry disease in California. Dr. Marshall responded. Sen. Horton questioned problems in the U.K. and Dr. Marshall addressed his inquiry. Discussion continued by Dr. Marshall. Mr. Blanton then addressed SB-864. He gave members the back ground on this proposed legislation. Mr. John Hoffman, Threat and Mitigation Specialist with the Department of Agriculture did a slide presentation. (Copy attached). Sen. Weinstein, vice chair, presided as Sen. Albertson spoke on the bill. Sen. Kinnaird sent forth an amendment and explained. The vote was taken and moved. Sen. Weinstein sent forth an amendment. Mr. George Givens, staff counsel explained. The vote was taken and passed. Sen. Albertson told members this will have to be referred to Appropriations. Sen. Jenkins moved to roll the two amendments into a new PCS, be re-referred to Appropriations and given a favorable report, unfavorable as to the original bill. The vote was taken and passed as moved.

Sen. Albertson presided again and the meeting adjourned at 11:55 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, May 27, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **834** Amend Agricultural Laws - 2.

Draft Number:	PCS55193
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 834

Short Title:	Amend Agricultural Laws - 2.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 106 OF THE GENERAL STATUTES AND OTHER LAWS PERTAINING TO AGRICULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. This act amends the laws pertaining to agriculture.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 834
PROPOSED COMMITTEE SUBSTITUTE S834-PCS55193-RT-34

Short Title: Food Safety and Security Funds. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE FOOD SAFETY AND SECURITY TASK FORCE AND TO APPROPRIATE FUNDS TO IMPROVE FOOD SAFETY AND SECURITY IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The North Carolina Food Safety and Security Task Force is created as a cooperative, multiagency advisory and coordinating task force to protect the State's food supply system and the agricultural industry base. The Task Force shall consist of the following members, or their designees:

(1) The Commissioner of Agriculture.
(2) The Secretary of Environment and Natural Resources.
(3) The Secretary of Health and Human Services.
(4) The Secretary of Crime Control and Public Safety.
(5) The Superintendent of Public Instruction.
(6) The Commissioner of Labor.
(7) The Commissioner of Insurance.
(8) The Attorney General.
(9) The Chancellor of North Carolina State University.
(10) The Chancellor of North Carolina Agricultural and Technical State University.
(11) The President of the North Carolina Community College System.
(12) Representatives of private industry and other public members invited to participate by the Task Force.

SECTION 1.(b) The Commissioner of Agriculture and the Secretary of Health and Human Services shall serve as cochairs of the Task Force.

SECTION 2. The North Carolina Food Safety and Security Task Force shall:

(1) Assess the vulnerability of the State's food system to criminal and terrorist acts and make recommendations for:
   a. Improved safety and security of the food supply system.
   b. Terrorism threat reduction measures.
   c. Improvement of food safety and security mitigation and response plans.
   d. Training for key stakeholders in the State's food supply system.

(2) Recommend legislation needed to improve the ability of State departments and agencies to protect the safety and security of the State's food supply and the agricultural industry base, including legislation to protect sensitive and proprietary information of the State's food supply system, safety and security vulnerability information, and security plans, that, if compromised, would heighten the exposure of the State's food supply system to criminal or terrorist acts.

(3) Recommend budget, staffing and resource adjustments necessary to improve the capability of State departments and agencies to protect the safety and security of the State's food supply system and agricultural industrial base.

SECTION 3. The Food Safety and Security Task Force shall submit a preliminary report no later than 15 December 2003 and shall submit a final report no later than 15 December 2004 to the Joint Legislative Commission on Governmental Operations. These reports shall include any recommendations, including proposed legislation, for changes in laws, rules, and programs that the Task Force determines to be appropriate to enhance food safety and security in the State.

SECTION 4. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of thirty-six thousand dollars ($36,000) for the 2003-2004 fiscal year and the sum of thirty-six thousand dollars ($36,000) for the 2004-2005 fiscal year to establish and support a multiagency North Carolina Food Safety and Security Task Force.

SECTION 5. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of three hundred eighty-four thousand seven hundred forty-eight dollars ($384,748) for the 2003-2004 fiscal year to be used as the ten percent (10%) State matching funds needed to obtain a grant of approximately three million eight hundred forty-seven thousand four hundred-eighty-three dollars ($3,847,483) from the United States Department of Homeland Security to fund a multiagency, private-public food safety and security program to reduce the vulnerability of North Carolina food supplies to criminal and terrorist acts.

SECTION 6. This act becomes effective 1 July 2003.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/27/03

S. B. No. 834 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Kinnaird
)
Sen.)

moves to amend the bill on page 1, line 16-19

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"(10) The Chancellor of North Carolina Agricultural and Technical State University.
(11) The President of the North Carolina Community College System.
(12) Representatives of private industry and other public members invited to participate."

SIGNED _____

ADOPTED 27 May 2003 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS 5834-CSRT-34 [v.2]

H. B. No. _____ DATE 27 May 2003

S. B. No. 834 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, lines 12 through 15

( ) WHICH CHANGES THE TITLE

by Rewriting those lines to read:

"Section 3. The Food Safety and Security Task Force shall submit a preliminary report no later than 15 December 2003 and shall submit a final report no later than 15 December 2004 to the Joint Legislative Commission on Governmental Operations. These reports shall include any recommendations, including proposed legislation, for changes in laws, rules, or programs that the Task Force determines to be appropriate to enhance food safety and security in the State."

SIGNED _____

ADOPTED 27 May 2003 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NC Food Security

North Carolina's interagency effort to protect the food chain

2002 State Auditor's findings

The 2002 North Carolina Food Safety review by the N.C. Auditor's office has highlighted significant shortcomings in the capability of NCDA&CS to insure the safety of the state's food supply.

Further, in the face of the current bio-terrorism threat, extraordinary funds are currently being invested in Human Disease response and prevention efforts.

However, the investment at national and state levels in food security has been minimal to date!

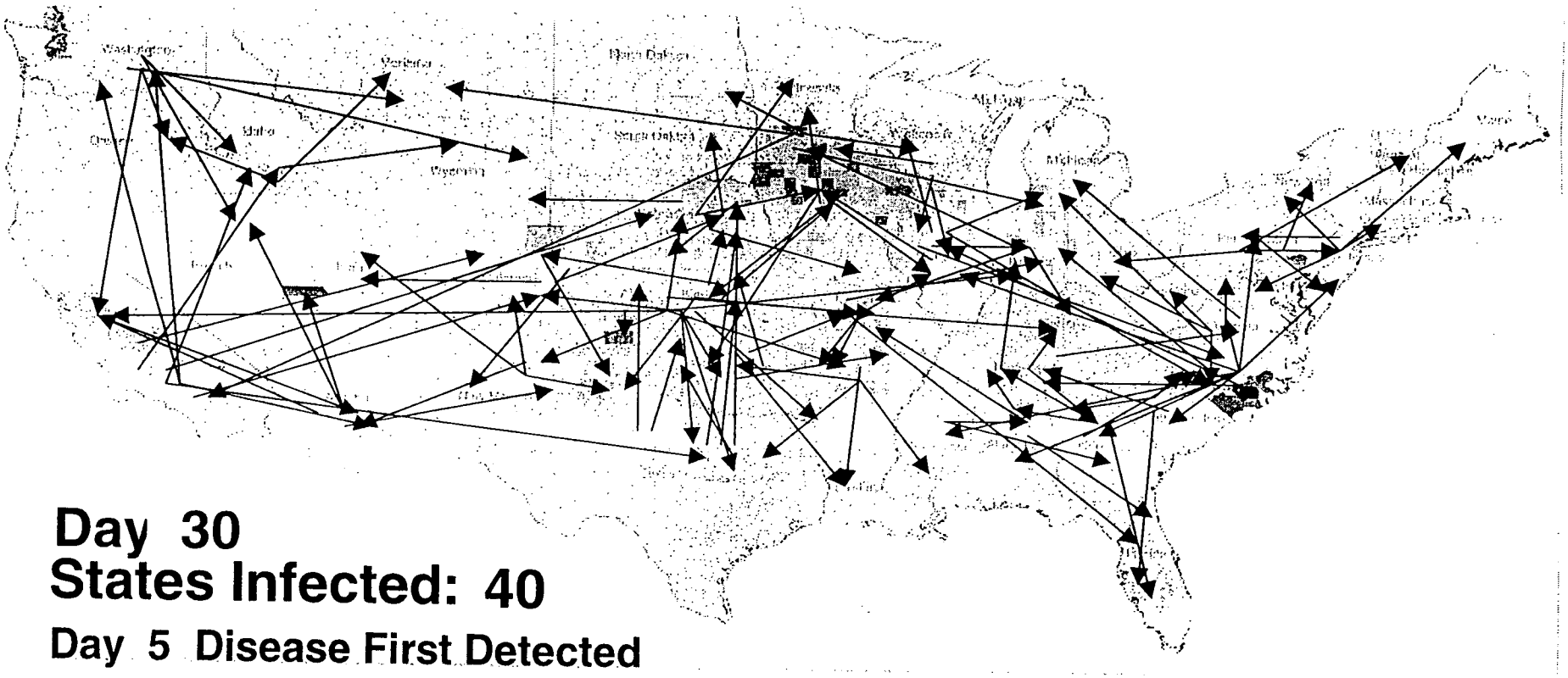
Is agriculture a target?

- Current intelligence and recent history suggest that terrorist acts targeting the food chain are a real threat
- Terrorist have historically exploited agriculture to create weapons
- In North Carolina, like in many states, agriculture is the single most important component of our economy. If a terrorist organizations seeks to harm our economy, this is where the body blow can be delivered!

Is agriculture a target?

- Finally, the overall capability of the state to ensure a safe food supply is hindered by inadequate laboratory staffing, capacity and modern equipment to deal with current safety surveillance needs. This situation complicates our response capability in the event of a terrorist attack on the state's food chain.

Potential FMD disease spread after a simulated terrorist attack at 5 Locations



Day 30
States Infected: 40
Day 5 Disease First Detected

Potential Impact: Even if a national "stop Movement" of all susceptible animals is ordered on Day 8, by the time the disease is eradicated the nation could lose still 23.6 million animals!

National Food Security - What is the Terrorism Risk?

- How secure is our national food chain from farm to table?
- What are our national vulnerabilities to food adulteration and contamination on a large scale?
- What is industry already doing to prevent intentional food contamination?
- FSIS and State inspection programs do not routinely test for botulism, anthrax or other weaponizable bio-agents, but instead rely on processing controls and carcass inspections to prevent accidental introduction of contaminating agents into the food supply.

National Food Security - What is the Terrorism Risk?

- Where do state and federal laws conflict with reasonable security practices and create vulnerabilities?
- Have our potential adversaries demonstrated an intent and/or capability to target our food supply?

Why is U.S. agriculture vulnerable to terrorism?

- Nearly all agriculture production and delivery is multi-state, highly integrated and "just-in-time" inventory based. It is vulnerable to interdiction with significant downstream affects.
- Our agri-industry is open and public, just like our society.
- Historically, we have focused on safety not security. No "security culture" exists!
- Terrorists have targeted and exploited the agriculture community throughout history.
- We lack effective surveillance and detection capabilities!

Current N.C. Interagency Food Security Initiatives:

- NC Governor's Terrorism Preparedness Task Force
- NCDA&CS Terrorism Vulnerability Self Assessment Program
- NCDA&CS Retail Food Security Training Program
- NC Interagency Food Security & Safety Task Force
- NC Retail Food Security Task Force
- NC Milk Security Task Force

Production facility food security



- Employee Background Checks
- Contract haulers must adhere to physical & transport security procedures
- Physical Security
- External Facility Monitoring
- Language/Cultural Issues
- Immigrant Workers
- Employee Chem & Bio-Security Training
- Terrorism Vulnerability Self Assessments

Food Security Issues

- Public-Private Partnerships
- Role of federal laboratories
- Role of local physicians, Medical Examiners and state public health labs
- Rapid detection and accurate patient history are key elements
- Industry staff food security training
- Access to retail food business customer databases

Food Security Issues

- Role and training posture of FSIS or State Inspectors in food security events
- Integration of state inspectors and laboratories with the FBI criminal investigation
- Surveillance of in-plant state and federal inspectors for disease indicators
- Identify the Essential Elements of Information (EEI) for forensic, Public Health, Veterinary and Food and Drug investigators to detect and understand food security events

Food Security
Economic Issues

- What will be the impact on the state's economy?
- What will be the effect on our foreign trade?



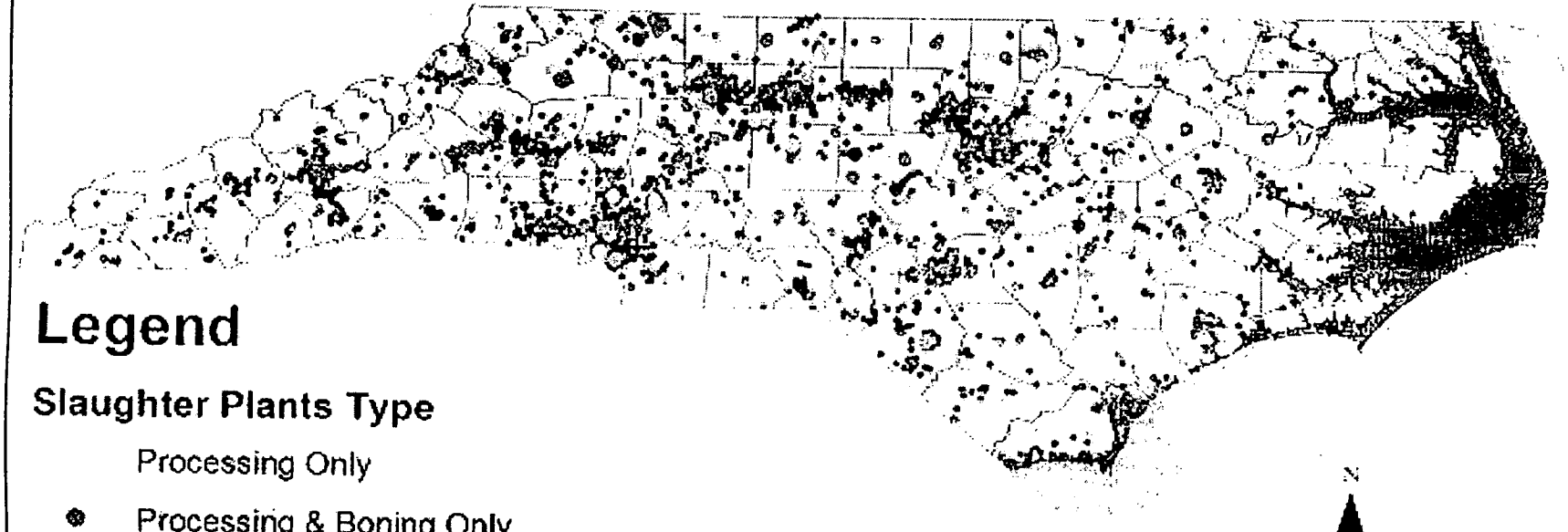
PROPOSED NORTH CAROLINA FOOD SECURITY PROJECT

N.C. Food Security Project

With the increasing focus on the potential impact on our nation of bio-terrorism, the risks to our nation's food supply are now being appreciated in a new context at every level.

The need to harden our food chain against such acts must receive equal priority and focus of effort as has been provided to human health issues. This project is intended to address that need. Our initial requirement of this project is to understand the vulnerabilities within the N.C. food chain to criminal and terrorist acts and then to provide a program to harden the overall food chain against such acts.

Food Safety Establishments North Carolina



Legend

Slaughter Plants Type

- Processing Only
- Processing & Boning Only
- Slaughter, Processing & Boning
- Rendering
- Other
- Foodlion
- Hotels & Restaurants

N

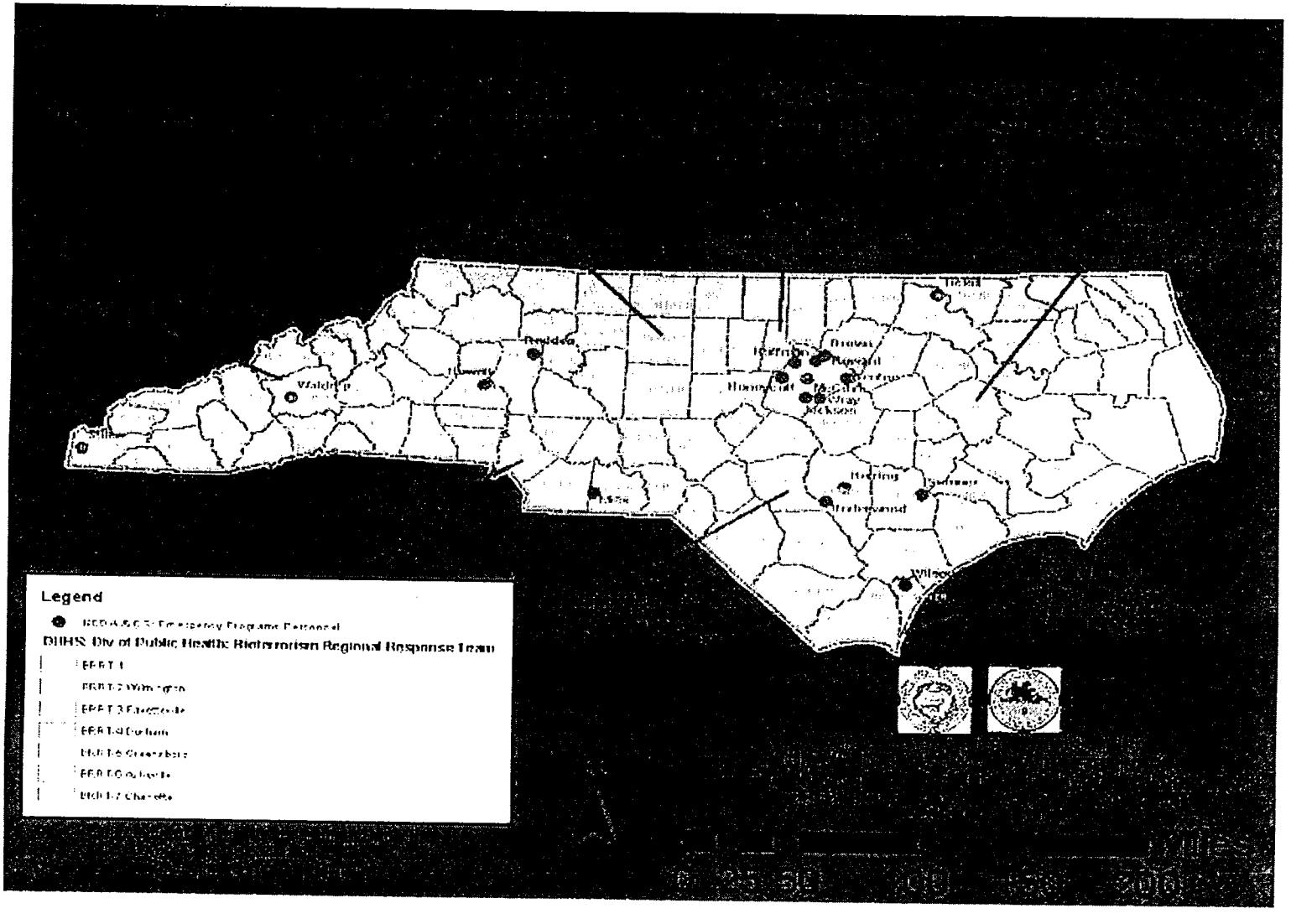
0 20 40 80 120 160 Miles

Proposed NC Food Security Project

Interagency Project Team Composition:

- NCDA&CS
- N.C. Department of Public Health
- N.C. State Bureau of Investigation
- N.C. Department of Justice
- N.C. Department of Crime Control and Public Safety
- Industry Organizations
- Federal Agencies

N.C. Food Security Project



N.C. Food Security Project Deliverables

1. Permanent Interagency State Food Security Task Force
2. Food Security Strategy for the state of NC
3. Vulnerability assessments of food production-distribution within NC
4. Integrated threat assessment and reporting system with Law Enforcement
5. Implementation of a Food Security Threat Reduction Plan
6. Strategy for implementing needed regulations, policies, and legislation

N.C. Food Security Project Deliverables

7. Strategy Integration with federal, neighboring states and industry
8. Integrated Interagency Food Security Response Plan
9. GIS based surveillance, reporting, decision support and threat management
10. Improved Food Chain bio-threat and disease surveillance and reporting
11. Identify and fulfill training needs of stakeholders
12. Prototype National Food Security Program

Final Thoughts on Food Safety

- In any terrorist food contamination scenario, the distribution of the contaminated product will not be limited to one store or one even area.
- Imagine how far that distribution might be in a real terrorist attack on food at the production level in multiple locations!
- In forecasting response needs: trained people, supplies, laboratory needs and interagency coordination levels, we will need to plan and respond on a massive scale!
- We need a national program that provides the same guidance and standards to all states and to all industries.
- N.C. is positioned to be the national prototype.

North Carolina Food Safety and Security Task Force

Account	Description	2003-04	2004-05
532714	In-State Transportation	12,000	12,000
532715	Out of State Transportation	11,600	11,600
532724	In-State Subsistence	4,000	4,000
532850	Printing	4,800	4,800
533110	Office Supplies & Materials	2,400	2,400
533900	Other Materials & Supplies	1,200	1,200
	Total Requirements	$ 36,000	$ 36,000

Sum Total Requirements $72,000

	Receipts	-0-	-0-
	Appropriations	$36,000	$ 36,000

North Carolina Department of Agriculture & Consumer Services
N.C. Inter-agency Food Security Project
Expansion Budget

Account	Description	2003-04	2004-05
531211	**Salaries & Wages** **(TIME LIMITED EMPLOYEES)** 1 Emergency Mgmt. Section Manager (Project Administrator- Agriculture) (PG 76) @ $50,004/ yr 1 Emergency Mgmt. Section Manager (Project Administrator- Public Health) (PG76) @ $50,004/ yr 18 members of Vulnerability Assess Team @ $4800/person/month effective October 03-Jan 05 1 Project Manager (PG 74) $42,000 1 Public Health Epidemiologist (PG70) $49,799 1 Public Health Data Processing Asst (PG 59) @ $21,996 Begins work October 03 - Jun 05 1 Paralegal I (PG 65) @ $37,992 Begins work October 03 - Jun 05 2 Training Administrators(PG-NG) $37,992 Jan 04 - Jun 05 2 Law Enforcement Officer I (PG 70) $37,992 Nov 03 - Jun 05 1 Emergency Management Plans Supervisor (Response Planner) (PG74) @ $42,000/yr Aug 03 – Jun 05 1 Emergency Management Support (Threat Specialist) (PG 72) $42,000 2 Mitigation Specialists(PG NG) $37,992 Jan 04 thur Jun 05 1 GIS Technician (PG-NG) $37,992	$1,231,535	$1,278,539
531511	Social Security @ 7.65% total salary	$94,212	$97,808
531521	Retirement	$37,316	$38,740
531561	Medical Insurance @ $2933.00/position	$70,875	$78,451
532199	**Misc. Contract**: Initial Recruiting Expenses	$8,700	
533110	Office Supplies & Materials	$26,230	$24,130
533900	Other Materials & Supplies	$23,500	$12,000
532714	In-State Transportation	$195,073	$160,802
532724	In-State Subsistence	$46,376	$36,856
532715	Out-of-State Transportation	$46,238	$37,670
532725	Out-of-State Subsistence	$14,594	$12,214
532814	Telephone Cell Phones (1200min) $70/employee/mo.	$23,870	$18,970
532840	Postage	$2,705	$2,355

532850	Printing	$6,115	$5,065
534534	Computer Equipment $120/employee/mo. GIS Work Station & Licenses	$25,080 $20,513	$17,400
534511	**Furniture** Initial Office Setup Costs $145,000	$100,000	
532714	**Motor Fleet** Vehicles (1050 miles) $350/ 4 employees/mo.	$29,838	$23,713
	Total Requirements	**$2,002,770**	**$1,844,713**
	Sum Total Two year Requirements	$3,847,483	
	Receipts:		
	Food Security Project- Federal	$1,802,493	$1,660,242
	Appropriations	$200,277	$184,471
	Total Number of Positions	32	

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

May 29, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Cooper	NCIALIA
David Marshall	NCDA+CS
Angie McMillan	TNC
Kadie Hoover	TLC
David Knight	NC Wildlife Fed
HALEY GILBERT	DAVID KNIGHT
Robin Smith	DENR
Steve Hall	Conservation Council
Sheryl Stephens	DENR
Kari Barsness	DENR
Grady McCallie	N.C. Conservation Network.
Jerry Rice	N.C. Conservation Network

Kim Hibbard NCLM
Claudia Bingham individual
- Tom Walsh "

Martha Downing DAI

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Fuller	Bayer
David Meredith	NC State Grange
John Cyrus	NC State Grange
Jim Blackburn	NC Association of County Commissioners
Rick Zechini	NC Assoc. of REALTORS
Ben Ann Mumford	NCPC
Sherry K	CAA
Doug Lassiter	NC STA
Jenny Hardesty	NC DC
Martha Glass	NCDA&CS
R. Rogers	NCDENR

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	NMCIC
DAVID PRESTWOOD	NCPIRG
Tom BEAN	NC ENVIRO DEF
Tyler Hustmid	NC Enviro Def.
Elizabeth Dalton	Bond Astor
Judy Igelman	Citizen
Matt Igelman	Hemophilia of NC

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 3, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 727	Soil and Water Conservation Commission.	Representative Culp
SB 945	Timely Environmental Permit Process.	Senator Hoyle
SB 981	Clean Air Trust Fund.	Senator Metcalf

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 3, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 3, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were eighteen members present.

Sen. Albertson called the meeting to order and recognized the Pages. He also recognized Dr. Weinstein, daughter of Sen. Weinstein.

HB-727 – SOIL & WATER CONSERVATION - Rep. Arlie Culp explained. Mr. George Givens, staff counsel, made additional comments. Sen. Holloman moved for a favorable report. Mr. Jimmy Mason, President-State Soil & Water Conservation, addressed members in favor of their support. The vote was taken and passed.

SB-945 – TIMELY ENVIRONMENTAL PERMIT PROCESS - Mr. Givens explained the bill and advised it would have to be referred to the Finance Committee if passed by our committee. George then explained an amendment for Sen. Weinstein. Sen. Weinstein moved for adoption of the amendment. Vote taken and passed. Sen. Lucas asked why we are moving forward since all parties haven't reached an agreement. Mr. Givens advised that Sen. Hoyle asked for consideration because good faith negotiations are still taking place. He then made additional comments. Sen. Albertson asked about safe guards of proceeding and counsel explained. Sen. Lucas wanted to know how soon before an agreement would be reached. Mr. Givens said Sen. Hoyle hopes to move this during this session since most sides are pretty close on reaching agreements. The chairman called upon Mr. Keith Overcash, Director of Division of Water Quality to address members. Sen. Gulley recommended this go to Finance before we take action so a fee could be worked out. Sen. Albertson advised that now was the time for us to work on it. Sen. Smith spoke in favor. Ms. Robin Smith, Asst. Sec., DENR, addressed members and advised that she couldn't add anymore than Mr. Givens had but that she was sure progress was being made. Sen. Webster asked for the longest period of time for a permit to be approved. Mr. Overcash and Ms. Smith replied. Mr. Overcash added that sometime permits had to have public hearings. Sen. Albertson asked if this would protect the environment and Mr. Overcash responded. Sen. Reeves spoke and wants to know how this bill will improve air quality. Sen. Gulley doesn't feel this will address this adequately. Ms. Smith spoke again and told that there are some safe guards but no one know how well they will work. She thinks the main focus has been on construction issues. Sen. Kinnaird spoke and urged caution before we move forward. Sen. Albertson took Sen. Gulley's suggestion to move to Finance first. Sen. Gulley then stated

his motion that we move this bill to Finance and have them refer it back to our committee. Sen. Albertson advised he would have to do this from the floor of the chamber.

SB-981- CLEAN AIR TRUST FUND - Sen. Metcalf apologized for the late notice on this change and thanked staff for their hard work. Sen. Horton moved we could adopt this for discussion since we didn't get a 24-hour notice. Sen. Weinstein moved for adoption of the PCS for discussion. Sen. Webster requested a personal privilege and thanked our staff for giving us the 24-hour advance notice on all PCS's we discuss in our committee. Sen. Metcalf then explained and advised this will go to Appropriation if we pass it. Counsel made additional comments. Sen. Smith expressed concerns because we haven't had enough time to study the new language. Sen. Kinnaird hopes that the State Energy Policy Council will be incorporated in this bill. Mr. Givens advised that had been done already. Sen. Horton advised that wasn't the proper title of that group. Sen. Albertson told members that discussion would continue on this at the next meeting. Sen. Clodfelter spoke and commended the sponsor but he offered caution on issues that need to be addressed before this is complete.

Time expired and the meeting adjourned at 11:55 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, June 03, 2003

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

FAVORABLE

H.B. **727** Soil and Water Conservation Commission.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 727

Short Title:	Soil and Water Conservation Commission.	(Public)
Sponsors:	Representatives Culp; Barbee, Blust, Church, Dockham, Fox, Gibson, Hill, Lewis, McGee, Ray, Rhodes, Saunders, Tolson, Walker, West, G. Wilson, and Yongue.	
Referred to:	State Government.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT MEMBERS OF THE SOIL AND WATER CONSERVATION COMMISSION ARE AUTHORIZED TO HOLD OFFICE CONCURRENTLY WITH OTHER ELECTIVE OR APPOINTIVE OFFICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-295 reads as rewritten:

"**§ 143B-295. Soil and Water Conservation Commission – members; selection; removal; compensation; quorum; services.**

(a) The Soil and Water Conservation Commission of the Department of Environment and Natural Resources shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

(1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;

(2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;

(3) One member appointed at large by the Governor.

(b) The members of the Commission, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(c) The office of member of the Soil and Water Conservation Commission may be held concurrently with any other ~~elected or appointed~~ elective or appointive office, ~~as authorized by G.S.128-1.1 and Article VI, Section 9, of the Constitution of North Carolina.~~ in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(d) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(e) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Commission shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources."

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

HOUSE BILL 727:
Soil and Water Conservation Commission

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Representative Culp
Date:	3 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	1st Edition		

SUMMARY: ***HB 727 would allow a member of the Soil and Water Conservation Commission to concurrently hold that office as well as either another appointed and another elected office or two other appointed offices.***

CURRENT LAW: Section 9 of Article VI of the Constitution of North Carolina prohibits a person from concurrently holding two offices elected by the people. The Constitution also prohibits a person from concurrently holding two or more appointed offices, or any combination of appointed and elected offices, except as provided by statute. G.S. 128-1.1 implements this constitutional provision by prohibiting a person from concurrently holding more than one elected and one appointed office or two appointed offices.

BILL ANALYSIS: The bill amends G.S. 143B-295(c) (which specifies the membership of the Soil and Water Conservation Commission (Commission)) regarding dual office holding by members of the Commission. This statute currently applies the office holding provisions set out in G.S. 128-1.1. The bill would allow a member of the Commission to also concurrently hold one elected and one other appointed office or two other appointed offices. Given the constitutional prohibition against concurrently holding two elected offices, the change would not allow a person to concurrently hold one appointed office and two elected offices.

BACKGROUND: The Commission is composed of seven members appointed by the Governor as follows:

- The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts (Association);
- Three district supervisor members nominated by the Association and appointed by the Governor; and
- One member appointed at large.

RATIONALE: The rationale for this bill is as follows: To be an officer in the Association, a person must be a district supervisor. Therefore at least six of the seven members of the Commission must be district supervisors. District supervisors are either elected by the people or appointed by the board of county commissioners. In practice, the Governor's at large appointee has always also been an elected or appointed district supervisor. Thus, members of the Commission (who are appointed by the Governor) in practice are always either elected or appointed district supervisors and therefore hold the maximum number of offices allowed by G.S. 128-1.1 and can hold no other office. This bill would allow an elected district supervisor to both serve on the Commission and hold another appointed office and would allow an appointed district supervisor to serve on the Commission and hold one other office, either elected or

appointed. Similar provisions are in effect for the Coastal Resources Commission (G.S. 113A-104(f)) and the Coastal Resources Advisory Council (G.S. 113A-105(d)).

EFFECTIVE DATE: The act is effective when it becomes law.

Kory J. Goldsmith, Counsel to the House State Government Committee, contributed substantially to this summary.

H727-SMRI-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 945

Short Title:	Timely Environmental Permit Process.	(Public)
Sponsors:	Senators Hoyle; Clodfelter, Foxx, Garrou, Rucho, Stevens, and Swindell.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES SHALL MODIFY THE PERMIT PROCESS FOR CERTAIN AIR QUALITY PERMITS, SHALL CONDUCT A THOROUGH REVIEW OF THE ENVIRONMENTAL PERMIT PROGRAMS TO IDENTIFY IMPEDIMENTS TO THE TIMELY ISSUANCE OF PERMITS BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND SHALL MAKE RECOMMENDATIONS FOR MODIFICATIONS TO THESE PROGRAMS IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. 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, except as provided in G.S. 143-215.108A.

(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, except as provided in G.S. 143-215.108A.

(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 device to be constructed, installed, or operated.~~"

SECTION 2. G.S. 143-215.108(f) reads as rewritten:

"(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to ~~construction or~~ operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of ~~construction or~~ operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

SECTION 3. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.108A. Control of sources of air pollution; construction of new facilities and the expansion of existing facilities.**

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air-cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air-cleaning device for which a

permit is required under G.S. 143-215.108. A person may, however, construct any component of the facility that is not integral to the operation of the air contaminant source, equipment, or associated air-cleaning device, including any portion of the facility that relates to or supports both the air contaminant source, equipment, or associated air-cleaning device and other functions, such as the foundation, walls, roof, electrical wiring, and vents, if the person complies with the requirements of this section. At least 15 days prior to commencing construction under this subsection, the person who owns the facility shall give notice to the Commission of the person's intent to construct a facility for which a permit will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the proposed facility and the name and address of the person who will apply for a permit under G.S. 143-215.108.

(2) The nature of the air contaminant sources and equipment associated with the facility when constructed.

(3) An estimate of total regulated air contaminant emissions associated with the facility when constructed.

(4) The air-cleaning devices that are to be employed to address each of the air contaminant sources.

(5) The construction schedule for the proposed construction.

(6) An acknowledgment by the person that the actual air contaminant sources, equipment, and associated air-cleaning devices may not be constructed until the person has obtained a permit under G.S. 143-215.108.

(7) An acknowledgment by the person that any construction prior to the issuance of a permit under G.S. 143-215.108 is undertaken at the person's own risk and with the knowledge that the person may be denied a permit under G.S. 143-215.108 without regard to the person's financial investment or construction activities.

(8) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the person's knowledge and ability, executed by the person or, if the person is a corporation, by the appropriate officers of the corporation.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air-cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air-cleaning devices in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, construct or modify an air contaminant source, equipment, or associated air-cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing construction or modification under this

subsection, the permittee shall give notice to the Commission of the person's intent to construct a facility for which a permit modification will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air-cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The construction schedule associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air-cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any construction prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or construction activities.

(9) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. – Upon receipt of the notice to the Commission required under subsection (a) or (b) of this section, the Commission may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility or permit modification. If at any time during construction the Commission determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request in writing that the person or permittee submit, within 15 days of receipt of the request, specific additional information related to the reasons that give rise to the determination. If, after reviewing any additional information submitted by the person or permittee, the Commission again determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request that the plans for the construction be altered in order to address the anticipated inability of the person or permittee to qualify for a permit or permit modification, or the Commission may order that construction or modification cease. If the Commission orders that construction or modification cease, then construction may resume only if the

Commission either makes a subsequent determination that the circumstances that resulted in the determination that resulted in the order to cease construction or modification have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction to resume. Any order by the Commission that construction cease shall be in writing and shall set forth specific reasons for the determination that the person or permittee will not qualify for a permit.

(d) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (a) or (b) of this section. No evidence regarding any financial investment made, construction activity undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.

(e) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any construction or modification undertaken by any person, permittee, or owner of any facility pursuant to this section.

(f) Local Zoning Ordinances Not Affected. – This section shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance.

(g) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction or modification that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(h) Fee. – A person or permittee who submits a notice of construction under subsection (a) or (b) of this section shall pay a fee of two hundred dollars ($200.00) for

each notice submitted to cover a portion of the administrative costs of implementing this section."

SECTION 4.(a) The Secretary of Environment and Natural Resources shall conduct a thorough examination of the permitting programs in the Department of Environment and Natural Resources to determine modifications that may be made under current law and with current staffing resources to reduce the time required for permit issuance so as to enhance economic development in North Carolina without compromising protection of North Carolina's environment and natural resources. In examining the permit programs of the Department of Environment and Natural Resources, the Secretary of Environment and Natural Resources shall identify all of the following:

(1) Outdated regulations or policies that serve as impediments to timely issuance of environmental permits.

(2) Any organizational impediments to reducing the time required for the issuance of environmental permits.

(3) Ways to streamline the issuance of permits for minor activities, such as utilizing general permits, standard specifications, or permitting by rule.

(4) Which permit programs currently utilize general permits for minor activities, which minor activities are presently subject to general permits, and opportunities to expand the use of general permits to other minor activities as well as to other permit programs that are not currently utilizing general permits.

(5) Voluntary options that permit applicants may pursue, such as the payment of higher permit application fees to decrease the time required to issue permits.

(6) Opportunities to further streamline or eliminate certain permit requirements for minor activities conducted by permit applicants that operate under an independently certified environmental management system.

(7) Opportunities to expand upon the use of professional engineers, professional geologists, or other individuals certified by the Department of Environment and Natural Resources as having the skills necessary to design and approve emission controls, treatment systems, or structures for minor activities.

SECTION 4.(b) As used in Section 4(a) of this act, "minor activities" means activities that pose no risk or minimal risk to the environment.

SECTION 4.(c) The Secretary of Environment and Natural Resources shall recommend legislation necessary to streamline or otherwise change the environmental permit programs or activities of the Department of Environment and Natural Resources that would serve to enhance the State's ability to meet its economic development goals without compromising environmental and natural resource protections.

SECTION 4.(d) The Secretary of Environment and Natural Resources shall, in cooperation with the Secretary of Administration, review the rules and policies developed by the two departments to implement the Environmental Policy Act, Article

1 of Chapter 113A of the General Statutes, and identify any modifications to the Environmental Policy Act and the implementing rules and policies that would remove impediments to economic development where such impediments have no significant environmental or natural resource protection benefit.

SECTION 4.(e) In conducting the examination of the permit programs of the Department of Environment and Natural Resources and the activities of the Department of Environment and Natural Resources under the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, the Secretary of Environment and Natural Resources shall consult with staff of the Department of Environment and Natural Resources, local government officials, manufacturers, business groups, economic developers, professional engineers, professional geologists, land developers, and any other individuals or groups that the Secretary of Environment and Natural Resources believes to possess information that would be of benefit to the examination of the permit programs conducted by the Department of Environment and Natural Resources.

SECTION 4.(f) On or before December 31, 2003, the Secretary of Environment and Natural Resources shall report the findings and recommendations under subdivisions (1) through (7) of subsections (a) and (b) of this section, along with any other findings and recommendations deemed important by the Secretary of Environment and Natural Resources to fostering a regulatory climate favorable to improving economic development without compromising environmental and natural resources protections, to the Environmental Review Commission and to the Joint Legislative Commission on Governmental Operations.

SECTION 5. This act is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after the date on which this act becomes law. This act does not apply to any application for a permit or permit modification under G.S. 143-215.108 that is submitted to the Environmental Management Commission prior to the date on which this act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 945

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

S945-ART-10 [v.2]

Date _____,2003

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

Senator Weinstein

moves to amend the bill on page 5, lines 11 through 13,
by rewriting those lines to read:

"if the construction allowed under this section had not occurred. No evidence regarding any"; and

on page 7, line 11,
by inserting at the end of that line:

"representatives of environmental protection and natural resources conservation advocacy groups,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 3 June 2003 FAILED _____ TABLED _____

2/03

AIR PERMITTING GUIDANCE
(Draft)

The following activities do not constitute construction of an air contaminant source, equipment or air-cleaning device, and will be allowed to be undertaken on-site prior to the receipt of the state air quality permit at both new and existing, permitted facilities:

1) clearing and grading;
2) development of access roads, driveways and parking lots;
3) construction and installation of underground pipework, including water, sewer and electrical utilities; and
4) construction of accessory structures and buildings, including fences and separate offices, that are not a necessary part of the air contaminant source, equipment or air-cleaning device that requires the air quality permit.

Sources requiring a PSD review and permit are subject to the more stringent limitations on the beginning of construction activities prior to permitting, found at 40 CFR Section 51.166(b) (11).

Construction activities will be found to relate to the building and erection of an emission source once those activities extend beyond those specifically allowed above, and thus are not authorized to begin without a permit. DAQ will also consider any activity to be unauthorized if it prejudices the ultimate design of the emission source; and DAQ will not consider any pre-permit investment costs when reviewing the application.

SENATE BILL 945:
Timely Environmental Permit Process.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Hoyle
		Summary by:	George Givens, Committee Counsel
Date:	June 3, 2003		Tim Dodge Research Assistant
Version:	First Edition		

SUMMARY: ***Senate Bill 945 would modify the procedures required before construction, expansion, modification, or operation of an air contaminant source and its components may begin. The bill would:***

- ***Establish notification and review procedures for permit applicants, establish an application fee, and prohibit the use of economic and financial losses incurred by a person who proceeds without a permit as evidence during administrative and judicial review of permit decisions.***
- ***Direct the Secretary of Environment and Natural Resources (Secretary) to examine permitting programs in the Department of Environment and Natural Resources (DENR) to determine modifications that may be made under current law and with current staffing resources to reduce the time required for permit issuance so as to enhance economic development in North Carolina without compromising protection of the environment and natural resources of the State.***
- ***Direct the Secretary, in cooperation with the Secretary of Administration, to review the rules and policies developed by the two departments to implement the Environmental Policy Act, and identify any modifications to the Environmental Policy Act and the implementing rules and policies that would remove impediments to economic development where such impediments have no significant environmental or natural resource protection benefit.***

The bill would become effective when it becomes law.

BACKGROUND: G.S. 143-215.108 prohibits a person from carrying out activities that may contravene the air quality or emission control standards established by the Environmental Management Commission (EMC) under G.S. 143-215.107 unless the person has applied for and received a permit from the EMC. These laws prohibit the construction, alteration, or entering into an irrevocable contract for the construction or installation of any air contaminant source without a permit from the EMC. In actual practice in the past, the point at which a permit was required varied among DENR regional offices. On February 8, 2001, the Attorney General issued an advisory opinion that interpreted G.S. 143-215.108 to require that a person secure a permit prior to the actual on-site assembling of materials that will constitute a "source."

Senate Bill 945 is similar to Senate Bill 1037(No Air Pmt. Req. Until Facility Operational), introduced by Senator Hoyle during the 2001 General Assembly. Senate Bill 1037 was modified extensively during deliberations, but was not enacted.

BILL ANALYSIS: Senate Bill 945 modifies G.S. 143-215.108 (Sections 1 and 2) and adds a new G.S. 143-215.108A (Section 3) to clearly delineate the point at which a permit approved by the EMC becomes necessary for air contaminant sources during construction, expansion, modification, or operation. The bill makes the following changes:

Consistency with local government ordinances:

Current law (G.S. 143-215.108(f)) requires facilities to be consistent with local ordinances **prior to construction or operation.** Section 2 of the bill amends G.S. 143-215.108(f) to require persons proposing to construct or expand to ensure the facility or expansion is consistent with local zoning or subdivision ordinances **prior to *operation*.** Section 3 also adds a subsection (f) to the new G.S. 143-215.108A that provides that the new section does not affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or affect the responsibility of any person to comply with any local ordinance.

Procedures for construction of new air pollution facilities:

Subsection (a) of the new G.S. 14-215.108A authorizes a person to construct components of a facility **that are not integral to the operation of the air contaminant source or equipment prior to obtaining an air permit,** but the person must obtain a permit **prior to *construction* or operation of the actual air contaminant source, equipment, or associated air-cleaning devices.** Facilities would be required to notify the EMC at least 15 days prior to commencing construction and provide the EMC with the following information:

1. The name and location of the proposed facility and the name and address of the permit applicant.
2. The nature of the proposed contaminant source.
3. An estimate of regulated emissions.
4. The air cleaning devices that will be employed to address each contaminant source.
5. The expected construction schedule.
6. An acknowledgement by the person that the actual air contaminant sources may not be constructed until the permit is obtained.
7. An acknowledgement that any construction of an air contaminant source prior to the receipt of an operation permit will be performed at the applicant's own risk.
8. A certification under oath of the accuracy of the notice of construction.

Procedures for facilities currently holding a permit:

Subsection (b) of the new G.S. 14-215.108A would allow a person that holds a current permit to modify a facility or emission source prior to obtaining a modified permit, but if the modification would alter the emissions from the facility, the facility must obtain a modified permit **prior to operation** of the modified emissions source. Notification requirements would be similar to those for a new facility and would require the following information:

1. The name and location of the proposed facility and the name and address of the permit applicant.
2. The current permit number.

3. The nature of the contaminant sources and equipment associated with the modification.
4. An estimate of regulated emissions under the proposed modification.
5. The air cleaning devices that will be employed to address each contaminant source.
6. The expected construction schedule.
7. An acknowledgement by the permittee that the actual air contaminant sources may not be operated in a manner that alters the permitted emissions until a modified permit is obtained.
8. An acknowledgement that any construction of an air contaminant source prior to the receipt of a modified operation permit will be performed at the permittee's own risk.
9. A certification under oath of the accuracy of the notice of construction or modification.

Review and Determination by the EMC:

Subsection (c) of the new G.S. 14-215.108A provides that, following receipt of a notice of construction, the EMC may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility. If the EMC determines that there is a significant likelihood that a person or permittee will not qualify for a permit or modified permit, the EMC may request in writing that the person submit specific additional information. Upon review of the additional information, if the EMC determines that there continues to be a significant likelihood that a person or permittee would not qualify for a permit, the EMC may request that the plans be altered or may order that construction cease until the EMC issues a permit or permit modification that authorizes construction to resume.

Administrative and Judicial Review of Permit Decisions:

Subsection (d) of the new G.S. 14-215.108A would prohibit the use of prior financial investment, construction activity undertaken, or economic loss incurred as evidence by a person or permittee who proceeds with construction, expansion, or modification without first obtaining a permit. Under current law, a person or permittee may contest a decision based on dissatisfaction arising from any issue. The bill also directs the EMC to consider any written comment that it receives in response to the public notice.

State, EMC, and Employees Not Liable:

Subsection (e) of the new G.S. 14-215.108A provides that the State, EMC, and their employees shall not be held liable for any loss incurred by a person, permittee, or owner of a facility as a result of the enforcement of the provisions of the bill.

Federal Air Quality Programs Not Affected:

Subsection (g) of the new G.S. 14-215.108A provides that the new section would not affect a person's duty to comply with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, nor would G.S. 143-215.108A apply if it is inconsistent with any federal requirement. The bill would also not apply to any construction or modification that is subject to the requirements for prevention of significant deterioration or federal nonattainment new source review.

Fee:

Subsection (h) of the new G.S. 14-215.108A provides that an applicant or permittee shall pay a processing fee of two hundred dollars ($200.00) at the time of notification.

Study of Environmental Permitting Programs:

Section 4 of the bill directs the Secretary to examine permitting programs in DENR to determine modifications that may be made under current law and with current staffing resources to reduce the time required for permit issuance so as to enhance economic development in North Carolina without compromising protection of the environment and natural resources of the State. The bill provides a specific list of items for the study to identify and directs the Secretary to report the findings and legislative recommendations based on the study on or before December 31, 2003. The Secretary shall also, in cooperation with the Secretary of Administration, review the rules and policies developed by the two departments to implement the Environmental Policy Act, and identify any modifications to the Environmental Policy Act and the implementing rules and policies that would remove impediments to economic development where such impediments have no significant environmental or natural resource protection benefit.

Effective Date:

The bill would become effective when it becomes law and would apply to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after that date.

S945-SMSY-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 981*

Short Title:	Clean Air Trust Fund.	(Public)
Sponsors:	Senators Metcalf; and Queen.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND TO APPROPRIATE FUNDS TO IT.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Clean Air Trust Fund.

"**§ 113A-271. Purpose.**

(a) The General Assembly finds and declares that clean air is critical to the health of the citizens, economy, and environment of North Carolina. The General Assembly recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, and hydrocarbons from stationary and mobile sources cause unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition, mercury contamination, and other air pollutants.

(b) The General Assembly is committed to reducing air pollution to restore mountain air quality, to provide healthy air to urban and rural citizens of the State, to protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters, to reduce mercury contamination in fish and the environment, to enhance the travel and tourism industry, and to maintain the high quality of life of the citizens of the State.

(c) The General Assembly finds that education, technical assistance, incentives, and regulations are all needed to prevent and reduce emissions of air pollutants and to protect the environment, public health, natural resources, and the economy.

(d) The General Assembly finds that cleaner fuels, alternative fuels, energy efficiency, transit, smart growth, public education, and awareness will prevent and reduce emissions of air pollutants.

(e) The General Assembly finds and declares that an incentive-based air quality program is needed to assist local governments, State agencies, nonprofit conservation organizations, and industry to help finance projects that prevent or reduce emissions of

oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

"**§ 113A-272. Definitions.**

As used in this Article:

(1) 'Board of Trustees' means the Clean Air Trust Fund Board of Trustees.

(2) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

"**§ 113A-273. Fund established.**

(a) Fund Established. – There is established a Clean Air Trust Fund in the State Treasurer's Office that shall be used to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of Board of Trustees or its designee.

(c) Fund Purposes. – Moneys from the Fund may be used for any of the following purposes:

(1) To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.

(2) To increase efficient use of energy in State, local, and public school buildings.

(3) To encourage private and public investments in alternative energy and energy-efficient technology.

(4) To convert animal waste to alternative energy and other value-added products.

(5) To educate and encourage the public to prevent and reduce air pollution.

(6) To provide incentives to encourage pedestrian and transit oriented smart growth.

(7) To plant trees in urban and rural areas.

(8) To acquire and protect forests and open space.

(9) To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

(10) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than five percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each

fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of funds.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant or loan from the Fund for the purpose of protecting and restoring air quality and preventing and reducing emissions of air pollution:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the protection and restoration of the environment and natural resources.

(b) Grant Matching Requirement. – The Board of Trustees may establish matching requirements for grants awarded under this Article.

(c) Loans. – The Board of Trustees may provide loans to applicants.

(d) Grants and Loans Not Available to Satisfy Excess Emissions Offsets or Conformity Requirements. – No grant or loan from the Fund shall be awarded to satisfy excess emissions offsets allowed under 40 Code of Federal Regulations § 77.3 (1 July 2002 Edition) or transportation conformity requirements set out in 40 Code of Federal Regulations Part 51 and Part 93 (1 July 2002 Edition).

(e) Grants and Loans Not Available to Achieve Compliance with State Emissions Limits. – No grant or loan from the Fund shall be awarded to achieve compliance with the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out in G.S. 143-215.107D.

"**§ 113A-275. Board of Trustees established; membership qualifications; vacancies; meetings; and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Air Trust Fund Board of Trustees. The Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. – The Board of Trustees shall be composed of nine members appointed to four-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 four.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(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 four.

(4) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(5) One member appointed by 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 four.

(6) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by four.

(7) One member appointed by 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 four.

(8) One member appointed by the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(9) One member appointed by 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 four.

(c) Qualifications. – The office of member of the Board of Trustees is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9 of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Public health.

(2) Protection and restoration of air quality.

(3) Environmental management.

(4) Energy efficiency.

(5) Alternative energy.

(6) Motor vehicles and motor fuels.

(7) Power plants and industrial boilers.

(8) Environmental education.

(9) Local government.

(10) Transportation and land-use planning.

(d) Chair. – The Board of Trustees shall elect a Chair to serve a two-year term, subject to reelection.

(e) Vacancies. – An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(g) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(h) Per Diem and Expenses. – Members of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members of the Board of Trustees shall be paid from the Fund.

(i) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director.

(j) Technical Assistance. – The Secretary of Environment and Natural Resources, the Secretary of the Department of Transportation, and the Secretary of the Department of Administration shall provide technical assistance for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director of the Fund.

"**§ 113A-276. Board of Trustees powers and duties.**

(a) Grants and Loans. – The Board of Trustees shall allocate moneys from the Fund as grants or loans. A grant or loan may be awarded only for a project or activity that prevents or reduces emissions of air pollution pursuant to this Article.

(b) Develop Grant and Loan Criteria. – The Board of Trustees shall develop criteria for awarding grants and loans under this Article. The Board of Trustees shall consider the following:

(1) Consistency with the State's statutory and regulatory programs for air pollution control.

(2) Complementing regional and local plans to prevent and reduce air pollution.

(3) Attainment and maintenance of State and federal ambient air quality standards for ozone and fine particulate matter.

(4) Protection of public health.

(5) Protection and restoration of scenic views.

(6) Protection of areas with good air quality.

(7) Restoration of areas with poor air quality.

(8) Public education and awareness.

(9) Ability of applicants to pay.

(10) Capacity of applicants to develop and implement projects.

(11) Geographic distribution of funds.

(c) Develop Additional Guidelines. – The Board of Trustees may develop guidelines in addition to the grant and loan criteria consistent with and as necessary to implement this Article.

(d) Rule-making Authority. – The Board of Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Board of Trustees.

"**§ 113A-277. Reporting requirement.**

The Chair of the Board of Trustees shall report no later than 1 October of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittee on Natural and Economic Resources of the Senate Appropriations Committee, the Subcommittee on Natural and Economic Resources of the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly regarding the implementation of this Article. The report shall include a list of the projects awarded grants or loans from the Fund for the previous 12-month period. The list shall include for each project a

description of the project, the amount of the grants or loans awarded for the project, and the total cost of the project.

"**§ 113A-278. Executive Director and staff.**

(a) The Board of Trustees shall develop and adopt an annual budget.

(b) The Board of Trustees shall hire an Executive Director who has knowledge and experience in the protection and restoration of air quality. The Executive Director serves at the pleasure of the Board of Trustees. The Executive Director may hire technical, administrative, and clerical staff and contractors, consistent with the budget adopted by the Board of Trustees, as necessary to implement the provisions of this Article.

(c) The Board of Trustees shall set the salary of the Executive Director. The salary of the Executive Director and other staff shall be paid from the Fund.

(d) The Executive Director and staff shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Expenses shall be paid from the Fund.

"**§ 113A-279. Advisory Council.**

There is established the Clean Air Trust Fund Advisory Council. The Council shall meet at least annually and shall advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund and other issues as requested by the Board of Trustees. The Council shall be composed of the following persons or their designees:

(1) The Secretary of Environment and Natural Resources.
(2) The Secretary of Commerce.
(3) The Secretary of Transportation.
(4) The Secretary of Administration."

SECTION 2. In order to provide for a system of staggered four-year terms for the members of the Clean Air Trust Fund Board of Trustees established by G.S. 113A-275, as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(1) shall be four years and shall expire on 1 July 2007.
(2) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(2) shall be five years and shall expire on 1 July 2008.
(3) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(3) shall be two years and shall expire on 1 July 2005.
(4) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(4) shall be three years and shall expire on 1 July 2006.
(5) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(5) shall be four years and shall expire on 1 July 2007.

(6) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(6) shall be five years and shall expire on 1 July 2008.

(7) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(7) shall be two years and shall expire on 1 July 2005.

(8) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(8) shall be three years and shall expire on 1 July 2006.

(9) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(9) shall be four years and shall expire on 1 July 2007.

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. The first report required by G.S. 113A-277, as enacted by Section 1 of this act, shall be due no later than 1 October 2004.

SECTION 5. There is appropriated from the General Fund to the Clean Air Trust Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement this Article. It is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement this Article. The funds in the Clean Air Trust Fund shall be used only in accordance with Article 19 of Chapter 113A of the General Statutes.

SECTION 6. This act becomes effective 1 July 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 981*

PROPOSED COMMITTEE SUBSTITUTE S981-PCS65300-SY-7

Short Title: Clean Air Trust Fund. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND THE CLEAN AIR TRUST FUND BOARD OF TRUSTEES AND TO APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Clean Air Trust Fund.

"**§ 113A-271. Legislative findings and intent.**

(a) The General Assembly finds and declares that clean air is critical to the health of the citizens, economy, and environment of North Carolina. The General Assembly recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, and hydrocarbons from stationary and mobile sources cause unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition, mercury contamination, and other air pollutants.

(b) The General Assembly is committed to the protection of air quality in the State and to the restoration of mountain air quality. The General Assembly intends to provide healthy air to urban and rural citizens of the State, to reduce the emission of air pollutants, to protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters, to reduce mercury contamination in fish and the environment, to enhance the travel and tourism industry, and to maintain the high quality of life of the citizens of the State. As evidence of its commitment and intent, the General Assembly enacted legislation in 1999, 2000, and 2001 to strengthen and expand the motor vehicle emissions inspection and maintenance program in order to improve air quality by reducing emissions from mobile sources. Moreover, the General Assembly enacted groundbreaking legislation in 2002 to impose limits on the emission of pollutants from the largest coal-fired generating units in the State in order to improve air quality.

(c) The General Assembly finds that education, technical assistance, incentives, and regulations are all needed to prevent and reduce emissions of air pollutants and to protect the environment, public health, natural resources, and the economy.

(d) The General Assembly finds that alternative fuels, energy efficiency, transit, smart growth, public education, and awareness will prevent and reduce emissions of air pollutants.

(e) The General Assembly finds and declares that an incentive-based air quality program is needed to assist local governments, State agencies, nonprofit conservation organizations, and industry to help finance projects that prevent or reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, hydrocarbons, and other air pollutants.

"**§ 113A-272. Definitions.**

As used in this Article:

(1) 'Alternative fuel' means a fuel that is not directly derived from petroleum, coal, or uranium, including, but not limited to, natural gas, propane, electricity, ethanol, biodiesel, and hydrogen.

(2) 'Board of Trustees' or 'Board' means the Clean Air Trust Fund Board of Trustees.

(3) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

(4) 'Renewable energy' means energy derived from a nonextractive source, including, but not limited to, solar, wind, biomass, including landfill gas, and alternative fuels that are not derived from natural gas.

"**§ 113A-273. Fund established.**

(a) Fund Established. – There is established a Clean Air Trust Fund in the State Treasurer's Office that shall be used to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, hydrocarbons, and other air pollutants in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of Board of Trustees or its designee.

(c) Fund Purposes. – Moneys from the Fund may be used for any of the following purposes:

(1) To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.

(2) To increase energy efficiency and the use of renewable energy in State, local, and public school buildings.

(3) To encourage private and public investments in renewable energy and energy-efficient technology.

(4) To educate and encourage the public regarding energy efficiency and the use of renewable energy and alternative fuels to prevent and reduce air pollution.

(5) To provide incentives to encourage pedestrian and transit oriented smart growth.

(6) To plant trees in urban areas that will reduce the impact of air pollution.

(7) To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, hydrocarbons, and other air pollutants.

(8) To provide matching funds for federal grants to promote energy efficiency and the use of renewable energy and alternative fuels.

(9) To develop and implement coordinated land-use, transportation, and air quality plans.

(10) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than five percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of funds.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant or loan from the Fund for the purpose of protecting and restoring air quality and preventing and reducing emissions of air pollution:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the protection and restoration of the environment and natural resources.

(b) Grant Matching Requirement. – The Board of Trustees may establish matching requirements for grants awarded under this Article.

(c) Prioritization of Matching Funds for Federal Grants. – The Board shall give priority to grants to provide matching funds for federal grants to promote energy efficiency and the use of renewable energy and alternative fuels.

(d) Loans. – The Board of Trustees may provide loans to applicants.

(e) Grants and Loans Not Available for Certain Purposes. – The Board shall award grants and loans so as to augment, increase, or supplement funds that are available to prevent or reduce air pollution, promote energy efficiency, and promote the use of renewable energy and alternative fuels rather than to replace or supplant funds that would, in the absence of the grant or loan, otherwise be available for those purposes. Accordingly, no grant or loan from the Fund shall be awarded primarily to do any of the following:

(1) Offset excess emissions under 40 Code of Federal Regulations § 77.3 (1 July 2002 Edition).
(2) Satisfy transportation conformity requirements set out in 40 Code of Federal Regulations Part 51 and Part 93 (1 July 2002 Edition).
(3) Comply with the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out in G.S. 143-215.107D.

"**§ 113A-275. Board of Trustees established; membership qualifications; vacancies; meetings; and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Air Trust Fund Board of Trustees. The Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. – The Board of Trustees shall be composed of nine members appointed to four-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 four.
(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.
(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 four.
(4) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.
(5) One member appointed by 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 four.
(6) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by four.
(7) One member appointed by 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 four.
(8) One member appointed by the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.
(9) One member appointed by 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 four.

(c) Qualifications. – The office of member of the Board of Trustees is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9 of the North Carolina Constitution. In recommending appointments under this section, the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall give

consideration to ensuring a balance of appointments that represent those who have knowledge and expertise in all of the following areas:

(1) Public health.
(2) Protection and restoration of air quality.
(3) Environmental management.
(4) Energy efficiency.
(5) Renewable energy.
(6) Motor vehicles, motor fuels, and alternative fuels.
(7) Facilities that generate electricity and industrial boilers.
(8) Environmental education.
(9) Local government.
(10) Transportation and land-use planning.

(d) Chair. – The Board of Trustees shall elect a Chair to serve a two-year term, subject to reelection.

(e) Vacancies. – An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(g) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(h) Per Diem and Expenses. – Members of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members of the Board of Trustees shall be paid from the Fund.

(i) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director.

(j) Technical Assistance. – The Secretary of Environment and Natural Resources, the Secretary of the Department of Transportation, and the Secretary of the Department of Administration shall provide technical assistance for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director of the Fund.

"**§ 113A-276. Board of Trustees powers and duties.**

(a) Grants and Loans. – The Board of Trustees shall allocate moneys from the Fund as grants or loans. A grant or loan may be awarded only for a project or activity that prevents or reduces emissions of air pollution pursuant to this Article.

(b) Develop Grant and Loan Criteria. – The Board of Trustees shall develop criteria for awarding grants and loans under this Article. The Board of Trustees shall consider the following:

(1) Consistency with the State's statutory and regulatory programs for air pollution control.

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. The first report required by G.S. 113A-277, as enacted by Section 1 of this act, shall be due no later than 1 October 2004.

SECTION 5. There is appropriated from the General Fund to the Clean Air Trust Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement this Article. It is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement this Article. The funds in the Clean Air Trust Fund shall be used only in accordance with Article 19 of Chapter 113A of the General Statutes.

SECTION 6. This act becomes effective 1 July 2003.

SENATE BILL 981:
Clean Air Trust Fund.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Metcalf
Date:	June 3, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (S981-PCS65300-SY-7)		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 981 (PCS) establishes the Clean Air Trust Fund. The purpose of the Fund is to finance projects to prevent or reduce air pollution, promote energy efficiency, and promote the use of renewable energy and alternative fuels. State agencies, local governments, and nonprofit corporations with an environmental purpose are eligible to apply to the Fund for grants and loans. The PCS establishes the Clean Air Trust Fund Board of Trustees, which would develop criteria for awarding grants and loans, and the Clean Air Trust Fund Advisory Council, which would advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund. The PCS also appropriates to the Fund twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement the act.***

BILL ANALYSIS:

Clean Air Trust Fund: The PCS establishes the Clean Air Trust Fund (Fund) in the Treasurer's Office. The purpose of the Fund is to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, hydrocarbons, and other air pollutants. Moneys from the Fund may be used for the following specific purposes:

- To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.
- To increase energy efficiency and the use of renewable energy in State, local, and public school buildings.
- To encourage private and public investments in renewable energy and energy-efficient technology.
- To educate and encourage the public regarding energy efficiency and the use of renewable energy and alternative fuels to prevent and reduce air pollution.
- To provide incentives to encourage pedestrian and transit oriented smart growth.
- To plant trees in urban areas that will reduce the impact of air pollution.
- To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, carbon dioxide, hydrocarbons, and other air pollutants.
- To provide matching funds for federal grants to promote energy efficiency and the use of renewable energy and alternative fuels.
- To develop and implement coordinated land-use, transportation, and air quality plans.
- To fund operating expenses of the Board of Trustees and its staff.

State agencies, local governments, and nonprofit corporations with an environmental purpose are eligible to apply to the Fund for grants or loans. Priority is given to grants that provide matching funds for federal

grants to promote energy efficiency and the use of renewable energy and alternative fuels. Moneys from the Fund are intended to supplement rather than replace or supplant existing funds available to prevent or reduce air pollution, promote energy efficiency, and promote the use of renewable energy and alternative fuels. The PCS also prohibits the use of moneys from the Fund for the primary purpose of satisfying or complying with existing State or federal emissions limitations.

Board of Trustees: The PCS establishes the Clean Air Trust Fund Board of Trustees (Board) within the Department of Environment and Natural Resources (DENR). The Board is responsible for developing criteria and guidelines for awarding grants and loans from the Fund, and may adopt rules to implement the provisions of the PCS. The Board consists of nine members that serve staggered four-year terms. Three members are appointed by the Governor, three by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Section 2 of the PCS staggers the terms of the initial appointments to the Board to facilitate a regular interval of appointments and expirations.

The appointing officers shall give consideration to ensure a balance of appointments that represent those who have knowledge and experience in all of the following areas:

- Public health.
- Protection and restoration of air quality.
- Environmental management.
- Energy efficiency.
- Renewable energy.
- Motor vehicles, motor fuels, and alternative fuels.
- Facilities that generate electricity and industrial boilers.
- Environmental education.
- Local government.
- Transportation and land-use planning.

The PCS provides for the Board to select a Chair and establishes guidelines for vacancies, quorum, and other provisions that conform to the provisions of similar appointed bodies.

Reporting Requirement: The PCS directs the Chair of the Board to submit an annual report to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittee on Natural and Economic Resources of the Senate Appropriations Committee, the Subcommittee on Natural and Economic Resources of the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly regarding the implementation of the act. The report will include a list of the projects awarded grants or loans from the Fund for the previous 12-month period, a description of each project, the amount of the grants or loans awarded for each project, and the total cost of the project. The first report is due no later than October 1, 2004.

Executive Director: The Board will develop and adopt an annual budget and hire an Executive Director who has knowledge and experience in the protection and restoration of air quality. The Executive Director may hire technical, administrative, and clerical staff and contractors. All expenses will be paid from the Fund.

Advisory Council: The PCS also establishes the Clean Air Trust Fund Advisory Council (Advisory Council) to advise the Board with regard to criteria, guidelines, and allocations made from the Fund. The Advisory Council consists of the following persons, or their designee: 1) the Secretary of Administration; 2) the Secretary of Commerce; 3) the Secretary of Environment and Natural Resources; 4) the Secretary of Transportation; and 5) the Chair of the Public Utilities Commission.

Recodification of Clean Water Management Trust Fund: Section 3 of the PCS recodifies Article 13A (Clean Water Management Trust Fund) of Chapter 113 (Conservation and Development) of the General Statutes as Article 18 of Chapter 113A (Pollution Control and Environment), and authorizes the Reviser of Statutes to correct any reference in the General Statutes to the statutes that are recodified by the PCS.

Appropriations: The PCS appropriates from the General Fund to the Clean Air Trust Fund twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement the provisions of the act. The PCS also states that it is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement the provisions of the act.

EFFECTIVE DATE: The PCS would become effective July 1, 2003.

S981-smsy-002

Senate Bill 981: Clean Air Trust Fund

Comparison sheet between First Edition and Proposed Committee Substitute S981-PCS65300-SY-7.

Page numbers refer to the location of the changes in the PCS.

Changes made in PCS:

1. (Page 1, lines 17 to 28) -- Modified legislative findings and intent by adding references to air quality legislation enacted over past four years, including the Clean Smokestacks Act and modifications to the motor vehicle emissions inspection and maintenance program.

2. (Page 1, line 14; page 2, line 11; page 2, line 27; and page 3, line 10) -- Added term "carbon dioxide".

3. (Page, 2, lines 14-16, and page 2, lines 20-22) -- Added definitions for the terms "alternative fuel" and "renewable energy".

4. (Page 2, line 40) -- Modified fund purpose #2 by striking "efficient use of energy" and replacing with "energy efficiency and the use of renewable energy".

5. (Page 2, line 42) -- Modified fund purpose #3 by striking "alternative" and replacing with "renewable".

6. Deleted "To convert animal waste to alternative energy and other value-added products." from the fund purposes (previously subdivision (4)).

7. (Page 3, lines 1-2) -- Modified fund purpose #4 by inserting the following language "regarding energy efficiency and the use of renewable energy and alternative fuels".

8. (Page 3, lines 6-7) -- Modified fund purposes #6 by striking "and rural areas." and replacing with "that will reduce the impact of air pollution."

9. Deleted "To acquire and protect forests and open space." from the fund purposes. (Previously subdivision (8)).

10. (Page 3, lines 12-13) -- Added fund purpose #8: "To provide matching funds for federal grants to promote energy efficiency and the use of renewable energy and alternative fuels."

11. (Page 3, lines 14-15) -- Added fund purpose #9: "To develop and implement coordinated land use, transportation, and air quality plans."

12. (Page 3, lines 34-36) -- Added new subsection (c) to proposed G.S. 113A-274: "Prioritization of Matching Funds for Federal Grants. – The Board shall give

priority to grants to provide matching funds for federal grants to promote energy efficiency and the use of renewable energy and alternative fuels."

13. (Page 3, line 38 through page 4, line 6) -- Revised subsections (e) and (f) of proposed G.S. 113A-274 into a single subsection (e) and included "supplement and not supplant" provision.

14. (Page 4, line 42 through page 5, line 2) -- Modified subsection (c) of proposed G.S. 113A-275 by striking "Persons appointed shall be knowledgeable in at least one of" and replacing it with "In recommending appointments under this section, the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall give consideration to ensuring a balance of appointments that represent those who have knowledge and expertise in all of".

15. (Page 5, line 7) -- Modified Board of Trustees qualifications #5 by striking "alternative" and replacing with "renewable".

16. (Page 5, line 8) -- Modified Board of Trustees qualifications #6 by striking "vehicles and motor" and replacing with "vehicles, motor fuels, and alternative".

17. (Page 5, line 9) -- Modified Board of Trustees qualifications #7 by striking "Power plants" and replacing with "Facilities that generate electricity" (page 5, line 3).

18. (Page 6, lines 1-2) -- Added grant and loan criteria #2: "Consistency with the State energy policy developed by the Energy Policy Council pursuant to G.S. 113B-6."

19. (Page 6, lines 3-4) -- Modified grant and loan criteria #3 by inserting the following language: "regarding energy efficiency and the use of renewable energy and alternative fuels".

20. (Page 6, lines 16-17) -- Added grant and loan criteria #13: "Opportunities to leverage federal grants to promote energy efficiency and the use of renewable energy and alternative fuels."

21. (Page 7, line 14) -- Added The Chair of the Public Utilities Commission to the Advisory Council.

22. Additional clarifying and conforming changes, such as the renumbering of subsections and subdivisions, were made to incorporate the proposed revisions.

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

June 3, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Overcash	NC Div of Air Quality
Mark Bergstrom	NC DOT
Brock Nicholson	NC DAQ / DENR
Robin Smith	DENR
David Mickey	Blue Ridge Environmental Defense League
Colby Almond	S.C.O.T.H
Joann Almond	S.C.O.T.C.H.
Price Harrison	Beaufort NC
Steve Wall	Conservation Council
Molly Diggins	Sierra Club
Lauren Hoen	Sierra Club

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Holmes	CWMTF
Larry Shirley	State Energy Office
Chris Bryson	Dept. of Administration
Amy Dobson	NC Statewatch
John McHugh	Gov Office
Grady McMillin	N.C. Conservation Network
Kelly Mance	NC Conservat'n Network
Angie McMillan	TNC
Katie Hoover	TNC
Wendy Rutter	TNC
David Knight	Sierra Club
Albert Eckel	CONWIN/G
Tyler Mahrenholz	NC Env. Def.

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Cook	Weyerhaeuser
Beth Anne Mumford	NCPC
Alan Briggs	Save Our State
Jerry Schill	NC Fisheries Association
John Cyrus	NC State Grange
David Meredith	NC State Grange
Jon Haddock	NC Pork Council
Lance D. Maryum	Governor's Office (Intern)
Sharon Miller	CUCA
Bill Scoggin	KCLH
Sharyl Stephens	DENR

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
HACK GILBERT	DAVID KNIGHT
[illegible]	NCConnect
Sabina Jang	David Knight
Jeremy Rechemeyer	NCPIRG
Doug Lassiter	NCSTA
John Kong	Martin Marietta
Leslie Bwaeger	NCCBI
Preston Howard	NCFC
Nancy Thompson	NCIC
Bob Steelman	NC Forestry Assoc.
Lu-Ann Lee	NCPA

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melinda Weinstein	Lawrence Technological University
Dylan Fugt	Environmental Defense (Intern)
Christopher Brook	Environmental Defense
Kim Hibbard	NCLM
Gene Ainsworth	RJR

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, June 5, 2003 at 9:00 a.m.
Room 643, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 945	Timely Environmental Permit Process.	Senator Hoyle
SB 838	Amend Fisheries Proclamation Process.	Senator Albertson

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 5, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 5, 2003, at 9:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, Chairman presided and there were sixteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

Sen. Weinstein presided so the chairman could explain his bill.

SB-838 – AMEND FISHERIES PROCLAMATION PROCESS – Sen. Albertson moved for adoption of the proposed committee substitute. So moved. He then explained the PCS. Mr. Jeff Hudson, staff counsel made additional explanation. Sen. Smith moved for a favorable report as to the PCS, not to the original bill. Mr. Hudson told members that this bill would have to be referred to the Rules Committee and put into the Studies Bill. The vote was taken and passed.

SB- 945 – TIMELY ENVIRONMENTAL PERMIT PROCESS - Discussion on this bill had begun at the prior meeting and it had been recommended to let it pass to Finance and come back to our committee. Sen. Albertson told members that he and the Rules Chairman had discussed it and it was requested by Sen. Rand that we continue discussion on it while it was assigned to our committee. Discussion continued. Mr. Preston Howard, Manufacturers and Chemicals spoke in favor of the bill and urged members to support it. Ms. Leslie Bevacqua, NC Citizens for Business & Industry spoke and urged support. Mrs. Jo Ann Almond, Stanley County Citizens Opposed to Toxic Chemicals Hazards, Albemarle, NC, spoke against the bill and urged them not to support it. She told of a company that had moved into their area and it was polluting the air. Mr. John Peterson, NC Economic Developers Assoc., spoke and urged support. Mr. David Knight, NC Sierra Club & Wildlife Federation addressed members. He feels this needs additional work. He told of a bill from a previous session a couple of years ago that didn't pass and how it was more detailed than this current legislation. He urged members not to support this. Mr. Knight asked that this not be referred to Finance but that our committee hold this until more details could be worked out. Sen. Jenkins asked DENR if current air permit laws are changed in this bill. Ms. Robin Smith addressed this and told him no. Sen. Jenkins spoke on the bill and moved for a favorable report for the PCS, unfavorable to the original bill. Sen. Webster asked Ms. Almond if the cement plant was still operating in Stanley County. Sen. Webster then spoke about a personal experience with a cement plant that didn't help protect air quality. He feels we need to cure the problem with the Departments. Sen. Lucas told members she was not

opposed to business economic development, but there are problems that we need to work out and be supportive of environmental and economic groups. She asked why we are working on this if groups were working on it. She asked Mr. David Knight, Sierra Club, why this wasn't a good bill. He responded. Sen. Albertson asked DENR what the current process is now relative to a public notice permit. Mr. Keith Overcash told members there is not for small business but there are for large businesses. Mr. George Givens, staff counsel, made additional comments relative to how DENR currently operates it permits. Sen. Bingham made comments and offered regrets to Ms. Almond and her community. He pointed out sections of the bill that doesn't offer protection for NC industries, but don't feel it is fair to put all industries in the same category because some businesses do a good job protecting air quality. Sen. Tillman asked if there have been problems with our environment currently. Mr. Overcash told the he knew of none. Sen. Gully expressed concerns and don't think this bill changes DENR regulations. He asked Ms. Leslie Bevaqua, NCCBI, if there are other states that will allow businesses to construct as far as we do without a permit. She advised that we could not begin construction if tighter regulations are imposed. She deferred to Mr. Preston Howard, MCIC, and he explained how we will be competitive with other states is the southeast that do not require permits. He told members that they are working to help small businesses get started. Sen. Gully spoke again and Ms. Bevaqua addressed his comments. Sen. Gully inquired about changing Page 3 from 15 days to 30 days. Ms. Bevaqua advised that they had agreed to that in the last session. She said they were willing to change this if the opponents would support it. Mr. Howard made additional comments regarding 15 days vs. 30 days and how it haults construction and that DENR hasn't requested a change in the days. Mr. Overcash said they would look at this option. Sen. Allran questioned DENR and asked if permits couldn't be issued sooner. Ms. Robin Smith, Asst. Sec., DENR, addressed his comments. Sen. Allran spoke of concerns about air quality. Sen. Reeves felt we should address these problems and not send this bill to an other committee. He felt he was getting mixed signals on air quality and economic development. He feels the triangle area will be in trouble if we are non-attained. Sen. Queen spoke and said he feels NC should improve economic development and be "customer friendly" through DENR in the permit process. He urged caution in moving forward with this bill, as there are still concerns. Mr. Givens restated the motion previously made so that it would incorporate the amendment from Tuesday's meeting into a new PCS and be given a favorable report, unfavorable as to the original bill. The vote was taken and passed.

Time expired and the meeting adjourned at 10:00.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, June 05, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **838** Amend Fisheries Proclamation Process.

Draft Number:	PCS35311
Sequential Referral:	None
Recommended Referral:	Rules and Operations of the Senate
Long Title Amended:	Yes

S.B. **945** Timely Environmental Permit Process.

Draft Number:	PCS35310
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 838

Short Title:	Amend Fisheries Proclamation Process.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 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.~~ 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.

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 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 838
PROPOSED COMMITTEE SUBSTITUTE S838-PCS35311-SB-39

Short Title: Marine Fisheries Studies. (Public)

Sponsors:

Referred to:

April 3, 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.

DRAFT FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 838
PROPOSED COMMITTEE SUBSTITUTE S838-CSSB-39 [v.2]

6/4/2003 1:34:36 PM

Short Title: Marine Fisheries Studies. (Public)

Sponsors:

Referred to:

April 3, 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 recommendations arising out of discussions of the Marine Fisheries Commission related to the Core Sound shellfish lease moratorium.

(2) Whether to amend the maximum sustainable yield fisheries management standard.

(3) The establishment of a violations 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 in 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 838
PROPOSED COMMITTEE SUBSTITUTE S838-CSSB-39 [v.5]

6/4/2003 4:38:31 PM

Short Title: Marine Fisheries Studies. (Public)

Sponsors:

Referred to:

April 3, 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.

SENATE BILL 838:
Marine Fisheries Studies

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Jeff Hudson Committee Counsel
Date:	June 5, 2003		
Version:	Proposed Committee Substitute S838-CSSB-39 [v.5]		

SUMMARY: ***The proposed committee substitute for Senate Bill 838 would authorize the Joint Legislative Commission on Seafood and Aquaculture to conduct various marine fisheries studies.***

BILL ANALYSIS: The proposed committee substitute for Senate Bill 838 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.

Senate Bill 838, as introduced, would have amended the process by which fisheries proclamations are issued. Its companion bill, House Bill 987, received a favorable report from this committee on May 13, 2003, and was presented to the Governor on May 29, 2003.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 945

Short Title:	Timely Environmental Permit Process.	(Public)
Sponsors:	Senators Hoyle; Clodfelter, Foxx, Garrou, Rucho, Stevens, and Swindell.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES SHALL MODIFY THE PERMIT PROCESS FOR CERTAIN AIR QUALITY PERMITS, SHALL CONDUCT A THOROUGH REVIEW OF THE ENVIRONMENTAL PERMIT PROGRAMS TO IDENTIFY IMPEDIMENTS TO THE TIMELY ISSUANCE OF PERMITS BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND SHALL MAKE RECOMMENDATIONS FOR MODIFICATIONS TO THESE PROGRAMS IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. 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, except as provided in G.S. 143-215.108A.

(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, except as provided in G.S. 143-215.108A.

(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 device to be constructed, installed, or operated.~~"

SECTION 2. G.S. 143-215.108(f) reads as rewritten:

"(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to ~~construction or~~ operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of ~~construction or~~ operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

SECTION 3. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.108A. Control of sources of air pollution; construction of new facilities and the expansion of existing facilities.**

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air-cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air-cleaning device for which a

permit is required under G.S. 143-215.108. A person may, however, construct any component of the facility that is not integral to the operation of the air contaminant source, equipment, or associated air-cleaning device, including any portion of the facility that relates to or supports both the air contaminant source, equipment, or associated air-cleaning device and other functions, such as the foundation, walls, roof, electrical wiring, and vents, if the person complies with the requirements of this section. At least 15 days prior to commencing construction under this subsection, the person who owns the facility shall give notice to the Commission of the person's intent to construct a facility for which a permit will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the proposed facility and the name and address of the person who will apply for a permit under G.S. 143-215.108.

(2) The nature of the air contaminant sources and equipment associated with the facility when constructed.

(3) An estimate of total regulated air contaminant emissions associated with the facility when constructed.

(4) The air-cleaning devices that are to be employed to address each of the air contaminant sources.

(5) The construction schedule for the proposed construction.

(6) An acknowledgment by the person that the actual air contaminant sources, equipment, and associated air-cleaning devices may not be constructed until the person has obtained a permit under G.S. 143-215.108.

(7) An acknowledgment by the person that any construction prior to the issuance of a permit under G.S. 143-215.108 is undertaken at the person's own risk and with the knowledge that the person may be denied a permit under G.S. 143-215.108 without regard to the person's financial investment or construction activities.

(8) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the person's knowledge and ability, executed by the person or, if the person is a corporation, by the appropriate officers of the corporation.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air-cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air-cleaning devices in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, construct or modify an air contaminant source, equipment, or associated air-cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing construction or modification under this

subsection, the permittee shall give notice to the Commission of the person's intent to construct a facility for which a permit modification will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air-cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The construction schedule associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air-cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any construction prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or construction activities.

(9) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. – Upon receipt of the notice to the Commission required under subsection (a) or (b) of this section, the Commission may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility or permit modification. If at any time during construction the Commission determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request in writing that the person or permittee submit, within 15 days of receipt of the request, specific additional information related to the reasons that give rise to the determination. If, after reviewing any additional information submitted by the person or permittee, the Commission again determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request that the plans for the construction be altered in order to address the anticipated inability of the person or permittee to qualify for a permit or permit modification, or the Commission may order that construction or modification cease. If the Commission orders that construction or modification cease, then construction may resume only if the

Commission either makes a subsequent determination that the circumstances that resulted in the determination that resulted in the order to cease construction or modification have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction to resume. Any order by the Commission that construction cease shall be in writing and shall set forth specific reasons for the determination that the person or permittee will not qualify for a permit.

(d) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (a) or (b) of this section. No evidence regarding any financial investment made, construction activity undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.

(e) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any construction or modification undertaken by any person, permittee, or owner of any facility pursuant to this section.

(f) Local Zoning Ordinances Not Affected. – This section shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance.

(g) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction or modification that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(h) Fee. – A person or permittee who submits a notice of construction under subsection (a) or (b) of this section shall pay a fee of two hundred dollars ($200.00) for

each notice submitted to cover a portion of the administrative costs of implementing this section."

SECTION 4.(a) The Secretary of Environment and Natural Resources shall conduct a thorough examination of the permitting programs in the Department of Environment and Natural Resources to determine modifications that may be made under current law and with current staffing resources to reduce the time required for permit issuance so as to enhance economic development in North Carolina without compromising protection of North Carolina's environment and natural resources. In examining the permit programs of the Department of Environment and Natural Resources, the Secretary of Environment and Natural Resources shall identify all of the following:

(1) Outdated regulations or policies that serve as impediments to timely issuance of environmental permits.

(2) Any organizational impediments to reducing the time required for the issuance of environmental permits.

(3) Ways to streamline the issuance of permits for minor activities, such as utilizing general permits, standard specifications, or permitting by rule.

(4) Which permit programs currently utilize general permits for minor activities, which minor activities are presently subject to general permits, and opportunities to expand the use of general permits to other minor activities as well as to other permit programs that are not currently utilizing general permits.

(5) Voluntary options that permit applicants may pursue, such as the payment of higher permit application fees to decrease the time required to issue permits.

(6) Opportunities to further streamline or eliminate certain permit requirements for minor activities conducted by permit applicants that operate under an independently certified environmental management system.

(7) Opportunities to expand upon the use of professional engineers, professional geologists, or other individuals certified by the Department of Environment and Natural Resources as having the skills necessary to design and approve emission controls, treatment systems, or structures for minor activities.

SECTION 4.(b) As used in Section 4(a) of this act, "minor activities" means activities that pose no risk or minimal risk to the environment.

SECTION 4.(c) The Secretary of Environment and Natural Resources shall recommend legislation necessary to streamline or otherwise change the environmental permit programs or activities of the Department of Environment and Natural Resources that would serve to enhance the State's ability to meet its economic development goals without compromising environmental and natural resource protections.

SECTION 4.(d) The Secretary of Environment and Natural Resources shall, in cooperation with the Secretary of Administration, review the rules and policies developed by the two departments to implement the Environmental Policy Act, Article

1 of Chapter 113A of the General Statutes, and identify any modifications to the Environmental Policy Act and the implementing rules and policies that would remove impediments to economic development where such impediments have no significant environmental or natural resource protection benefit.

SECTION 4.(e) In conducting the examination of the permit programs of the Department of Environment and Natural Resources and the activities of the Department of Environment and Natural Resources under the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, the Secretary of Environment and Natural Resources shall consult with staff of the Department of Environment and Natural Resources, local government officials, manufacturers, business groups, economic developers, professional engineers, professional geologists, land developers, and any other individuals or groups that the Secretary of Environment and Natural Resources believes to possess information that would be of benefit to the examination of the permit programs conducted by the Department of Environment and Natural Resources.

SECTION 4.(f) On or before December 31, 2003, the Secretary of Environment and Natural Resources shall report the findings and recommendations under subdivisions (1) through (7) of subsections (a) and (b) of this section, along with any other findings and recommendations deemed important by the Secretary of Environment and Natural Resources to fostering a regulatory climate favorable to improving economic development without compromising environmental and natural resources protections, to the Environmental Review Commission and to the Joint Legislative Commission on Governmental Operations.

SECTION 5. This act is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after the date on which this act becomes law. This act does not apply to any application for a permit or permit modification under G.S. 143-215.108 that is submitted to the Environmental Management Commission prior to the date on which this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 945
PROPOSED COMMITTEE SUBSTITUTE S945-PCS35310-RT-43

Short Title: Timely Environmental Permit Process. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES SHALL MODIFY THE PERMIT PROCESS FOR CERTAIN AIR QUALITY PERMITS, SHALL CONDUCT A THOROUGH REVIEW OF THE ENVIRONMENTAL PERMIT PROGRAMS TO IDENTIFY IMPEDIMENTS TO THE TIMELY ISSUANCE OF PERMITS BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND SHALL MAKE RECOMMENDATIONS FOR MODIFICATIONS TO THESE PROGRAMS IN ORDER TO ENHANCE ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. 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, except as provided in G.S. 143-215.108A.

(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, except as provided in G.S. 143-215.108A.

(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 device to be constructed, installed, or operated.~~"

SECTION 2. G.S. 143-215.108(f) reads as rewritten:

"(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to ~~construction or~~ operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of ~~construction or~~ operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

SECTION 3. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.108A. Control of sources of air pollution; construction of new facilities and the expansion of existing facilities.**

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air-cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air-cleaning device for which a permit is required under G.S. 143-215.108. A person may, however, construct any component of the facility that is not integral to the operation of the air contaminant source, equipment, or associated air-cleaning device, including any portion of the facility that relates to or supports both the air contaminant source, equipment, or associated air-cleaning device and other functions, such as the foundation, walls, roof, electrical wiring, and vents, if the person complies with the requirements of this section. At least 15 days prior to commencing construction under this subsection, the person who owns the facility shall give notice to the Commission of the person's intent to construct a facility for which a permit will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the proposed facility and the name and address of the person who will apply for a permit under G.S. 143-215.108.

(2) The nature of the air contaminant sources and equipment associated with the facility when constructed.

(3) An estimate of total regulated air contaminant emissions associated with the facility when constructed.

(4) The air-cleaning devices that are to be employed to address each of the air contaminant sources.

(5) The construction schedule for the proposed construction.

(6) An acknowledgment by the person that the actual air contaminant sources, equipment, and associated air-cleaning devices may not be constructed until the person has obtained a permit under G.S. 143-215.108.

(7) An acknowledgment by the person that any construction prior to the issuance of a permit under G.S. 143-215.108 is undertaken at the person's own risk and with the knowledge that the person may be denied a permit under G.S. 143-215.108 without regard to the person's financial investment or construction activities.

(8) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the person's knowledge and ability, executed by the person or, if the person is a corporation, by the appropriate officers of the corporation.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air-cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air-cleaning devices in a manner that alters the emission of any air contaminant without obtaining a permit modification

under G.S. 143-215.108. A permittee may, however, construct or modify an air contaminant source, equipment, or associated air-cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing construction or modification under this subsection, the permittee shall give notice to the Commission of the person's intent to construct a facility for which a permit modification will be required under G.S. 143-215.108. The notice to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air-cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The construction schedule associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air-cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any construction prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or construction activities.

(9) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. – Upon receipt of the notice to the Commission required under subsection (a) or (b) of this section, the Commission may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility or permit modification. If at any time during construction the Commission determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request in writing that the person or permittee submit, within 15 days of receipt of the request, specific additional information related to the reasons that give rise to the determination. If, after reviewing any additional information submitted by the person or permittee, the Commission again determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request

that the plans for the construction be altered in order to address the anticipated inability of the person or permittee to qualify for a permit or permit modification, or the Commission may order that construction or modification cease. If the Commission orders that construction or modification cease, then construction may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the determination that resulted in the order to cease construction or modification have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction to resume. Any order by the Commission that construction cease shall be in writing and shall set forth specific reasons for the determination that the person or permittee will not qualify for a permit.

(d) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction allowed under this section had not occurred. No evidence regarding any financial investment made, construction activity undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.

(e) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any construction or modification undertaken by any person, permittee, or owner of any facility pursuant to this section.

(f) Local Zoning Ordinances Not Affected. – This section shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance.

(g) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction or modification that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(h) Fee. – A person or permittee who submits a notice of construction under subsection (a) or (b) of this section shall pay a fee of two hundred dollars ($200.00) for each notice submitted to cover a portion of the administrative costs of implementing this section."

SECTION 4.(a) The Secretary of Environment and Natural Resources shall conduct a thorough examination of the permitting programs in the Department of Environment and Natural Resources to determine modifications that may be made under current law and with current staffing resources to reduce the time required for permit issuance so as to enhance economic development in North Carolina without compromising protection of North Carolina's environment and natural resources. In examining the permit programs of the Department of Environment and Natural Resources, the Secretary of Environment and Natural Resources shall identify all of the following:

(1) Outdated regulations or policies that serve as impediments to timely issuance of environmental permits.

(2) Any organizational impediments to reducing the time required for the issuance of environmental permits.

(3) Ways to streamline the issuance of permits for minor activities, such as utilizing general permits, standard specifications, or permitting by rule.

(4) Which permit programs currently utilize general permits for minor activities, which minor activities are presently subject to general permits, and opportunities to expand the use of general permits to other minor activities as well as to other permit programs that are not currently utilizing general permits.

(5) Voluntary options that permit applicants may pursue, such as the payment of higher permit application fees to decrease the time required to issue permits.

(6) Opportunities to further streamline or eliminate certain permit requirements for minor activities conducted by permit applicants that operate under an independently certified environmental management system.

(7) Opportunities to expand upon the use of professional engineers, professional geologists, or other individuals certified by the Department of Environment and Natural Resources as having the skills necessary to design and approve emission controls, treatment systems, or structures for minor activities.

SECTION 4.(b) As used in Section 4(a) of this act, "minor activities" means activities that pose no risk or minimal risk to the environment.

SECTION 4.(c) The Secretary of Environment and Natural Resources shall recommend legislation necessary to streamline or otherwise change the environmental permit programs or activities of the Department of Environment and Natural Resources that would serve to enhance the State's ability to meet its economic development goals without compromising environmental and natural resource protections.

SECTION 4.(d) The Secretary of Environment and Natural Resources shall, in cooperation with the Secretary of Administration, review the rules and policies developed by the two departments to implement the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, and identify any modifications to the Environmental Policy Act and the implementing rules and policies that would remove impediments to economic development where such impediments have no significant environmental or natural resource protection benefit.

SECTION 4.(e) In conducting the examination of the permit programs of the Department of Environment and Natural Resources and the activities of the Department of Environment and Natural Resources under the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, the Secretary of Environment and Natural Resources shall consult with staff of the Department of Environment and Natural Resources, local government officials, manufacturers, business groups, economic developers, professional engineers, professional geologists, land developers, representatives of environmental protection and natural resources conservation advocacy groups, and any other individuals or groups that the Secretary of Environment and Natural Resources believes to possess information that would be of benefit to the examination of the permit programs conducted by the Department of Environment and Natural Resources.

SECTION 4.(f) On or before December 31, 2003, the Secretary of Environment and Natural Resources shall report the findings and recommendations under subdivisions (1) through (7) of subsections (a) and (b) of this section, along with any other findings and recommendations deemed important by the Secretary of Environment and Natural Resources to fostering a regulatory climate favorable to improving economic development without compromising environmental and natural resources protections, to the Environmental Review Commission and to the Joint Legislative Commission on Governmental Operations.

SECTION 5. This act is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after the date on which this act becomes law. This act does not apply to any application for a permit or permit modification under G.S. 143-215.108 that is submitted to the Environmental Management Commission prior to the date on which this act becomes law.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	NCCBI
JOHN PETERSON	NCEDA
Nancy Thompson	MCIC
PRESTON HOWARD	MCIC
John McHugh	GOV OFFICE
Robin Smith	DENR
Keith Overcash	DAQ – DENR
Molly Diggins	NC Sierra Club
Joann Almond	SCOTCH
Steve Hall	Conservation Council
Grady McMillin	N.C. Conservation Network

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kari Barsness	DENR
Sharyl Stephens	DENR
Beatrice Williams	CLCA
MIKE WATERS	NCRPS
Tyler Mulvaney	NC Env. Def.
David Knight	NC Sierra, NCWF
John Cyrus	n C State Grange
David Meredith	NC State Grange
Jerry Hardesty	NC Pork Council
Bethanie Manfood	"
Sandra Long	Martin Marietta

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NC Home Builders Assoc.
Lee-Ann Coe	NCPA
Lauren Stars	Sierra Club
DAVID PRESTWOOD	NCPIRG
Brock Nicholson	DENR - DAQ
[illegible]	WCCONMC
John McAlister	Duke Energy
Karen Carpenter	I/CPC
C Porter	Smith Anderson

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 10, 2003	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1062	Local Water Supply Plans.	Representative McLawhorn

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 10, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 10, 2003, at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, Chairman presided and there were thirteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

Ms. Erica U. Peterson, NC Agribusiness Council was recognized to present the Golden Egg Award from the contest between the House and Senate teams last month. She thanked and congratulated all the Senate members for their support and participation.

HB-1062 LOCAL WATER SUPPLY PLANS – Rep. McLawhorne explained her bill. Sen. Reeves thanked the sponsor for working on this issue. He then inquired why this focused on the number of families served rather than the amount of water used. He feels that would be more informative. Mr. George Givens, staff counsel responded. Mr. Linwood Peele, Division of Water Quality, Department of Environment & Natural Resources, addressed members and explained how they collect water source information and that this legislation is for additional informational purposes. Sen. Reeves made inquiry as to whom DENR worked with on gathering data and Mr. Peele advised that they are working with municipalities and the Department of Agriculture. Sen. Reeves made additional comments and feels the focus should be on all uses of water systems statewide. Mr. Givens addressed his comments.

Sen. Jenkins moved for a favorable report.

Discussion continued with Sen. Webster requesting additional clarification on the bill and if additional staff would be required for this new report. Rep. McLawhorne and Mr. Peele addressed his concerns. Sen. Webster asked what additional power this will give to the Department. Mr. Peele explained that it will allow authority to go to the specific regions of the state that may be most affected by droughts. Sen. Webster asked why the Governor didn't have this authority to instruct someone to look at potentially worse areas. Mr. Givens explained the process. Sen. Brock asked if water systems supplies were on line and are they under any type of security system. Mr. Peele said that 500 were on line and they are protected. Having no further discussion, the vote was taken and so passed.

SB-627- STATE NAT. & HISTORY PRESERVE ADDS & REMOVALS – Sen. Albertson told members that this came back to our committee for concurrence. Mr. Givens explained the history of the bill. Sen. Albertson advised that this bill requires a 3/5 vote on the Senate floor. Sen. Tillman asked if there was any opposition and no one knew of any. Sen. Horton spoke in favor. Sen. Allran asked for explanation of the South Mountain State Park. Mr. Phil McKnelly, Director of State Parks, DENR responded. Sen. Webster asked what happened to cause this bill to come back to our committee. Mr. McKnelly advised that this comes to us as a recommendation from the Council of State and this is the first time it has been affected by the crossover deadline for the General Assembly. He told members that the entrance of South Mountain State Park needs immediate attention due to a bridge that was lost this year due to a flood. Sen. Allran inquired of any opposition and there was none. Sen. Allran expressed concerns on the legal terminology and Mr. Givens explained. Sen. Weinstein moved that we do concur. The vote was taken and so moved.

The meeting adjourned at 11:40.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Tuesday, June 10, 2003

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

FAVORABLE

H.B.(CS #1) **1062** Local Water Supply Plans.
Sequential Referral: None
Recommended Referral: None

FAVORABLE AS TO CONCURRENCE

S.B.(HCS#1) **627** State Nat. & Hist. Preserve Adds. & Removals.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1062

Committee Substitute Favorable 4/22/03

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.

HOUSE BILL 1062:
Local Water Supply Plans.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative McLawhorn
		Summary by:	Jeff Hudson Committee Counsel
Date:	June 10, 2003		
Version:	Second Edition		

SUMMARY: ***House Bill 1062 would require certain community water systems to prepare local water supply plans, 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, and would authorize 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.***

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 House Bill 1062 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 bill would also require 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 would be due on or before January 1, 2004.

Section 2 of House Bill 1062 would authorize 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-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 627
House Committee Substitute Favorable 6/3/03

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.

SENATE BILL 627:
State Nat. & Hist. Preserve Adds. & Removals

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Senator Albertson
Date:	10 June 2003	**Summary by:**	George Givens, Senior Committee Counsel, Jennifer McGinnis, Committee Counsel
Version:	2nd Edition (for concurrence)		

SUMMARY: ***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: Senate Bill 627 does the following:

- The bill 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 bill dedicates and accepts Beech Creek Bog, Elk Knob State Natural Area and Lea Island State Natural Area as new components of the Preserve.
- The bill 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 bill 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 bill 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 (Division) 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 located on property that was once a landfill constructed by the City of Goldsboro in 1960. According to the Director of the Division, the Park does not contain biological, archaeological or other resources that make it suitable for continued inclusion in the State Parks System. The City of Goldsboro, Wayne County and the Old Waynesborough Historical Commission have expressed an interest in assuming ownership of the property. The Division will continue to be responsible for the property until that responsibility is assumed by the City, County, or the Historical Commission or divested by the State as surplus property. The Park is currently closed.

HOUSE COMMITTEE SUBSTITUTE'S 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 bill would be effective when it becomes law

S627-SMRI-003

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 10, 2003

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LINWOOD PEELE	NC DIV. OF WATER RESOURCES (DENR)
TRIP MCKNELLY	DENR/DPR
Kim Gibbud	NCLM
John Cyrus	nc state Grange
David Meredith	NC State Grange
Ken Melton	Alley Associates
Mara Thompson	NCIC
Theresa K	CAA
Jim Blackburn	NC Association of County Commissioners
Rick Zechini	NC Assoc. of REALTORS
Andy Romanet	NCLM

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	MCIC
Robin Smith	DENR
R. Rogers	DENR
Erica Peterson	NC Agribusiness Council
Kari Barsness	NCDENR
Colleen Kochanek	Hafer & Caldwell, P.A.
Angie McMillan	TNC
R.S. (Steve) Marks.	attorney at law
David Knight	NC Sierra / NC Wildlife Fed
Mark Bacon	Capitol Group
Elizabeth Ouzts	NCPIRG

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Jason Rep	NC Conservation Network
Tyler Hunsinger	NC Env. Def.
Pricy Harrison	Beaufort NC
Lisa Page	Conservation Council
David Presswood	NCPIRG
Jeremy Reckmeyer	NCPIRG
Sheryl Stephens	DENR
Anita Watkins	NC League of Municipalities
Beau Mills	NCCCN

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, June 12, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 1112	Clarify Food Service Laws.	Representative Gibson, III
SB 859	Catawba-Wateree River Basin Study.	Senator Clodfelter
SB 981	Clean Air Trust Fund.	Senator Metcalf

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 12, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 12, 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were nine members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1112 & SB-981 were removed from the agenda.

SB-859 – CATAWBA-WATEREE RIVER BASIN STUDY - Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Mr. George Givens, staff counsel explained and advised this will go to the Appropriations Committee if approved. Sen. Clodfelter explained the PCS as a work in progress with our sister state of South Carolina. Sen. Horton wanted assurance that this will be set up inter-basin transfers. Sen. Clodfelter advised this would not do that but allow the advisory board to look at it in the future. Mr. John Morris, DENR, Water Resources, spoke in favor of the bill. Sen. Weinstein moved for a favorable report for the PCS, unfavorable as to the original bill. Sen. Webster asked for the contrast of what happened with the bill from last session that was like this one. Mr. Givens explained the differences. Sen. Clodfelter spoke again. Sen. Smith supports this but asked about Duke Power since they have been very involved if perhaps they could do a grant so we wouldn't have to make an appropriation. Sen. Clodfelter liked his suggestion and advised it could be strongly considered during the interim, as the team would still be working on it then. Having no further discussion, the vote was taken and passed as moved.

Meeting adjourned at 11:25 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, June 12, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **859** Catawba-Wateree River Basin Study.

Draft Number:	PCS35322
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1112

Short Title:	Clarify Food Service Laws.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATED TO SANITATION OF FOOD AND LODGING FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-248(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, ~~or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events,~~ or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

SECTION 2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food ~~unit shall be operated in conjunction with a permitted restaurant.~~unit."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 859

Short Title:	Catawba-Wateree River Basin Study.	(Public)
Sponsors:	Senators Clodfelter; and Hoyle.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ESTABLISHMENT AND PARTICIPATION IN A BI-STATE ADVISORY AND PLANNING AND STUDY COMMISSION FOR THE CATAWBA-WATEREE RIVER BASIN, TO INVITE THE STATE OF SOUTH CAROLINA TO PARTICIPATE IN THE COMMISSION, AND TO APPROPRIATE FUNDS FOR THE ESTABLISHMENT OF SUCH A COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 859
PROPOSED COMMITTEE SUBSTITUTE S859-PCS35322-SY-8

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.

SENATE BILL 859:
Catawba River Basin Bi-State Advisory Comm.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Clodfelter
Date:	June 12, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (S859-PCS35322-SY-8)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 859 establishes the Catawba River Basin Bi-State Advisory Commission. The Commission would provide guidance and make recommendations to various government bodies on the use, stewardship, and enhancement of water and other natural resources in the basin. The bill would become effective July 1, 2003.***

BILL ANALYSIS: The PCS for Senate Bill 859 establishes the Catawba River Basin Bi-State Advisory Commission (Commission). The Commission is composed of 14 members as follows:

- Two members of the North Carolina Senate whose districts include a portion of the Catawba River Basin (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 Basin, appointed by the Speaker of the House of Representatives.
- Two members of the South Carolina Senate whose districts include a portion of the Basin, appointed as provided by the General Assembly of South Carolina.
- Two members of the South Carolina House of Representatives, whose districts include a portion of the Basin, appointed as provided by the General Assembly of South 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 person from a non-profit land conservation trust operating within the North Carolina portion of the Basin, appointed by the Governor of North Carolina.
- 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.

The Commission has no regulatory authority. Its purposes include:

(i) 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 Basin.

(ii) To provide a forum for discussion of issues affecting the Basin's water quality, water quantity, and natural resources.

(iii) To promote communication, coordination, and education among stakeholders.

(iv) To undertake studies and publish reports related to water quantity, water quality and other natural resources of the Basin.

The PCS provides that the Department of Environment and Natural Resources (DENR) and the South Carolina Department of Health and Environmental Control shall provide staffing and meeting facilities to the Commission. The PCS also directs the 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.

Appropriations:

The PCS appropriates from the General Fund to the Commission $25,000 for the 2003-2004 fiscal year and $25,000 for the 2004-2005 fiscal year to implement the provisions of the act.

Effective Date:

The bill would become effective July 1, 2003.

S859-SMSY-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

SENATE BILL 981*

Short Title:	Clean Air Trust Fund.	(Public)
Sponsors:	Senators Metcalf; and Queen.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND TO APPROPRIATE FUNDS TO IT.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Clean Air Trust Fund.

"**§ 113A-271. Purpose.**

(a) The General Assembly finds and declares that clean air is critical to the health of the citizens, economy, and environment of North Carolina. The General Assembly recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, and hydrocarbons from stationary and mobile sources cause unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition, mercury contamination, and other air pollutants.

(b) The General Assembly is committed to reducing air pollution to restore mountain air quality, to provide healthy air to urban and rural citizens of the State, to protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters, to reduce mercury contamination in fish and the environment, to enhance the travel and tourism industry, and to maintain the high quality of life of the citizens of the State.

(c) The General Assembly finds that education, technical assistance, incentives, and regulations are all needed to prevent and reduce emissions of air pollutants and to protect the environment, public health, natural resources, and the economy.

(d) The General Assembly finds that cleaner fuels, alternative fuels, energy efficiency, transit, smart growth, public education, and awareness will prevent and reduce emissions of air pollutants.

(e) The General Assembly finds and declares that an incentive-based air quality program is needed to assist local governments, State agencies, nonprofit conservation organizations, and industry to help finance projects that prevent or reduce emissions of

oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

"**§ 113A-272. Definitions.**

As used in this Article:

(1) 'Board of Trustees' means the Clean Air Trust Fund Board of Trustees.

(2) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

"**§ 113A-273. Fund established.**

(a) Fund Established. – There is established a Clean Air Trust Fund in the State Treasurer's Office that shall be used to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of Board of Trustees or its designee.

(c) Fund Purposes. – Moneys from the Fund may be used for any of the following purposes:

(1) To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.

(2) To increase efficient use of energy in State, local, and public school buildings.

(3) To encourage private and public investments in alternative energy and energy-efficient technology.

(4) To convert animal waste to alternative energy and other value-added products.

(5) To educate and encourage the public to prevent and reduce air pollution.

(6) To provide incentives to encourage pedestrian and transit oriented smart growth.

(7) To plant trees in urban and rural areas.

(8) To acquire and protect forests and open space.

(9) To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

(10) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than five percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each

fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of funds.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant or loan from the Fund for the purpose of protecting and restoring air quality and preventing and reducing emissions of air pollution:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the protection and restoration of the environment and natural resources.

(b) Grant Matching Requirement. – The Board of Trustees may establish matching requirements for grants awarded under this Article.

(c) Loans. – The Board of Trustees may provide loans to applicants.

(d) Grants and Loans Not Available to Satisfy Excess Emissions Offsets or Conformity Requirements. – No grant or loan from the Fund shall be awarded to satisfy excess emissions offsets allowed under 40 Code of Federal Regulations § 77.3 (1 July 2002 Edition) or transportation conformity requirements set out in 40 Code of Federal Regulations Part 51 and Part 93 (1 July 2002 Edition).

(e) Grants and Loans Not Available to Achieve Compliance with State Emissions Limits. – No grant or loan from the Fund shall be awarded to achieve compliance with the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out in G.S. 143-215.107D.

"**§ 113A-275. Board of Trustees established; membership qualifications; vacancies; meetings; and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Air Trust Fund Board of Trustees. The Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. – The Board of Trustees shall be composed of nine members appointed to four-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 four.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(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 four.

(4) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(5) One member appointed by 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 four.

(6) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by four.

(7) One member appointed by 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 four.

(8) One member appointed by the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(9) One member appointed by 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 four.

(c) Qualifications. – The office of member of the Board of Trustees is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9 of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Public health.

(2) Protection and restoration of air quality.

(3) Environmental management.

(4) Energy efficiency.

(5) Alternative energy.

(6) Motor vehicles and motor fuels.

(7) Power plants and industrial boilers.

(8) Environmental education.

(9) Local government.

(10) Transportation and land-use planning.

(d) Chair. – The Board of Trustees shall elect a Chair to serve a two-year term, subject to reelection.

(e) Vacancies. – An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(g) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(h) Per Diem and Expenses. – Members of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members of the Board of Trustees shall be paid from the Fund.

(i) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director.

(j) Technical Assistance. – The Secretary of Environment and Natural Resources, the Secretary of the Department of Transportation, and the Secretary of the Department of Administration shall provide technical assistance for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director of the Fund.

"**§ 113A-276. Board of Trustees powers and duties.**

(a) Grants and Loans. – The Board of Trustees shall allocate moneys from the Fund as grants or loans. A grant or loan may be awarded only for a project or activity that prevents or reduces emissions of air pollution pursuant to this Article.

(b) Develop Grant and Loan Criteria. – The Board of Trustees shall develop criteria for awarding grants and loans under this Article. The Board of Trustees shall consider the following:

(1) Consistency with the State's statutory and regulatory programs for air pollution control.

(2) Complementing regional and local plans to prevent and reduce air pollution.

(3) Attainment and maintenance of State and federal ambient air quality standards for ozone and fine particulate matter.

(4) Protection of public health.

(5) Protection and restoration of scenic views.

(6) Protection of areas with good air quality.

(7) Restoration of areas with poor air quality.

(8) Public education and awareness.

(9) Ability of applicants to pay.

(10) Capacity of applicants to develop and implement projects.

(11) Geographic distribution of funds.

(c) Develop Additional Guidelines. – The Board of Trustees may develop guidelines in addition to the grant and loan criteria consistent with and as necessary to implement this Article.

(d) Rule-making Authority. – The Board of Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Board of Trustees.

"**§ 113A-277. Reporting requirement.**

The Chair of the Board of Trustees shall report no later than 1 October of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittee on Natural and Economic Resources of the Senate Appropriations Committee, the Subcommittee on Natural and Economic Resources of the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly regarding the implementation of this Article. The report shall include a list of the projects awarded grants or loans from the Fund for the previous 12-month period. The list shall include for each project a

description of the project, the amount of the grants or loans awarded for the project, and the total cost of the project.

"**§ 113A-278. Executive Director and staff.**

(a) The Board of Trustees shall develop and adopt an annual budget.

(b) The Board of Trustees shall hire an Executive Director who has knowledge and experience in the protection and restoration of air quality. The Executive Director serves at the pleasure of the Board of Trustees. The Executive Director may hire technical, administrative, and clerical staff and contractors, consistent with the budget adopted by the Board of Trustees, as necessary to implement the provisions of this Article.

(c) The Board of Trustees shall set the salary of the Executive Director. The salary of the Executive Director and other staff shall be paid from the Fund.

(d) The Executive Director and staff shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Expenses shall be paid from the Fund.

"**§ 113A-279. Advisory Council.**

There is established the Clean Air Trust Fund Advisory Council. The Council shall meet at least annually and shall advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund and other issues as requested by the Board of Trustees. The Council shall be composed of the following persons or their designees:

(1) The Secretary of Environment and Natural Resources.
(2) The Secretary of Commerce.
(3) The Secretary of Transportation.
(4) The Secretary of Administration."

SECTION 2. In order to provide for a system of staggered four-year terms for the members of the Clean Air Trust Fund Board of Trustees established by G.S. 113A-275, as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(1) shall be four years and shall expire on 1 July 2007.
(2) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(2) shall be five years and shall expire on 1 July 2008.
(3) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(3) shall be two years and shall expire on 1 July 2005.
(4) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(4) shall be three years and shall expire on 1 July 2006.
(5) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(5) shall be four years and shall expire on 1 July 2007.

(6) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(6) shall be five years and shall expire on 1 July 2008.

(7) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(7) shall be two years and shall expire on 1 July 2005.

(8) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(8) shall be three years and shall expire on 1 July 2006.

(9) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(9) shall be four years and shall expire on 1 July 2007.

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. The first report required by G.S. 113A-277, as enacted by Section 1 of this act, shall be due no later than 1 October 2004.

SECTION 5. There is appropriated from the General Fund to the Clean Air Trust Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement this Article. It is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement this Article. The funds in the Clean Air Trust Fund shall be used only in accordance with Article 19 of Chapter 113A of the General Statutes.

SECTION 6. This act becomes effective 1 July 2003.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

June 12, 2003
Date Thursday

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Grayson	DENR
Beth Ann Murphy	NCPC
Sheryl Stephens	DENR
RICHARD HARKRADER	NC SUSTAINABLE ENERGY ASSOC.
Camille Stall	KCLH
Keith Overcash	DENR - DAQ
Kirsten Collings	CCNC
Grady McCallie	NC. ConNet
Sabina Jang	David Knight.
Haley Gilbert	David Knight.
DENNIS RAMSEY	DENR / DWQ
TOM BEAN	NC ENVIRO DEFENSE

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Coleen H. Sullins	DWQ
Tyler Hurstwild	NC Enviro Def.
Sharon Miller	CUCA
Larry Shirley	State Energy Office
John Morris	DENR
Dr. Holman	CWMTF
Erica Peterson	NC Agribusiness Council
Steve Hall	Conservation Council
Percy Harrison	Beaufort NC
Ramon Carpenter	NCPC
[illegible]	NCPC

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Long	Martin Marietta
Julie A	NC Stakewatch
Andrew Meehan	NC ~~elec~~ Elec. coops
Kim Hibbard	NCLM
Ok Kabs	CAA
Dan Rutter	NC DENR
Alan Briggs	Save Our State
Bucky Myers	NC WARN
Wendy Rutter	TNC
Amy Fullbright	Hunton & Williams
Nancy Thompson	LMCIC

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Rick Zechini	NC Assn. of REALTORS
Paul Meyer	NLACC
David Vogel	DENR Soil & Water Conservation

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 17, 2003	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1112	Clarify Food Service Laws.	Representative Gibson, III

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 18, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Wednesday, June 18, 2003, at 11:00 a.m. in Room 643, Legislative Office Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1112 CLARIFY FOOD SERVICE LAWS – Rep. Gibson, sponsor. Sen. Weinstein moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Gibson explained the bill and urged support. Sen. Hargett asked for clarification of Page 2, line 14, beginning with "The Commission shall specify...." . Mr. George Givens, staff counsel, explained that in the water quality statues, as in many other statues, all of the responsibility is vested in the Environmental Management Commission and that many routine tasks are delegated to the Department. The Department in effect issues permits for these particular types of operations. Many are covered under what's called a general permit which is a "one size fits all" and the only thing that changes are the names and locations. Some are covered by individual permits. The Department issues those permits, the general permits under general conditions and the individual permits in many instances have specific requirements that apply to particular circumstances. So, where the bill reads "the Commission," it's because all these statues are cast in terms of what the Commission does. What actually happens is the Department already has a general permit and many of the things you might ask questions about including the minimum additional freeboard, those are things that are already established in a permit and this bill is not intended to give any indication that any of those things that should be changed. Someone else asked me about what would be a timely manner of reporting. This is set out in the permit. Also, where the bill reads 'promptly takes appropriate action to reduce ...'. (page 2, line 20), that is already specified in the permit, and consists of filing a 30-day action plan that tells how the permittee will address the invasion of the required freeboard, that is the fact that or water level in the required freeboard. This is a statutory recognition of a process that is already in place. Sen. Hargett followed up by asking about page 2, line 19, "Would (ii), 'the owner or operator promptly takes .....' would that be spraying, I'm not sure?" Mr. Givens responded, "there are a number of options for reducing lagoon levels, including spraying when you can. Of course you can't spray if it's raining but when your fields are dry you can spray. You may have to pump some, pump and haul. In the worse case scenario you may have to reduce the population by take some of the animals off the farm. So there are a number of means and the people in this business can probably give you more and better detail about this sort of thing, but that is what this is referring to."

Sen. Reeves asked if this is due to the 400 NOV's (Notice of Violations) that were sent out and the producers were put in untenable positions because their lagoons were too full and they could not spray. Rep. Gibson told why some of the NOV's were sent.

Sen. Weinstein asked about the current freeboard and Rep. Gibson explained how the system is designed and operates at the specification to the Department requirement. Sen. Weinstein asked if there had been any system failures and the sponsor told there were none. Rep. Gibson complimented DENR on the design but told they should not penalize producers for doing what they are supposed to do.

Sen. Clodfelter asked about modification or clarification of the issuance of a NOV. Mr. Givens responded. Sen. Clodfelter inquired about the general permit going to the 7 inches and what changes if we have a storm event. Mr. Givens explained that this would take care of the 25/24 up to the point of the 7-inch band without a violation.

Sen. Kinnaird made comments and asked if they could have moved animals before they had problems. Rep. Gibson explained how that is humanly possible but not practical. Sen. Kinnaird spoke again and asked where all the new technology from the past 7 years of study was. Rep. Gibson advised that we have come a long way and are the leaders in the nation for improvement. Mr. Givens made additional comments regarding our improvements.

Sen. Horton asked if Section I had been changed in reference to pushcarts or mobile food units. He expressed a concern about this. Mr. Givens advised that there were no changes. Rep. Gibson and Mr. Givens addressed his comments/concerns and referred to county health officers doing this. Ms. Susan Grayson, Head of Dairy and Food Safety, DENR addressed members and explained the current law. She told what they look for in concession carts. Sen. Horton spoke again and wondered if this should be amended to remove this portion. Rep. Gibson explained the safety and sanitation practices.

Sen. Webster thanked the sponsor for taking on this task. He also asked if NOV's mailed earlier in the year were due to the 12 inch freeboard. Ms. Coleen Sullins, NC Division of Water Quality, said they were and most of the violations were in the 25/24 range. Sen. Webster then addressed Sen. Kinnairds remarks about moving animals and told of a personal experience in having to do so. He told how difficult it is to get vehicles (trucks or tractors with trailers) in muddy areas. Sen. Webster commended the legislation to members and moved for a favorable report for the PCS, unfavorable as to the original bill.

Sen. Queen asked for clarification of freeboard and the sponsor explained.

Sen. Lucas asked how many producers or farms and how many are in violation. Rep. Gibson said there are 2,300 farms and 400 NOV's were issued. He said there are conflicting ideas of violations and this will allow some leeway. Sen. Lucas told members she had received many communications opposing this. Rep. Gibson addressed her concerns and told that he understands

but this is a choice of spraying an already wet field or pumping waste that may not be the best solution at the time either.

Sen. Smith asked for more clarification on the 19-inch and the 12-inch freeboard and if the farmer has to call in to report, and if he does the Department won't send him a violation notice but will allow DENR to monitor the farm. He asked if there was an environmental impact. Rep. Gibson responded to his inquires.

Sen. Albertson advised that there were public members that had asked to speak and he recognized Mr. James Gulick, Senior Deputy Attorney General. Mr. Gulick urged members to oppose this. Secretary Ross, DENR addressed members and spoke in opposition. Sen. Albertson made supportive remarks and reminded members that this has been a difficult work in progress and still had some perfecting to do but this is a good bill.

The vote was taken and passed as moved.

Time expired and the meeting adjourned at noon.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Wednesday, June 18, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1112** Clarify Food Service Laws.

Draft Number:	PCS30384
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1112
PROPOSED SENATE COMMITTEE SUBSTITUTE H1112-PCS30384-RT-49

Short Title: Amend Environmental Laws-2. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (2) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (3) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-248(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, ~~or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events,~~ or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

SECTION 2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food ~~unit shall be operated in conjunction with a permitted restaurant.~~unit."

SECTION 3. G.S. 143-215.10C(b) reads as rewritten:

"(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. In order to protect the structural integrity of a lagoon that is a component of an animal waste management system, the owner or operator of a lagoon shall maintain a minimum of 12 inches of freeboard. The owner or operator of a lagoon shall maintain sufficient additional freeboard to contain the runoff and direct precipitation that results from the 25-year, 24-hour storm, or from chronic rainfall. The Commission shall specify in the permit the minimum additional freeboard that the owner or operator is required to maintain. An owner or operator shall not be deemed to have violated the permit requirement to maintain additional freeboard if all of the following apply: (i) the owner or operator reports any failure to maintain the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator promptly takes appropriate action to reduce the level of the lagoon so as to restore the required additional freeboard, (iii) the owner or operator at all times maintains a minimum of 12 inches of structural freeboard, and (iv) the failure to maintain the required additional freeboard does not cause pollution in the waters of the State. An owner or operator shall be deemed to have violated the permit if any of the following apply: (i) the owner or operator fails to report any failure to maintain the required structural freeboard or the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator fails to promptly take appropriate action to reduce the level of the lagoon so as to restore the required structural or minimum additional freeboard, (iii) the owner or operator at any time fails to maintain a minimum of 12 inches of structural freeboard, or (iv) if any failure to maintain the required structural or minimum additional freeboard causes pollution in the waters of the State. As used in this subsection:

(1) '25-year, 24-hour storm' means a precipitation event that has a probable recurrence interval of once in 25 years as determined by the National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(2) 'Chronic rainfall' means a series of wet weather conditions that preclude dewatering of a properly maintained lagoon.

(3) 'Freeboard' means the distance between the surface of water contained in a lagoon and the top of the lagoon.

(4) 'Lagoon' has the same meaning as in G.S. 106-802."

SECTION 4. Sections 1, 2, and 4 of this act are effective when this act becomes law. Section 3 of this act is effective retroactively to 1 January 2003.

HOUSE BILL 1112:
Amend Environmental Laws-2.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Gibson
		Summary by:	Tim Dodge Research Assistant for Environmental Issues
Date:	June 18, 2003		
Version:	Proposed Committee Subsititute (H1112-PCS30384-RT-49)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1112 modifies the classification of a base of operations for a pushcart or mobile food unit, repeals obsolete language in the Statutes, and provides that an owner or operator of a lagoon that is a component of an animal waste management system must maintain a minimum of 12 inches of freeboard, plus sufficient freeboard to contain the runoff and direct precipitation that results from a 25-year, 24-hour storm, or from chronic rainfall. The provisions related to food and lodging facilities become effective when the bill becomes law. The provisions related to animal waste management systems become effective retroactively to January 1, 2003.***

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.

Section 3 *(added in PCS)* provides that an owner or operator of a lagoon that is a component of an animal waste management system must maintain a minimum of 12 inches of freeboard, plus sufficient freeboard to contain the runoff and direct precipitation that results from a 25-year, 24-hour storm, or from chronic rainfall. The term "chronic rainfall" is defined as a series of wet weather conditions that preclude dewatering of a properly maintained lagoon. An owner or operator will be found in violation of the permit requirement to maintain additional freeboard if any of the following apply:

1. The owner or operator fails to report any failure to maintain the required structural freeboard or the required minimum additional freeboard in a timely manner.
2. The owner or operator fails to promptly take action to reduce the level of the lagoon so as to restore the required structural or minimum additional freeboard.
3. The owner or operator at any time fails to maintain a minimum of 12 inches of structural freeboard.
4. Any failure to maintain the required structural or minimum additional freeboard causes pollution in the waters of the State.

Background for Section 3: The NPDES general permit for swine waste management systems in North Carolina specifies that the maximum waste level for lagoons must not exceed the level that provides adequate storage to contain the 25-year, 24-hour storm event (in most of eastern North Carolina, this event is defined as 5, 6, or 7 inches, depending on the precise location) plus an additional 12 inches of structural freeboard except that there will be no violation of this condition if all of the following apply:

(a) There is a storm event more severe than a 25-year, 24-hour event.
(b) The permittee is in compliance with its Certified Animal Waste Management Plan.
(c) There is at least one 12 inches of structural freeboard.

EFFECTIVE DATE: Sections 1 and 2 of the PCS would become effective when the PCS becomes law. Section 3 would become effective retroactively to January 1, 2003.

H1112-SMSY-002

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

June 17, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Grayson	DENR - 2728 Capitol Blvd Raleigh
Tyler Hurstwild	NC Environ Def.
HALEY GILBERT	DAVID KNIGHT
Lauren Hoey	NC Sierra Club
Sabina Jang	David Knight.
Angie McMillan	TNC
Wendy Rutter	TNC
Alan Briggs	SOS
Steve Wall	Conservation Council
Kirsten Collings	CCNC
Joe Rudek	NC ENVR. Def.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CHARLOTTE MITCHELL	SELC
Amy Vukovich	SELC
Grady McCallie	N.C. Conservation Network.
Courtney Washburn	NC Sierra Club
Trip Van Noppen	SELC
Molly Diggins	NC Sierra Club
Elizabeth Ouzts	NCPIRG
David Knight	NC Sierra Club
Coleen Sullins	NC DWQ
Jim Gulick	NC DOT
Bill Ross	NC DENR

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Lance Mangum	Governor's Office.
Hawley Truax	"
[illegible]	[illegible]
John Cyrus	NC State Grange
David Meredith	N.C State Grange
Charlie Queen	Son of Senator Queen
Martha Glass	NC DA&CS
David McLeod	NCDA&CS
John McHugh	Gov office
Kari Barsness	DENR
John Morris	DENR
Erica Peterson	NC Agribusiness Council

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheryl Stephens	DENR
Johanna Reese	DENR
Don Reuter	DENR 458 whitfield St., Kingsville
Nomer Landis	Fayetteville Observer
Janice Ramquist	NCIMS
Anita Watkins	NC League of Municipalities
Kim Hibbard	NCLM
Allison Pope	NCLM
[illegible]	CAA
Beth Anne Mumford	NCPC
PGP	NCFB

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karen Carpenter	NCPC
Tommy Stevens	NCPC
Julie W. Rogers	Hunton & Williams
Charles Case	"
Stephanie Simpson	NC Assn. of REALTORS
Terry Hardesty	N.C. Pork Council
DENNIS RAMSEY	DENR/DWQ
Pricy Harrison	Raleigh NC
Bob Sandquist	NC Justice Center
Edgar Mills	Conservation Trust for NC
Jonathan Howes	NC Chamber
Gary McLamb	DOJ

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phillip Manning	Audubon N.C.
Chris Canfield	Audubon N.C.
Joanne Stevens	nursing + NCCASA
Julie Allen	NC Stakwater
Jeff Kilian	Moore Van Allen
Adam Fitzwater	

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 19, 2003	9:00 AM	643LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB1112	Clarify Food Service Laws	Rep. Gibson, III

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 19, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, June 19 2003, at 9:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1112 – CLARIFY FOOD SERVICE LAWS - Sen. Albertson told members that there were still concerns regarding this so he is bringing it back before the committee again. Sen. Horton sent forth an amendment and explained. Ms. Susan Grayson, Dairy & Food Protection, DENR, addressed members and spoke of concerns from a department standpoint. Sen. Horton responded to her comments. Rep. Gibson, sponsor, asked Ms. Grayson questions to which she responded. Rep. Gibson made additional comments and he urged members not to support the amendment. Sen. Clodfelter spoke and shared his concerns for the amendment. Sen. Horton responded to each of their comments and moved for adoption of the amendment. Sen. Webster asked for clarification of a C3 and C4. Rep. Gibson explained that they are non-profits. Sen. Kinnaird made additional explanations as well. The vote was taken on the amendment and failed. Sen. Albertson sent forth an amendment. Staff counsel, George Givens, explained that this was due to a concern from the previous discussion the day before. Sen. Smith moved for adoption. Sen. Clodfelter requested a definition of "chronic rainfall". Mr. Givens replied. Sen. Gulley spoke in support of the amendment. The vote was taken and passed. Ms. Michelle Nowlin, NC Southern Environmental Law Center, addressed members and urged defeat of the bill. She feels this is a risk to water quality. Dr. Joe Rudick, Scientist, Environmental Defense, commended members for the their concerns and addressing this issue. Ms. Molly Dickens, Director, NC Sierra Club made additional comments in opposition of the bill. Sen. Kinnaird asked Ms. Nowlin about EPA standards and if we could be sued. Her response was yes. Sen. Clodfelter inquired about consequences and Mr. Gulick, Attorney General's office, responded to members. Sen. Clodfelter followed up with clarification to which Mr. Gulick explained by geographic rainfalls by different states. Sen. Reeves commented and expressed concerns about the designs used by farmers. He feels that some producers are not properly managing their waste systems. Rep. Gibson addressed his concerns and comments and explained how the NOV (notice of violation) is stricter than a notice of efficiency. Sen. Reeves questioned the difference between the two and Rep. Gibson explained how an NOV could affect farmers financially. Sec. Of DENR, Bill Ross and Ms. Colleen Sullins, Division of Water Quality, explained how they handle evaluations and the letters of NOV. Sen. Webster asked about fines. Ms. Sullins responded and Sec. Ross made additional comments. Sen. Albertson questioned Sen. Reeves

about municipal waste systems and Sen. Reeves responded. Sen. Hargett spoke and feels that hog farmers are in a bind at no fault of their own. He feels that most farmers are very responsible individuals. He then moved for a favorable report. Sen. Gulley spoke again. Rep. Gibson spoke again and urged support. Sen. Clodfelter asked Sec. Ross if they have the authority to reclassify the NOV's to NOD's, and Sec. Ross told members they do that that authority. The vote was taken and passed.

Meeting adjourned at 10:00 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charlie Albertson, Chair

Thursday, June 19, 2003

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

FAVORABLE, AS AMENDED

H.B.(SCS #1)**1112** Amend Environmental Laws-2.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 1112

Senate Agricultural/Environment/Natural Resources Committee Substitute Adopted 6/18/03

Short Title: Amend Environmental Laws-2. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (2) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (3) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-248(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, ~~or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events,~~ or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

SECTION 2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food ~~unit shall be operated in conjunction with a permitted restaurant.~~unit."

SECTION 3. G.S. 143-215.10C(b) reads as rewritten:

"(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. In order to protect the structural integrity of a lagoon that is a component of an animal waste management system, the owner or operator of a lagoon shall maintain a minimum of 12 inches of freeboard. The owner or operator of a lagoon shall maintain sufficient additional freeboard to contain the runoff and direct precipitation that results from the 25-year, 24-hour storm, or from chronic rainfall. The Commission shall specify in the permit the minimum additional freeboard that the owner or operator is required to maintain. An owner or operator shall not be deemed to have violated the permit requirement to maintain additional freeboard if all of the following apply: (i) the owner or operator reports any failure to maintain the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator promptly takes appropriate action to reduce the level of the lagoon so as to restore the required additional freeboard, (iii) the owner or operator at all times maintains a minimum of 12 inches of structural freeboard, and (iv) the failure to maintain the required additional freeboard does not cause pollution in the waters of the State. An owner or operator shall be deemed to have violated the permit if any of the following apply: (i) the owner or operator fails to report any failure to maintain the required structural freeboard or the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator fails to promptly take appropriate action to reduce the level of the lagoon so as to restore the required structural or minimum additional freeboard, (iii) the owner or operator at any time fails to maintain a minimum of 12 inches of structural freeboard, or (iv) if any failure to maintain the required structural or minimum additional freeboard causes pollution in the waters of the State. As used in this subsection:

(1) '25-year, 24-hour storm' means a precipitation event that has a probable recurrence interval of once in 25 years as determined by the National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(2) 'Chronic rainfall' means a series of wet weather conditions that preclude dewatering of a properly maintained lagoon.

(3) 'Freeboard' means the distance between the surface of water contained in a lagoon and the top of the lagoon.

(4) 'Lagoon' has the same meaning as in G.S. 106-802."

SECTION 4. Sections 1, 2, and 4 of this act are effective when this act becomes law. Section 3 of this act is effective retroactively to 1 January 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

H1112-ASB-21 [v.3]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Horton

moves to amend the bill on page 1, lines 2 through 27,
by rewriting those lines to read:

"AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) ELIMINATE THE RESTRICTION ON WHO MAY HOLD A LIMITED FOOD SERVICE ESTABLISHMENT PERMIT, (2) TO REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (3) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (4) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-248(a4) reads as rewritten:

'(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. ~~Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

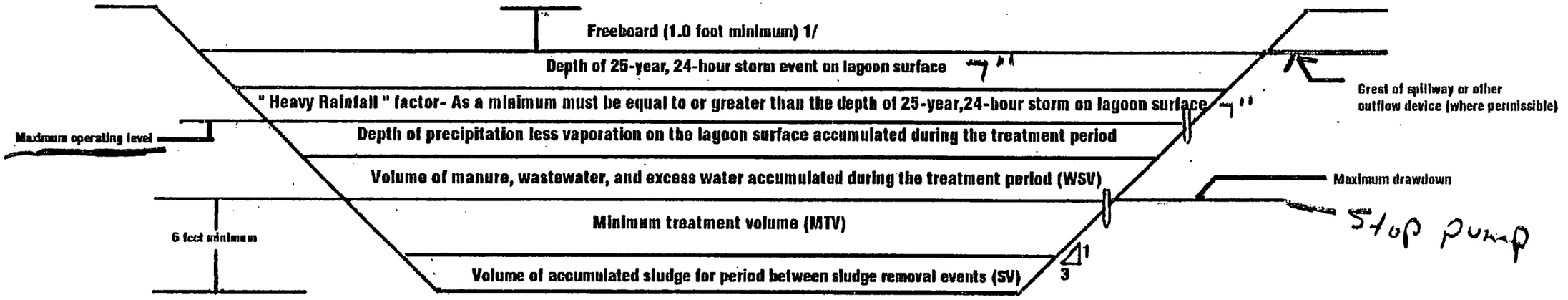
H1112-ASB-21 [v.3]

~~section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.~~'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 19 June 2003 TABLED _____



Note: The minimum treatment volume for an anaerobic waste treatement lagoon is based on volatile solids.

1/ If an emergency spillway is used the design depth of flow must be added to the freeboard.

Figure A- Anaerobic Lagoon Cross Section

NRCS, NC
January, 1998
Rev. 4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

H1112-ASB-21 [v.3]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Horton

moves to amend the bill on page 1, lines 2 through 27,
by rewriting those lines to read:

"AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) ELIMINATE THE RESTRICTION ON WHO MAY HOLD A LIMITED FOOD SERVICE ESTABLISHMENT PERMIT, (2) TO REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (3) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (4) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

H1112-ASB-21 [v.3]

~~section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.~~'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

H1112-ART-20 [v.2]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Albertson

moves to amend the bill on page 2 line 19,
by rewriting that line to read:

"the Division in a timely manner, (ii) the failure to maintain the required additional freeboard is solely the result of chronic rainfall and is not a result of the failure of the owner or operator to properly manage the animal waste management system, (iii) the owner or operator promptly takes appropriate";

on page 2, line 26,

by rewriting that line to read:

"additional freeboard to the Division in a timely manner, (ii) the failure to maintain the required additional freeboard is the result of the failure of the owner or operator to properly manage the animal waste management system, (iii) the owner or operator fails";

on page 2, lines 21 and 28,
by deleting "(iii)" and substituting "(iv) on each line;

on page 2, lines 22 and 29,
by deleting "(iv)" and substituting "(v) on each line; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1112

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

H1112-ART-20 [v.2]

on page 2, line 37,
by rewriting that line to read:

"preclude dewatering of a lagoon that is a component of a properly managed animal waste management system."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1112

Senate Agricultural/Environment/Natural Resources Committee Substitute
Adopted 6/18/03

Short Title: Amend Environmental Laws-2. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (2) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (3) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

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"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food ~~unit shall be operated in conjunction with a permitted restaurant.~~unit."

SECTION 3. G.S. 143-215.10C(b) reads as rewritten:

"(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. In order to protect the structural integrity of a lagoon that is a component of an animal waste management system, the owner or operator of a lagoon shall maintain a minimum of 12 inches of freeboard. The owner or operator of a lagoon shall maintain sufficient additional freeboard to contain the runoff and direct precipitation that results from the 25-year, 24-hour storm, or from chronic rainfall. The Commission shall specify in the permit the minimum additional freeboard that the owner or operator is required to maintain. An owner or operator shall not be deemed to have violated the permit requirement to maintain additional freeboard if all of the following apply: (i) the owner or operator reports any failure to maintain the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator promptly takes appropriate action to reduce the level of the lagoon so as to restore the required additional freeboard, (iii) the owner or operator at all times maintains a minimum of 12 inches of structural freeboard, and (iv) the failure to maintain the required additional freeboard does not cause pollution in the waters of the State. An owner or operator shall be deemed to have violated the permit if any of the following apply: (i) the owner or operator fails to report any failure to maintain the required structural freeboard or the required minimum additional freeboard to the Division in a timely manner, (ii) the owner or operator fails to promptly take appropriate action to reduce the level of the lagoon so as to restore the required structural or minimum additional freeboard, (iii) the owner or operator at any time fails to maintain a minimum of 12 inches of structural freeboard, or (iv) if any failure to maintain the required structural or minimum additional freeboard causes pollution in the waters of the State. As used in this subsection:

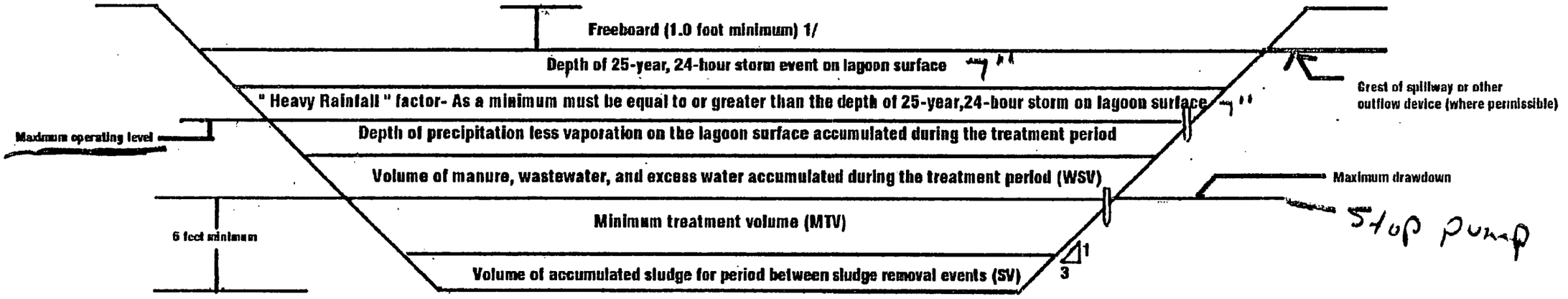
(1) '25-year, 24-hour storm' means a precipitation event that has a probable recurrence interval of once in 25 years as determined by the National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(2) 'Chronic rainfall' means a series of wet weather conditions that preclude dewatering of a properly maintained lagoon.

(3) 'Freeboard' means the distance between the surface of water contained in a lagoon and the top of the lagoon.

(4) 'Lagoon' has the same meaning as in G.S. 106-802."

SECTION 4. Sections 1, 2, and 4 of this act are effective when this act becomes law. Section 3 of this act is effective retroactively to 1 January 2003.



Note: The minimum treatment volume for an anaerobic waste treatement lagoon is based on volatile solids.

1/ If an emergency spillway is used the design depth of flow must be added to the freeboard.

Figure A- Anaerobic Lagoon Cross Section

NRCS, NC
January, 1998
Rev. 4

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — 6-19-2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kari Barbness	DENR
JAY BRYAN	Attorney, 410 Airport N CH, NC 27514
Jan Ramquist	NCIMS
Julie Allen	NC Statewatch
Martha Glenn	NC DACS
Erica Peterson	NC Agribusiness Council
Beau Mills	ncem
Kim Hibbard	NCLM
Allison Pope	NCLM
Susan Grayson	DENR, 2728 Capital Blvd. Raleigh, NC
Molly Ryan	NCSBA
Guy Michael	DJ

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Reuter	NC DENR
Tyler Hartsfield	NC Envir Def.
Paul Pulley	NCATL
Alan Briggs	SOS
Ryke Longest	NCDOJ
Gradey McCallie	NC Conservation Network
Joe Rudek	envir Def
Lauren Boers	NC Sierra Club
Courtney Washburn	NC Sierra Club
DENNIS RAMSEY	DENR / DWQ
Hawley Truax	Office of the Governor

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lance D. Mongum	Office of the Governor
Bill Ross	DENR
Michelle Nowlin	SELC
Sheryl Stephens	DENR
Robin Smith	DENR
Coleen H. Sullins	DENR / DWQ

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 24, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 974	State Purchases of Substitute for Milk.	Representative Hill
HB 1062	Local Water Supply Plans.	Representative McLawhorn
SB 989	Water and Seafood Protection Act. (FOR DISCUSSION ONLY)	Senator Reeves

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 24, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 242003, at 9:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fourteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1062 – LOCAL WATER SUPPLY PLANS - Sen. Weinstein moved for the adoption of the new proposed committee substitute for discussion. So moved. Staff counsel, George Givens explained. Sen. Albertson questioned how often the Council would meet and advised they will meet as necessary. Sen. Kinnaird spoke. Sen. Weinstein moved for a favorable report for the PCS, unfavorable to the original bill. Sen. Bingham asked what part sanitary districts would play in this and Mr. Givens responded. Sen. Reeves asked for the difference in the original bill and the PCS. Mr. Givens explained the differences. No further discussion and the vote was taken and passed as moved.

HB-974 – STATE PURCHASES OF SUBSTITUTE FOR MILK – Sen. Clodfelter moved for adoption of the PCS for discussion. So moved. Ms. Barbara Riley, staff counsel, explained. Sen. Kinnaird asked for clarification of reconstituted milk. Mr. Riley and Mr. Dewitt Hardee, NC Department of Agriculture responded. Sen. Holloman as the purpose of this legislation and Mr. Hardee replied. Sen. Clodfelter asked the state can still buy powdered milk and made additional comments regarding the proper labeling, and Mr. Hardee responded. Sen. Albertson questioned the shipping of milk products and Mr. Hardee explained that NC has the highest of all standards for milk inspection. Rep. Hill, sponsor, spoke and urged support. Sen. Holloman moved for a favorable report to the PCS, unfavorable to the original bill. Vote was taken and passed as moved.

HB-1028 NEW BULKHEAD PERMIT – (was added to the agenda) Sen. Hargett moved for adoption of the PCS for discussion. Mr. George Givens explained the technical amendment. Sen. Weinstein moved for adoption of the amendment. So moved. Rep. Williams, sponsor, explained the PCS. Counsel made additional comments. Sen. Allran asked staff for clarification of hardened structures and if jetties were included. Mr. Givens responded. Sen. Allran advised members this was a controversial issue. Mr. Givens told members it would have to go to Finance Committee because it has a fee, if it passes from our committee. Sen. Allran questioned state parks and hazardous areas. Ms. Donna Moffitt, DENR-DEM Director, explained what a hazardous area is. She told that inlets that are federally maintained need to be taken care of too.

She told members they had not seen this new language and PCS until this meeting. Sen. Allran asked Ms. Moffitt if concrete is considered permanent to help build up shorelines. She responded. Sen. Allran spoke again and asked about grandfathering for Fort Macon and Fort Fisher. She responded to his inquiry. Sen. Allran told members this is an on-going scientific debate. Rep. Williams told members that Sec. III had just been added the night before. Sen. Gulley spoke and Ms. Moffitt responded to his comments. Sen. Allran asked where Sec. III came from and Mr. Givens advised it was at the request of Sen. Basnight. Sen. Holloman moved for a favorable report for the PCS, unfavorable to the original bill. Chairman Albertson reminded members this will go to the Finance Committee. Mr. Jim Stephenson, NC Coastal Federation, spoke in support of this legislation. The vote was taken and passed as moved.

SB-989 – WATER & SEAFOOD PROTECTION ACT – Sen. Reeves moved for adoption of the PCS for discussion. So moved. Sen. Reeves explained. Sen. Bingham questioned Page 4, Line 42 about slopes. Mr. Joseph Rudick, Environmental Defense, responded. Sen. Queen inquired about the fee. Sen. Reeves explained the goal of the bill is to raise enough money to employee the staff that is necessary to watch over this project. Sen. Queen expressed concerns about the fee.

Time expired and the meeting adjourned at Noon.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Tuesday, June 24, 2003

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1028** New Bulkhead Permit.

Draft Number:	PCS30395
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1) **1062** Local Water Supply Plans.

Draft Number:	PCS30397
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **974** State Purchases of Substitute for Milk.

Draft Number:	PCS80338
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 989

Short Title:	Water and Seafood Protection Act.	(Public)
Sponsors:	Senators Reeves; Gulley, Kinnaird, and Lucas.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT WATER QUALITY AND SEAFOOD HABITATS BY STRENGTHENING THE LAWS REGARDING SEDIMENTATION POLLUTION CONTROL TO REDUCE SEDIMENTATION, THE NUMBER ONE CAUSE OF WATER QUALITY DEGRADATION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding three new subsections to read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person submitting the erosion and sedimentation control plan or an agent of the person submitting the erosion and sedimentation control plan shall perform each inspection. The person who performs each inspection shall post a record of the inspection on the site of the land-disturbing activity. The record shall certify that the work has been completed in accordance with the approved erosion and sedimentation control plan and is being maintained in a manner that satisfies the requirements of this Article. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

(f) No later than September 1, 2004, the Commission shall develop a protocol for developers and other applicants. This protocol shall include all of the following:

(1) Information to enable the applicant, when planning a development project and prior to making a significant economic investment, to assess the risks associated with erosion and sedimentation control at the proposed development site.

(2) Disincentives to develop highly vulnerable sites.

(3) Incentives to control potential impacts of erosion and sedimentation.

(g) The protocol under subsection (f) of this section shall include an assessment of the vulnerability of the proposed development site to the export of erosion and

sedimentation and of any mitigating conservation measures that can be taken at that site. The assessment of the vulnerability of the proposed development site shall consider the soil type, the slope of the land, the size of the site, the proximity of the site to waters, and any other factors the Commission determines relevant. The assessment of mitigating conservation measures that can be taken at that site shall consider best management practices, the time of the exposure, the design density, the phasing of construction, and any other factors the Commission determines relevant."

SECTION 2. G.S. 113A-54.2 reads as rewritten:

"**§ 113A-54.2. Approval Fees.**

(a) ~~The Commission may establish a fee schedule for the review and approval of erosion and sedimentation control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. An application fee may not exceed fifty dollars ($50.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project.~~ Subject to subsection (a1) of this section, the fee for the review of an erosion and sedimentation control plan and related compliance activities shall be one hundred fifty dollars ($150.00) per acre of disturbed land as shown on an erosion and sedimentation control plan or of land disturbed during the life of the project, whichever is greater.

(a1) The Commission shall increase the fee for the review and approval of erosion and sedimentation control plans under subsection (a) of this section for plans that involve land-disturbing activities in a one hundred year flood plain. This incremental portion of the fee shall not exceed twenty-five dollars ($25.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project.

(b) The Sedimentation Account is established as a nonreverting account within the Department. Fees collected under subsection (a) of this section shall be credited to the Sedimentation Account and shall be applied to the costs of administering this Article. The Floodplain Protection Account is established as a nonreverting account within the Department. The incremental portion of the fees collected under subsection (a1) of this section shall be credited to the Floodplain Protection Account and shall be applied to the costs of the compliance activities of the Department under this Article.

(c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3.

(d) This section may not limit the existing authority of local governments that establish local programs approved pursuant to this Article to assess fees for the approval of erosion and sedimentation control plans. When establishing its fee schedule, the local government shall increase the fee for the review and approval of erosion and sedimentation control plans for plans that involve land-disturbing activities in a one hundred year flood plain. This incremental portion of the fee shall not exceed twenty-five dollars ($25.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project. The local government shall use this incremental portion of the fee for the costs of the compliance activities of its local program."

SECTION 3. G.S. 113A-56 reads as rewritten:

"**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that ~~are:~~ are any of the following:

(1) Conducted by the ~~State;~~ State.

(2) Conducted by the United ~~States;~~ States.

(3) Conducted by persons having the power of eminent ~~domain;~~ domain other than a local government.

~~(4) Conducted by local governments; or~~

(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that have an approved erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to an approved erosion and sedimentation control program:

(1) To review and amend an erosion and sedimentation control plan approved by an approved erosion and sedimentation control program if the Commission determines that the plan does not comply with the requirements of this Article and the rules adopted pursuant to this Article.

(2) To take inspection and enforcement action if the Commission determines that the local government has failed to take appropriate inspection or enforcement action."

SECTION 4. G.S. 113A-57 reads as rewritten:

"**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a ~~buffer~~ zone of undisturbed vegetation is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the ~~buffer~~ zone of undisturbed vegetation nearest the land-disturbing activity. No later than September 1, 2004, the Commission shall develop an erosion and sedimentation control best management practice that determines the required width of the zone of undisturbed vegetation based upon the slope of the site, the ability to ensure compliance with the requirement under this subdivision that all visible siltation be retained within the first twenty-five percent (25%) of the

zone of undisturbed vegetation nearest the land-disturbing activity, even in the event of a failure of other erosion and sedimentation control measures and best management practices, and other factors determined by the Commission to be relevant. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle ~~which~~ that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~15~~ 10 working days or ~~30~~ 21 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

SECTION 5. G.S. 113A-58 reads as rewritten:

"**§ 113A-58. Enforcement authority of the Commission.**

(a) In implementing the provisions of this Article the Commission is authorized and directed to:

(1) Inspect or cause to be inspected the sites of land-disturbing activities to determine whether applicable laws, regulations or erosion and sedimentation control plans are being complied with;

(2) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this Article.

(b) No later than September 1, 2004, the Commission shall develop a policy that clarifies the circumstances under which restoration is required of streams that are damaged by erosion and sedimentation."

SECTION 6. G.S. 113A-60 reads as rewritten:

"**§ 113A-60. Local erosion and sedimentation control programs.**

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related compliance activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government 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 Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government 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 local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the inspection of land-disturbing activities within

the jurisdiction of the local government. The Commission shall be responsible for administering all components of the erosion and sedimentation control program other than the inspection of land-disturbing activities. The local government may adopt ordinances and regulations necessary to establish and enforce a limited erosion and sedimentation control program and establish a fee for the Commission's review of an erosion and sedimentation control plan and related compliance activities performed under the direction of the local government or the Commission. A local government that administers a limited erosion and sedimentation control program shall pay an amount equal to one hundred twenty dollars ($120.00) per acre of disturbed land subject to inspection under the limited erosion and sedimentation control program to the Department of Environment and Natural Resources for deposit in the Sedimentation Account established by G.S. 113A-54.2(b). A local government may create or designate agencies or subdivisions of the local government to administer and enforce the limited program. An ordinance adopted by a local government that establishes a limited program shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration and enforcement of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs."

SECTION 7. 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 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 8. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-67. Annual report.**

The Department of Environment and Natural Resources shall report to the Environmental Review Commission on the implementation of this Article on or before 1 September of each year. The Department shall include in the report an analysis of how well the implementation of the Sedimentation Pollution Control Act of 1973 is

preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include an evaluation of whether the fees and civil penalties are adequate to properly administer and enforce this Article. In addition, the report shall include a review of the effectiveness of local erosion and sedimentation control programs."

SECTION 9. The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 5 of this act, to the Environmental Review Commission on or before September 1, 2004.

SECTION 10. This act becomes effective August 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 989
PROPOSED COMMITTEE SUBSTITUTE S989-CSLD-1 [v.2]

4/10/2003 4:21:20 PM

Short Title: Water and Seafood Protection Act. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT WATER QUALITY AND SEAFOOD HABITATS BY STRENGTHENING THE LAWS REGARDING SEDIMENTATION POLLUTION CONTROL TO REDUCE SEDIMENTATION, THE NUMBER ONE CAUSE OF WATER QUALITY DEGRADATION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding three new subsections to read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person submitting the erosion and sedimentation control plan or an agent of the person submitting the erosion and sedimentation control plan shall perform each inspection. The person who performs each inspection shall post a record of the inspection on the site of the land-disturbing activity. The record shall certify that the work has been completed in accordance with the approved erosion and sedimentation control plan and is being maintained in a manner that satisfies the requirements of this Article. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

(f) No later than September 1, 2004, the Commission shall develop a protocol for developers and other applicants. This protocol shall include all of the following:

(1) Information to enable the applicant, when planning a development project and prior to making a significant economic investment, to assess the risks associated with erosion and sedimentation control at the proposed development site.

(2) Disincentives to develop highly vulnerable sites.

(3) Incentives to control potential impacts of erosion and sedimentation.

(g) The protocol under subsection (f) of this section shall include an assessment of the vulnerability of the proposed development site to the export of erosion and sedimentation and of any mitigating conservation measures that can be taken at that site. The assessment of the vulnerability of the proposed development site shall consider the soil type, the slope of the land, the size of the site, the proximity of the site to waters, and any other factors the Commission determines relevant. The assessment of mitigating conservation measures that can be taken at that site shall consider best management practices, the time of the exposure, the design density, the phasing of construction, and any other factors the Commission determines relevant."

SECTION 2. G.S. 113A-54.2 reads as rewritten:

"**§ 113A-54.2. Approval Fees.**

(a) ~~The Commission may establish a fee schedule for the review and approval of erosion and sedimentation control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. An application fee may not exceed fifty dollars ($50.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project.~~ Subject to subsection (a1) of this section, the fee for the review of an erosion and sedimentation control plan and related compliance activities shall be one hundred fifty dollars ($150.00) per acre of disturbed land as shown on an erosion and sedimentation control plan or of land disturbed during the life of the project, whichever is greater.

(a1) The Commission shall increase the fee for the review and approval of erosion and sedimentation control plans under subsection (a) of this section for plans that involve land-disturbing activities in a one hundred year flood plain. This incremental portion of the fee shall not exceed twenty-five dollars ($25.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project. Because a regulatory scheme already exists for the coastal area under the Coastal Area Management Act, Article 7 of Chapter 113A of the General Statutes, this subsection does not apply to any county located in the coastal area, as defined in G.S. 113A-103.

(b) The Sedimentation Account is established as a nonreverting account within the Department. Fees collected under subsection (a) of this section shall be credited to the Sedimentation Account and shall be applied to the costs of administering this Article. The Floodplain Protection Account is established as a nonreverting account within the Department. The incremental portion of the fees collected under subsection (a1) of this section shall be credited to the Floodplain Protection Account and shall be applied to the costs of the compliance activities of the Department under this Article.

(c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3.

(d) This section may not limit the existing authority of local governments that establish local programs approved pursuant to this Article to assess fees for the approval of erosion and sedimentation control plans. When establishing its fee schedule, the local government shall increase the fee for the review and approval of erosion and sedimentation control plans for plans that involve land-disturbing activities in a one

hundred year flood plain. This incremental portion of the fee shall not exceed twenty-five dollars ($25.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the project. The local government shall use this incremental portion of the fee for the costs of the compliance activities of its local program."

SECTION 3. G.S. 113A-56 reads as rewritten:

"**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that ~~are:~~ are any of the following:

(1) Conducted by the ~~State;~~ State.

(2) Conducted by the United ~~States;~~ States.

(3) Conducted by persons having the power of eminent ~~domain;~~ domain other than a local government.

~~(4) Conducted by local governments; or~~

(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that have an approved erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to an approved erosion and sedimentation control program:

(1) To review and amend an erosion and sedimentation control plan approved by an approved erosion and sedimentation control program if the Commission determines that the plan does not comply with the requirements of this Article and the rules adopted pursuant to this Article.

(2) To take inspection and enforcement action if the Commission determines that the local government has failed to take appropriate inspection or enforcement action."

SECTION 4. G.S. 113A-57 reads as rewritten:

"**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an

undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse. This subdivision applies only to counties located in the coastal area, as defined in G.S. 113A-103.

(1a) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a zone of undisturbed vegetation is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the zone of undisturbed vegetation nearest the land-disturbing activity. No later than September 1, 2004, the Commission shall develop an erosion and sedimentation control best management practice that determines the required width of the zone of undisturbed vegetation based upon the slope of the site, the ability to ensure compliance with the requirement under this subdivision that all visible siltation be retained within the first twenty-five percent (25%) of the zone of undisturbed vegetation nearest the land-disturbing activity, even in the event of a failure of other erosion and sedimentation control measures and best management practices, and other factors determined by the Commission to be relevant. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse. Because a regulatory scheme already exists for the coastal area under the Coastal Area Management Act, Article 7 of Chapter 113A of the General Statutes, this subsection does not apply to any county located in the coastal area, as defined in G.S. 113A-103.

(2) The angle for graded slopes and fills shall be no greater than the angle ~~which~~ that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed

will, within ~~15~~ 10 working days or ~~30~~ 21 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

SECTION 5. G.S. 113A-58 reads as rewritten:

"**§ 113A-58. Enforcement authority of the Commission.**

(a) In implementing the provisions of this Article the Commission is authorized and directed to:

(1) Inspect or cause to be inspected the sites of land-disturbing activities to determine whether applicable laws, regulations or erosion and sedimentation control plans are being complied with;

(2) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this Article.

(b) No later than September 1, 2004, the Commission shall develop a policy that clarifies the circumstances under which restoration is required of streams that are damaged by erosion and sedimentation."

SECTION 6. G.S. 113A-60 reads as rewritten:

"**§ 113A-60. Local erosion and sedimentation control programs.**

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related compliance activities. Local governments are authorized to

create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government 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 Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government 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 local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for administering all components of the erosion and sedimentation control program other than the inspection of land-disturbing activities. The local government may adopt ordinances and regulations necessary to establish and enforce a limited erosion and sedimentation control program and establish a fee for the Commission's review of an erosion and sedimentation control plan and related compliance activities performed under the direction of the local government or the Commission. A local government that administers a limited erosion and sedimentation control program shall pay an amount equal to one hundred twenty dollars ($120.00) per acre of disturbed land subject to inspection under the limited erosion and sedimentation control program to the Department of Environment and Natural Resources for deposit in the Sedimentation Account established by G.S. 113A-54.2(b). A local government may create or designate agencies or subdivisions of the local government to administer and enforce the limited program. An ordinance adopted by a local government that establishes a limited program shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration and enforcement of the limited program. The

resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs."

SECTION 7. 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 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 8. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-67. Annual report.**

The Department of Environment and Natural Resources shall report to the Environmental Review Commission on the implementation of this Article on or before 1 September of each year. The Department shall include in the report an analysis of how well the implementation of the Sedimentation Pollution Control Act of 1973 is preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include an evaluation of whether the fees and civil penalties are adequate to properly administer and enforce this Article. In addition, the report shall include a review of the effectiveness of local erosion and sedimentation control programs."

SECTION 9. G.S. 143-214.7 is amended by adding a new subsection to read:

"(d1) A parking lot for which a stormwater permit is required under G.S. 143-215.1 may not consist of more than twenty-five percent (25%) impervious surface area for the portion of the parking lot that is used for vehicular parking and for ingress and egress to the parking lot and parking spaces. The limitation on the amount of impervious surface shall not take into account landscaped areas associated with the parking lot. This provision shall apply only to parking lots that provide space for the parking of 10 or more vehicles."

SECTION 10. The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 8 of this act, to the Environmental Review Commission on or before September 1, 2004.

SECTION 11. This act becomes effective August 1, 2003, and applies to all construction that is subject to any stormwater permit issued on or after 1 October 2003.

SENATE BILL 989:
Water and Seafood Protection Act.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Reeves
		Summary by:	George Givens, Senior Committee Counsel, Tim Dodge, Research Assistant
Date:	24 June 2003		
Version:	1st Edition		

SUMMARY: ***Senate Bill 989 requires the self-inspection of an area covered by an approved erosion and sedimentation control plan; directs the Sedimentation Control Commission (Commission) to develop a protocol to assess the vulnerability of proposed developments to the export of erosion and sedimentation; increases the fee for the review of an erosion and sedimentation control plan to $150 per acre from a maximum of $50 per acre and provides for an additional incremental fee for review of plans that involve land-disturbing activities in a 100-year floodplain; allows a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by that local government; directs the Commission to develop an erosion and sedimentation best management practice to determine the width of the zone of undisturbed vegetation along a watercourse; requires exposed slopes to be planted or provided with ground cover within 10 working days or 21 calendar days, whichever is shorter, of completion of any phase of grading; directs the Commission to develop a policy for restoration of steams that are damaged by erosion and sedimentation; authorizes a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; and requires the Department of Environment and Natural Resources to report on the implementation of the Sedimentation Pollution Control Act of 1973.***

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that certain land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the Commission, which has delegated this authority to the Division of Land Resources of the Department of Environment and Natural Resources (DENR), prior to initiating the activity. In addition, the Act requires the utilization of sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the construction within the boundaries of the tract during construction and provide for permanent ground cover after completion of construction. A local government may establish its own erosion and sedimentation control program to approve plans and enforce the Act upon a determination by the Commission that the local program has standards that equal or exceed those of the Act. A local government that establishes its own program also sets its own fees.

BILL ANALYSIS:

Self-Inspection:

Section 1 requires a plan to include a schedule for the self-inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary groundcover. The person

who submits the plan, or their agent, shall perform each inspection and post a record of each inspection on site that certifies that the work at the site has been completed and maintained in accordance with the approved plan and the Act.

Protocol for Highly Vulnerable Sites:

Section 1 also directs the Commission to develop a protocol to assess the vulnerability of a proposed development site to the export of erosion and sedimentation and to assess any mitigating conservation measures that can be taken at the site.

Fee for Plan Review and Related Compliance Activities:

Section 2 increases the fee for the review of a plan and related compliance activities to $150 per acre of disturbed land, or portion thereof. Current law authorizes the Commission to establish a fee schedule with a fee not to exceed $50 per acre of disturbed land.

Land-Disturbing Activities in 100-year floodplains:

Section 2 also directs the Commission to increase the fee for the review and approval of plans that involve land-disturbing activities in a 100-year floodplain, not to exceed an incremental increase of $25 per acre. The incremental increase would be credited to the newly created Floodplain Protection Account, which would be used to cover the costs of the compliance activities under the Article. The bill also directs local programs to increase the fee for the review and approval of plans that involve land-disturbing activities in a 100-year floodplain, not to exceed an incremental increase of $25 per acre.

Jurisdiction:

Section 3 allows a local government with an approved plan to regulate land-disturbing activities conducted by that local government. This section also clarifies that the Commission, by delegation of the Division of Land Resources in DENR, has concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program. The bill also authorizes the Commission to review and amend a plan approved by a local program if the Commission determines that the plan does not comply with the requirements of the Article.

Undisturbed Vegetative Buffer:

Section 4 of the bill specifies that the buffer zone required along the margin of a lake or natural watercourse must consist of undisturbed vegetation. The bill directs the Commission to develop a best management practice that determines the required width of the zone of undisturbed vegetation.

Ground Cover on Exposed Slopes:

Section 4 also provides that exposed slopes must be planted or provided with ground cover within 10 working days or 21 calendar days, whichever period is shorter, of completion of any phase of grading.

Stream Restoration Policy:

Section 5 directs the Commission to develop a policy that clarifies the circumstances under which restoration is required of streams that are damaged by erosion and sedimentation.

Local Erosion and Sedimentation Control Programs:

Section 6 authorizes a local government to request that the Commission approve and delegate an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities, and the assessment and collection of appropriate fees. Local governments are authorized to adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program, which shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities under the Act and the associated rules. If the Commission approves a limited local program, the Commission will retain responsibility for approval of plans and enforcement. The local government will establish a fee for the review of a plan and related compliance activities and is required to submit an amount equal to $120 per acre of land disturbed to DENR to compensate DENR for the costs associated with the review of plans and related compliance activities. The bill also clarifies that as a part of a local government's erosion and sedimentation control program it may adopt an ordinance that establishes a fee for the review of plans and related compliance activities.

Civil Penalty for First Violation:

Section 7 increases the maximum civil penalty for the first day of a violation of the Act or ordinance, rule, or order adopted pursuant to the Act, from $5,000 to $10,000.

Annual Reporting Requirement

Section 8 requires DENR to report to the Environmental Review Commission by 1 September of each year on the implementation of the Act, the adequacy of the fees and civil penalties, and the effectiveness of local programs. Section 9 provides that the first report is due 1 September 2004.

Effective Date

Section 10 provides that the act becomes effective 1 August 2003.

S989-SMSY-001

Jennifer McGinnis, Counsel to the Senate Committee on Agriculture, Environment, and Natural Resources, contributed significantly to the preparation of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 2

HOUSE BILL 974
Senate Commerce Committee Substitute Adopted 6/5/03

Short Title: State Purchases of Substitute for Milk. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STATE AGENCIES FROM PURCHASING RECONSTITUTED MILK.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. No contracts for the purchase of reconstituted or recombined milk.**

No department, institution, or agency of the State shall enter into a contract for the purchase of any fluid milk that has as a part of its label the term "reconstituted" or "recombined"."

SECTION 2. This act becomes effective October 1, 2003, and applies to contracts entered into on or after that date.

HOUSE BILL 974:
State Purchases of Substitute for Milk.

BILL ANALYSIS

Committee:	Senate Ag, Envir & Natural Resources	**Introduced by:**	Rep. Hill
Date:	June 24, 2003	**Summary by:**	Karen Cochrane Brown and Barbara Riley
Version:	Proposed Committee Substitute H974-CSRT-59		Committee Counsel

SUMMARY: ***House Bill 974 prohibits any department, institution, or agency of the State from purchasing fluid milk that has as a part of its label the term "reconstituted or recombined." The proposed committee substitute adds a definition of "fluid milk product" to the bill.***

BILL ANALYSIS:

House Bill 974 adds a new section to Article 3 in Chapter 143 of the General Statutes, covering Purchases and Contracts. This section would prohibit departments, institutions and agencies of the State, such as the Department of Corrections, from entering into a contract to purchase fluid milk listing "reconstituted" or "recombined" on the label.

The proposed committee substitute for the bill uses the term "fluid milk product" and defines fluid milk product consistent with the Agricultural Marketing Service's definition in 7 CFR 1000.15. Under this section, fluid milk product means any milk product in fluid or frozen form that contains less than 9% butterfat and that is intended to be used as a beverage. The term does not include evaporated milk, sweetened condensed milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed containers, or products that contain less than 6.5% nonfat milk solids.

The bill does not define the terms "reconstituted or "recombined". However, Robert Cropp, of the University of Wisconsin-Platteville, states that:

"Reconstituted milk is a fluid milk product produced by adding water to condensed or dried milk components. Usually, fat and nonfat components are separated prior to condensing or drying. Reconstitutable ingredients include dry whole milk, nonfat dry milk, reverse-osmosis concentrated skim milk, cream, anhydrous milkfat and unsalted butter. This should not be confused with 'filled milk', which is made from skim milk and some type of vegetable oil. Reconstituted milk also refers to fluid milk blends consisting of whole milk, water and condensed or dried milk components."

This act would become effective on October 1, 2003 and applies to contracts entered into on or after that date.

Theresa Matula, Committee Staff to the House State Government Committee, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 4

HOUSE BILL 1028

Corrected Copy 4/16/03
Committee Substitute Favorable 5/27/03
Fourth Edition Engrossed 6/16/03

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), the authorization to adopt temporary rules pursuant to this section shall continue in effect until 1 July 2004. Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule set out in G.S. 150B-21.1.

SECTION 2. 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 3. This act becomes effective 1 July 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1028

Corrected Copy 4/16/03
Committee Substitute Favorable 5/27/03
Fourth Edition Engrossed 6/16/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1028-PCS45167-RTf-57

Short Title: Erosion Control Structures. (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, TO PROHIBIT THE CONSTRUCTION OF PERMANENT EROSION CONTROL STRUCTURES IN OCEAN HAZARD AREAS, AND TO PROVIDE THAT TEMPORARY EROSION CONTROL STRUCTURES IN OCEAN HAZARD AREAS SHALL BE LIMITED TO SANDBAGS.

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), the authorization to adopt temporary rules pursuant to this section shall continue in effect until 1 July 2004. Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule set out in G.S. 150B-21.1.

SECTION 2. 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 3. Part 3 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) 'Erosion control structure' means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(2) 'Ocean hazard area' means the Atlantic Ocean, an oceanfront shoreline, or waters and shorelines adjacent to an ocean hazard area of environmental concern as designated by the Commission pursuant to G.S. 113A-113(b)(6), but does not include any portion of a shoreline that exhibits characteristics of estuarine shorelines.

(b) No person shall construct a permanent erosion control structure in an ocean hazard area. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean hazard area. This section shall not apply to any permanent erosion control structure that is approved pursuant to an exception adopted by the Commission prior to 1 July 2003. 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 control structures in inlets or along estuarine shorelines."

SECTION 4. Sections 1 and 2 of this act become effective 1 July 2003. Sections 3 and 4 of this act become effective when this act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1028

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

H1028-ART-22 [v.1]

Date _____,2003

Comm. Sub. [NO]
Amends Title [NO]
H1028-PCS45167-RTf-57

Senator _____

moves to amend the bill on page 2, line 20,
by rewriting that line to read:

"pursuant to an exception set out in a rule adopted by the Commission prior to 1 July 2003. This section".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1062

Committee Substitute Favorable 4/22/03

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1062

Committee Substitute Favorable 4/22/03

PROPOSED COMMITTEE SUBSTITUTE H1062-PCS80339-RT-60

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 Advisory Management Council and drought designations.**

(a) The Department shall establish a Drought Management Advisory Council. The purposes of the Council are:

(1) To improve coordination among local, State, and federal agencies; public water systems, as defined in G.S. 130A-313(10); and water users to improve the management and mitigation of the harmful effects of drought.

(2) To provide consistent and accurate information to the public about drought conditions.

(b) The Department shall invite each of the following organizations to designate a representative to serve on the Council:

(1) North Carolina Cooperative Extension Service.

(2) State Climate Office at North Carolina State University.

(3) Public Staff of the Utilities Commission.

(4) Wildlife Resources Commission.

(5) Department of Agriculture and Consumer Services.

(6) Department of Commerce.

(7) Department of Crime Control and Public Safety.

(8) National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(9) United States Geological Survey of the United States Department of the Interior.

(10) United States Army Corps of Engineers.

(11) United States Department of Agriculture.

(12) Federal Emergency Management Agency of the United States Department of Homeland Security.

(c) The Department shall also invite other agencies and organizations that represent water users, including local governments, agriculture, agribusiness, forestry, manufacturing, and others as appropriate, to designate a representative to serve on the Council or to participate in the work of the Council with respect to particular drought related issues.

(d) The Department shall designate an employee of the Department to serve as Chair of the Council. The Council shall meet at least once in each calendar year in order

to maintain appropriate agency readiness and participation. In addition, the Council shall meet on the call of the Chair to respond to drought conditions. The provisions of Article 33C of this Chapter apply to meetings of the Council.

(e) In order to provide accurate and consistent information to assist local governments and other water users in taking appropriate drought response actions, the Council may issue drought advisories that designate:

(1) Specific areas of the State in which drought conditions are impending.

(2) Specific areas of the State that are suffering from drought conditions.

(3) The level of severity of drought conditions.

(f) In making a determination of any of the drought designations described in subsection (e) of this section, the Council shall consider stream flows, ground water levels, the amount of water stored in reservoirs, weather forecasts, the time of year, and other factors that are relevant to determining the location and severity of drought conditions."

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.

HOUSE BILL 1062:
Local Water Supply Plans.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative McLawhorn
Date:	June 24, 2003	**Summary by:**	George Givens Senior Committee Counsel, Jennifer McGinnis Committee Counsel
Version:	PCS for 2nd Edition (H1062-PCS80339-RT-60)		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1062 would require certain community water systems to prepare local water supply plans, 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, and would authorize the Secretary of Environment and Natural Resources to establish a Drought Management Advisory Council (Council). The bill would authorize the Council to assist local governments and other water users in taking appropriate drought response actions by issuing drought advisories.***

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 (Department). 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 Department. Local water supply plans must be revised at lease once every five years.

BILL ANALYSIS:

Section 1 of House Bill 1062 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 bill would also require 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 would be due on or before January 1, 2004.

Section 2 of House Bill 1062 would direct the Secretary of Environment and Natural Resources to establish a Drought Management Advisory Council in order to improve coordination among governmental bodies to improve the management and mitigation of the harmful effects of drought, and to provide consistent and accurate information to the public about drought conditions. The Council would be comprised of a representative from each of the following organizations:

- North Carolina Cooperative Extension Service
- State Climate Office at North Carolina State University
- Public Staff of the Utilities Commission
- Wildlife Resources Commission

- Department of Agriculture and Consumer Services
- Department of Commerce
- Department of Crime Control and Public Safety
- National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce
- United States Geological Survey of the United States Department of the Interior
- United States Army Corps of Engineers
- United States Department of Agriculture
- Federal Emergency Management Agency of the United States Department of Homeland Security

In addition, the bill would direct the Department to invite other agencies and organizations that represent water users to participate in the work of the Council. The Department would designate an employee of the Department as Chair of the Council. The Council would meet at least once each calendar year in order to maintain agency readiness and participation, and on the call of the Chair in order to respond to drought conditions. Meetings of the Council would be subject to the provisions of the Open Meetings Act.

The bill would also authorize the Council to assist local governments and other water users in taking appropriate drought response actions by issuing drought advisories that designate:

- Specific areas of the State where drought conditions are impending.
- Specific areas of the State as suffering from drought conditions.
- The level of severity of drought conditions.

EFFECTIVE DATE: This act is effective when it becomes law.

H1062-SMSB-003

Jeff Hudson, Counsel to the Senate Committee on Agriculture, Environment, and Natural Resources, contributed significantly to the preparation of this summary.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dewitt Hardee	NCDA&CS
David McLeod	NCDA&CS
Martin Blair	NCDA&CS
Eddie Caldwell	NCGWA
Jean Ramsaur	NCIMS
Steve Woodson	NCFB
Doug Caster	NCSTA
Everett Case	Hunton & Williams
Alan Stallings	Hunton & Williams
Lance Morgan	Office of the Governor
Butch Gunnells	NCSDA

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Simpson	NC Assn. of REALTORS
Nancy Thompson	NRCIC
John Cyrus	n C state Grange
Kim Hibbard	NCLM
Rick Zechini	NC Assoc. of REALTORS
Julie Allen	NC Statewatch
Kari Barsness	NCDENR
Jim Simons	NC DENR
DON RAYNO	NC DENR-DWR
Erica Peterson	NC Agribusiness Council
Donna Moffitt	DENR- DCM

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheryl Stephens	DENR
Robin Smith	DENR
Pricey Harrison	CRC
Molly Diggins	NC Sierra Club
Joe Rudek	ENVR Defense
Lisa Page	Conservation Council
Jim Stephenson	NC Coastal Federation
Steve Hall	Conservation Council
David Knight	NC Sierra Club, NC Wildlife Fed
Lisa Schneider	NC Sierra Club
Gordy Wilkie	N.C. Conservation Network.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeremy Ryzer	NC LCV NCC
Mike Waters	NCRPS
Berry Jenkins	Carolinas AGC
Elizabeth Ouzts	NCPIRG
Lauren Boers	NC Sierra Club
Angie McMillan	TNC
Wendy Rutter	TNC
Sabina Jangi	David Knight
Jim Lowry	NC Utility Contractors Assn
Sarah Smith	WCSR

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 8, 2003 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 47	Adopt Carolina Lily as State Wildflower.	Representative Baker
HB 974	Prohibit State Purchase of Reconstituted Milk.	Representative Hill
HB 897	Underground Storage Tank Prgm. Testing Req.	Representative Gibson, III Representative Gillespie
	Governor's Appointments to the Board Of Agriculture	

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 8, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 8 2003, at 11:00 a.m. in Room544, Legislative Office Building. Senator Albertson, chairman presided and there were fifteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

Mr. Franklin Freeman, Office of the Governor, was recognized to present the **Governor's Appointments to the NC State Board of Agriculture**. Each member stood (if present) when his name was called. Mr. Elbert Ray Pitt, Jr., and Mr. Kirk Mathis, were new appointee. Mr. William Holliday and Mr. Hyman Young, Jr. were re-appointees. Mr. Freeman submitted these and requested the members accept these recommendations. Sen. Clodfelter moved for approval. Sen. Kinnaird asked there were any conflicts of interest and Mr. Freeman responded. Sen. Hargett spoke in favor of each one. The vote was taken and passed.

HB-47 ADOPT THE CAROLINA LILY AS THE STATE WILDFLOWER - Rep. Rex Baker explained the bill. Sen. Weinstein asked if this is the same as a Day Lily and are they in southeast North Carolina. Rep. Baker responded. Sen. Kinnaird asked if this were the only wildflower presented and Rep. Baker told her it was to the best of his knowledge. She then asked if this would grow in all 100 counties. He told her he didn't know. Sen. Allran asked if the Venus Fly Trap is a wildflower. Rep. Baker gave him an explanation. Sen. Hartsell moved for a favorable report. Rep. Baker recognized his wife who was present at the meeting and thanked her for the photos. The vote was taken and passed.

HB-974 PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK – Rep. Hill told members he thinks everything has now been worked out since this was the third time this bill was being presented to our committee. Sen. Horton asked if reconstituted milk is being sold in NC, is it wholesome, and if it can be in a form other than powder. Rep. Hill addressed all of his questions. Sen. Horton spoke again regarding the price of the product. Mr. Dewitt Hardee, NC Department of Agriculture addressed members and gave additional explanation. Sen. Horton asked Mr. Hardee a series of questions to which he responded. Sen. Webster wants a citation to suspend this law in times of crises and asked about the statues. Staff counsel, George Givens began working on this request. Sen. Gulley expressed that he feels it's good to have and keep our dairy industries in NC but he has a problem with free market debt and making exceptions to this. How can we support this and our free market? Rep. Hill responded to his comments/questions. Mr. Hardee also made additional remarks. Sen. Gulley spoke again and

expressed he feels uncomfortable with this. Sen. Albertson asked Mr. Hardee where the request came from for this legislation. Mr. Hardee advised it was from the dairy farmers. Sen. Albertson asked how many dairy farms there are now in NC and how many there used to be. Mr. Hardee responded. Sen. Horton spoke again. Mr. George Givens responded to Sen. Webster's earlier inquiry on the statues. Sen. Webster spoke again and expressed concerns about the statewide problems in crises and not being able to provide milk to schools. He requested language to protect us in emergency situations. Mr. Givens drafted an amendment. Sen. Webster moved for adoption of the amendment. Vote taken and passed. Sen. Webster restated his motion as to unfavorable to the original bill, but favorable as to the PCS (after rolling the amendment into it). Mr. Dave Meredith, NC State Grange and a dairy farmer, spoke to members. He thanked them for this, as it will help keep our dairy farms in NC. The vote was taken on Sen. Webster's motion and passed.

Sen. Kinnaird had provided each member with a bottle of chocolate milk from a farm in her district and requested that everyone return their milk bottles to her to recycle.

HB-897 UNDERGROUND STORAGE TANK PROGRAM AMENDS – Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Rep. Gibson explained. Staff counsel, George Givens make additional comments. Sen. Allran asked about owners of gas stations if they discover leaks. He requested the difference of before and after this bill, if it passes. Mr. Givens explained the differences. Sen. Allran questioned the fee to be charged and George explained. Rep. Gibson, the sponsor, spoke again. He told member that this is a problem with money and he's hopeful that an ERC study can also look into this. Sen. Kinnaird questioned the high cost. Rep. Gibson responded. Sen. Horton spoke in favor of the bill and moved for a favorable report for the PCS, unfavorable to the original bill. Sen. Webster spoke in frustration of the high costs. Rep. Gibson again responded. The vote was taken and passed as moved.

Mrs. Paula Gupton-Page, Farm Bureau was recognized to invite members to the "Ag in the Classroom" breakfast on Thursday, July 16, 2003.

The meeting adjourned at 12:10 p.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Brooks, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, July 08, 2003

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

FAVORABLE

H.B.(CS #1) **47** Adopt Carolina Lily as State Wildflower.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **897** Underground Storage Tank Prgm. Testing Req.
Draft Number: PCS30405
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, July 08, 2003

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 3

H.B.(SCS #2) **974** Prohibit State Purchase of Reconstituted Milk.

Draft Number:	PCS80348
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 974

Senate Commerce Committee Substitute Adopted 6/5/03
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/24/03

Short Title: Prohibit State Purchase of Reconstituted Milk. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PURCHASE OF RECONSTITUTED OR RECOMBINED FLUID MILK BY ANY DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. Contracts for the purchase of reconstituted or recombined fluid milk products prohibited.**

(a) As used in this section, 'fluid milk product' has the same meaning as in 7 Code of Federal Regulations § 1000.15 (1 January 2003 Edition).

(b) No department, institution, or agency of the State shall enter into any contract for the purchase of any fluid milk product that is labeled or that is required to be labeled as 'reconstituted' or 'recombined'."

SECTION 2. This act becomes effective 1 October 2003 and applies to any contract entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 974

Senate Commerce Committee Substitute Adopted 6/5/03
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/24/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H974-PCS80348-RT-67

Short Title: Prohibit State Purchase of Reconstituted Milk. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE PURCHASE OF RECONSTITUTED OR RECOMBINED FLUID MILK BY ANY DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. Contracts for the purchase of reconstituted or recombined fluid milk products prohibited.**

(a) As used in this section, 'fluid milk product' has the same meaning as in 7 Code of Federal Regulations § 1000.15 (1 January 2003 Edition).

(b) No department, institution, or agency of the State shall enter into any contract for the purchase of any fluid milk product that is labeled or that is required to be labeled as 'reconstituted' or 'recombined'.

(c) The Secretary of Administration may temporarily suspend the provisions of subsection (b) of this section in case of any emergency or pressing need as provided in G.S. 143-57."

SECTION 2. This act becomes effective 1 October 2003 and applies to any contract entered into on or after that date.

HOUSE BILL 974:
State Purchases of Substitute for Milk.

BILL ANALYSIS

Committee:	Senate Ag, Envir & Natural Resources	**Introduced by:**	Rep. Hill
Date:	July 8, 2003	**Summary by:**	Karen Cochrane Brown and Barbara Riley Committee Counsel
Version:	Proposed Committee Substitute H974-CSRT-59		

SUMMARY: ***House Bill 974 prohibits any department, institution, or agency of the State from purchasing fluid milk that has as a part of its label the term "reconstituted or recombined." The proposed committee substitute adds a definition of "fluid milk product" to the bill.***

BILL ANALYSIS:

House Bill 974 adds a new section to Article 3 in Chapter 143 of the General Statutes, covering Purchases and Contracts. This section would prohibit departments, institutions and agencies of the State, such as the Department of Corrections, from entering into a contract to purchase fluid milk listing "reconstituted" or "recombined" on the label.

The proposed committee substitute for the bill uses the term "fluid milk product" and defines fluid milk product consistent with the Agricultural Marketing Service's definition in 7 CFR 1000.15. Under this section, fluid milk product means any milk product in fluid or frozen form that contains less than 9% butterfat and that is intended to be used as a beverage. The term does not include evaporated milk, sweetened condensed milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed containers, or products that contain less than 6.5% nonfat milk solids.

The bill does not define the term "reconstituted or "recombined" milk. However, the Grade A Pasteurized Milk Ordinance, 2001 Revision, (PMO), which according to NCDA has been adopted by reference into the Health and Human Services rules, defines reconstituted or recombined milk and milk products to mean milk or milk products resulting from the reconstituting or recombining of milk constituents with potable water when appropriate. PMO, Section 1 (AA).

This act would become effective on October 1, 2003 and applies to contracts entered into on or after that date.

Theresa Matula, Committee Staff to the House State Government Committee, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 974

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

H974-ART-24 [v.1]

Date 8 July ,2003

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

Senator Webster

moves to amend the bill on page 1, line 14,
by rewriting that line to read:

"as 'reconstituted' or 'recombined'.

(c) The Secretary of Administration may temporarily suspend the provisions of subsection (b) of this section in case of any emergency or pressing need as provided in G.S. 143-57."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 8 July 2003 FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 897*

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H897-PCS30405-RT-35

Short Title: Underground Storage Tank Prgm. Amends. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE SOLVENCY OF THE COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND AND THE NONCOMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND BY TEMPORARILY REQUIRING THAT CLEANUPS PROCEED ONLY AFTER PREAPPROVAL BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES PURSUANT TO A SCHEDULE BASED ON THE DEGREE OF RISK TO HUMAN HEALTH AND THE ENVIRONMENT AND OTHER FACTORS; TO PROVIDE THAT PAYMENT OR REIMBURSEMENT FROM THE COMMERCIAL FUND AND NONCOMMERCIAL FUND BE LIMITED TO THAT NECESSARY TO ACHIEVE THE MOST COST-EFFECTIVE CLEANUP; TO PROVIDE FOR THE IMPLEMENTATION OF PERFORMANCE-BASED CLEANUPS; TO MINIMIZE FUTURE DISCHARGES AND RELEASES BY AUTHORIZING THE ADOPTION OF RULES TO REQUIRE THE USE OF SECONDARY CONTAINMENT FOR PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS; 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 TO REDUCE COSTS; TO PROVIDE THAT A MIXED PLUME OF CONTAMINATION THAT RESULTS FROM RELEASES OF PETROLEUM FROM BOTH AN UNDERGROUND STORAGE TANK AND AN ABOVEGROUND STORAGE TANK OR OTHER SOURCE MAY BE CLEANED UP UNDER THE RISK-BASED CLEANUP RULES APPLICABLE TO RELEASES FROM PETROLEUM UNDERGROUND STORAGE TANKS; AND TO AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION TO

STUDY ISSUES RELATED TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM IN ORDER TO PROTECT PROPERTY VALUES, ENSURE TIMELY REIMBURSEMENT OF PERSONS WHO ENGAGE IN CLEANUPS, AND PROTECT GROUNDWATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94A is amended by adding a new subsection to read:

"(2a) 'Cost-effective cleanup' means the cleanup method that meets all of the following criteria:

a. Addresses imminent threats to human health or the environment.

b. Provides for the cleanup or removal of all contaminated soil except in circumstances where it is impractical to remove contaminated soil.

c. Is approved by the Commission for remediation of the site.

d. Is the least expensive cleanup based on total cost, including costs not eligible for reimbursement from the Commercial Fund or the Noncommercial Fund."

SECTION 2. G.S. 143-215.94B(d) reads as rewritten:

"(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.

(4) Costs intended to be paid by the Noncommercial Fund.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Commercial Fund, including but not limited to, any payment or reimbursement made under a contract of insurance.

(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.

(8) Costs in excess of those required to achieve the most cost-effective cleanup."

SECTION 3. G.S. 143-215.94B(f) reads as rewritten:

"(f) **(Effective until October 1, 2006)** ~~On the first day of~~ During each fiscal ~~quarter,~~ year, the Department may ~~allocate~~ use up to ~~fifty percent (50%)~~ two million

five hundred thousand dollars ($2,500,000) of the funds in the Commercial Fund ~~that are not otherwise obligated~~ for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a commercial underground storage tank. The Department or any owner, operator, or landowner may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. Before the award of the contract, the environmental services firms shall secure a surety or performance bond equal to the price of the firm's services under the contract and shall demonstrate having secured the surety or performance bond to the satisfaction of the Department. The surety shall be liable on the bond obligation when the environmental services firms fail to perform as specified in the contract. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department or any owner, operator, or landowner shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding ~~process.~~ process and any other rules necessary to implement this subsection. The rules shall establish qualifications for environmental services firms and for individuals and firms that provide engineering services as part of a contract to satisfactorily complete work associated with cleanup."

SECTION 4. G.S. 143-215.94D(d) reads as rewritten:

"(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle.

(2) The removal or replacement of any tank, pipe, fitting or related equipment.

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline.

(4) Costs intended to be paid for by the Commercial Fund.

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(6) Costs paid or reimbursed by or from any source other than the Noncommercial Fund, including, but not limited to, any payment or reimbursement made under a contract of insurance.

(7) Costs incurred as a result of the cleanup of environmental damage to groundwater to a more protective standard than the risk-based standard required by the Department unless the cleanup of environmental damage to groundwater to a more protective standard is necessary to resolve a claim for compensation by a third party for property damage.

(8) Costs in excess of those required to achieve the most cost-effective cleanup."

SECTION 5. G.S. 143-215.94D(f) reads as rewritten:

"(f) **(Effective until October 1, 2006)** ~~On the first day of~~During each fiscal ~~quarter,~~ year the Department may ~~allocate~~use up to ~~fifty percent (50%)~~ two hundred fifty thousand dollars ($250,000) of the funds in the Noncommercial Fund ~~that are not otherwise obligated~~ for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a noncommercial underground storage tank. The Department or any owner, operator, or landowner may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. Before the award of the contract, the environmental services firms shall secure a surety or performance bond equal to the price of the firm's services under the contract and shall demonstrate having secured the surety or performance bond to the satisfaction of the Department. The surety shall be liable on the bond obligation when the environmental services firms fail to perform as specified in the contract. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department or any owner, operator, or landowner shall select environmental services firms for performance-based cleanup through a competitive bidding ~~process.~~ process and any other rules necessary to implement this subsection."

SECTION 6. G.S. 143-215.94E(f) is repealed.

SECTION 7. G.S. 143-215.94E(g) reads as rewritten:

"(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department ~~if:~~if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or ~~releases;~~releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton ~~misconduct; or~~misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C."

SECTION 8. G.S. 143-215.94T reads as rewritten:

"**§ 143-215.94T. Adoption and implementation of regulatory program.**

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. These rules shall include standards and

requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

(1) Design, construction, and installation, including monitoring systems.
(2) Notification to the Department, inspection, and registration.
(3) Recordation of tank location.
(4) Modification, retrofitting, and upgrading.
(5) General operating requirements.
(6) Release detection.
(7) Release reporting, investigation, and confirmation.
(8) Corrective action.
(9) Repair.
(10) Closure.
(11) Financial responsibility.
(12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests.
(13) Secondary containment for nontank components of petroleum underground storage tank systems.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

(1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
(2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
(3) Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households.

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all nontank components of underground storage tank systems, including all piping and fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall piping and fittings and sump containment for pump heads and dispensers. The rules shall provide for monthly monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any nontank component of an underground storage tank system on or after that date."

SECTION 9. G.S. 143-215.94V reads as rewritten:

"**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the

solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. Repealed by Session Laws 1998-161, s. 11(c).

g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage ~~tank.~~ and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through ~~(e)~~(e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January ~~2,~~ 1998.

(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. The Department shall not pay or reimburse any costs associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund."

SECTION 10. The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to this section. The rights and obligations of an owner, operator, or a landowner to whom G.S. 143-215.94E(b1) applies who is eligible to have costs paid or reimbursed under G.S. 143-215.94B shall be governed by G.S. 143-215.94E as modified by this section. The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup based on the degree of risk to human health and the environment posed by the discharge or release. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid from the Commercial Fund, the Department shall also consider the

availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule. The Department may revise the schedule that applies to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors. The lack of availability of funds in the Commercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup. If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S.143-215.84 or G.S. 143-215.94E before the owner or operator is authorized to proceed with further assessment or cleanup pursuant to the schedule set by the Department. Once the Department has determined a schedule for the assessment and cleanup of a discharge or release from a commercial underground storage tank, an owner, operator, or other person responsible for the assessment and cleanup is not eligible to have the costs of the assessment or cleanup paid or reimbursed from the Commercial Fund until such time as further assessment or cleanup is authorized by the Department pursuant to the schedule. An owner, operator, or other person may undertake further assessment or cleanup before receiving authorization from the Department. An owner, operator, or other person who undertakes further assessment or cleanup before receiving authorization from the Department shall be reimbursed only after the Department has paid or reimbursed the costs for all assessments and cleanups that the Department has authorized.

SECTION 11. 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 requirements set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule.

SECTION 12.(a) The Environmental Review Commission may study issues related to the Leaking Petroleum Underground Storage Tank Cleanup Program. The Commission may evaluate any of the following:

(1) The adequacy of program funding.
(2) Options for management of available funds, including prioritization of cleanups and preapproval of cleanups.
(3) Changes in deductible and co-payment requirements.
(4) Options to increase program funding.
(5) The availability and use of private insurance to pay or reimburse the costs of the assessment and cleanup of releases and discharges of petroleum from petroleum underground storage tanks and of any liability of owners and operators of those tanks to third parties.

(6) Issues related to the inclusion of aboveground storage tanks in the program, including registration, fees and other funding issues, cleanup standards, and regulation of these tanks.

(7) Issues related to the provision of liability protection to a bona fide purchaser of a petroleum-contaminated property who has knowledge of, but did not cause or contribute to, the contamination of the property.

SECTION 12.(b) The Commission may report its findings and recommendations, including any proposed legislation, to the 2004 Regular Session of the 2003 General Assembly, or to the 2005 General Assembly.

SECTION 13. This act is effective when it becomes law. Section 10 of this act expires 1 October 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 897*
Committee Substitute Favorable 4/29/03

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.

HOUSE BILL 897:
Underground Storage Tank Prgm. Amends.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representatives Gibson and Gillespie
Date:	July 8, 2003	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (H897-PCS30405-RT-35)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 897 makes the following changes to the Leaking Petroleum Underground Storage Tank (UST) Cleanup Program:***

- ***Provides that payment or reimbursement for cleanups of leaking UST sites is limited to the amount necessary to achieve the most cost-effective cleanup.***
- ***Authorizes the Department of Environment and Natural Resources (DENR) to use up to $250,000 of the funds in the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund) and $2,500,000 in the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) for performance-based cleanups of leaking UST sites.***
- ***Authorizes the Environmental Management Commission (EMC) to adopt rules that establish secondary containment requirements for nontank components of petroleum UST systems.***
- ***Provides that a mixed contaminant plume that results from releases of petroleum from both a UST and an aboveground storage tank may be cleaned up under the risk-based cleanup rules applicable to releases from a petroleum UST.***
- ***Directs DENR to temporarily require that cleanups proceed only after preapproval pursuant to a schedule based on the degree of risk to human health and the environment and other factors.***
- ***Authorizes the EMC to adopt temporary and permanent rules to modify the testing requirements for assessment and remediation of leaking petroleum UST cleanup sites.***
- ***Authorizes the Environmental Review Commission (ERC) to study issues related to the UST Cleanup program.***

The PCS would become effective when it becomes law. The preapproval requirements would expire on 1 October 2005.

BILL ANALYSIS:

Cost-effectiveness: The PCS for House Bill 897 provides that the Commercial Fund and the Noncommercial Fund will not be used to reimburse costs in excess of those required to achieve the most cost-effective cleanup. The EMC must notify the owner, operator, or landowner of the cleanup method approved by the EMC as the most cost-effective cleanup method for the site. An owner, operator, or landowner may select a cleanup method other than the cost-effective cleanup method approved by the EMC as long as the EMC determines that the alternative cleanup method will address imminent threats to human health and the environment. DENR will not, however, pay or reimburse costs in excess of the cost of implementing the approved cost-effective cleanup.

Performance-based cleanups: A performance-based cleanup program allows DENR to select qualified contractors for site cleanup using a competitive bidding process. The critical elements of a performance-based contract include the timeline for cleanup and the cleanup cost. In 2001, the General Assembly authorized DENR to allocate up to 50% of the funds in the Commercial Fund and the Noncommercial Fund that were not otherwise obligated for performance-based cleanups. Since that time, all funds in the Commercial Fund and Noncommercial Fund have been obligated, so no performance-based cleanups have been undertaken.

The PCS authorizes DENR to use up to $250,000 of the funds in the Noncommercial Fund and $2,500,000 in the Commercial Fund during each fiscal year for performance-based cleanups of leaking UST sites. The PCS also provides that before a cleanup contract is awarded, the environmental service firm must secure a surety or performance bond equal to the price of the firm's services under the contract, and must demonstrate having secured the bond to the satisfaction of DENR.

Secondary containment: The PCS authorizes the EMC to adopt rules to establish standards and requirements for secondary containment for nontank components of petroleum UST systems, including all piping and fittings, pump heads, and dispensers. The rules will also provide for monthly monitoring of double wall interstices and sump containments. The rules will apply to any new UST system that is installed on or after the date on which the rules become effective and to the replacement of any nontank component of a UST on or after that date.

Commingled plumes: Under current law, a discharge or release of petroleum from a UST may be cleaned up to risk-based cleanup standards, but a discharge or release of petroleum from an aboveground storage tank must be cleaned up to State drinking water standards. The PCS provides that a plume of contamination that results from the commingling of contamination from a leaking UST and a leaking aboveground storage tank may be cleaned up to risk-based standards. The Commercial Fund and Noncommercial Fund may only be used to pay or reimburse the portion of the costs of assessment or remediation that result from the leaking UST.

Preapproval and cleanup schedule: The PCS directs DENR to establish the degree of risk to human health and the environment posed by a discharge or release from a leaking commercial UST and to determine a schedule for further assessment and cleanup based on those factors. If any of the costs of assessment or cleanup are eligible to be paid from the Commercial Fund, DENR must also consider the availability of funds in the Commercial Fund. Once DENR has established a cleanup schedule, the costs of any assessment or cleanup activities are not eligible for reimbursement from the Commercial Fund until the actions are authorized by DENR pursuant to the schedule. An owner, operator, or other person may choose to undertake assessment or cleanup before receiving authorization from DENR, but the costs for the assessment or cleanup will only be reimbursed after DENR has paid or reimbursed the costs for all assessments and cleanups authorized by DENR. The lack of availability of funds in the Commercial Fund does not relieve an owner or operator of responsibility to perform initial abatement and assessment activities necessary to determine the degree of risk to human health or the environment posed by the discharge or to collect and remove any contaminant source, nor does it serve as a defense against any

violations or penalties issued to the owner or operator for failure to conduct any required assessments or cleanup. The preapproval requirements would expire on 1 October 2005.

Testing requirements: The PCS authorizes the EMC to adopt temporary and permanent 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 UST cleanup sites.

Study UST program: The PCS authorizes the ERC to study the following issues related to the UST program:

- The adequacy of program funding.
- Options for management of available funds, including prioritization of cleanups and preapproval of cleanups.
- Changes in deductible and co-payment requirements.
- Options to increase program funding.
- The availability and use of private insurance to pay or reimburse the costs of the assessment and cleanup of releases and discharges of petroleum from petroleum USTs and of any liability of owners and operators of those tanks to third parties.
- Issues related to the inclusion of aboveground storage tanks in the program, including registration, fees and other funding issues, cleanup standards, and regulation of these tanks.
- Issues related to the provision of liability protection to a bona fide purchaser of a petroleum-contaminated property who has knowledge of, but did not cause or contribute to, the contamination of the property.

The ERC may report its findings and recommendations, including any proposed legislation, to the 2004 Regular Session of the 2003 General Assembly, or to the 2005 General Assembly.

EFFECTIVE DATE: The PCS would become effective when it becomes law. The preapproval requirements would expire on 1 October 2005.

BACKGROUND: In 1988, the General Assembly established the Commercial Fund and the 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.

H897-SMSY-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 47

Committee Substitute Favorable 3/26/03

Short Title: Adopt Carolina Lily as State Wildflower. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT ADOPTING THE CAROLINA LILY AS THE OFFICIAL WILDFLOWER OF NORTH CAROLINA.

Whereas, North Carolina is blessed with an abundance of wildflowers from the mountains to the coast; and

Whereas, the Carolina Lily is a scarce and beautiful flower that is found throughout North Carolina in upland pine-oak woods and pocosins; and

Whereas, the Carolina Lily (Lilium michauxii) is one of many plants named for the distinguished French botanist Andre Michaux who traveled widely in the southeastern United States; and

Whereas, Andre Michaux (1747-1802), a genuine hero of science and exploration, referred to the North Carolina mountains as "the great botanical laboratory and paradise of North America"; and

Whereas, the Carolina Lily, sometimes referred to as Michaux's Lily, bears up to six reddish-yellow, spotted flowers with petals that bend backwards; and

Whereas, each nodding flower grows to about three inches in diameter; and

Whereas, this magnificent flower bears the name of our great State; and

Whereas, the State of North Carolina does not have an official wildflower; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"**§ 145-19. State wildflower.**

The Carolina Lily (Lilium michauxii) is adopted as the official wildflower of the State of North Carolina."

SECTION 2. The title of Chapter 145 of the General Statutes reads as rewritten:

"Chapter 145.

State ~~Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock, Beverage, Historical Boat, Language, Dog, Military Academy, Tartan, Watermelon Festival,~~ Symbols and Other Official Adoptions."

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

Carolina Lily (Lilium michauxii)

From: Sen. Albertson

HOUSE BILL 47:
Adopt Carolina Lily as State Wildflower.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Baker
Date:	July 8, 2003	**Summary by:**	Tim Dodge, Research Assistant for Environmental Issues
Version:	2nd Edition		

SUMMARY: House Bill 47 adopts the Carolina Lily as the official wildflower of North Carolina and makes technical and clarifying changes.

BILL ANALYSIS:

Section 1 amends Chapter 145 of the General Statutes by adding a new section adopting the Carolina Lily (*Lilium michauxii*) as the official wildflower of the State of North Carolina.

Section 2 simplifies the title of Chapter 145 by amending it to read, "Chapter 145. State Symbols and Other Official Adoptions." Currently, the title of Chapter 145 includes a list of most of the official adoptions.

The bill is effective when it becomes law.

BACKGROUND:

- The dogwood is the official flower of the State of North Carolina, but the State does not currently have an official wildflower.
- The Carolina Lily is found as far west as east Texas and as far north as Virginia. The plant has a one to four foot stem with three-inch long leaves. It features one to six blossoms that are yellow to reddish-orange with brown spots. Each blossom is approximately three inches in diameter with six tepals (three petals and three sepals) that are bent back. The filaments and stigma protrude from the center of the flower.
- The Carolina Lily (Lilium michauxii) is named for French botanist Andre Michaux, who traveled widely in the southeastern United States in the late 18th century.



Photo Credit: Caroline R. Dean

Theresa Matula, Staff of the House Committee on State Government, contributed significantly to this summary.

North Carolina General Assembly
Senate Chamber
State Legislative Building
Raleigh 27601-2808

SENATOR CHARLES W. ALBERTSON
10TH DISTRICT

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July 8. 2003

COMMITTEES:

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES, CHAIRMAN
APPROPRIATIONS/BASE BUDGET, VICE CHAIRMAN
APPROPRIATIONS/NATURAL & ECONOMIC RESOURCES, VICE CHAIRMAN
FINANCE
JUDICIARY I
PENSIONS & RETIREMENT AND AGING
RULES & OPERATIONS OF THE SENATE
STATE & LOCAL GOVERNMENT & VETERANS' AFFAIRS
WAYS & MEANS

The President and Members of the Senate
North Carolina General Assembly
State Legislative Building
Raleigh, North Carolina 27601-2808

Dear Madame President and Members of the Senate:

In compliance with the provision of G.S. 106-2, which requires that appointments to the Board of Agriculture be made by the Governor and with the consent of the Senate, Governor Easley has submitted his appointees; Mr. Elbert Pitt, Mr. Kirk Mathis, Mr. Hyman Young, Jr., and Mr. William Holliday; for consent. Their terms are effective immediately, and will expire May 1, 2009.

The Senate Committee on Agriculture/Environment/Natural Resources has considered the appointments and makes the following recommendation to the Senate:

That the Senate consent to the appointments of Mr. Elbert Pitt and Mr. Kirk Mathis; and the re-appointments of Mr. Hyman Young, Jr., and Mr. William Holliday to the Board of Agriculture for terms that will begin immediately and that will expire May 1, 2009.

Respectfully submitted,

Charles W. Albertson, Chair
Senate Agriculture/Environment/
Natural Resources Committee

CWA/cjb

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

June 30, 2003

The Honorable Charles Albertson
NC General Assembly
525 Legislative Office Building
Raleigh, NC 27601

Dear Senator Albertson:

Pursuant to General Statute §106-2, I hereby appoint Mr. Elbert Pitt and Mr. Kirk Mathis and reappoint Mr. Hyman Young, Jr. and Mr. William Holliday to the North Carolina State Board of Agriculture and submit their names for confirmation by the North Carolina Senate. Their terms are effective immediately, pending confirmation, and will expire May 1, 2009.

Enclosed is biographical information on these appointees. Please feel free to call on them or members of my office of Boards and Commissions if you need additional information.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

cc: The Honorable Beverly Perdue
The Honorable Marc Basnight
Ms. Janet Pruitt

ELBERT RAY PITT, JR
5948 NC 42 W
MACCLESFIELD, NC 27852
252-827-4260

EDUCATION	1969 Graduate of South Edgecombe High School 1973 Graduate with Business Degree from Atlantic Christian College, Wilson, NC
PROFESSIONAL	1974 until present – full time farmer in Edgecombe County. I am the 6th generation to farm our family farm that was founded in 1825 1980 until present Edgecombe County Farm Bureau Board of Directors 1992 until present President of Edgecombe County Farm Bureau 1996-1998 Philip Morris Agricultural Leadership Development Program 1997-2000 North Carolina Farm Bureau Cotton Committee 2000-2003 Cotton Incorporated Board of Directors Alternate 1989 North Carolina Soil Conservation Farm Family of the Year 1939 News and Observer's Tar Heel of the Week October 1 Member of the Edgecombe County Forestry Club
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NORTH CAROLINA BOARD OF ETHICS

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.DOA.STATE.NC.US/DOA/ETHICS

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 16, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Elbert Ray (Bert) Pitt, Jr., Board of Agriculture

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest. We did find the potential for conflict of interest.

Mr. Pitt is self-employed as a cotton and tobacco farmer. His farm is subject to state regulations. He is President of the Edgecombe County Farm Bureau. As such, he has the potential for conflict of interest and should exercise caution while performing official duties.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should not participate in any proceedings in which their impartiality might reasonably be questioned due to their financial, familial, personal, or professional relationship with a participant in the proceeding. A "participant" includes, but is not limited to, employees in the same state agency or business entity as the public official.

We are sending a copy of this letter to the Chairman of the Board with the request that our findings be recorded in the Board's minutes pursuant to Section 6 (c) of the Order.

Sincerely,

George F. Bason/md

George F. Bason
Chairman

cc: Mr. Bert Pitt, Jr.
Chairman of the Board

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

Kirk Mathis

Kirk Mathis is a life-long farmer. He operates a family farm located in Wilkes County, NC, along with his father, Gurney, and brothers, Talmadge and Mark. The farm produces beef, broiler chickens, corn for silage and grain, and small grain silage.

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PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 12, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Kirk Mathis, Board of Agriculture

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

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Chairman

c: Mr. Kirk Mathis
Chairman of the Board

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Hyman Young Jr.
8700 little Pine Road
Marshall, N.C. 28753

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1997- 2001 Served on N.C. Veterinary School Advisory Board

1999- Inducted into the N.C. Agricultural Hall of Fame

1955- Present has been involved with the equine industry. Showing, breeding and promoting Appaloosa horses, resulting in many national and world championships in events ranging from jumping, hunter under saddle, western riding, game events and cattle classes (roping and working cow horse). Owner of Dynamite Day- six time World Best Appaloosa and holder of 46 National and World Titles.

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CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 27, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Hyman Young, Jr., Board of Agriculture

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest. We did find the potential for conflict of interest.

Mr. Young is self-employed as a farmer. His farm is subject to state regulations. As such, he has the potential for conflict of interest and should exercise caution while performing official duties.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should not participate in any proceedings in which their impartiality might reasonably be questioned due to their financial, familial, personal, or professional relationship with a participant in the proceeding. A "participant" includes, but is not limited to, employees in the same state agency or business entity as the public official.

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Sincerely,

George F. Bason/md

George F. Bason
Chairman

cc: Mr. Hyman Young, Jr.
Chairman of the Board

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

William E. Holliday Bio

William E. "Billy" Holliday was raised on a dairy in southern Alamance County, North Carolina. He has lived and worked on the family farm his entire life. Today, Billy and his two sons, Willie and Jimmie, fourth generation dairymen, continue to operate Holliday Farms. He currently serves as vice-president of the North Carolina Holstein Association, and vice-president of the Alamance County Extension Advisory Council. Billy has served on the North Carolina Board of Agriculture for the past twelve years, and maintains an active interest in every aspect of North Carolina's leading industry, agriculture. He and his wife, Jean, are members of the South Fork Friends Church in Snow Camp.

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CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 26, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
William E. Holliday, Board of Agriculture

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest. We did find the potential for conflict of interest.

Mr. Holliday is self-employed as a dairy farmer. His farm is subject to state regulations. He is Vice-President of the North Carolina Holstein Association. As such, he has the potential for conflict of interest and should exercise caution while performing official duties.

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Sincerely,

George F. Bason/md

George F. Bason
Chairman

cc: Mr. William E. Holliday
Chairman of the Board

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

June 30, 2003

The Honorable Charles Albertson
NC General Assembly
525 Legislative Office Building
Raleigh, NC 27601

Dear Senator Albertson:

Pursuant to General Statute §106-2, I hereby appoint Mr. Elbert Pitt and Mr. Kirk Mathis and reappoint Mr. Hyman Young, Jr. and Mr. William Holliday to the North Carolina State Board of Agriculture and submit their names for confirmation by the North Carolina Senate. Their terms are effective immediately, pending confirmation, and will expire May 1, 2009.

Enclosed is biographical information on these appointees. Please feel free to call on them or members of my office of Boards and Commissions if you need additional information.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

cc: The Honorable Beverly Perdue
The Honorable Marc Basnight
Ms. Janet Pruitt

ELBERT RAY PITT, JR
5948 NC 42 W
MACCLESFIELD, NC 27852
252-827-4260

EDUCATION	1969 Graduate of South Edgecombe High School 1973 Graduate with Business Degree from Atlantic Christian College, Wilson, NC
PROFESSIONAL	1974 until present – full time farmer in Edgecombe County. I am the 6th generation to farm our family farm that was founded in 1825 1980 until present Edgecombe County Farm Bureau Board of Directors 1992 until present President of Edgecombe County Farm Bureau 1996-1998 Philip Morris Agricultural Leadership Development Program 1997-2000 North Carolina Farm Bureau Cotton Committee 2000-2003 Cotton Incorporated Board of Directors Alternate 1989 North Carolina Soil Conservation Farm Family of the Year 1939 News and Observer's Tar Heel of the Week October 1 Member of the Edgecombe County Forestry Club
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PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 16, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Elbert Ray (Bert) Pitt, Jr., Board of Agriculture

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest. We did find the potential for conflict of interest.

Mr. Pitt is self-employed as a cotton and tobacco farmer. His farm is subject to state regulations. He is President of the Edgecombe County Farm Bureau. As such, he has the potential for conflict of interest and should exercise caution while performing official duties.

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George F. Bason/md

George F. Bason
Chairman

cc: Mr. Bert Pitt, Jr.
Chairman of the Board

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

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PERRY Y. NEWSON
EXECUTIVE DIRECTOR

June 12, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

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Kirk Mathis, Board of Agriculture

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EXECUTIVE DIRECTOR

June 27, 2003

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Hyman Young, Jr., Board of Agriculture

Dear Governor Easley:

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Mr. Young is self-employed as a farmer. His farm is subject to state regulations. As such, he has the potential for conflict of interest and should exercise caution while performing official duties.

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cc: Mr. Hyman Young, Jr.
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June 26, 2003

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VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — July 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie McMillan	TNC
[illegible]	NCDA&CS
Bert Pust	NCDA
Billy Ulbrich	NCDA
Penny Carpenter	NCPC
Beth Ann Duff	NCPC
Helen Baker	Stokes Co. Resident
Laura Edwards	Chapel Hill
Pricey Harrison	Beaufort NC
Sandra Davis	Gov. Office
Steve Wall	CCNC

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — 7/8/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin G. Leonard	DENR
Dewitt Hardee	NCDA & CS
Martha Glass	NCDA&CS
David Meredith	NC State Grange
[illegible]	Friend of Charlie's
[illegible]	NC Statewatch
John Cyrus	NC State Grange
[illegible]	Hunton & Williams
Anita Watkins	NC League of Municipalities
Kim Hibbard	NCLM
Doug Howey	NCPMA
Gary Harris	NCPMA

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Ouzts	NCPIRG
Jean Holliday	Visitor
Gordy McArthur	NC CoNet.
Sabina Jang	David Knight
Haley Gilbert	David Knight
Jenny Keyes	NC CoNet
Lisa Page	Conservation Council
Kirsten Collings	CCNC
Bill Meyer	Citizen
Sandy Sadler	WCSR
Crissy Porter	Smith Anderson.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc. of REALTORS®

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 16, 2003	9:00 AM	643 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1100	Protect Certain Reptiles and Amphibians.	Representative Parmon Representative Womble
SB 981	Clean Air Trust Fund.	Senator Metcalf

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 16, 2003

The Senate Agriculture/Environment/Natural Resources Committee met on Wednesday, July 16 2003, at 9:00 a.m. in Room 643, Legislative Office Building. Senator Albertson, chairman presided and there were six members present.

Sen. Albertson called the meeting to order and recognized the Pages.

SB-981 – CLEAN AIR TRUST FUND – was removed from the agenda at the request of the sponsor.

HB-1100 – PROTECT CERTAIN REPTILES & AMPHIBIANS - Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Sen. Garrou explained the proposed committee substitute now entitled Protect the Master Settlement Funds. She told members that she had taken her old bill and put it in this as a vehicle for the tobacco issue. Sen. Clodfelter moved for a favorable report for the proposed committee substitute, unfavorable as to the original bill. George reminded members that this was the exact same bill as before that Sen. Garrou had presents. Everyone was in favor and the vote was taken and the motion carried.

Sen. Albertson told members about the "Ag in the Classroom" omelet-cooking contest he had been to that morning sponsored by the Farm Bureau.

The meeting adjourned at 9:15 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Brooks, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Wednesday, July 16, 2003

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1100** Protect Certain Reptiles and Amphibians.

Draft Number:	PC50295
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 981*

Short Title:	Clean Air Trust Fund.	(Public)
Sponsors:	Senators Metcalf; and Queen.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND TO APPROPRIATE FUNDS TO IT.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Clean Air Trust Fund.

"**§ 113A-271. Purpose.**

(a) The General Assembly finds and declares that clean air is critical to the health of the citizens, economy, and environment of North Carolina. The General Assembly recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, and hydrocarbons from stationary and mobile sources cause unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition, mercury contamination, and other air pollutants.

(b) The General Assembly is committed to reducing air pollution to restore mountain air quality, to provide healthy air to urban and rural citizens of the State, to protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters, to reduce mercury contamination in fish and the environment, to enhance the travel and tourism industry, and to maintain the high quality of life of the citizens of the State.

(c) The General Assembly finds that education, technical assistance, incentives, and regulations are all needed to prevent and reduce emissions of air pollutants and to protect the environment, public health, natural resources, and the economy.

(d) The General Assembly finds that cleaner fuels, alternative fuels, energy efficiency, transit, smart growth, public education, and awareness will prevent and reduce emissions of air pollutants.

(e) The General Assembly finds and declares that an incentive-based air quality program is needed to assist local governments, State agencies, nonprofit conservation organizations, and industry to help finance projects that prevent or reduce emissions of

oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

"**§ 113A-272. Definitions.**

As used in this Article:

(1) 'Board of Trustees' means the Clean Air Trust Fund Board of Trustees.

(2) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

"**§ 113A-273. Fund established.**

(a) Fund Established. – There is established a Clean Air Trust Fund in the State Treasurer's Office that shall be used to finance projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of Board of Trustees or its designee.

(c) Fund Purposes. – Moneys from the Fund may be used for any of the following purposes:

(1) To convert public transit, school bus, State government, local government, and private vehicle fleets to cleaner or alternative-fueled vehicles.

(2) To increase efficient use of energy in State, local, and public school buildings.

(3) To encourage private and public investments in alternative energy and energy-efficient technology.

(4) To convert animal waste to alternative energy and other value-added products.

(5) To educate and encourage the public to prevent and reduce air pollution.

(6) To provide incentives to encourage pedestrian and transit oriented smart growth.

(7) To plant trees in urban and rural areas.

(8) To acquire and protect forests and open space.

(9) To fund other projects to protect and restore air quality and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants.

(10) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than five percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each

fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"**§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of funds.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant or loan from the Fund for the purpose of protecting and restoring air quality and preventing and reducing emissions of air pollution:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the protection and restoration of the environment and natural resources.

(b) Grant Matching Requirement. – The Board of Trustees may establish matching requirements for grants awarded under this Article.

(c) Loans. – The Board of Trustees may provide loans to applicants.

(d) Grants and Loans Not Available to Satisfy Excess Emissions Offsets or Conformity Requirements. – No grant or loan from the Fund shall be awarded to satisfy excess emissions offsets allowed under 40 Code of Federal Regulations § 77.3 (1 July 2002 Edition) or transportation conformity requirements set out in 40 Code of Federal Regulations Part 51 and Part 93 (1 July 2002 Edition).

(e) Grants and Loans Not Available to Achieve Compliance with State Emissions Limits. – No grant or loan from the Fund shall be awarded to achieve compliance with the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out in G.S. 143-215.107D.

"**§ 113A-275. Board of Trustees established; membership qualifications; vacancies; meetings; and meeting facilities.**

(a) Board of Trustees Established. – There is established the Clean Air Trust Fund Board of Trustees. The Board of Trustees shall be administratively located within the Department of Environment and Natural Resources but shall be independent of the Department.

(b) Membership. – The Board of Trustees shall be composed of nine members appointed to four-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 four.

(2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by four.

(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 four.

(4) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(5) One member appointed by 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 four.

(6) One member appointed by the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by four.

(7) One member appointed by 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 four.

(8) One member appointed by the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by two years those years that are evenly divisible by four.

(9) One member appointed by 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 four.

(c) Qualifications. – The office of member of the Board of Trustees is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9 of the North Carolina Constitution. Persons appointed shall be knowledgeable in at least one of the following areas:

(1) Public health.

(2) Protection and restoration of air quality.

(3) Environmental management.

(4) Energy efficiency.

(5) Alternative energy.

(6) Motor vehicles and motor fuels.

(7) Power plants and industrial boilers.

(8) Environmental education.

(9) Local government.

(10) Transportation and land-use planning.

(d) Chair. – The Board of Trustees shall elect a Chair to serve a two-year term, subject to reelection.

(e) Vacancies. – An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Frequency of Meetings. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(g) Quorum. – A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(h) Per Diem and Expenses. – Members of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members of the Board of Trustees shall be paid from the Fund.

(i) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director.

(j) Technical Assistance. – The Secretary of Environment and Natural Resources, the Secretary of the Department of Transportation, and the Secretary of the Department of Administration shall provide technical assistance for the Board of Trustees and its staff as requested by the Board of Trustees or the Executive Director of the Fund.

"**§ 113A-276. Board of Trustees powers and duties.**

(a) Grants and Loans. – The Board of Trustees shall allocate moneys from the Fund as grants or loans. A grant or loan may be awarded only for a project or activity that prevents or reduces emissions of air pollution pursuant to this Article.

(b) Develop Grant and Loan Criteria. – The Board of Trustees shall develop criteria for awarding grants and loans under this Article. The Board of Trustees shall consider the following:

(1) Consistency with the State's statutory and regulatory programs for air pollution control.

(2) Complementing regional and local plans to prevent and reduce air pollution.

(3) Attainment and maintenance of State and federal ambient air quality standards for ozone and fine particulate matter.

(4) Protection of public health.

(5) Protection and restoration of scenic views.

(6) Protection of areas with good air quality.

(7) Restoration of areas with poor air quality.

(8) Public education and awareness.

(9) Ability of applicants to pay.

(10) Capacity of applicants to develop and implement projects.

(11) Geographic distribution of funds.

(c) Develop Additional Guidelines. – The Board of Trustees may develop guidelines in addition to the grant and loan criteria consistent with and as necessary to implement this Article.

(d) Rule-making Authority. – The Board of Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Board of Trustees.

"**§ 113A-277. Reporting requirement.**

The Chair of the Board of Trustees shall report no later than 1 October of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittee on Natural and Economic Resources of the Senate Appropriations Committee, the Subcommittee on Natural and Economic Resources of the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly regarding the implementation of this Article. The report shall include a list of the projects awarded grants or loans from the Fund for the previous 12-month period. The list shall include for each project a

description of the project, the amount of the grants or loans awarded for the project, and the total cost of the project.

"**§ 113A-278. Executive Director and staff.**

(a) The Board of Trustees shall develop and adopt an annual budget.

(b) The Board of Trustees shall hire an Executive Director who has knowledge and experience in the protection and restoration of air quality. The Executive Director serves at the pleasure of the Board of Trustees. The Executive Director may hire technical, administrative, and clerical staff and contractors, consistent with the budget adopted by the Board of Trustees, as necessary to implement the provisions of this Article.

(c) The Board of Trustees shall set the salary of the Executive Director. The salary of the Executive Director and other staff shall be paid from the Fund.

(d) The Executive Director and staff shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Expenses shall be paid from the Fund.

"**§ 113A-279. Advisory Council.**

There is established the Clean Air Trust Fund Advisory Council. The Council shall meet at least annually and shall advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund and other issues as requested by the Board of Trustees. The Council shall be composed of the following persons or their designees:

(1) The Secretary of Environment and Natural Resources.

(2) The Secretary of Commerce.

(3) The Secretary of Transportation.

(4) The Secretary of Administration."

SECTION 2. In order to provide for a system of staggered four-year terms for the members of the Clean Air Trust Fund Board of Trustees established by G.S. 113A-275, as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(1) shall be four years and shall expire on 1 July 2007.

(2) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(2) shall be five years and shall expire on 1 July 2008.

(3) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(3) shall be two years and shall expire on 1 July 2005.

(4) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(4) shall be three years and shall expire on 1 July 2006.

(5) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(5) shall be four years and shall expire on 1 July 2007.

(6) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(6) shall be five years and shall expire on 1 July 2008.

(7) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(7) shall be two years and shall expire on 1 July 2005.

(8) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(8) shall be three years and shall expire on 1 July 2006.

(9) The term of the member initially appointed to serve in the position established by G.S. 113A-275(b)(9) shall be four years and shall expire on 1 July 2007.

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. The first report required by G.S. 113A-277, as enacted by Section 1 of this act, shall be due no later than 1 October 2004.

SECTION 5. There is appropriated from the General Fund to the Clean Air Trust Fund the sum of twenty million dollars ($20,000,000) for the 2003-2004 fiscal year and the sum of thirty million dollars ($30,000,000) for the 2004-2005 fiscal year to implement this Article. It is the intent of the General Assembly to provide the sum of fifty million dollars ($50,000,000) for the 2005-2006 fiscal year to implement this Article. The funds in the Clean Air Trust Fund shall be used only in accordance with Article 19 of Chapter 113A of the General Statutes.

SECTION 6. This act becomes effective 1 July 2003.

HOUSE BILL 1100
Second Edition Engrossed 4/23/03

Short Title:	Protect Certain Reptiles and Amphibians.	(Public)
Sponsors:	Representatives Parmon, Womble (Primary Sponsors); and Rapp.	
Referred to:	Wildlife Resources.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE AUTHORITY OF THE WILDLIFE RESOURCES COMMISSION TO ENABLE PROTECTION OF CERTAIN REPTILES AND AMPHIBIANS REQUIRING CONSERVATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333(a) is amended by adding a new subdivision to read:

"(6) To adopt and implement rules to limit, regulate, or prohibit the taking, possession, collection, purchase or sale of those species of wild animals in the classes Amphibia and Reptilia that do not meet the criteria for listing pursuant to G.S. 113-334, but that are determined by the Commission to require conservation measures in order to prevent the addition of the species to the protected animal lists pursuant to G.S. 113-334. However, the Commission shall not have the authority under this subdivision to prohibit the taking of any such species solely to protect persons, habitat, or property, or to prohibit possession of four or less individual reptiles or 24 or less individual amphibians of those species in the aggregate by any person."

SECTION 2. The commercial taking of all individuals within the species of turtles or terrapins in the families Emydidae and Trionychidae, which are the large basking and sliding turtles or terrapins, is prohibited until such time as the Wildlife Resources Commission adopts rules to regulate the taking of turtles or terrapins within these two families of reptiles. For the purposes of this section, "commercial taking" is defined as the capture and possession in the aggregate of five or more individual turtles or terrapins from the two families of reptiles listed herein.

SECTION 3. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1100

Second Edition Engrossed 4/23/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1100-PCS50295-RT-70

Short Title: Protect Master Settlement Funds. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE STATE'S MASTER SETTLEMENT AGREEMENT FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

SECTION 2. If this act or any portion of the amendment made to G.S. 66-291(b)(2) by this act is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this act. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the

application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

SECTION 3. This act becomes effective 1 October 2003.

HOUSE BILL 1100:
Protect Master Settlement Funds.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representatives Parmon and Womble
Date:	July 16, 2003	**Summary by:**	Tim Dodge, Research Assistant For Environmental Issues
Version:	Proposed Committee Substitute (H1100- PCS50295-RT-70)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1100 would amend the law that establishes how much money a tobacco product manufacturer who does not participate in the national tobacco Master Settlement Agreement has to place in escrow against possible future damage claims by the states. This amendment would change the determination of the amount to be placed in escrow from being based on the allocable share per state to an allocable share of units of tobacco sold in each individual state.***

BILL HISTORY: The first edition of House Bill 1100 (Protect Certain Reptiles and Amphibians), was similar to Senate Bill 825, introduced by Senator Albertson, which received a favorable report by the Senate Committee on Agriculture, Environment, and Natural Resources on April 22, 2003, and became law on May 31, 2003. The contents of the PCS are identical (with the exception of minor technical and grammatical changes) to the contents of the first edition of Senate Bill 992 (Protect Master Settlement Moneys), which was reported favorably out of the Senate on April 30, 2003.

CURRENT LAW: As part of the national tobacco Master Settlement Agreement (MSA) each state was required to enact the Model Escrow Statute to cover the liability of Non-Participating Manufacturers (NPMs) and to create a level competitive playing field by preventing NPMs from undercutting the market due to savings from not having to make payments to the states like participating manufacturers.

The current model escrow statute was enacted as Article 37 – Tobacco Reserve Fund in Chapter 66 of the General Statutes. The amount a NPM currently has to put into escrow in the State based on their sales n the State that exceeds what their allocable share would have been had they participated in the Master Settlement Agreement may be refunded to the NPM from their escrow. A copy of G.S. 66-291 is attached to this document.

BILL ANALYSIS: Section 1 of the PCS would amend the formula for a NPM's funds to be released from escrow by changing the determination from what the NPM's allocable market share would have been had they participated to a calculation based on the tobacco units sold in the State.

Section 2 contains a severability clause if either this provision or the underlying subsection is found to be unconstitutional that effectively restores the law as it exists prior to this amendment.

BACKGROUND: The Model Escrow Statute (Tobacco Reserve Fund in NC) was intended to create reserve against which claims could be made against tobacco product manufacturers who were not given

immunity from suit by participating in the Master Settlement Agreement. It was also intended to reduce the competitive advantage a manufacturer would gain from not having to make payments to the states under the MSA and not being subject to the advertising restrictions agreed to in the MSA.

The current formula for escrow payments presumes sales nationwide on the same allocable share as under the MSA. If a NPM focuses a large portion of their sales in one state, their allocable share under the current escrow statutes may be far less than the comparable payment a participating manufacturer has to make based on a per unit sold basis under the MSA. This amendment puts NPMs on the same basis for determining the amount of payments they are require to make into escrow as the participating manufacturers are required to make to the states under the MSA.

EFFECTIVE DATE: The PCS becomes effective October 1, 2003.

O. Walker Reagan, Counsel to the Senate Judiciary I Committee, contributed significantly to this summary.

H1100-SMSY-001

§ 66-291. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Article shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

a. 1999: $.0094241 per unit sold after the effective date of this Article.

b. 2000: $.0104712 per unit sold.

c. For each of 2001 and 2002: $.0136125 per unit sold.

d. For each of 2003 through 2006: $.0167539 per unit sold.

e. For each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2) of subsection (a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) To the extent not released from escrow under subdivisions (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation either of subdivision (2) of subsection (a) of this section, of subsection (b) of this section, or of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(2) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation either of subdivision (2) of subsection (a) of this section, of subsection (b) of this section, or of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. (1999-311, s. 1; 2000-140, s. 58; 2002-145, s. 2.)

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

July 16, 2003
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JERRY SCHILL	NC FISHERIES ASSOCIATION
HARRY GILBERT	DAVID KNIGHT
SABINA JANG	"
Kim Hibbard	NCLM
Brock Nicholson	DAQ / DENR
Sheryl Stephens	DENR
John McHugh	Gov Office
Andrew Meeha	NC Elec. Coops
Lance Mangum	Office of the Governor
Steve Woodson	NC FB

SENATE AGRICULTURE COMMITTEE - 2003-2004 SESSION

MEMBER	LOCATION	PHONE	LEGISLATIVE ASST.
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Lucas, Jeanne, **Vice Chair**	620-LOB	3-4599	Bernie David-Yerumo
Weinstein, David, **Vice Chair**	2108-OB	3-5651	Dee Bagley
Kinnaird, Ellie, **Vice Chair**	2115-LB	3-5804	Kathie Young
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Jenkins, Clark	409-LB	5-3040	Carolyn Gooden
Queen, Joe Sam	2111-LB	3-3460	Katie Gooch
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Thomas, Scott	622-LOB	3-6275	Susanne Gunter
Hargett, Cecil	620-LOB	5-3034	Surena Henderson
Holloman, Robert	522-LOB	5-3032	Irma Avent-Hurst
Bingham, Stan	2117-LB	3-5665	Judy Chriscoe
Brock, Andrew	1101-LB	5-0690	Tabatha Walker
Garwood, John	1118-LB	3-5742	Phyllis Porter
Hartsell, Fletcher	518-LOB	3-7223	Gerry Johnson
Smith, Fred	1026-LB	3-5850	Allen Bean
Webster, Hugh	1119-LB	3-5745	Darrell Malcolm
Tillman, Jerry	628-LOB	3-5870	Yvonne Hall

Committee Counsel

Givens, George	**LOB-545**	**3-2578**
Hudson, Jeffrey	**LOB-545**	**3-2578**
Riley, Barbara	**LOB-545**	**3-2578**
Dodge, Tim	**LOB-545**	**3-2578**
Jennifer L. McGinnis	**LOB-545**	**3-2578**

Feb. 2004

Bill	Short Title		Date	Latest Action
H 868=	IMPROVE ENVIRONMENTAL ENFORCEMENT.	*S	05-05-2003	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Finance
H 996=	MONITOR COASTAL WATER QUALITY.	S	04-24-2003	Ref To Com On Agriculture/ Environment/Natural Resources
H1082=	ENVIRONMENTAL REPORTS CONSOLIDATION.	S	04-24-2003	Ref To Com On Agriculture/ Environment/Natural Resources
H1393=	FEDERAL ENFORCEMENT BY MARINE INSPECTORS.	*S	07-02-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S 322	INTERCONNECTION OF PUBLIC WATER SYSTEM.	S	03-06-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 591=	DISAPPROVE SWIFT CREEK RECLASSIFICATION.	S	03-31-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 624	DENR/LOCAL ENVIRONMENTAL HEALTH SPECIALISTS.	S	04-01-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 626	EXPAND MARINE INSPECTOR ENFORCEMENT AUTH.	S	04-07-2003	Re-ref Com On Agriculture/ Environment/Natural Resources
S 628	FEDERAL ENFORCEMENT BY MARINE INSPECTORS.	S	04-07-2003	Re-ref Com On Agriculture/ Environment/Natural Resources
S 684=	COASTAL RECREATIONAL FISHING LICENSE/FUND.	S	04-02-2003	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Finance
S 715	LOCAL WATER SUPPLY PLANS.	S	04-02-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 723	I-40 BILLBOARD MORATORIUM.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 730=	AMEND SHELLFISH STATUTES.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 756	BROWNFIELDS AMENDMENTS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
763=	NC CLEAN VEHICLES.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 791	FARMLAND AND FORESTLAND PRESERVATION.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 793	BEAR/WILD BOAR DOG-HUNTING LICENSE.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 822	LIMIT IMPERVIOUS SURFACE OF PARKING LOTS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 826	AMEND ENVIRONMENTAL HEALTH LAWS - 1.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 827	AMEND ENVIRONMENTAL HEALTH LAWS - 2.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
$ S 828=	**FARM FUTURES PILOT PROGRAM.**	**S**	**04-03-2003**	**Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Appropriations/Base Budget**
S 829	STORMWATER COMPLIANCE.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 830	ESTABLISH FISHERIES VIOLATION POINTS SYSTEM.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 835	AMEND NATURAL RESOURCES LAWS - 1.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 836	AMEND NATURAL RESOURCE LAWS - 2.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 837	AMEND ENVIRONMENTAL LAWS - 1.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources

'$' indicates the bill is an appropriations bill.
A bold line indicates the bill is an appropriations bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

Bill	Short Title		Date	Latest Action
S 839=	COMMUNITY BLDGS/EXEMPT FROM FOOD RULES.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 856	EMC TO DEVELOP REGULATIONS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 863=	NC CLIMATE ACTION REGISTRY.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 883=	DACS TO REGULATE FARMED CERVIDS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 888	ALTER WATERFLOW/IMPACT ON ADJACENT PROPERTY.	*S	05-01-2003	Re-ref Com On Agriculture/ Environment/Natural Resources
S 898	PRODUCTION AND SALE OF DOMESTICATED RABBIT.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 907=	CERTIFICATION OF WASTEWATER SITE EVALUATORS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 908=	GROUNDWATER PROTECTION ACT.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 927=	CERTIFY ON-SITE WASTEWATER CONTRACTORS.	S	04-03-2003	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Finance
$ S 981=	**CLEAN AIR TRUST FUND.**	**S**	**04-03-2003**	**Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Appropriations/Base Budget**
S 989	WATER AND SEAFOOD PROTECTION ACT.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 990	EXTEND SWINE MORATORIA/CONTROL PHOSPHORUS.	S	04-03-2003	Ref To Com On Agriculture/ Environment/Natural Resources
S 999	DEVELOP REGIONAL WATER SUPPLIES.	S	04-03-2003	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Appropriations/Base Budget
S1070=	FEDERAL ENFORCEMENT BY MARINE INSPECTORS.	S	06-09-2004	Re-ref Com On Agriculture/ Environment/Natural Resources
S1071=	REC. SHELLFISH LICENSE/AMEND SHELLFISH LAWS.	S	05-13-2004	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Finance
S1100=	EXPRESS REVIEW PROGRAM.	S	05-17-2004	Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Finance
S1111=	EST. MARINE FISHERIES VIOLATION POINTS SYSTEM.	S	05-17-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1112=	AMEND FISHERY MANAGEMENT PLAN REQUIREMENTS.	S	05-17-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1172=	BAN PIGEON SHOOTS.	S	05-19-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1211=	PHASE II STORMWATER MANAGEMENT-2.	S	05-20-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1220=	LEAKING UST FUND LIQUIDITY.	S	05-20-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1221=	WATER CONSERVATION/SUBMETERS.	S	05-20-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1224=	STATE NAT. & HIST. PRESERVE REMOVALS.	S	05-20-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1269=	ABC LICENSEES TO RECYCLE BEVERAGE CONTAINERS.	S	05-24-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1301	PHOSPHOROUS NUTRIENT MGT./ANIMAL	S	05-24-2004	Ref To Com On Agriculture/

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2003-2004 Biennium

Bill	Short Title		Date	Latest Action
	FEEDLOTS.			Environment/Natural Resources
[redacted]302=	ENVIRONMENTAL TECHNICAL CORRECTIONS.	S	05-24-2004	Ref To Com On Agriculture/ Environment/Natural Resources
S1303=	ENVIRONMENTAL REPORTS AMENDMENTS.	S	05-24-2004	Ref To Com On Agriculture/ Environment/Natural Resources
$ S1349=	**GREENHOUSE GASES EMISSIONS DATA/REPORT FUNDS.**	**S**	**05-27-2004**	**Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Appropriations/Base Budget**
$ S1376=	**LOW EMISSION VEHICLES/FUNDS.**	**S**	**05-27-2004**	**Ref to Agriculture/Environment /Natural Resources. If fav, re-ref to Appropriations/Base Budget**

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Senate Agriculture/Environment/Natural Resources Committee
Thursday, May 13, 2004, 10:00 AM
414 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1411	Hatteras Village/Temp. Unvegetated Beach Area.	Representative Culpepper, III

Presentations

Other Business

Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 13, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 13, 2004, at 10:00 a.m. in Room 414, Legislative Office Building. Senator Albertson, chairman presided and there were ten members present.

Sen. Albertson called the meeting to order and recognized the Pages. He also welcomed Sen. Ralph Hunt to our committee. Sen. Hunt replaced Sen. Gulley during the short session.

HB-1411 – HATTERAS VILLAGE/TEMP. UNVEGETATED BEACH AREA

Sen. Horton moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Albertson explained the purpose of this bill and how it was necessary due to the damage done by Hurricane Isabelle. Mr. George Givens, staff counsel, gave additional details and called attention to the map of the before and after of the vegetated line. Mr. Charles Jones, Director of Coastal Management, provided this map. Sen. Tillman spoke in favor of the legislation. Sen. Jenkins asked if the vegetation line was being moved. Mr. Jones explained that after the storm a berm was pushed over the line. Mr. Givens made additional comments and told of the need to pass legislation in order to expedite rules. Sen. Queen asked if this is to re-establish the line back to normal. Mr. Jones advised it was and explained. Sen. Bingham moved for a favorable report for the PCS, unfavorable to the original bill. Sen. Hunt asked what happens if we don't enact this legislation. Mr. Jones responded. Sen. Allran asked if this was non-controversial. Mr. Givens told members he knew of no opposition because we always took this type of action after major storms. Sen. Allran was concerned if this affected roads in the area. Mr. Jones explained it was only for the vegetated lines. No further discussion and the vote was taken and the PCS passed.

The meeting adjourned at 10:15 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy B. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Thursday, May 13, 2004

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1411** Hatteras Village/Temp. Unvegetated Beach Area.

Draft Number:	PCS30491
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1411

Short Title:	Hatteras Village/Temp. Unvegetated Beach Area.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE AS TEMPORARY UNVEGETATED BEACH AREAS CERTAIN OCEANFRONT AREAS ON HATTERAS ISLAND WHERE THE VEGETATION LINE WAS DESTROYED BY HURRICANE ISABEL AND THE REMNANTS OF THE VEGETATION LINE WERE BURIED BY THE CONSTRUCTION OF AN EMERGENCY BERM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. For purposes of implementing Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to that Article and notwithstanding any provision of that Article or those rules to the contrary, there are hereby designated as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on North Carolina Department of Transportation aerial photographs dated 2 June 2003, was destroyed as a result of Hurricane Isabel on 18 September 2003, and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until stable, natural vegetation is reestablished or until the area is permanently designated as an unvegetated beach area pursuant to 15A NCAC 07H .0304(4)(a).

SECTION 2. This act is effective when it becomes law and expires when a permanent rule that makes the designation set out in Section 1 of this act becomes effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 1411
Committee Substitute Favorable 5/12/04
PROPOSED SENATE COMMITTEE SUBSTITUTE H1411-PCS30491-RT-74

Short Title: Hatteras Village/Temp. Unvegetated Beach Area. (Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE AS TEMPORARY UNVEGETATED BEACH AREAS CERTAIN OCEANFRONT AREAS ON HATTERAS ISLAND WHERE THE VEGETATION LINE WAS DESTROYED BY HURRICANE ISABEL AND THE REMNANTS OF THE VEGETATION LINE WERE BURIED BY THE CONSTRUCTION OF AN EMERGENCY BERM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. For purposes of implementing Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to that Article and notwithstanding any provision of that Article or those rules to the contrary, there are hereby designated as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002, was destroyed as a result of Hurricane Isabel on 18 September 2003, and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until stable, natural vegetation is reestablished or until the area is permanently designated as an unvegetated beach area pursuant to 15A NCAC 07H .0304(4)(a).

SECTION 2. This act is effective when it becomes law and expires when a permanent rule that makes the designation set out in Section 1 of this act becomes effective.

HOUSE BILL 1411:
Hatteras Village/Temp. Unvegetated Beach Area.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Culpepper
Date:	May 13, 2004	**Summary by:**	Tim Dodge, Research Assistant for Environmental Issues
Version:	Second Edition and Proposed Committee Substitute (H1411-PCS30491-RT-74)		

SUMMARY: ***House Bill 1411 designates as temporary unvegetated beach areas certain oceanfront areas on Hatteras Island where the vegetation line was buried or destroyed by Hurricane Isabel and by the construction of an emergency berm.***

BILL ANALYSIS:

House Bill 1411 would designate certain oceanfront areas on Hatteras Island as temporary unvegetated beach areas. The affected properties include the oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line was destroyed by Hurricane Isabel on September 18, 2003 and by the construction of an emergency berm. Dare County orthophotographs dated February 4, 2002 through February 10, 2002, provide the reference line for the location of the destroyed vegetation line.

The designation would continue until stable, natural vegetation is reestablished or until the Coastal Resources Commission permanently designates the area as an unvegetated beach area.

The Proposed Committee Substitute (PCS) for House Bill 1411 replaces the words "or the photographs" with "orthophotographs" to correct a typographical error.

BACKGROUND:

The Coastal Area Management Act (CAMA) authorizes the Coastal Resources Commission to establish guidelines for development within areas of environmental concern. One of the primary guidelines is establishment of an erosion setback line, which determines the setback requirements for new development or redevelopment. The erosion setback is measured landward from the first line of stable natural vegetation nearest the ocean, usually near the face of the frontal dune system. The first line of stable natural vegetation is the first area on the oceanfront where natural dune-stabilizing plants (such as sea oats and American beachgrass) are present.

New or rebuilt structures smaller than 5,000 square feet must be set back the farthest of the following:

- A distance equal to 30 times the average annual erosion rate.
- Landward of the crest of the primary dune or the landward toe of the frontal dune.
- 60 feet landward of the first stable vegetation line.

New or rebuilt structures larger than 5,000 square feet must be set back the farthest of the following:

- A distance equal to 60 times the average annual erosion rate.
- 120 feet landward of the first stable vegetation line.

Where erosion exceeds 3.5 feet per year, the setback line for larger structures is 30 times the average annual erosion rate plus 105 feet.

HISTORY:

At its January 29, 2004 meeting, the Coastal Resources Commission moved to amend 15A NCAC 7H .0304 to designate the areas identified above on Hatteras Island as temporary unvegetated areas. The Commission approved the motion unanimously. The proposed rule change was published in the April 1, 2004, edition of the North Carolina Register and a public hearing on the proposed rule change was held on April 28, 2004. The proposed effective date for the rule is September 1, 2004.

The Commission previously used its authority to establish temporary unvegetated beach areas following Hurricane Fran in 1996.

EFFECTIVE DATE:

The PCS would become effective when it becomes law and would expire when a permanent rule that designates the beach areas as unvegetated beach area becomes effective.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Thursday
May 13, 2004
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Hibbard	NCLM
Chris Tillman	Pro Tem
Tim Minton	NC Home Building
Steve Neal	DENR
Erica Peterson	NC Agribusiness Council
Roger Bone	Bone + Assoc
Robin Smith	DENR
Al Wentz	Northampton Co
Susan Wentz	"

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 25, 2004	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
	Mr. Robert V. Williams, Director-Regulatory Affairs Blue Ridge Paper Products Guest Speaker	

Senator Charles W. Albertson, Chair

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 25, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 25, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were thirteen members present.

Sen. Albertson called the meeting to order and recognized Pages.

Mr. Robert Williams, Director, Regulatory Affairs, Blue Ridge Paper Products, Inc. was our guest speaker. He provided copies of his slide presentation which members followed as he read. (copy attached).

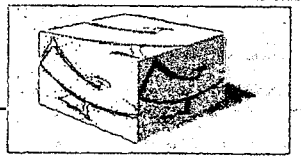
Chairman Albertson commended he and his company for achieving such an environmental improvements. Sen. Weinstein asked about their imports. Mr. Terry Huskins, VP on Paper Productions advised they did not do much in paper but on the board side of production. They work hard to keep up. Sen. Weinstein asked if they marketed in China and Mr. Huskins advised they hope to move into China later. Sen. Lucas was very impressed because she feels illnesses come from water and she commended the company. She asked what the General Assembly could do to help them. Mr. Williams advised they needed help to be able to continue to communicate and keep industry moving forward. Sen. Webster was familiar with their scholarship program sponsored by Canton Mills. He also spoke highly of their achievements. Sen. Albertson thanked Mr. Williams for a good presentation and for taking time to come address our committee.

The meeting adjourned at 11:40 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Davis, Clerk

Blue Ridge Paper Products
Canton Mill



North Carolina General Assembly
Senate Committee:
Agriculture / Environment / Natural Resources

May 25, 2004

Bob Williams – Director, Regulatory Affairs

Blue Ridge Paper Products Inc. – Canton Mill

Environmental Overview

BLUE RIDGE
PAPER PRODUCTS INC.

Formed in May,1999 when the employees and KPS Special Situation Funds purchased the Canton division from Champion International

Blue Ridge Paper Products

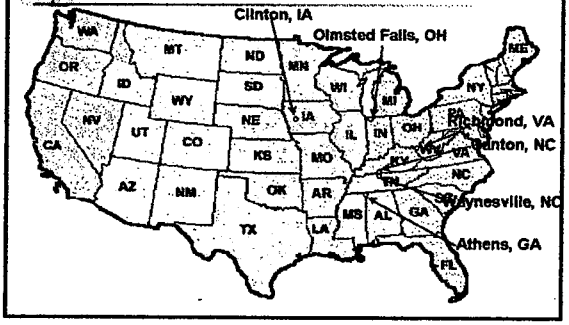
Ownership



Employee - owned company with over 90 years of paper and packaging experience

We are committed to environmental stewardship and community outreach

Blue Ridge Paper Products Locations



Canton Mill Overview

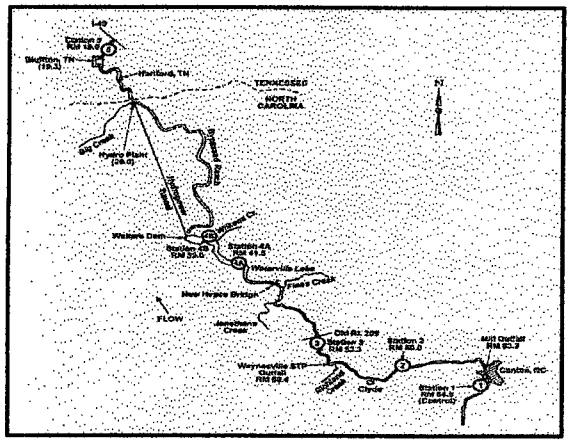
- Employees - 1300 in Haywood County
- Average hourly rate - $ 17.08
- Benefits include: pension, health insurance, stock ownership, and profit sharing
- Property Taxes Haywood County / Canton - $ 2,063,579
- Purchased electricity - $ 10,000,000
- Wood chips, freight, coal etc. - $ 100,000,000

Canton Mill Overview

- Built in 1908 to produce pulp for the Champion - Hamilton, Ohio Mill
- Located in excellent wood base - both hardwood and softwood
- Significant changes to mill in 90+ years-long history of papermaking
- Considered envelope capital of world for many years (1/3 of all envelopes)

Bob Williams
Director, Regulatory Affairs
Phone: 828 646-2033
E-Mail: willib@blueridgepaper.com

Blue Ridge Paper Products
Canton Mill



CANTON MILL OVERVIEW

HISTORY

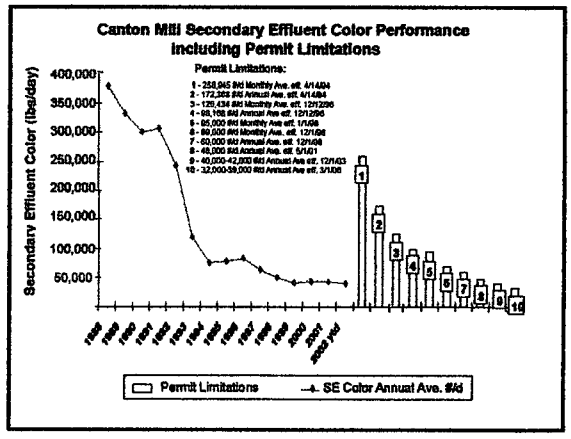
NPDES Permit

The Canton Mill discharges into the Pigeon River which flows through Haywood County, NC and then into Cocke County, TN. In the early 1980's the State of TN and environmentalists began a process to aggressively object to the permit.

- Early-1985 NC issues renewed permit
- 1987 NC District Court upholds EPA's authority to assume permit
- mid-1985 USEPA vetoes permit and assumes authority
- 1989 permit issued by EPA and appealed by TN
- 1992 EPA permit is upheld by Administrative Law Judge
- 1996 Permit is re-issued by NC, TN objects
- 1997 a Settlement Agreement is reached and permit is issued
- 2001 Permit renewed with no contests
- 2001 NC rescinds fish advisory
- 2002 TN rescinds fish advisory

Current Canton Mill Environmental Performance

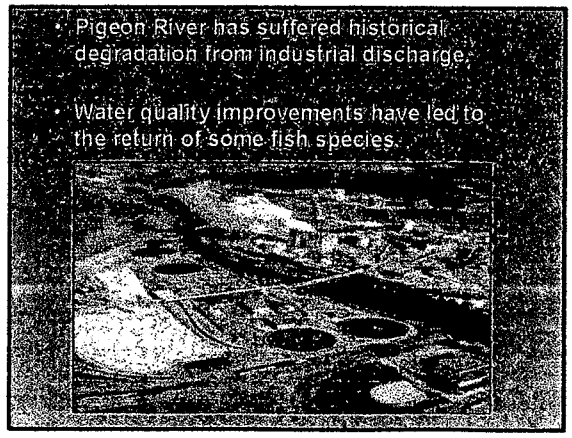
- $526 million invested over last 10 years
- Both fiber lines exceed Cluster Rules requirements
- Is a minimum impact mill with world class environmental performance through a combination of;
  - Oxygen delignification with 100% substitution of chlorine dioxide for elemental chlorine (OD_{100}™)
  - Bleach Filtrate Recycle (BFR™)
- Secondary effluent contains very low BOD, TSS, COD, AOX and color levels
- Bleach plant effluent non-detect for 2,3,7,8 TCDD and chlorophenolics
- State-of-the-Art BMPs



Pigeon River: Aquatic Life Support Trends, 1988-2000



Tennessee Department of Environmental Control



Bob Williams
Director, Regulatory Affairs
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Blue Ridge Paper Products
Canton Mill

Pigeon River
1983



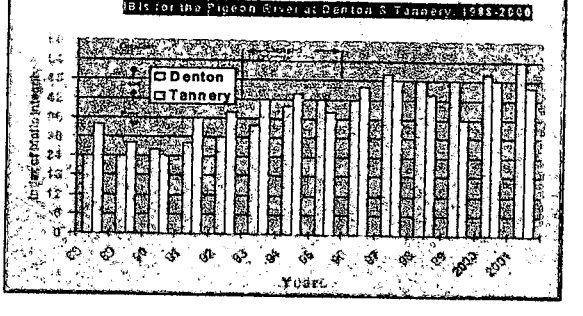
Pigeon River, Newport
February 2002



Pigeon River:
Trend Summary and Current Status

- IBI scores have risen from 'poor' in late 80's to 'good' range in 2000
- Strong improvements in species diversity, abundance, and sport fishery
- Fish Consumption Advisory downgraded from Do Not Consume All Fish to Limit Consumption of Redbreast, Catfish, and Carp.
- Agencies considering re-introduction of some native fish species back into the Pigeon as early as 2001-2002.

Pigeon River:
Fish Community IBIs, 1988-2001



The Status of Water Quality in Tennessee
· 2002 305(b) Report

Success Stories – Pigeon River

Partnerships between the Department and many private and public organizations has resulted in several dramatic improvements in water quality throughout the state.

- **Roland Dikes, Mayor of Newport**
- **Paul Davis, Tennessee Water Pollution Control Director**



- **Justin Wilson, Deputy to the Governor for Policy**
- **Iliff McMahan, Cocke County Executive**

Public Outreach

- Focused effort to gain feedback on community issues of the highest concern and priority

Bob Williams
Director, Regulatory Affairs
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Blue Ridge Paper Products
Canton Mill

Recent Community Activities

- Habitat House
- United Way
- Kids in the Creek – Haywood Scenic Rivers Association
- Blue Ridge Trout Festival
- Santa Pal
- Health Adventure Camp "Kids at Risk"
- Haywood County Teacher of the Year Sponsor

Canton Mill Community Advisory Committee

Purpose: Regularly Communicate on Canton Mill permit progress, listen and respond to community feedback.

Membership:	Charles Lewis Moore	- Cocke County Executive
	Larry Blazer	- Cocke County Superintendent of Schools
	Dean Williams	- Cocke County – Economic Development
	David Popiel	- Newport Plain Talk
	Patsy Williams	- Cocke County Tourism Council
	Matt Moses	- Cocke County – Rafters Permitters
	Gay Webb	- Dead Pigeon River Council
	Jack Horton	- Haywood County Manager
	Bill Upton	- Haywood County Superintendent of Schools
	Jay Hinson	- Haywood County Economic Development
	Jonathan Key	- Enterprise Mountaineer

Joint Watershed Advisory Committee

Purpose: Joint planning and public input on decisions effecting the Pigeon River

Membership:	Charles Lewis Moore	- Cocke County Executive
	Tim Dockery	- Cocke County/Newport Recreation Dept
	Jerry Wilde	- President Dead Pigeon River Council
	Dave Dudek	- Haywood Community College
	Jack Horton	- Haywood County Manager
	Kenny Sutton	- Blue Ridge Paper Products
Resources:	Paul Davis	- TN – Director of Water Quality
	Forrest Westall	- NC – Supervisor of Water Quality
	Marshall Hyatt	- USEPA, Region IV

US EPA Technology Review Workgroup

Purpose: Make recommendations to North Carolina Department of Environmental Management on further Color Reduction options for the Canton Mill

Membership:	Don Anderson	- Chairman USEPA Headquarters
	Paul Davis	- TN Dept. of Environmental Conservation
	Dave McKinney	- TN Wildlife Resources Agency
	Karrie-Jo Shell	- EPA Region IV, Atlanta
	Dave Goodrich	- NC Division of Environment
	Keith Haynes	- NC Division of Environment
	Forrest Westall	- NC Division of Environment
	Betsy Bicknell	- Consultant to USEPA
	Dan Bodien	- Consultant to USEPA
	Neil McCubbin	- Consultant to USEPA

Environmental Coalition

- America Canoe Association
- Clean Water Fund of North Carolina
- Appalachian Voices
- Dogwood Alliance
- Dead Pigeon River Council
- Western North Carolina Alliance\
- Southern Appalachian Biodiversity Project

Water Quality Benchmark

Canton Mill Compared to US, Canadian Mills

	AOX (lbs/ton)	Total Suspended Solids (lbs/ton)	Biological Oxygen Demand (lbs/ton)	Chemical Oxygen Demand (lbs/ton)	Color (lbs/ton)	Flow (gal/ton)
US Mills Avg. (NCASI)	2.16	6.68	4.13	76.88	200.55	20,637
Canadian Mills Avg. (CPPA)	1.2	8.1	5.2	68.20	146.22	22,140
Canton Mill	0.17	2.08	0.73	13.69	31.22	15,145

Reference: 2001 Liebergott Study

Bob Williams
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Blue Ridge Paper Products
Canton Mill

USEPA
National Environmental
Achievement Track Record

- EPA recognizes businesses that outperform regulatory requirements
- 2001 Canton Mill enrolled as Charter member



NEXT STEPS ....

- Continue focus on air & water quality
- **STABILIZE** the business

Bob Williams
Director, Regulatory Affairs
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ASHEVILLE
CITIZEN-TIMES
VOICE OF THE MOUNTAINS • CITIZEN-TIMES.com

■ EDITORIALS

Pigeon River cleanup sets solid example for other WNC waters

If you'll pardon the pun, the Pigeon River is a shining example of how water quality can be improved when industry and regulators work together instead of at cross purposes.

A decade ago, drivers didn't need the exit signs on Interstate 40 to know when they were approaching Canton; they could smell the wastes the Champion paper mill was spewing into the air. And that was nothing compared to what the mill was doing to the river. As recently as 1991, the mill was dumping 400,000 pounds of color a day, turning the river brown and foamy from Canton downstream into Tennessee.

A major turning point came when employees bought out Champion and formed Blue Ridge Paper. The new firm has cooperated with regulators, most notably in a 1998 agreement that mandated significant improvement in the quality and color of the river. By 2001 color discharges were down to 10 percent of the 1991 levels.

As the water quality comes back, so do the things that used to live in the river. Eight fish species, six snail species and nine mussel species have been reintroduced to the lower Pigeon River in Tennessee, according to the N.C. Wildlife Resources Commission. "All of the snails and mussels are surviving, and at least four snail species are reproducing," the commission says.

Now, fisheries biologists are preparing to introduce two native fish species, saffron shiners and mirror shiners, into the 25-mile stretch of the river from Canton downstream to the Walters Reservoir.

The two, which are now found upriver from the mill and which once populated this part of the river, were chosen in part because they were unlikely to return on their own, said Steve Fraley, western nongame aquatic coordinator for the commission.

"The fish would not naturally be able to migrate back to this section of stream because of the dam downstream and a small dam at Blue Ridge," Fraley said. If they survive downstream, biologists want to reintroduce silver shiners and telescope shiners as well.

Additionally, "We chose these species because they are thought to have the greatest chance of surviving in the Pigeon River, given its current water and habitat quality," Fraley said. "Also, we wanted to choose species that we could collect in relatively large numbers from other parts of the Pigeon River system.

"We believe the river is coming back sufficiently to support those species."

Does that mean the river is all right? No. There still is a long way to go. "Nobody's saying the river is completely recovered," Fraley added. "It's at an intermediate stage of recovery." Any discoloration of the downstream water is unacceptable.

The existing permit, issued in 2001, allowed 48,000 pounds of color discharge a day, which was reduced to 42,000 in February and will remain at that level until the permit expires in 2006, according to Forrest Westall of the state Division of Water Quality. That is essentially the 2001 level, which is still too high.

Nevertheless, that does not detract from the progress that has been made. Blue Ridge Paper has spent millions improving the river and will spend $60,000 on the shiner reintroduction. There will be calls for more spending, and disagreement among parties as to how much can be done and how soon, but the precedent has been set.

"This is kind of breaking new ground," Fraley said of the shiner introduction. That is true of the entire process as well.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

May 25, 2004
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul T. Dew	Ret. Asheville NC 28809
Tom Toon	NC Environmental Defense
Jerry Harkey	NC Pork Council
Jimmy Randolph	NC Poultry Fed.
Thomas Cheek	OSBM
Johnny Gray	OSBM
David Brown	OSBM
Kim Hibbard	NCLM
Bob Slocum	NC Forestry Assoc.
Paul Holden	Carolina Hog Farmers Assn.
Pam Carpenter	NC Pork Council

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Anne Mumford	NCPC
John Cyrus	NC State Grange
David Meredith	NC State Grange
David McLeod	NCDA&CS
Johanna Reese	DENR
Erin Kinsey	NC Conservation Network
Camille Stell	Kennedy Covington
Anita Watkins	NCLM
Robin Smith	DENR
Terry Husley	Blue Ridge Paper Products
DAVID BARNES	Poyner + Spruill LLP

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Rice	Self
Steve Hartsie	Associated Press
Berry Jenkins	Carolinas AGC
Roger Bone	Bone and Assoc
Andy Romanet	NCLM
Anne Wimer	

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 8, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 8, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were fourteen members present.

Sen. Albertson called the meeting to order and recognized Pages. Former Sen. Jim Speed was visiting and the chairman recognized him.

SB-1219 DRY CLEANING SOLVENT CLEANUP ACT – Sen. Clodfelter explained. Sen. Kinnaird asked how much did a gallon of solvent cost. She feels that $10.00 is too expensive. Sen. Clodfelter the costs. Sen. Lucas moved for a favorable report. Vote was taken and passed.

SB-1270 LOWER HAW RIVER STATE NATURAL AREA – Sen. Weinstein moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Kinnaird explained. Sen. Weinstein moved for a favorable report for the PCS, unfavorable as to the original bill. The vote was taken and passed.

Mr. Bill (William) Showers, NCSU Assoc. Professor, Director NCSU Stable Isotope Lab, River Newt Program was the guest speaker. He explained how the pilot program started in 1999 and gave an overview of the process. A copy of his presentation is attached. Sen. Kinnaird asked if some wastewater treatment plants measure up better than others. Mr. Showers explained that larger plants are easier to measure than smaller ones. Raleigh is the largest wastewater plant in NC. Mr. Showers continued his presentation and explained how to record groundwater inputs. This is the first such groundwater measurement, and very important to the nitrogen influx and is a vital component in water safety. They are going to begin UV mapping groundwater nutrient inputs soon. This will begin with the Raleigh plant and will be a pilot test. Sen. Horton asked about the injection of oil and the function of it. Mr. Showers explained that one doctor used soybean oil to help the process to expedite the de-nitrocation process. Sen. Kinnaird asked about nitrogen and pesticides on the soybeans. Sen. Jenkins explained that. Sen. Jenkins then asked if the agricultural testing measures agricultural nutrients. Dr. Showers told him that this technology would be able to do that in the near future as the mapping technology is more enhanced. Sen. Jenkins spoke again and asked if farming practices have improved over the years. Dr. Showers advised that can tell a large difference and that's how the process began the groundwater testing. He told members they were seeing a great improvement since the testing began in 2001. Sen. Hartsell asked if the technology is effective in wastewater treatment plants. Dr. Showers explained his experience in studying this and gave the example of how they studied

Crabtree Creek and Reedy Creek and how with proper funding and upgrading treatement sewage plants can improve water quality. Sen. Albertson asked if data collected could tell us where we can go to get greater results and go farther with our improved impacts. Dr. Showers told him yes. This can go a long way and we are making great progress reducing nitrogen in our water. Sen. Queen asked for relative impacts for agricultural and municipal wastes. Dr. Showers advised fertilizer is the predominate factor on the agricultural side.

Sen. Albertson thanked Dr. Showers for his informative presentation and addressing our committee.

The meeting adjourned at 11:45 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Davis, Clerk

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 8, 2004 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 1219	Dry Cleaning Solvent Cleanup Act Amendments.	Senator Clodfelter
SB 1270	Lower Haw River State Natural Area.	Senator Kinnaird
	Dr. William J. Showers – NCSU Guest Speaker	

III. Other Business

IV. Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Tuesday, June 08, 2004

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

FAVORABLE

S.B. **1219** Dry Cleaning Solvent Cleanup Act Amendments.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1270** Lower Haw River State Natural Area.

Draft Number:	PCS-65455-RI-8
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

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.

SENATE BILL 1219:
Dry Cleaning Solvent Cleanup Act Amendments.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Clodfelter
Date:	June 8, 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.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

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

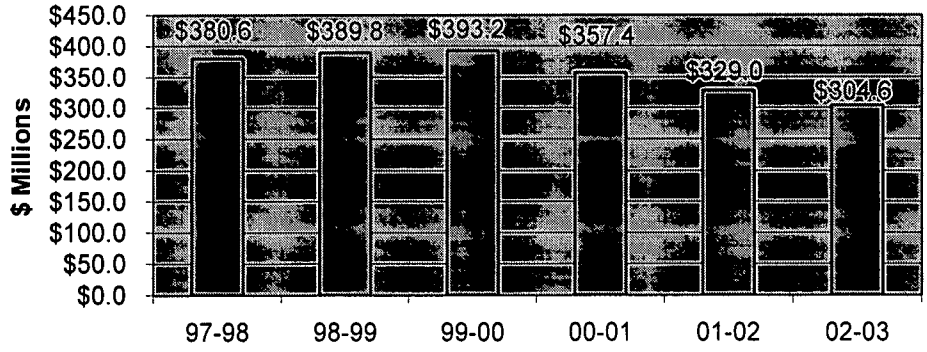
BILL SUMMARY: This proposal increases the annual cap on payments from the Dry-Cleaning Solvent Cleanup Fund for costs ("past costs") incurred in connection with dry-cleaning solvent assessment and remediation activities pursuant to a notice of violation or enforcement action during the period between 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



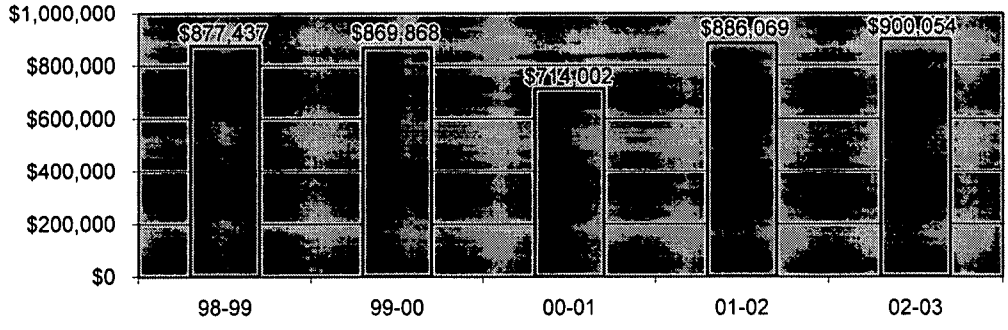
Taxable retail sales in the current fiscal year (FY 2003-04) are on pace to finish at $300 million. This fiscal note assumes a no growth scenario for the next five years and annual taxable retail sales of $300 million. Table A below summarizes the projected State sales tax collections on laundry and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

Dry Cleaning Solvent Tax Collections



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 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 2, 2004

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 1270*

Short Title:	Lower Haw River State Natural Area.	(Public)
Sponsors:	Senators Kinnaird; Bingham, Clodfelter, Dorsett, Garwood, and Lucas.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 24, 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.

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.

SENATE BILL 1270:
Lower Haw River State Natural Area

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Kinnaird
Date:	June 8, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	First Edition and PCS S1270-PCS65455-RI-8		

SUMMARY: ***Senate Bill 1270 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 892 acres to be included in the proposed State Natural Area from Duke University for a purchase price of two million five hundred forty-five thousand dollars ($2,545,000). 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. In addition to the property already acquired, there will likely be additional acquisitions for this unit in the future. 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.

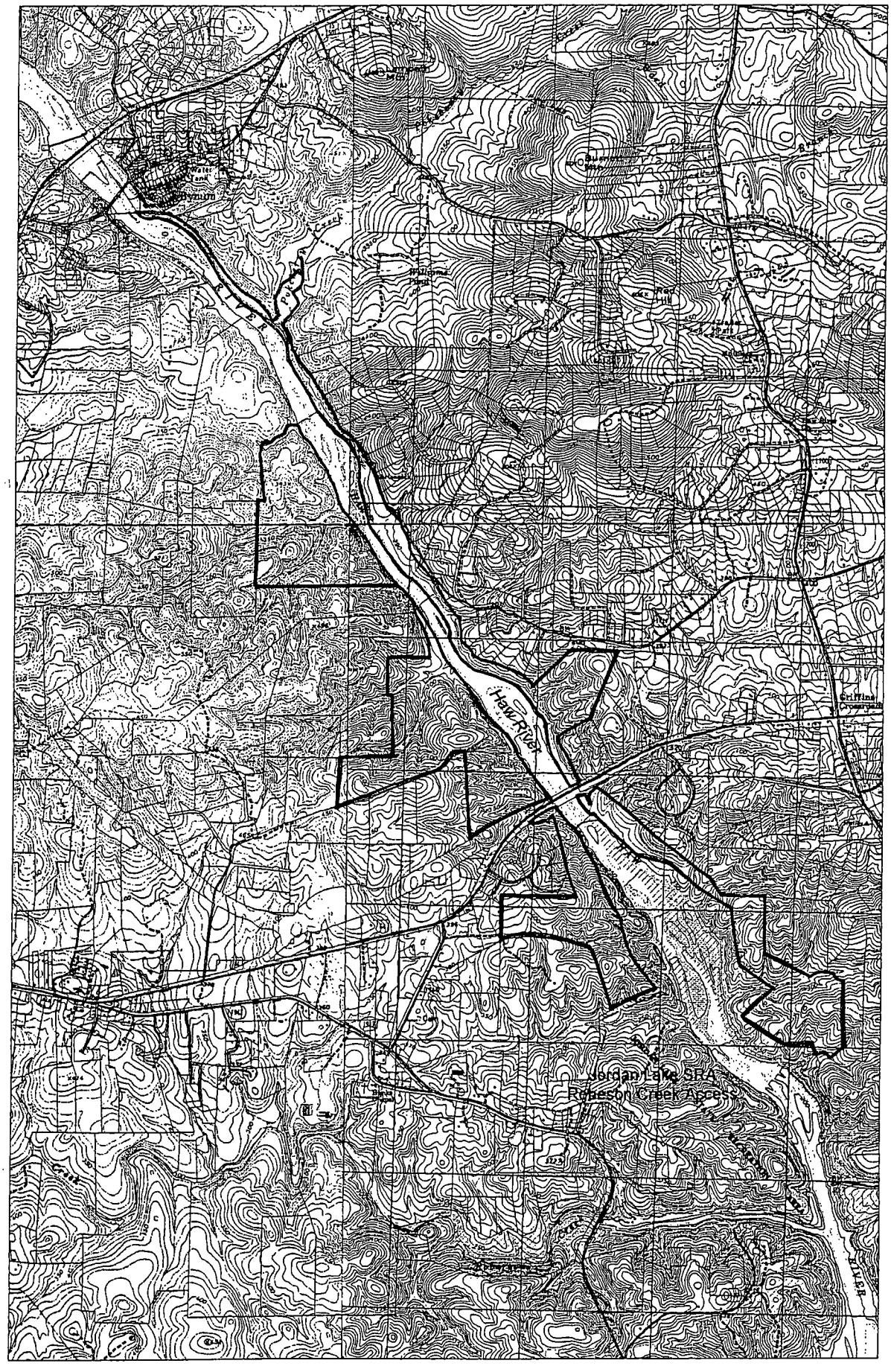
CHANGES MADE BY THE PCS:

- 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: Senate Bill 1270 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.

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

S1270-SMRI-001



Lower Haw River
State Natural Area

State Natural Area
State Recreation Area
Wildlife Resources Commision

0 2000 4000 Feet

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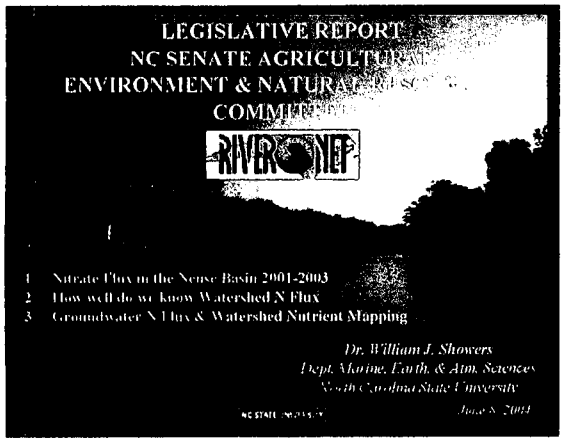
April 2004

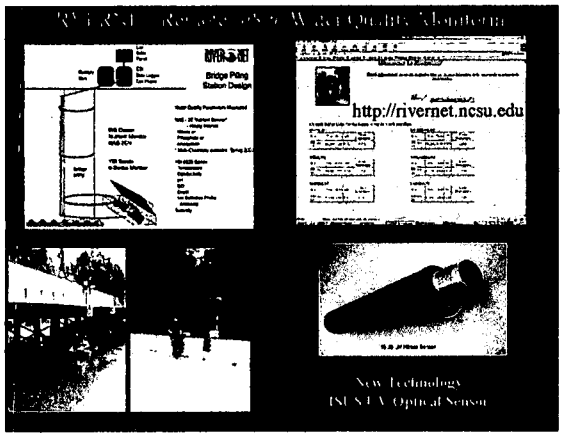
William J. Showers
Associate Professor
Director: NCSU Stable Isotope Lab, RiverNet Program

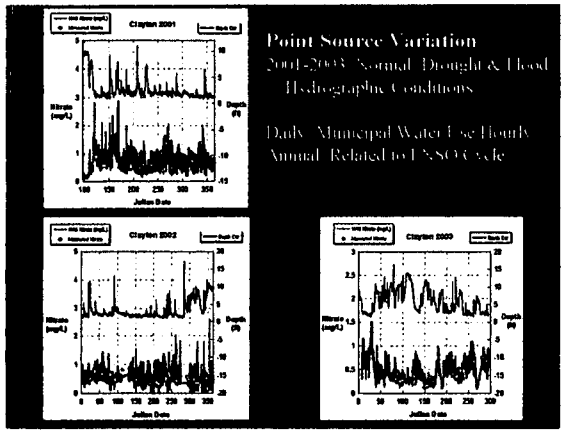
NC STATE UNIVERSITY

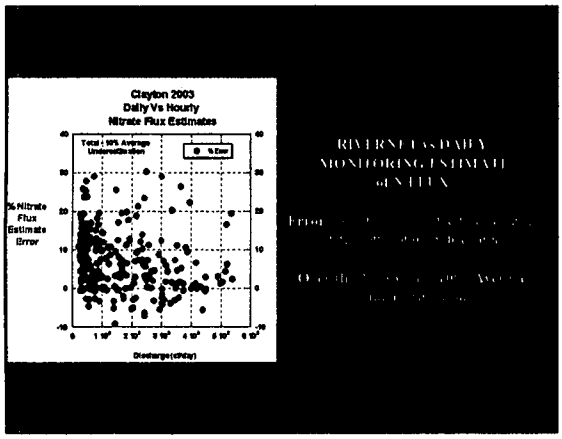
Department of Marine, Earth and Atmospheric Sciences
Campus Box 8208
Raleigh, NC 27695-8208

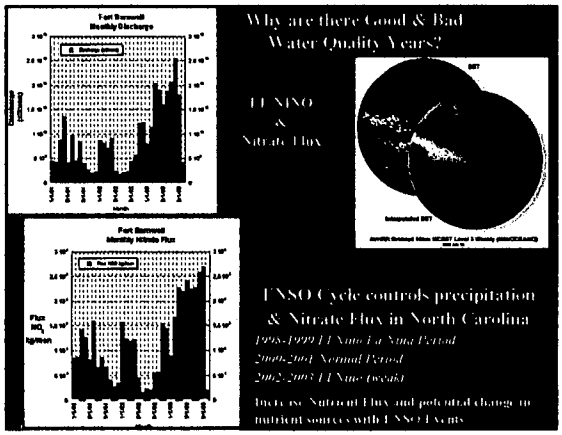
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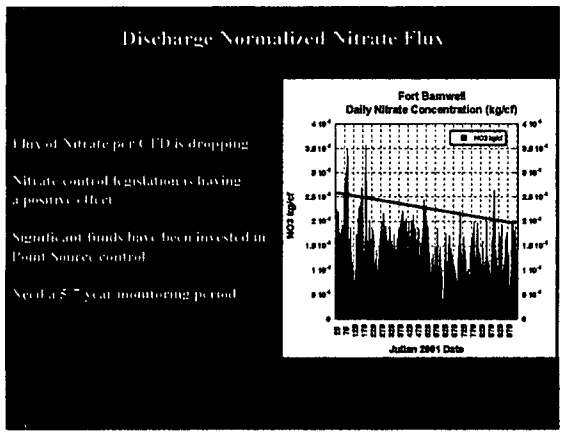


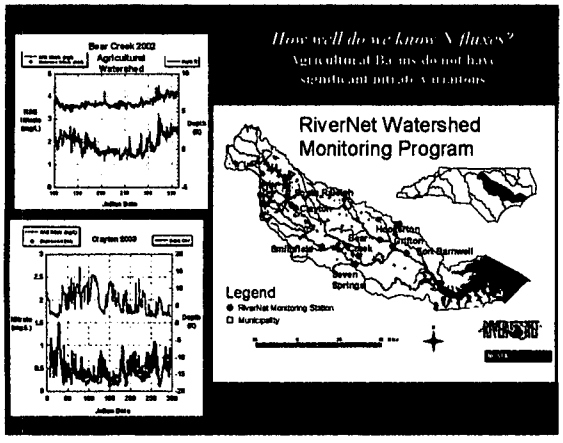


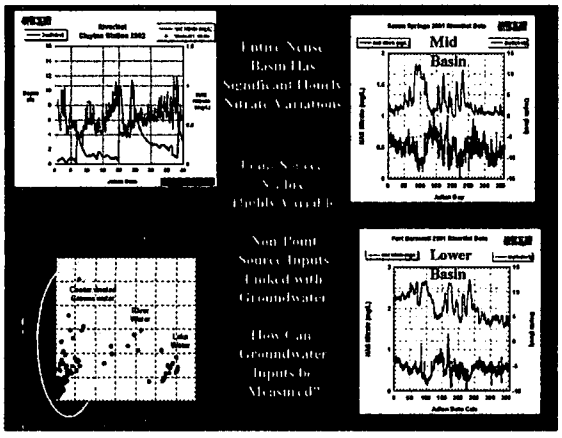


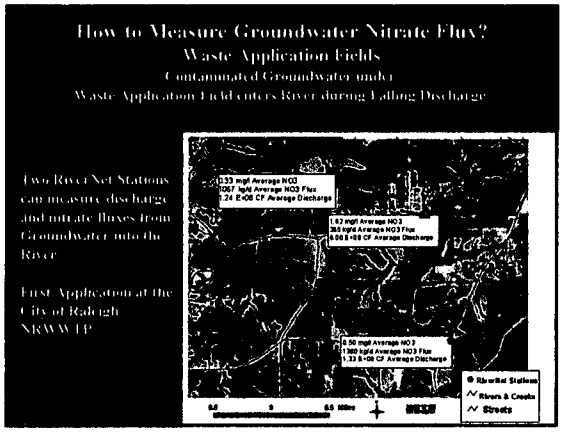

Clayton 2003
Daily Vs Hourly
Nitrate Flux Estimates
% Nitrate Flux Estimate Error
Discharge (cfs/day)
RIVERNET DAILY MONITORING ESTIMATE of N FLUX


Fort Barnwell
Monthly Discharge
Fort Barnwell
Monthly NitrateFlux
Why are there Good & Bad Water Quality Years?
EL NINO & Nitrate Flux
ENSO Cycle controls precipitation & Nitrate Flux in North Carolina
1998-1999 EL Nino La Nina Period
2000-2001 Normal Period
2002-2003 EL Nino (weak)
Increase Nutrient Flux and potential change in nutrient source with ENSO Events


Discharge Normalized Nitrate Flux
Flux of Nitrate per CFD is dropping
Nitrate control legislation is having a positive effect
Significant funds have been invested in Point Source control
Need a 5-7 year monitoring period
Fort Barnwell
Daily Nitrate Concentration (kg/cf)
NO3 kg/cf
Julian 2001 Date


How well do we know N fluxes?
Agricultural Basins do not have significant nitrate variations
RiverNet Watershed Monitoring Program
Legend
RiverNet Monitoring Station
Municipality


Entire Neuse Basin Has Significant Hourly Nitrate Variations
Point Source Nitrate Fields Variable
Non Point Source Inputs Linked with Groundwater
How Can Groundwater Inputs be Measured?
Mid Basin
Lower Basin


How to Measure Groundwater Nitrate Flux?
Waste Application Fields
Contaminated Groundwater under
Waste Application Field enters River during Falling Discharge
Two RiverNet Stations can measure discharge and nitrate fluxes from Groundwater into the River
First Application at the City of Raleigh SRWWTP
RiverNet Stations
Rivers & Creeks
Streets

Groundwater Inputs

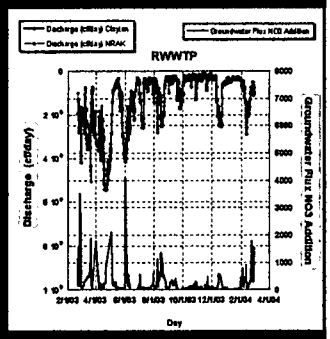
from waste application fields

large increase 1-3 day period

up to 150% of normal river flux

12% of Total Flux over the year

Groundwater Inputs

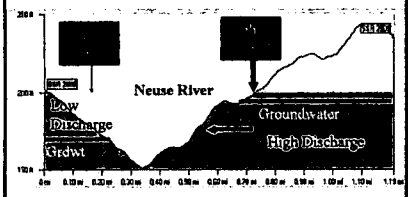


ANNUAL NITRATE AND WATER BALANCE RWWTP

	Norm Flux %
Surface Flux NO3 Input % Clayton	68.48
RWWTP Flux NO3 % Clayton	21.27
Groundwater Flux NO3 % Clayton	10.26
Total Inputs NO3	**100.00**
Surface Flux Water Input % Clayton	90.81
RWWTP Flux Water % Clayton	4.40
Groundwater Flux Water % Clayton	4.80
Total Inputs Q	**100.00**

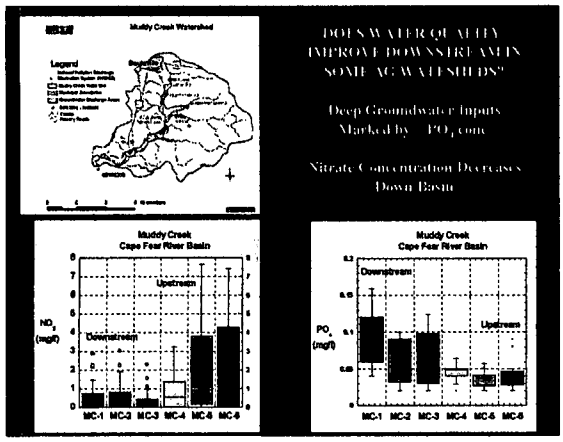
Groundwater nitrate additions and loss balance.
Groundwater flux increases slightly

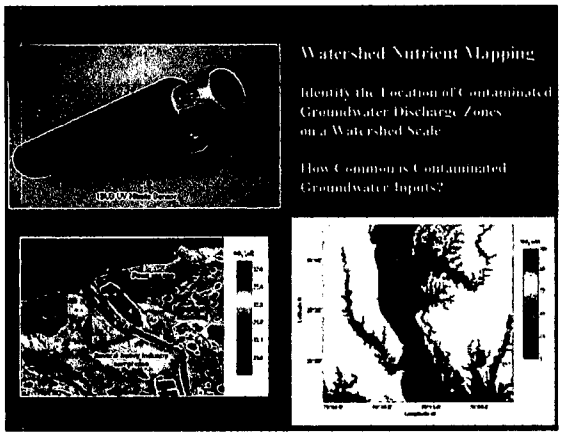
Groundwater Inputs controlled by discharge states and level of Groundwater table





Water moves both ways through riparian buffer
During hot summer months evapotranspiration in the buffer
Can remove water and nutrients from the river





CONCLUSIONS

- Discharge of nitrate-enriched Eutaw Gw in the Sucarnoochee River
- Excess Temporal Variability in Nitrate Flux from Point Sources
- Nitrate Flux from Groundwater Sources can be important but is not always predictable
- Surface Concentrations in Some Streams and Rivers are Diluted by deeper groundwater inputs
- Contaminated Groundwater Inputs are Event-Driven and Diffuse

Future Work

- New Technologies will allow watershed nutrient mapping to assess the importance and control of groundwater nitrate inputs on a large scale

EXECUTIVE SUMMARY
LEGISLATIVE REPORT
January 2004

RIVERNET: Continuous Monitoring of Water Quality in the Neuse River Basin

Dr. William J. Showers
Dept. of Marine, Earth & Atmospheric Sciences, North Carolina State University

PURPOSE OF PROGRAM

Agricultural and urban land use has increased the fluxes of nutrients, sediments and different organic/inorganic chemicals into surface water and ground waters. As a consequence, many estuaries and wetlands are under various levels of environmental pressure as a result of diminished water quality (e.g., high nutrient concentrations, sediment loading, low levels of dissolved oxygen). The increased nitrogen flux to estuaries and coastal waters has affected water quality by enhancing phytoplankton blooms as part of the overall eutrophication process. This enhanced production modifies coastal food webs, reduces commercial species abundance, and in extreme cases produces zones of hypoxia and anoxia. The threat of agricultural chemicals to groundwater supplies has focused attention on the mobility of solutes such as nitrates and pesticides in shallow groundwater systems. Although extensive research has been done to understand nitrate contamination and attenuation processes in ground water, discharge rates of nitrate in streams are commonly not matched to different types of land use or to field application rates. To promote the long-term sustainability of natural and managed watersheds, fundamental processes that control water quality on a watershed scale must be investigated.

BACKGROUND

The 2001 Session of the General Assembly appropriated $285,000 to the Department of Environment and Natural Resources (DENR) for transfer to North Carolina State University (NCSU) for the continued operation of the RiverNet Program. The RiverNet Monitoring network has been installed over the past three years. During the first year several technological problems were solved. During the second year the system monitored nitrogen flux during a severe drought. During the third year the system monitored nitrogen flux as the drought ended and began to work with the City of Raleigh monitoring nutrient flux from the Raleigh WWTP near Clayton, NC. During this past year the RiverNet Program has measured groundwater and nitrogen flux from the Raleigh Waste Water Treatment Facility into the Neuse River, and developed a new tracer to measure the transfer of atmospheric deposition of nitrogen into surface waters (^{17}O). We have also developed a new technology that will permit nutrient watershed mapping to investigate where groundwater inputs are coming into the river system. Seven stations are operating in the basin from Raleigh to Fort Barnwell, two stations are in the Contentnea watershed, and five are along the Neuse Mainstem (Figure 1). Physical water quality property measurements are made every 15 minutes and nitrate analyses are made once an hour. The data is transferred to a server at the NCSU Raleigh campus once a day via a cell phone network and mounted on a web site for public access (http://rivernet.ncsu.edu). This monitoring will continue for the next year with nutrient watershed mapping and groundwater monitoring at the Raleigh WWTP.

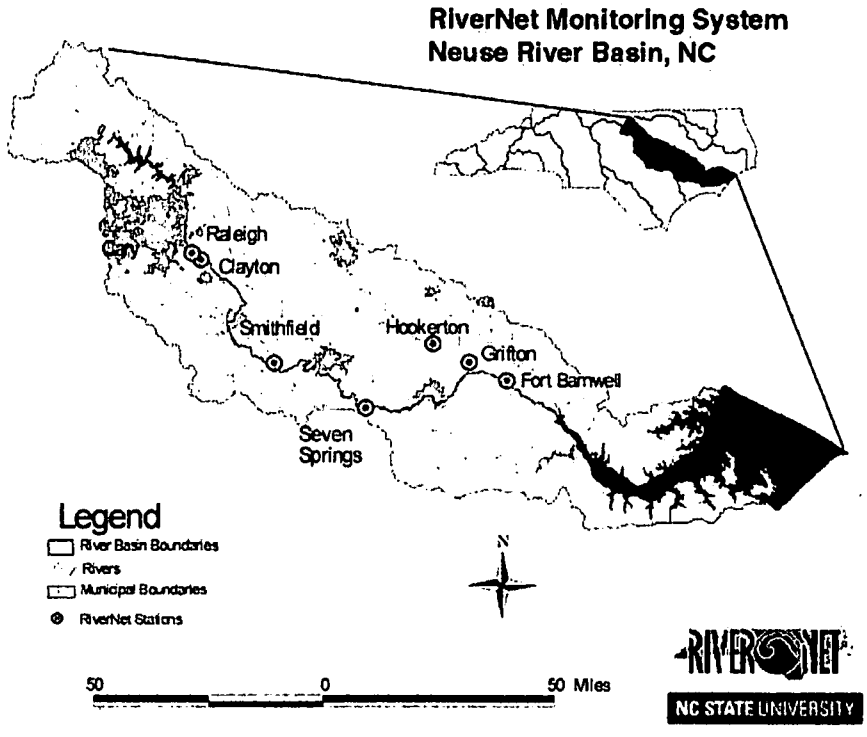


Figure 1. The RiverNet monitoring network with a new station located above the Raleigh Waste Water Treatment Plant (WWTP) to investigate the relationship of groundwater flux from this large Waste Application Field (WAF) in the piedmont.

RiverNet: Results 2004

Previous years results have shown that there are significant nitrate concentration variations in the Neuse River. These variations occur on time scales that vary from an hourly to daily basis (Figure 3). These variations are found in drought and non-drought conditions and are associated with large NPDES dischargers. These nitrate variations are found in the upper,

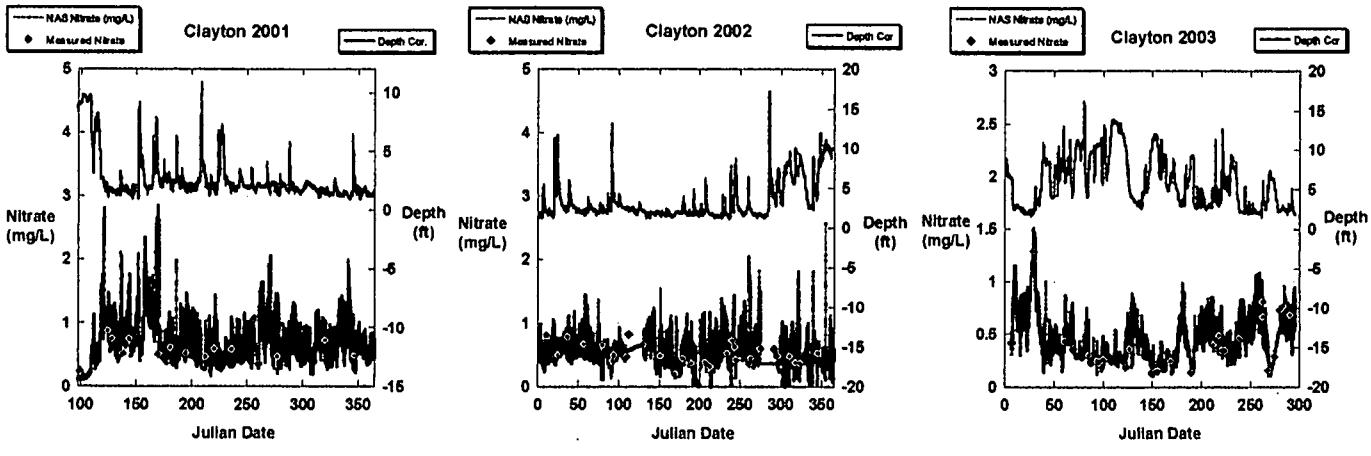


Figure 2. River nitrate variations during the 2001 to 2003 period. Notice the high frequency variations are not related to drought

middle and lower portions of the basin. Without a RiverNet program, nitrogen flux estimates are based on 15-minute discharge measurements and daily nitrogen concentration measurements.

Large errors are associated with daily flux estimates when compared to the RiverNet hourly flux estimates (Figure 3). These errors can be as large as 30% of the total flux. On an annual basis the flux of nitrogen to the estuary is underestimated by 10% without a RiverNet program. Over the long-term nitrogen flux is controlled by rainfall and river discharge (Figure 4). Rainfall in North Carolina is related to the El Nino / Southern Oscillation cycle which is 5-7 years in length. At the present time we have captured about 50% of this cycle. However, when the flux of nitrogen is weighted for the ENSO controlled water

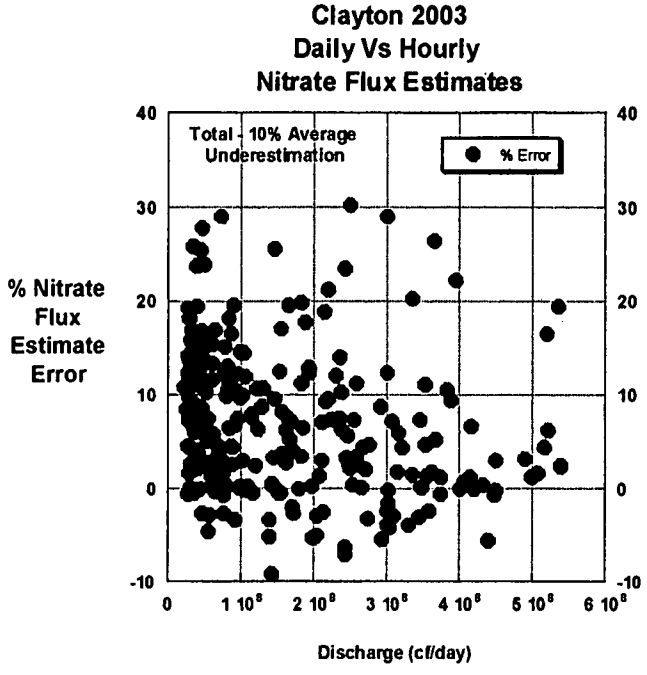


Figure 3. Daily versus hourly flux measurements at Clayton on the Neuse River, NC. The error without a RiverNet program is –10 to + 30 per cent. Over the year the nitrate flux in the Neuse Basin is ~ 10%.

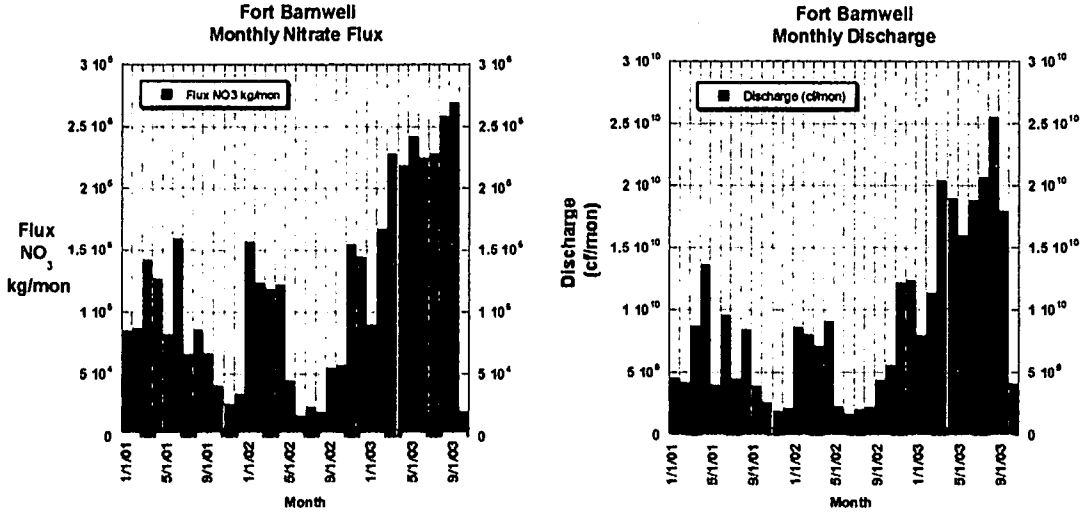


Figure 4. From 2001 to 2003 the flux of water and nitrate in the Neuse Basin has varied with the El Nino Southern Oscillation cycle (ENSO). This cycle has a frequency of 5-7 years, so with three years of monitoring we have captured approximately 5o% of the cycle.

discharge variations, the weighted flux of nitrate in the Neuse River basin has dropped about 20%. This indicates that the regulations put in place by the NC General Assembly and enforced by NC DENR are currently reducing the flux of nitrogen to the Neuse River Estuary (Figure 5).

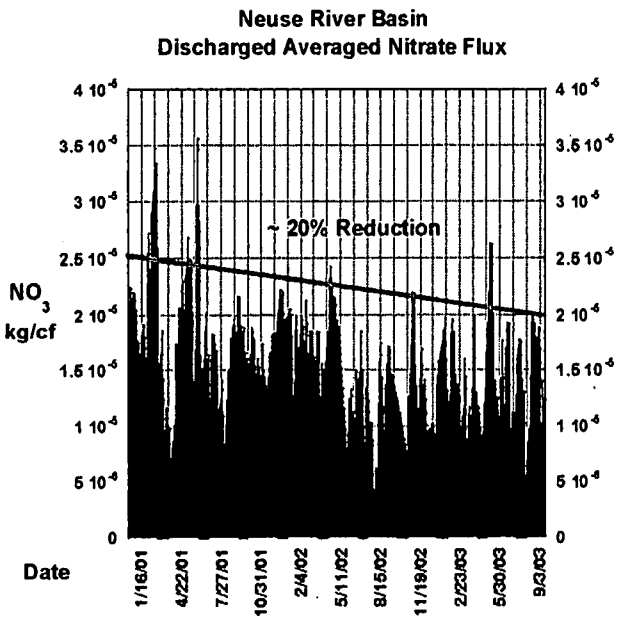


Figure 4. From 2001 to 2003 the flux of water and nitrate in the Neuse Basin normalized for discharge variations.

CONTAMINATED GROUNDWATER FLUX OF NITRATE TO THE NEUSE RIVER

Waste application fields accumulate nitrate, but the movement of nitrate from under these fields to surface waters is not well understood. We have worked with the City of Raleigh Public Works Division and UNC WRRI over the past year to measure the flux of groundwater nitrate from the waste application fields at the Battle Bridge Road treatment plant in southern Wake County.

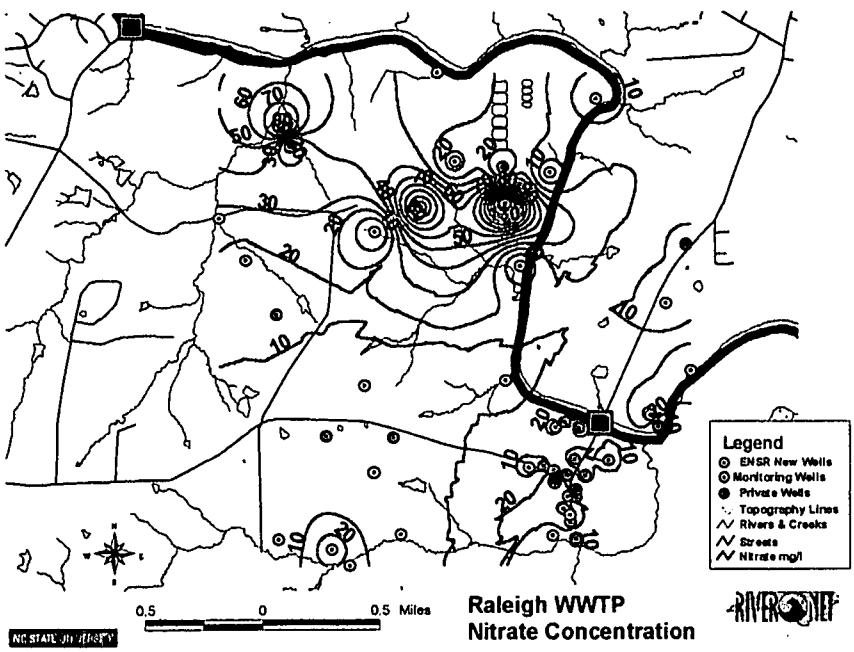


Figure 5. Two RiverNet stations monitor groundwater additions and nitrate flux at the Raleigh WWTP

Groundwater nitrate flux to the Neuse River is event driven and occurs over a 1-5 day period after heavy rainfalls (Figure 6). On an annual basis the groundwater flux of nitrate is about

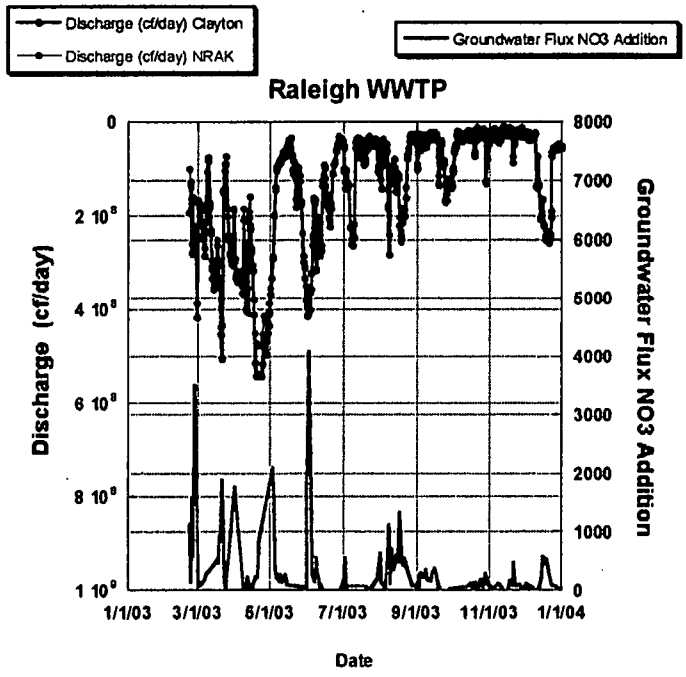


Figure 6. Groundwater additions of nitrate at the Raleigh WWTP are episodic and of a 1-3 day period and are related to river stage and not precipitation amount, which indicates a hydrologic control.

50% of the flux of nitrogen out of the plant through the discharge pipe (Table 1). This agrees with an estimate made by an Environmental Consultant with groundwater models, but the RiverNet data shows how episodic the groundwater additions can be. Groundwater flux

Table 1. Nitrate Fluxes at the Raleigh WWTP

	% Norm Flux
Surface Flux NO3 Input % Clayton	68.48
RWWTP Flux NO3 % Clayton	21.27
Groundwater Flux NO3 % Clayton	10.26
Total Inputs NO3	100.00
Surface Flux Q Input % Clayton	90.81
RWWTP Flux Q % Clayton	4.40
Groundwater Flux Q % Clayton	4.80
Total Inputs Q	100.00

of nitrate is important to river water quality, but is currently poorly understood and not measured. The large number of CAFO's on the coastal plain suggest that we need to develop a reliable technology to recognize, measure and remediate contaminated groundwater nitrate flux to surface waters.

Future Directions for RiverNet: Watershed Nutrient Mapping

This year we have successfully tested a new optical UV sensor just developed by Satlantic Inc. This UV sensor has the ability to make measurements of extremely short duration over the period of seconds to minutes. Correlation with our chemical underwater sensors is excellent (Figure 7). With this rapid-fire nitrate sensor, we can map nutrient distributions in the river and determine where contaminated groundwaters are entering the river. Once the location is determined remediation efforts can be undertaken to stop the flux of nitrate with chemical hydrology measures.

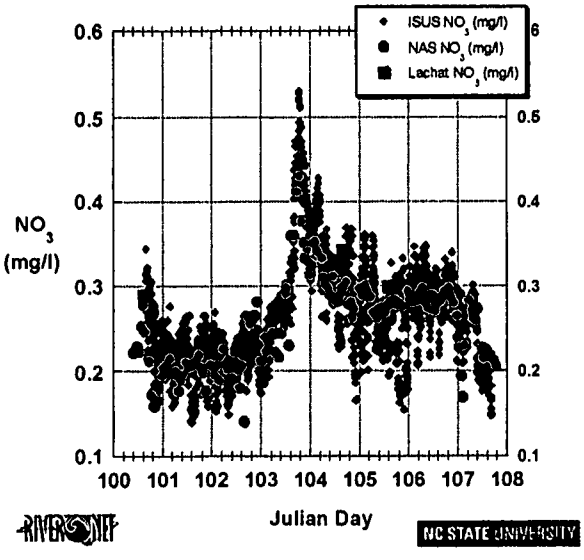


Figure 7. Isus optical nitrate measurements compared to NAS chemical nitrate measurements in the Neuse River above the Raleigh WWTP. With the optical system three measurements are made every 15 minutes as opposed to 1 per hour with the chemical system. With some capital equipment funds the RiverNet program can be converted from a chemical measurement program to an optical measurement program and many more stations can be operated for the same cost. This will make expansion of the program to a statewide system possible so that water quality can be measured in river basins other than just the Neuse.

Summary:

RiverNet is a monitoring system that has significantly evolved and given researchers and water quality regulators a new understanding of fundamental processes affecting water quality on a watershed scale. At the present time we have obtained $517k in funds from NSF for a program enhancement entitled "Enhancing Diversity in Geosciences in North Carolina". This is a three-year collaborative effort between NCSU and NCA&T to recruit minority graduate students to Geosciences graduate programs. RiverNet is a central research program in this federally funded education effort, and we are working with minority students from NCA&T as well as Robeson Community College this summer and next fall.

Major findings of the program to date include:

- Nitrate and sediment concentrations in the Neuse River Basin change rapidly with and without stage changes. These variations are correlated to discharge and precipitation variations that are controlled by the ENSO (El Nino Southern Oscillation) cycle, which has a 5-7 year time period.
- Hourly RiverNet flux measurements are significantly more accurate than flux estimates

made from daily concentration measurements.

- Discharge normalized nitrate flux measured by the RiverNet program indicates that there has approximately been a 20% reduction of nitrate flux since 2001.
- Measurement of groundwater nitrate fluxes with the RiverNet technology has shown that groundwater additions are episodic with time periods of hours to days.
- Groundwater nitrate flux at the Raleigh WWTP is about 50% the nitrogen flux from the discharge pipe.
- New stable new optical measurement techniques are less expensive than the current chemical measurement techniques and will allow the RiverNet program to expand statewide for reasonable costs.
- Nutrient mapping on a watershed scale will be possible with this new optical nitrate measurement technology to understand nitrate fluxes that enter the river in groundwater discharge zones. The groundwater quality in these groundwater discharge zones has a direct effect upon surface water quality in these regions, but at present this is poorly understood.

This lack of understanding will not enhance our regulation, mitigation and remediation efforts and allows blame to be placed on potentially the wrong industries with poor economic consequences.

By wisely using state and national resources and by emphasizing results focused on the systematic application of research-based knowledge, we can expedite the timely resolution of our water quality problems and protect our invaluable water resources without economic impairment. By combining research efforts with educational outreach programs, we can train the scientists, regulators and policy makers of the future. In the end we will improve the public's understanding of water resource issues and the essential social, economic, and environmental value of local water resources for all persons and sectors of society.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

June 8, 2004
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thad H. Banks	Banks Forestry & Realty 4366 Beaver Dam Church Rd. Roseboro, NC 28382
Michael Nelson	CCNC
Jim Speed	Louisburg
John Cyrus	NC Grange
Rick Zechini	NC Assoc. of Realtors
Jim Bland	International Paper 15 Gum Ave Bolton, NC 28423
David Green	" "
MaryBeth Hanson	" "
Tony Doster	" "
Steve Woodson	NC Farm Bureau
Paul Mayer	NCAE

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Kim Hibbard	NCLM
Tom BEAN	NC ENVIRONMENTAL DEFENSE
Nancy Thompson	NCIC
[illegible]	NC Park Council
Bern Anne Mumford	NCPC
Don McCorquodale	SAS
Chad Essick	Poyner & Spruill LLP
Bob Holtatschek	Weyerhaeuser Co. New Bern NC
Bob Emory	NC Forestry Assoc.
Bryan H. Hulka	Weyerhaeuser Co. New Bern, NC
Larry Tomberlin	NC Forestry Assoc.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
MIKE WARD	CCA - NC
Will Morgan	Coastal Conservation Association of NC
Mary Morgan	Coastal Conservation Assoc of NC
Angie McMillen	TNC
Amanda Maris	Sierra Club - intern for David Knight
Melissa Tolan	Sierra club/intern for David Knight
Andy Willis	NC State Univ
SAM TAYLOR	NC ALC
NANCY REED	
Patsy Hanson	
LEWIS LEAFORD	DENR, DPR

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Johanna Reese	DENR
JERRY SCHILL	NC Fisheries Assoc
Erin Kinney	NC Con Net
Sandra Miller	NC Forestry Assoc
Chip Miller	NC Forestry Assoc.
Gerty McLellan	N.C. Conservation Network
Adrienne Harris	N.C. Conservation Network

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 15, 2004 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 1574	State Parks System Adds. & Study.	Representative Hackney
HB 1607	State Nat. & Hist. Preserve Removals.	Representative Miner Representative Weiss
SB 1202	Septic System Setbacks for Pre-1977 Lots.	Senator Soles

III. Other Business

IV. Adjournment

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 15, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 15, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were eleven members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1607 STATE NAT. & HIST. PRESERV. REMOVALS – Rep. Weiss explained the bill. Sen. Weinstein moved for a favorable report. Sen. Brock had a question pertaining to Horne Creek and Mr. Jim McPherson, Dept. of Cultural Resources addressed it. Staff counsel, George Givens made additional remarks in reference to Cary. No further discussion by members and the vote was taken and passed with a favorable report. It was requested that Sen. Horton handle this bill on the senate floor for discussion.

HB – 1574 – STATE PARKS SYSTEM ADDS & STUDY – Rep. Joe Hackney explained the bill. Sen. Albertson asked for clarification as to the location of Blewett Falls. Mr. Givens advised. Ms. Carol Tingley, DENR, Division of Parks, gave a more detailed explanation of the surrounding counties. Sen. Weinstein moved for a favorable report. Having no further discussion, the vote was taken and passed with a favorable report. It was requested that Sen. Kinnaird handle this bill on the senate floor for discussion.

SB – 1202 SEPTIC SYSTEM SETBACKS FOR PRE-1977 LOTS – Sen. R. C. Soles explained the bills. Sen. Holloman moved for favorable report. Mr. Terry Pierce, Director of Environmental Health, DENR, told members they oppose this bill because they feel there are additional rules necessary. Mr. Don Youcey, Health Director of Brunswick County addressed members and urged their support. Sen. Allran asked how the footage was changed from 10 ft to 20 ft. Sen. Soles explained and Mr. Youcey made additional comments about how during the review of the program they noticed a discrepancy. Sen. Hunt inquired if anyone that had bought property had any problems with the set back. Sen. Soles advised he knew of none. Sen. Horton had a couple of questions that Mr. Pierce addressed. No further discussion and the vote was taken and given a favorable report.

The meeting adjourned at 11:30 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. B. Davis, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, June 15, 2004

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

FAVORABLE

S.B. **1202**	Septic System Setbacks for Pre-1977 Lots.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **1574**	State Parks System Adds. & Study.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **1607**	State Nat. & Hist. Preserve Removals.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1607*

Committee Substitute Favorable 6/1/04

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.

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

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representatives Weiss and Miner
Date:	15 June 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	2nd Edition		

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.***

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. The property was purchased with funds from the Federal Land and Water Conservation Fund, thus 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.

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

H1607-SMRI-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1574*

Committee Substitute Favorable 6/1/04

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.

HOUSE BILL 1574:
State Parks System Adds. & Study

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representatives Hackney and Insko
Date:	15 June 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	2nd Edition		

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 and directs 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 892 acres to be included in the proposed State Natural Area from Duke University for a purchase price of two million five hundred forty-five thousand dollars ($2,545,000). 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. In addition to the property already acquired, there will likely be additional acquisitions for this unit in the future. 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

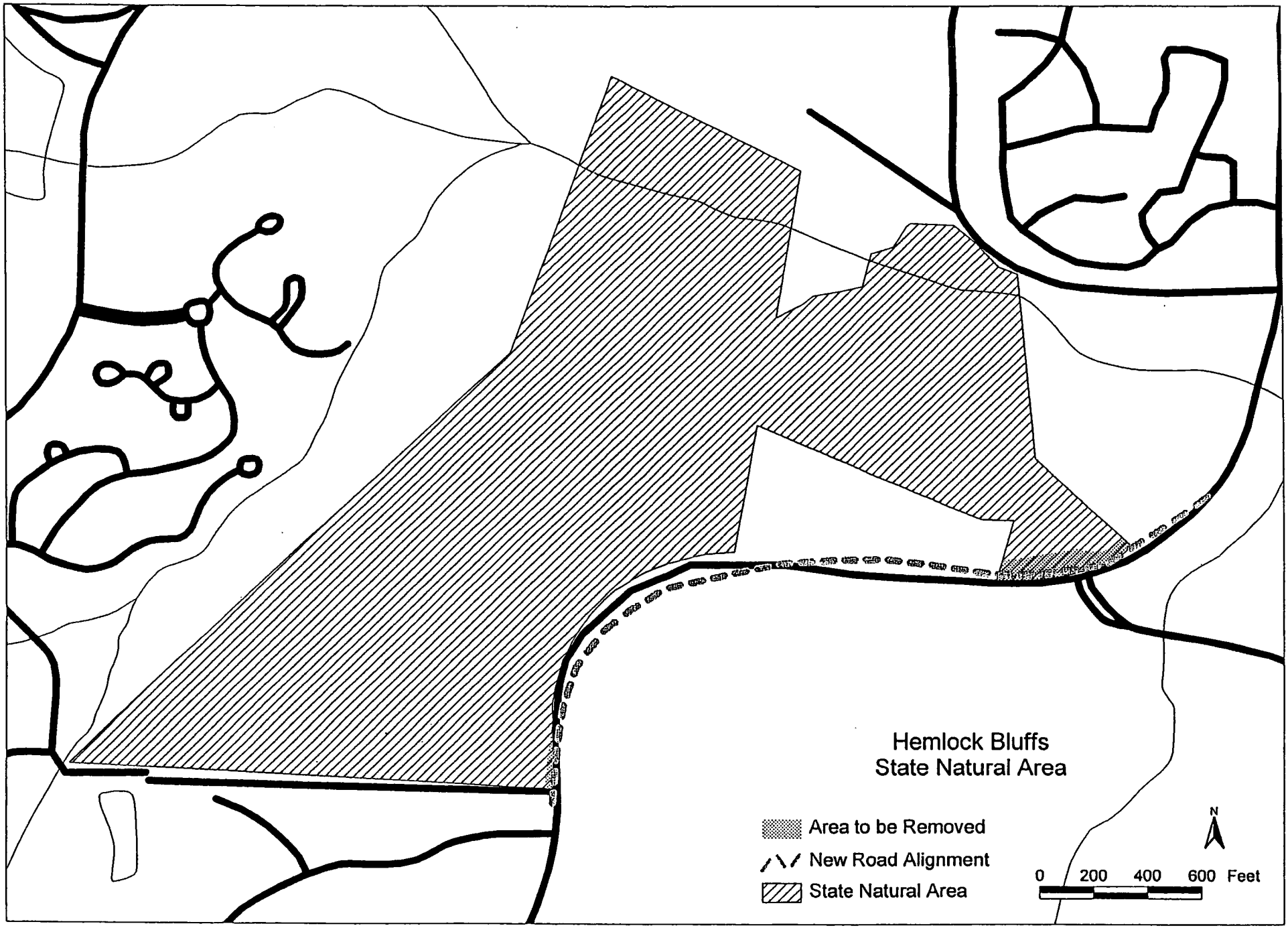
parking. The proposed State Natural Area is not suitable for campgrounds and other such intensive uses, which are available nearby at Jordan Lake State Recreation Area.

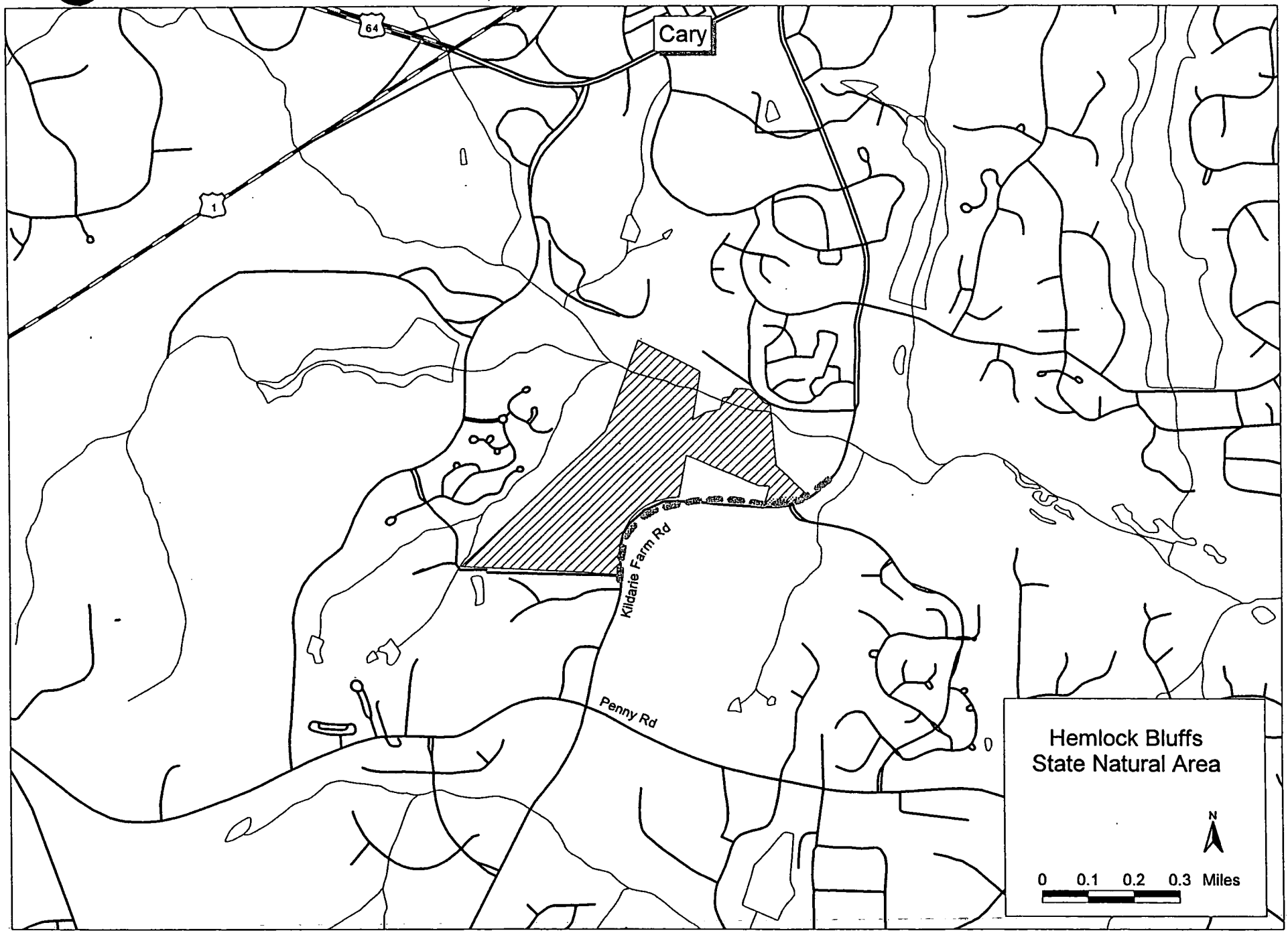
Study of new State Recreation Area at Blewett Falls Lake

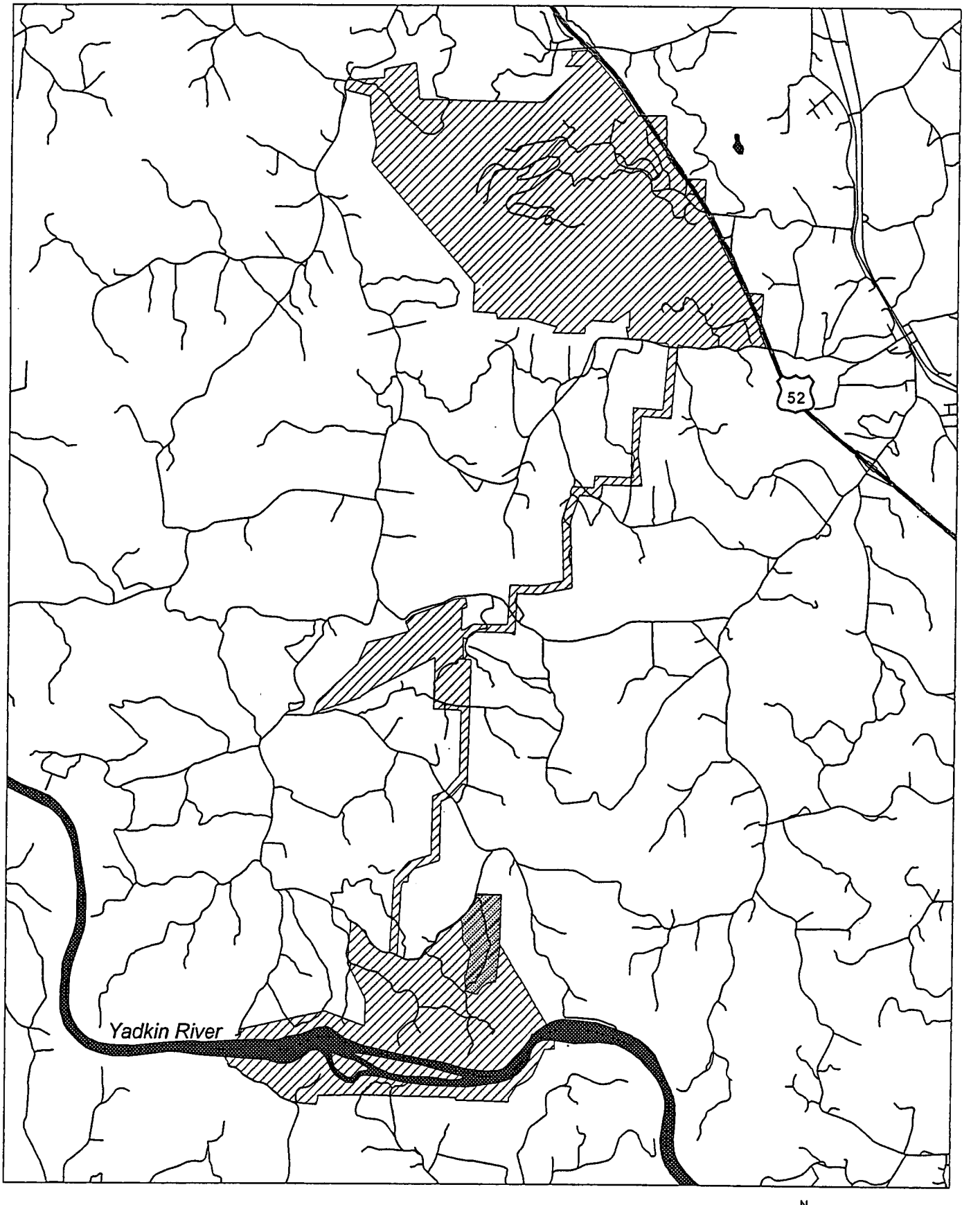
The Division has identified the Lower Pee Dee, which includes Blewett Falls Lake, as the highest ranked candidate for establishment of a new State Recreation Area.

BILL ANALYSIS: House Bill 1574 authorizes DENR to add the Lower Haw River State Natural Area to the State Parks System and directs 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-002


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


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



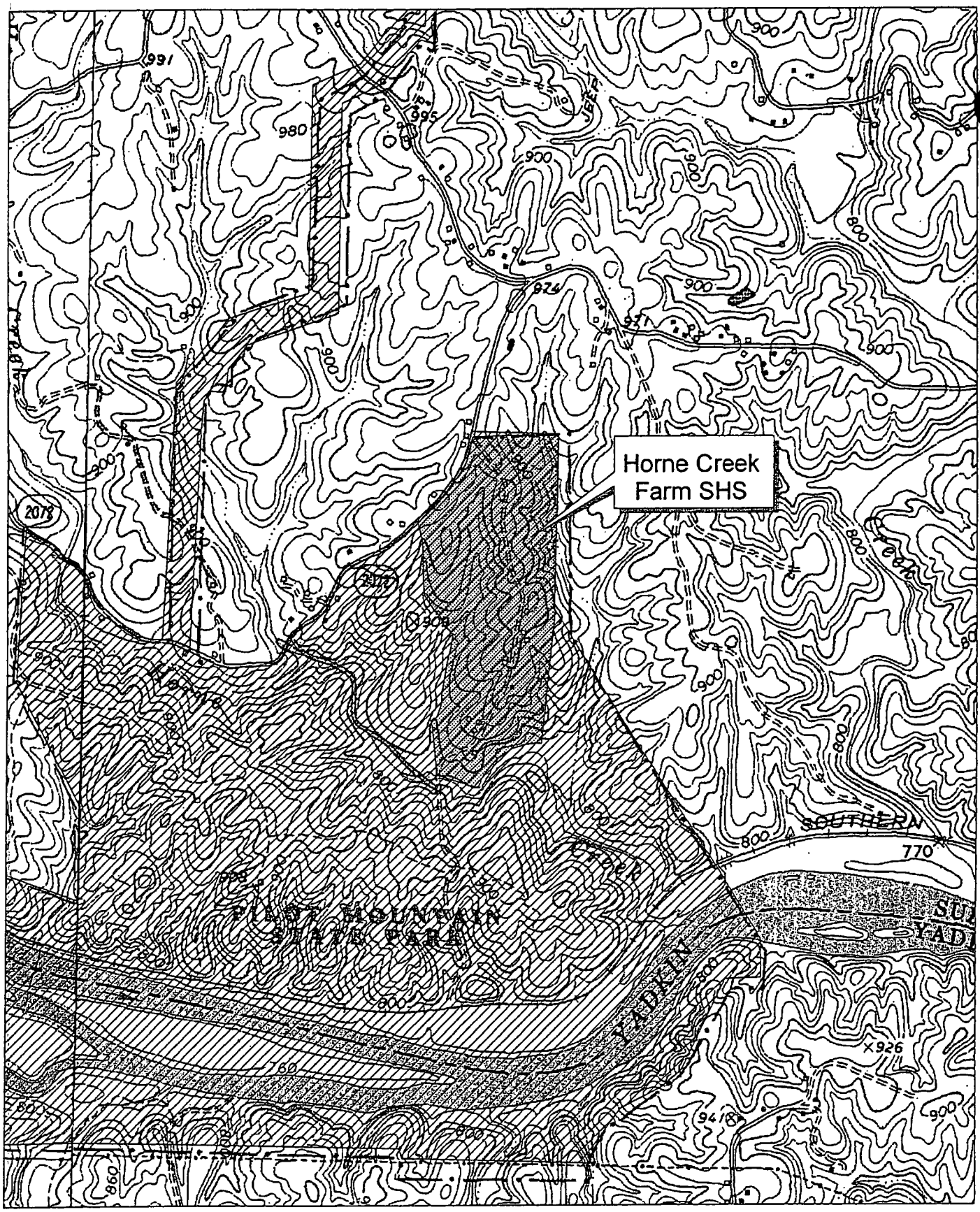
Pilot Mountain
State Park
Area

Horne Creek Farm SHS

State Park

N

0 3000 6000 Feet



Pilot Mountain
State Park

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.

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

BILL ANALYSIS

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

SUMMARY: ***Senate Bill 1202 would reduce from 20 feet to 10 feet the minimum horizontal separation distance between a septic tank system that is located on a lot platted prior to 1 July 1977 and is operated in Soil Group I (sandy texture) soils and any other septic tank system. The bill 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 sanitary sewage and treatment systems (septic tank system) and certain other features, including wells, surface waters, building foundations, property lines, and nitrification fields from other septic tank systems. The rule provides that the minimum horizontal separation distance required between two septic tank systems is twenty (20) feet.

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

- The lot was platted prior to 1 July 1977.
- The lot was 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 septic tank systems.

BILL ANALYSIS: Senate Bill 1202 would allow the installation and operation of a septic tank system to be located ten (10) feet or more from any other septic system if the lot meets the following criteria:

- The septic tank system is located on a lot platted prior to 1 July 1977.
- The septic tank system is 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.

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to applications for permits made on or after that date.

S1202-SMSY-001

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

June 15, 2004
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Terry L. Pierce	NCDENR- Div Env Hlth
STEVE STEINBECK	NCDENR/DEH
Carol Tingley	DENR/Parks
	Gov. Office
Johanna Reese	DENR
	TNC
Mike Nelson	CCNC
Tracy Kimbrell	Parker Poe
Scott Byzle	Parker Poe
BRUCE THOMPSON	PARKER POE

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason Cowley	Parker Poe
Tim Minton	NC Home Builders Association
Lisa Martin	NC Home Builders Assoc.
Bob Sloane	NC Forestry Assoc.
JERRY SCHILL	NC Fisheries Assoc
Erin Kinney	NC Conservation Network
Sara Brodnax	Conservation Council NC
Jim McPherson	DCR - St. Historic Sites
Heyward McKinney	DCR
Don Yousey	Brunswick Co. Health Dept.
Preston Pate	NC DENR

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AG Rogers	DENR
Steve Woodson	NC Farm Bureau
Tracy Hollabaugh	NC Pork Council
John Cyrus	NC Grange
David Meredith	NC State Grange
Chris Dillon	Pro Team
Jane Daughtridge	Business Alliance for a Sound Economy P.O. Box 3101 Wilmington, NC 28406
Preston Howard	NCIC
Nancy Thompson	NCIC
Kim Hibbard	NCCM

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 29, 2004	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1210	Phase II Stormwater Management-1.	Senator Clodfelter

Senator Charles W. Albertson, Chair

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 29, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 29, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were sixteen members present.

Sen. Albertson called the meeting to order and recognized the Pages. He also thanked the staff and the League of Municipalities, The Realtors, The Home Builders and the County Commissioners Association for all the time and effort put forth with this bill.

SB–1210 –PHASE II STORMWARTER MANAGEMENT-1. Sen. Clodfelter moved for adoption of the PCS for discussion. So moved. Sen. Clodfelter also commended the working team for their hard work, and then he explained the bill. Sen. Horton asked for the differences from the version they were given on Monday night and what was presented in today's meeting. Sen. Clodfelter explained that the changes were technical and Mr. George Givens, staff counsel gave a detailed explanation. (Summary attached) Sen. Clodfelter made additional comments after Mr. Givens and explained to Sen. Horton that the effective date was changed. His overview comment was that this bill gives options and choices to local governments as to who and how they can administer the law and he feels this is a better bill than the first version. Chairman Albertson called for comments from the public.

Mr. Rich Z echini, NC Association of Realtors, thanked the sponsor and the leadership and the staff for the work done on this bill. They feel this is going in the right direction to help everyone.

Mr. Paul Myer, County Commissioners Association spoke in favor of this legislation and thanked everyone involved.

Mr. Tim Minton, NC Home Builders also thanked everyone and commended their good works. They too support this legislation.

Ms. Kim Hibberd, NC League of Municipalities spoke in favor and commended the good work.

Mr. David Knight, NC Sierra Club addressed members and opposed the legislation due to environmental issues they feel aren't addressed very well in this version. He commended the hard work but is concerned with this version of the bill. They are disappointed this doesn't address everyone's issues.

Sen. Webster asked the County Commissioners how much additional personnel would be necessary. Mr. Myer advised he didn't know the answer to that question as yet. Sen. Webster inquired as to whether or not this bill had a fiscal note. Sen. Albertson advised this is due to a federal mandate that are working from and there is no fiscal note.

Sen. Kinnaird questioned staff as to who was involved in the working groups of this bill and why wouldn't all interested parties be included in all the meetings. Mr. Givens responded to her inquiry. Sen. Kinnaird also asked if EMC would be a significant difference. George advised it would and explained the EMC rules.

Sen. Clodfelter made additional comments and explained how much this was improved from the original bill and how this PCS has come together to help everyone. He feels this is a very good compromise and a better balance than before.

Sen. Lucas asked Sen. Clodfelter if he agreed with Mr. Knight's comments and he advised he did not agree with their position.

Sen. Hargett moved for a favorable report for the PCS, unfavorable as to the original bill.

Sen. Albertson commended the committee staff again for their good work and all the hours spent on this bill.

The vote was taken and so passed.

The meeting adjourned at 11:55 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J.B. Davis, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, June 29, 2004

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1210** Phase II Stormwater Management-1.

Draft Number:	PCS-75354-RT-81
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1210*

Short Title:	Phase II Stormwater Management-1.	(Public)
Sponsors:	Senators Clodfelter, Albertson, Dorsett, Kinnaird; Hartsell, Hunt, Lucas, and Moore.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS, 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 Department 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 Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. 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. – New development or redevelopment in any area designated as an urbanized area under the 1990 or 2000 census by the Bureau

of the Census or designated under procedures established in Section 7 of this act, and located in a local planning jurisdiction that does not administer either a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management or a local stormwater management program approved pursuant to Section 5 of this act shall comply with the standards set out in Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. The Department shall administer and enforce these standards in these areas. A public entity may request that the Department 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 more 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. – After the Department 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 Department. The Department 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 an area designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census or a local government designated pursuant to Section 7 of this act may submit a stormwater management program for its jurisdiction or a portion of its jurisdiction to the Department for approval. To this end public entities are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater management programs. Public entities are authorized to create or designate agencies or subdivisions to administer and enforce the programs. 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 resolutions establishing 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 Department. The Department

shall review each program submitted and within 90 days of receipt thereof shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Department 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 Department 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 Department, the Department 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 a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management application 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 Department shall send a draft permit decision to public notice by 1 November 2004.

(2) For a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management application 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 Department shall send a draft permit decision to public notice by 1 May 2005.

(3) A public entity shall adopt postconstruction stormwater management measures that become effective within 24 months after the date on which a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management is issued.

SECTION 7. Designation. – A public entity 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 follows:

(1) Federal Designation. – A public entity that owns or operates a small municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulation § 122.32 (1 July Edition).

(2) State Designation Process. – The Department shall designate a public entity as a regulated entity as provided in this subdivision.

a. General Criteria. – The Department shall designate a public entity as a regulated entity based on the public entity's potential to adversely impact water quality. An adverse impact on water quality includes any activity that has a significant adverse

habitat or biological impact or that violates water quality standards, including, but not limited to, impairment of designated uses.

b. Designation Schedule. – The Department 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).

c. Identification of Candidate Regulated Entities. – The Department shall identify public entities as candidates for designation as a regulated entity based on the following criteria:

1. Municipalities. – A municipality shall be identified as a candidate for designation as a regulated entity if its total population is greater than 10,000 and its population density is at least 1,000 people per square mile.
2. Counties. – A county shall be identified as a candidate for designation as a regulated entity if the county municipal and nonmunicipal total population is greater than 45,000 persons.
3. Other public entities. – A public entity shall be identified as a candidate for designation as a regulated entity if it is a municipality located within a designated county or is an owner or operator of a municipal separate storm sewer system (MS4).

d. Notice and Comment on Candidacy. – The Department shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of the public entities, the Department shall publish a list of public entities within a river basin identified as candidates for designation as regulated entities. The Department 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.

e. Designation of Regulated Entities. – After review of the designation criteria and review of public comments received, the Department shall make a determination on designation for each of the candidates. The Department shall designate a candidate public entity as a regulated public entity if the Department determines that the public entity either:

1. 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. Provides 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 Department 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 Designation. – The Department 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 the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Department.

(3) Designation Under a Total Maximum Daily Load (TMDL) Implementation Plan. – The Department 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.

SECTION 8. Petition Process. – A petition may be submitted to the Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department 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).

(3) Petition Administration. – The Department shall process petitions in the following manner:

a. The Department 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 Department shall evaluate only complete petitions. The Department 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 Department requests additional information, the petitioner may submit additional information and the Department 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 Department 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 Department shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Department shall accept and consider public comment for at least 30 days from the date of posting.

f. The Department 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 Department determines that there is a significant public interest in holding a public hearing. The Department's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Department 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 Department 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 Department 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 Department shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Department 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 Department 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.

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 design manual and model ordinance shall be completed by 1 October 2005.

SECTION 10. Design Manual. – Consistent with G.S. 150B-2(8a)h., the Division, in consultation with the Division of Land Resources, Division of Soil and Water Conservation, and North Carolina State University, shall develop a design manual to provide assistance in determining which controls are best suited to the unique characteristics of the permittee.

SECTION 11. Definitions. – The following definitions apply to this act:

(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) "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 or the water area of a swimming pool.

(5) "Department" means the Department of Environment and Natural Resources.

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

(7) "Population density" means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the sum of the permanent and seasonal populations as determined by the Department or calculated by the Department from a measure of housing unit density.

(8) "Public entity" means the United States; the State; or a city, village, township, county, school district, public college or university, 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 entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(11) "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.

(12) "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).

(13) "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.

(14) "Total population" means the combined permanent and seasonal population of an area as determined from the most recent data available from local, State, or federal sources.

SECTION 12. Construction of Act. –

(1) Nothing in this act shall be construed to limit 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.

SECTION 13. Section 2 of this act becomes effective 1 July 2006. All other sections of this act become effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1210*
PROPOSED COMMITTEE SUBSTITUTE S1210-PCS75354-RT-81

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. An area delineated pursuant to subdivision (2) of this section.
   c. 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 delineated pursuant to subdivision 2 of this section; (iii) the jurisdiction of a regulated entity designated pursuant to Section 7 of this act; and (iv) 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. – The Commission shall identify an area in the unincorporated area of a county only if the area is outside a municipality that is designated as an urbanized area by the 1990 or 2000 census by the Bureau of the Census and the area:

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. The first sentence of subsection (e) is deleted and replaced with: "The following model practices for a postconstruction stormwater management program may be used in regulated coverage areas:".

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1210*

Short Title:	Phase II Stormwater Management-1.	(Public)
Sponsors:	Senators Clodfelter, Albertson, Dorsett, Kinnaird; Hartsell, Hunt, Lucas, and Moore.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS, 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 Department 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 Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. 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. – New development or redevelopment in any area designated as an urbanized area under the 1990 or 2000 census by the Bureau

habitat or biological impact or that violates water quality standards, including, but not limited to, impairment of designated uses.

b. Designation Schedule. – The Department 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).

c. Identification of Candidate Regulated Entities. – The Department shall identify public entities as candidates for designation as a regulated entity based on the following criteria:

1. Municipalities. – A municipality shall be identified as a candidate for designation as a regulated entity if its total population is greater than 10,000 and its population density is at least 1,000 people per square mile.
2. Counties. – A county shall be identified as a candidate for designation as a regulated entity if the county municipal and nonmunicipal total population is greater than 45,000 persons.
3. Other public entities. – A public entity shall be identified as a candidate for designation as a regulated entity if it is a municipality located within a designated county or is an owner or operator of a municipal separate storm sewer system (MS4).

d. Notice and Comment on Candidacy. – The Department shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of the public entities, the Department shall publish a list of public entities within a river basin identified as candidates for designation as regulated entities. The Department 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.

e. Designation of Regulated Entities. – After review of the designation criteria and review of public comments received, the Department shall make a determination on designation for each of the candidates. The Department shall designate a candidate public entity as a regulated public entity if the Department determines that the public entity either:

1. 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. Provides 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 Department 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 Designation. – The Department 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 the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Department.

(3) Designation Under a Total Maximum Daily Load (TMDL) Implementation Plan. – The Department 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.

SECTION 8. Petition Process. – A petition may be submitted to the Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department 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).

(3) Petition Administration. – The Department shall process petitions in the following manner:

a. The Department 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 Department shall evaluate only complete petitions. The Department 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 Department requests additional information, the petitioner may submit additional information and the Department 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 Department 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 Department shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Department shall accept and consider public comment for at least 30 days from the date of posting.

f. The Department 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 Department determines that there is a significant public interest in holding a public hearing. The Department's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Department 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 Department 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 Department 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 Department shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Department 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 Department 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.

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 design manual and model ordinance shall be completed by 1 October 2005.

SECTION 10. Design Manual. – Consistent with G.S. 150B-2(8a)h., the Division, in consultation with the Division of Land Resources, Division of Soil and Water Conservation, and North Carolina State University, shall develop a design manual to provide assistance in determining which controls are best suited to the unique characteristics of the permittee.

SECTION 11. Definitions. – The following definitions apply to this act:

(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) "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 or the water area of a swimming pool.

(5) "Department" means the Department of Environment and Natural Resources.

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

(7) "Population density" means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the sum of the permanent and seasonal populations as determined by the Department or calculated by the Department from a measure of housing unit density.

(8) "Public entity" means the United States; the State; or a city, village, township, county, school district, public college or university, 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 entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(11) "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.

(12) "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).

(13) "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.

(14) "Total population" means the combined permanent and seasonal population of an area as determined from the most recent data available from local, State, or federal sources.

SECTION 12. Construction of Act. –

(1) Nothing in this act shall be construed to limit 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.

SECTION 13. Section 2 of this act becomes effective 1 July 2006. All other sections of this act become effective when the act becomes law.

SENATE BILL 1210:
Phase II Stormwater Management-1.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Clodfelter
		Summary by:	Jeff Hudson Committee Counsel
Date:	June 29, 2004		
Version:	S1210-PCS75354-RT-81		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1210 (PCS) 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 5.)
- 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 6.)
- 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 PCS; and (iv) the area that is regulated by a Phase II NPDES permit for stormwater management required pursuant to Section 8 of the PCS 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 6.) 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 PCS 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 PCS. (Section 10 of the temporary Phase II stormwater management rules as modified is attached to the end of this analysis at page 6.)

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 PCS 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 meets the following model practices:

(i) The program shall require all projects as defined in Sub-Item (1)(e)(i)(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.

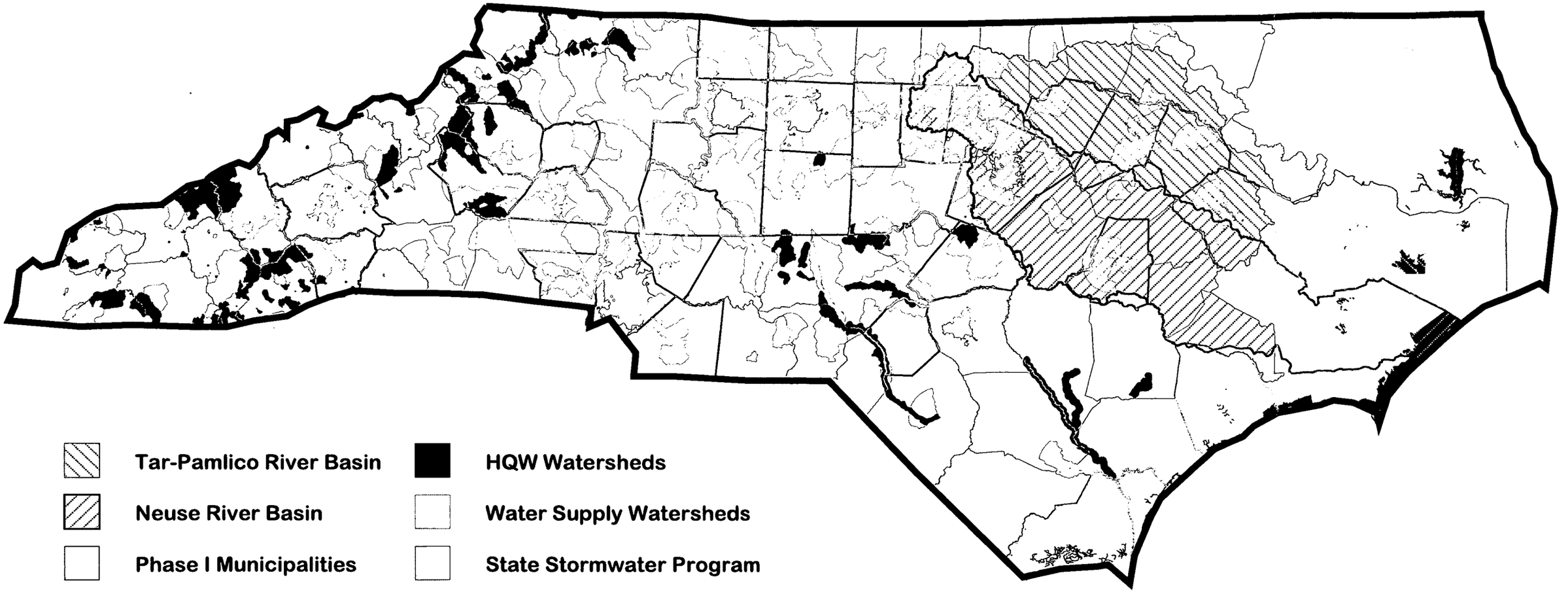
(k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of this Rule.

(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).

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

0 70 140 Miles

N

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — June 29, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	MCIC
Bob Loven	NC Forestry Assn
Jimmy Randolph	NC Poultry Fed.
Cris Porter	Smith Anderson
Henry Jones	Attorney N.C. Poultry Fed.
Amy Jo Horne	NCMS
Stephanie Simpson	NCAR
Henry Hutchaff	N.C.S.D.A.
Robb Leonard	Bode & Assoc
Elizabeth Dalton	Bode Assoc.
Barbara Canales	BSGR

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Sen. Ag/Env/Nat. Resources
Name of Committee

Date

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David Knight	NC Sierra, NLWF
Amy Pickle	SELC
Mike Nelson	CCNC
Robin Smith	DENR
Kelly Braam	NCBBF
Bobby Byrum	RRC
Anna Old	CWMTF
Melisse Hoke	intern for David Knight/Sierra Club
William Moss	Sierra Club
Kathryn Sawyer	ACEC/NC

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

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Adrienne Harris	NC Con Net
Christine Wunsche	NCPIRG
Karl Hartman	NC PIRG
Erin Kinney	NCconNet
Andrea Reese	NC PIRG
MIKE RANDALL	NC DWQ
Sara Brodnax	CCNC
Elizabeth Ouzts	NCPIRG
Grady McCallie	NC Conservation Network.
Bradley Bennett	NC DWQ
Johanna Reese	DENR

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — 6-30-04

Name of Committee — Date

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Kim Hibbard	NCLM
Lucius Pullen	NC Mining Association
D. Holman	Chamber
Tom Beeson	NC Environmental Defense
Camilla Stell	NCLH
Carole Lawler	EGLS
Angie [illegible]	TNC
Tamara Cheng	TNC
Trisha Hardin	policy office of Governor
Michael Nelson	CCNC

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

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Tim Minton	NC Home Builders
Lisa Martin	NC Home Builders
Lisa Piercy	Duke Energy
R. Rogers	DENR
Pricy Harrison	
Bill Ross	NC DENR
John McMillan	MF&S
Jim Stephenson	NC Coastal Federation
Mary P. Thompson	NC DENR
Currie Freels	NC Conservation Network

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 6, 2004	11:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 831	Coastal Recreational Fishing License/Fund.	Representative McComas Representative Gibson, III

Senator Charles W. Albertson, Chair

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 6, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 6, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were fourteen members present.

Chairman Albertson called the meeting to order and offered condolences to the Sen. David Weinstein for the loss of his wife over the weekend. The Committee honored the Weinstein family with a moment of silence.

Chairman Albertson called upon Sen. Lucas to chair while he explained the bill on the agenda.

HB-831 COASTAL RECREATIONAL FISHING LICENSE/FUND - Sen. Albertson moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Albertson asked staff counsel, Jeffrey Hudson to explain the PCS. After the explanation Sen. Lucas inquired as to whether or not the Division of Marine Fisheries keeps all records and data indefinitely for license purchased and also if it will be July 2005 before any license can be purchased. Mr. Hudson advised that the DMF does retain all records and also that it will be next year before the purchase of licenses will begin if this legislation passes. Sen. Albertson reminded members that this would be sent to the Finance and Appropriations committees if it passes today. Sen. Clodfelter asked if the means you have to get a license for personal consumption. Mr. Hudson explained. Sen. Horton sent forth an amendment (copy attached) and Mr. George Givens, staff counsel explained the amendment. Sen. Albertson supports the amendment. The vote was taken on the amendment and passed. Sen. Clodfelter inquired about the age differences mentioned. Mr. Hudson explained the prices of the license for the different ages.

Chairman Lucas called for comments from the public.

Mr. Preston Pate, Director of Division of Marine Fisheries addressed members and spoke in favor of the bill. He explained how this would also enable us to receive federal funding. Sen. Lucas inquired as to how much funding and Mr. Pate advised $1.5 million. Sen. Webster asked when this version of the bill was made available to members and Sen. Albertson reminded him that the announcement was made in session on Thursday that the PCS would be delivered before the meeting today and it was, however, there were a couple more changes made this morning thus creating another PCS that was just handed out in our meeting. Mr. Pate addressed members

again and made additional comments relative to the Board of Trustee appointments and why it is important that this be done now so that Board members may be appointed before next year.

Mr. Jerry Schill, President of NC Fisheries Association told members they oppose the recreational fishing license and have many years, however this is the best version that has been presented. He told members that he didn't have any other representation to speak against this today because they were busy with their fishing businesses. He expressed concerns that they feel that federal money comes with strings attached. He told members again that this is the most positive version but they also have concerns about non-profits receiving funds as mentioned in the PCS.

Representative Pryor Gibson was recognized as the sponsor of the original bill. He concurred with Mr. Schill's comments and agreed that this is the best version and hopes to see this pass this session. He feels this is important for North Carolina. We are the only state on the east coast that doesn't have this. It is also important for the eco system to protect our fishery resources.

Mr. Doug Roberts, Eastern Saltwater Fishing Club, New Bern, NC, addressed members. They overwhelmingly support this urge passage. He told member that over-fishing is occurring and is in danger if we don't start protecting our fishing industry.

Mr. Ron McPherson, citizen from Atlantic Beach, NC spoke in favor and urged support. There are a couple of items of concern on the distribution of funds and feels that some people should be grandfathered into this legislation but he is pleased to know we are moving forward with this issue.

Sen. Albertson moved for a favorable report to incorporate the amendment into the PCS, but unfavorable as to the original bill. The vote was taken and passed.

The meeting adjourned at 11:50 a.m.

Sen. Charlie W. Albertson, Chairman

Cindy J. Davis, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

Tuesday, July 06, 2004

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #3) **831** Coastal Recreational Fishing License/Fund.

Draft Number:	PCS60522
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 6

HOUSE BILL 831*

Committee Substitute Favorable 5/20/03
Committee Substitute #2 Favorable 7/9/03
Committee Substitute #3 Favorable 7/17/03
Fifth Edition Engrossed 7/19/03
Corrected Copy 7/20/03

Short Title: Coastal Recreational Fishing License. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A COASTAL RECREATIONAL FISHING LICENSE.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that coastal recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State, nation, and world, and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; and

Whereas, the General Assembly is committed to the continued viability of both recreational and commercial fishing industries in the State; and

Whereas, the General Assembly intends that the commercial fishing industry be allowed to continue to take fish by means of all methods traditionally employed in commercial fishing operations, including the use of nets and trawls; and

Whereas, the General Assembly finds that in order to protect coastal fishery resources, it is essential that the recreational as well as the commercial fishing sectors

provide data on use of fishery resources for the development of scientifically valid plans to manage fishery resources; and

Whereas, the General Assembly finds that it is essential to the success of efforts to better manage fishery resources that both the recreational and commercial fishing sectors are involved in and support these efforts; 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, 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, North Carolina is the only coastal state between Delaware and Texas that is not benefiting from a system for licensing coastal recreational fishing; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113 of the General Statutes is amended by adding two new Articles 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.

(k) Confidentiality of Information. – Information collected pursuant to this Article, including the names and addresses of licensed individuals, is confidential and is not a public record under Chapter 132 of the General Statutes.

"**§ 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. 113-174.4. 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. – $10.00. 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 18 years of age $150.00

b. 18 years of age to younger than 62 years of age $200.00

(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 a licensed medical doctor. 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) 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) Is 62 years of age or older.

(3) Holds a SCFL or a RSCFL.

(4) 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).

(5) Is fishing from a public bridge.

(6) Is fishing from the shore or a shore-based structure.

(7) Is fishing with hook and line in the county of the individual's residence using natural bait.

(e) 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.

(f) Fees collected under this section shall be credited to the General Fund and shall be used exclusively for the management, protection, restoration, and enhancement of the marine resources of the 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 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. 113-174.4. 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. 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. 113-172 is repealed.

SECTION 7. G.S. 113-173 is repealed.

SECTION 8. 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 9. Of the funds appropriated to the Department of Environment and Natural Resources by S.L. 2003-284, the Department may use up to one million one hundred thousand dollars ($1,100,000) for the 2003-2004 fiscal year and up to two million dollars ($2,000,000) for the 2004-2005 fiscal year to implement the provisions of this act. However, no funds appropriated to the Division of Forestry Resources or the Division of Soil and Water Conservation shall be used for the implementation of this act.

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 8, 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, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 831*

Committee Substitute Favorable 5/20/03
Committee Substitute #2 Favorable 7/9/03
Committee Substitute #3 Favorable 7/17/03
Fifth Edition Engrossed 7/19/03
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Short Title: Saltwater Fishing Fund/Holdover Appointments. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA SALTWATER FISHING FUND AND LICENSE AND TO PROVIDE THAT VACANCIES MAY BE FILLED IN CERTAIN OFFICES DURING A HOLDOVER PERIOD.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that saltwater fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State, nation, and world, and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; and

Whereas, the General Assembly is committed to the continued viability of both recreational and commercial fishing industries in the State; and

Whereas, the General Assembly intends that the commercial fishing industry be allowed to continue to take fish by means of all methods traditionally employed in commercial fishing operations, including the use of nets and trawls; and

Whereas, the General Assembly finds that in order to protect coastal fishery resources, it is essential that the recreational as well as the commercial fishing sectors provide data on use of fishery resources for the development of scientifically valid plans to manage fishery resources; and

Whereas, the General Assembly finds that it is essential to the success of efforts to better manage fishery resources that both the recreational and commercial fishing sectors are involved in and support these efforts; 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 14C.

"North Carolina Saltwater Fishing Fund.

"**§ 113-175. Definitions.**

As used in this Article:

(1) 'Board of Trustees' means the Board of Trustees of the Fund.

(2) 'Fund' means the North Carolina Saltwater Fishing Fund.

(3) 'Investment income' means interest earned from the investment of license revenues and the proceeds of any gifts, grants, or contributions deposited in the Fund.

(4) 'License revenues' means the net proceeds from the sale of Saltwater Fishing Licenses issued under G.S. 113-174.2. 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.

"**§ 113-175.1. North Carolina Saltwater Fishing Fund.**

There is hereby established the North Carolina Saltwater Fishing Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Fund is to enhance the fishery resources of the State for commercial and recreational fishing. License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund. The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. 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.

"**§ 113-175.2. Board of Trustees of the North Carolina Saltwater Fishing Fund.**

(a) Board of Trustees established. – There is hereby established the Board of Trustees of the North Carolina Saltwater Fishing Fund. The Board of Trustees shall be independent, but for administrative purposes shall be located under the Department of Environment and Natural Resources.

(b) Membership; Qualifications. – The Board of Trustees shall consist of eleven members as follows:

(1) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(2) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(3) One individual appointed by the Governor, who has purchased a current Saltwater Fishing License at the time of the appointment.

(4) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(5) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(6) One individual appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, who has purchase a current Saltwater Fishing License at the time of appointment.

(7) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(8) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(9) One individual appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, who has purchased a current Saltwater Fishing License at the time of appointment.

(10) The Director of the Division of Marine Fisheries or the Director's designee shall serve as a nonvoting, ex officio member of the Board of Trustees.

(11) The Chair of the Marine Fisheries Commission, or the Chair's designee shall serve as a nonvoting, ex officio member of the Board of Trustees.

(c) Officers. – The Governor shall appoint a member of the Board of Trustees to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Board of Trustees shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning July 1 and ending June 30 of the following year. The Vice-Chair may serve any number of consecutive terms.

(d) Terms. – The term of office of members of the Board of Trustees appointed under subdivisions (1) through (9) of subsection (b) of this section is three years. 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. The term of members appointed under subdivisions (1), (4), and (7) of subsection (b) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), and (8) of subsection (b) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), and (9) of subsection (b) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. An individual appointed under subdivisions (1) through (9) of subsection (b) of this section must continue to have a current Saltwater Fishing License in order to remain eligible to serve on the Board of Trustees.

(e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term. If a vacancy occurs for a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122.

(f) Meetings; Frequency. – The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members. Six members of the Board of Trustees shall constitute a quorum for the transaction of business.

(g) Per Diem and Expenses. – The Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, travel, and subsistence expenses shall be paid from the Fund.

"**§ 113-175.3. Allocation of investment income of the Fund; other powers and duties.**

(a) Disbursement of Funds. – The State Treasurer shall disburse investment income only upon the written direction of the Board of Trustees.

(1) The Board of Trustees may authorize the disbursement of investment income that accrues to the Fund for:

a. Resource and habitat enhancement, including, but not limited to, creation of natural nursery areas, construction of artificial reefs, restoration and enhancement of submerged aquatic vegetation, creation and restoration of oyster habitat, and acquisition of land or an interest in land that provides for the preservation of critical fisheries habitat.

b. Grants to fund fisheries management research for specifically designated species.

c. Acquisition of land or an interest in land that provides for the enhancement of fishery habitat or public access to coastal fishing waters.

d. Purchase or construction of public beach access areas and public marinas. If the Board of Trustees purchases or constructs a public marina, it may establish a boat docking fee.
e. Emergency dredging for the restoration of access to public fishing areas.
f. Establishment of scholarships for individuals pursuing degrees in marine sciences.
g. Administrative and operating expenses of the Board of Trustees.

(2) The Board of Trustees shall not authorize the disbursement of investment income that accrues to the Fund for law enforcement purposes.

(b) Applicants. – Any of the following are eligible to apply for monies from the Fund:

(1) A State agency.
(2) A local government or other political subdivision of the State or a combination of such entities.
(3) A nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of the marine resources of the State.

(c) Administrative and Operating Expenses. – No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees.

(d) Acquisition of Real Property. – The Board of Trustees may acquire real property by purchase, negotiation, gift, or devise. Any acquisition of real property by the Board of Trustees must be reviewed and approved by the Council of State and the deed for the real property subject to approval of the Attorney General before the acquisition can become effective. Nothing in this section shall allow the Board of Trustees to acquire real property by eminent domain.

(e) Real Property Management. – The Board of Trustees may designate managers or managing agencies of the real property acquired under this Article.

(f) Designation of Locations for Purchase and Renewal of Licenses. – Pursuant to G.S. 113-174.2, the Board of Trustees may designate locations at which Saltwater Fishing Licenses may be purchased and renewed.

(g) The Board of Trustees may adopt rules to implement this Article.

"**§ 113-175.4. Report.**

The Chair of the Board of Trustees shall submit to the Joint Legislative Commission on Seafood and Aquaculture 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."

SECTION 2. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14B.

"Saltwater fishing licenses.

"§ 113-174. Definitions.

As used in this Article:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'SFL' means Saltwater 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) '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.

"§ 113-174.1. General provisions governing licenses.

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters without having purchased a current 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. – 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) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address 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.

(e) Enforcement for Charterboats and Headboats. An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.

(f) Cancellation. – The Division may cancel a license issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance.

(g) Reporting Requirements. – A person licensed under this Article shall comply with the biological data sampling and survey programs of the Commission and the Division.

"**§ 113-174.2. Saltwater 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 having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.

(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.

(c) Types of SFLs; Fees; Duration. – The Division shall issue the following SFLs:

(1) 1-year SFL. – $15.00. This license is valid for a period of one year from the date of issuance.

(2) 2-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.

(3) 3-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.

(4) 7-day SFL. – $1.00. This license is valid for a period of 7 consecutive days. An individual may purchase this license only once in any 12 month period.

(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.

(6) Lifetime SFL. – This license is valid for the lifetime of the licensee. The fee for the Lifetime SFL, 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 18 years of age	$200.00
d.	18 years of age or older	$500.00

(d) Exemptions. – An individual may engage in recreational fishing by means of recreational gear without having purchased a SFL if the individual is 18 years of age or

younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent."

SECTION 3. 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 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~~ grandparent's, or

guardian's shellfish ~~license.~~license or a parent's, grandparent's, or guardian's shellfish endorsement of a SCFL.

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

SECTION 5. G.S. 120-122 reads as rewritten:

"**§ 120-122. Vacancies in legislative appointments.**

When a vacancy ~~occurs, other than by the expiration of term,~~ occurs in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 20 days after the date of adjournment; ~~or~~ (iii) after sine die adjournment of the regular ~~session,~~ session; or (iv) when the term of office expires and a successor has not been appointed, then the Governor may appoint a person to serve until the expiration of the term or until the General Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. When a person is holding over in office after the expiration of the term, for the purpose of this section that office may be filled as if it were vacant. Before making an appointment, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation. After receiving the written recommendation, the Governor must within 30 days either appoint the person recommended or inform the officer who made the recommendation that he is rejecting the recommendation. Failure to act within 30 days as required under the provisions of the preceding sentence shall be deemed to be approval of the candidate, and the candidate shall be eligible to enter the office in as full and ample extent as if the Governor had executed the appointment. The Governor shall not appoint a person other

than the person so recommended. Any position subject to initial appointment by the General Assembly but not filled prior to sine die adjournment of the Session at which the position was created or adjournment to a date certain which date is more than 20 days after the date of adjournment of the session at which the position was created may be filled by the Governor under this section as if it were a vacancy occurring after the General Assembly had made an appointment."

SECTION 6. 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 7. 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 8. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(h) Neither the Commission nor the Department may disclose personal information provided by an applicant for a license issued under Article 14A or 14B of Chapter 113 of the General Statutes."

SECTION 9. In order to establish a schedule of staggered terms of three years for the Board of Trustees of the North Carolina Saltwater Fishing Fund, the terms of members of the Board initially filling positions established by subdivisions (1), (4), and (7) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Board initially filling positions established by subdivisions (2), (5), and (8) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (3), (6), and (9) of subsection (b) of G.S. 113-175.2, as enacted by Section 1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June, 30 2008.

SECTION 10. Notwithstanding G.S. 113-175.3, the Board of Trustees of the North Carolina Saltwater Fishing Fund may authorize disbursement and the State Treasurer may disburse up to fifty percent (50%) of the license revenues in the North Carolina Saltwater Fishing Fund during fiscal years 2005-2006 through 2015-2016.

SECTION 11. The first report required pursuant to G.S. 113-175.4, as enacted by Section 1 of this act, is due by September 30, 2005.

SECTION 12.(a) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall develop a plan for the implementation of Section 2 of this act. The plan shall provide that:

1. Licenses may be purchased or renewed via mail, electronic mail, the internet, or telephone.
2. The licensing and renewal system shall be fully automated and shall allow for the purchase or renewal of licenses at any time, without delay.
3. The licensing system shall not require individuals to hold a physical license.
4. Verification of licensure shall be accomplished by an individual providing only the individual's name and residence address.

SECTION 12.(b) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall determine a date by which the plan developed pursuant to subsection (a) of this section would be fully implemented.

SECTION 12.(c) The Board of Trustees of the North Carolina Saltwater Fishing Fund shall study issues related to the establishment of a unified recreational fishing license for recreational fishing in both the inland and coastal fishing waters of the State. The Board shall make specific findings as to whether a unified licensing system should be adopted for recreational fishing in the State and, if so, what the system should be and how it should be implemented.

SECTION 12.(d) A report on the implementation plan, the determination of the date of full implementation, and the unified fishing license study required by subsections (a), (b), and (c) of this section shall be submitted to the Joint Legislative Commission on Seafood and Aquaculture no later than January 1, 2005.

SECTION 13. The State Controller shall transfer five million dollars ($5,000,000) from the unreserved credit balance to the North Carolina Saltwater Fishing Fund. The Board of Trustees of the North Carolina Saltwater Fishing Fund shall use these funds to implement the provisions of this act. Notwithstanding G.S. 113-175.3(a), the Board of Trustees shall repay to the unreserved credit balance the five million dollars ($5,000,000) transferred pursuant to this section by July 1, 2010.

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. Sections 2, 3, and 4 of this act become effective July 1, 2005. All other sections of this act become effective when the act becomes law.

HOUSE BILL 831:
Saltwater Fishing Fund/Holdover Appointments.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representatives Gibson and McComas
Date:	July 6, 2004	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Proposed Committee Substitute H831-CSSBf-52 [v.19]		

Sections 1 and 2 establish the North Carolina Saltwater Fishing Fund and a program for the licensing of coastal recreational fishing.

ARTICLE 14C. North Carolina Saltwater Fishing Fund.

G.S. 113-175 through 113-175.4

Establishes the North Carolina Saltwater Fishing Fund (Fund) as a nonreverting fund in the office of the State Treasurer to receive license revenues. The State Treasurer will invest the assets of the Fund and disburse investment income only as directed by the Board of Trustees of the North Carolina Saltwater Fishing Fund (Board). State agencies, local governments, and nonprofits with the primary purpose of conserving, preserving, or restoring the State's marine resources are eligible to apply for a grant from the Fund. The Board may authorize disbursement for:

- Resource and habitat enhancement.
- Grants to fund fisheries management research for specifically designated species.
- Acquisition of land that provides for the enhancement of fishery habitat or public access to coastal fishing waters.
- Purchase or construction of public beach access areas and public marinas. If the Board of Trustees purchases or constructs a public marina, it may establish a boat docking fee.
- Emergency dredging for the restoration of access to public fishing areas.
- Establishment of scholarships for individuals pursuing degrees in marine sciences.
- Administrative and operating expenses of the Board of Trustees (no more than 2% of the annual Fund balance or $1,250,000, whichever is greater, may be used).

The Board may not authorize disbursement for law enforcement.

The Board will be composed of eleven members as follows:

- Three members, each of whom holds a SFL, to be appointed by the Governor.
- Three members, each of whom holds a SFL, to be appointed by the Speaker.
- Three members, each of whom holds a SFL, to be appointed by the President Pro Tempore.
- 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 Chair of the Board will report to the Joint Legislative Commission on Seafood and Aquaculture 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.

ARTICLE 14B. Saltwater fishing licenses.

G.S. 113-174. – Definitions.

- "Commission" means the Marine Fisheries Commission.
- "SFL" means Saltwater Fishing License.
- "Division" means the Division of Marine Fisheries.
- "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 licenses.

- It is unlawful for an individual to engage in recreational fishing in coastal fishing waters without having purchased a license. It is unlawful for an individual to engage in recreational fishing in coastal fishing waters without providing the individual's name and residence address upon request of an enforcement officer.
- There are specific provisions related to enforcement for charterboats and headboats.
- A license does not authorize the license holder to sell fish taken under the license.
- Assignment or transfer of a license is prohibited.
- The Division may cancel a license issued on the basis of false information.
- A license holder must comply with sampling and survey programs.

G.S. 113-174.2. – Saltwater Fishing License.

Any license may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the internet, or telephone; or at locations designated by the Board of Trustees.

Types of SFLs:

1-year SFL	$15.00	Valid for a period of one year from the date of issuance
2-year SFL	$30.00	Valid for a period of two years from the date of issuance
3-year SFL	$45.00	Valid for a period of three years from the date of issuance
7-day SFL	$1.00	7 day duration, but may only be purchased once per year

Subsistence SFL	No charge	Valid for a period of one year from the date of issuance
Lifetime SFL		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 18 years of age	$200.00	
18 years of age or older	$500.00	

Exemption: An individual may engage in recreational fishing by means of recreational gear without holding a SFL if the individual is 18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

Sections 3 and 4 make conforming changes.

Section 5 provides that vacancies may be filled in certain offices during a holdover period.

Section 6 makes a conforming change.

Section 7 directs the Commission to adopt rules to define recreational gear and commercial gear.

Section 8 prohibits the Commission and the Division from disclosing personal information provided by a license applicant.

Section 9 provides for the staggered terms of the members of the Board.

Section 10 authorizes the Board and the State Treasurer to disburse up to 50% of license revenues in the Fund during fiscal years 2005-2006 through 2015-2016.

Section 11 provides that the first annual report from the Board to the Joint Legislative Commission on Seafood and Aquaculture is due by September 1, 2005.

Section 12 directs the Board to develop a plan for the implementation of the licensing provisions of the act and to study the creation of a unified fishing license for inland and coastal fishing. The Board will report to the Joint Legislative Commission on Seafood and Aquaculture on the plan and study no later than January 1, 2005.

Section 13 directs the State Controller to transfer $5,000,000 from the unreserved credit balance to the Fund to be used by the Board to implement the act. The Board will repay the $5,000,000 to the unreserved credit balance by July 1, 2010.

Section 14 is a severability clause.

Section 15 provides that the licensing provisions become effective July 1, 2005.

COMPARISON OF DIFFERENT EDITIONS OF HOUSE BILL 831 (COASTAL RECREATIONAL FISHING LICENSE/FUND.)

Prepared by Jeff Hudson, Committee Counsel

July 6, 2004

H831, 1st Edition (Coastal Recreational Fishing License/Fund.)	H831, 6th Edition (Coastal Recreational Fishing License.)	H831, CSSBf-52 [v.19] (Saltwater Fishing Fund/Holdover Appointments.)

License Types
• Standard CRFL – $15.00 – One year duration
• Ten-Day CRFL – $5.00 – Ten day duration
• Lifetime CRFL – Lifetime duration
  o Younger than 6 years of age – $100.00
  o Between 6 and 11 years of age – $150.00
  o Between 11 and 17 years of age – $200.00
  o Between 17 and 70 years of age – $250.00
  o 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
  o Vessel of 25 feet or less – $200.00
  o Vessel of greater than 25 feet – $400.00
• Ocean Fishing Pier Blanket CRFL – $4.00 per linear foot – One year duration
	License Types
	• Standard CRFL – $10.00 – One year duration
	• Ten-Day CRFL – $5.00 – Ten day duration
	• Lifetime CRFL – Lifetime duration
	  o Younger than 18 years of age – $150.00
	  o 18 years of age to younger than 62 years of age – $200.00
	• Disabled Individual CRFL – No charge – Duration of disability
	• Disabled Veteran CRFL – No charge – Duration of disability
	• Legally Blind Lifetime CRFL – No charge – Lifetime duration
		License Types
		• 1-year SFL – $15.00 – One year duration
		• 2-year SFL – $30.00 – Two year duration
		• 3-year SFL – $45.00 – Three year duration
		• 7-Day SFL – $1.00 – Seven day duration; may only be purchased once per year
		• Subsistence SFL – No Charge – One year duration
		• Lifetime CRFL – Lifetime duration
		  o Younger than 6 years of age – $100.00
		  o 6 years of age to younger than 11 years of age – $150.00
		  o 11 years of age to younger than 18 years of age – $200.00
		  o 18 years of age or older – $250.00

Exemptions • 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.	Exemptions • Under 16 years of age. • 62 years of age or older. • 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. • Is fishing from a public bridge. • Is fishing from the shore or a shore-based structure. • Is fishing with hook and line in the county of the individual's residence using natural bait.	Exemptions • 18 years of age or younger and making progress toward obtaining a high school diploma or its equivalent.
License Revenues Will be credited to the Marine Resources Restoration Fund.	License Revenues Will be credited to the General Fund.	License Revenues Will be credited to the North Carolina Saltwater Fishing Fund
Use of Revenues The Marine Fisheries Commission 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%.	Use of Revenues Fees must be used exclusively for the management, protection, restoration, and enhancement of the marine resources of the State.	Use of Revenues The Board of Trustees of the North Carolina Saltwater Fishing Fund shall use investment income from the Fund as follows: • Resource and habitat enhancement. • Grants to fund fisheries management research for specifically designated species. • Acquisition of land that provides enhancement of fishery habitat or public access to coastal fishing waters. • Purchase or construction of public beach access areas and public marinas. If the Board purchases or constructs a public marina, it may establish a boat docking fee. • Emergency dredging for the restoration of access to public fishing areas. • Establishment of scholarships for individuals pursuing degrees in marine sciences. • Administrative and operating expenses. The Board may not use investment income for law enforcement.

Implementation • "Paper" License – An individual must hold a license. An individual must have the license available for inspection when engaging in recreational fishing. • License Purchase – Any license may be purchased or renewed at designated offices of the Division of Marine Fisheries (Division) or from the Division by mail. The Standard CRFL and the Ten-day CRFL may be purchased from a designated license agent. Designated license agents are under the oversight of the Secretary and are allowed to deduct a 6% fee from the amount collected for each license. • Implementation Plan – There is no provision for the development of an implementation plan. • Appropriation – There is no appropriation. • Effective Date – The licensing provisions were to become effective March 1, 2004.	Implementation • "Paper" License – An individual must hold a license. An individual must have the license available for inspection when engaging in recreational fishing. • License Purchase – Any license may be purchased or renewed at designated offices of the Division of Marine Fisheries (Division) or from the Division by mail. The Standard CRFL and the Ten-day CRFL may be purchased from a designated license agent. Designated license agents are under the oversight of the Secretary and are allowed to deduct a 6% fee from the amount collected for each license. • Implementation Plan – There is no provision for the development of an implementation plan. • Appropriation – The Department of Environment and Natural Resources would have been authorized to use up to $1,1000,000 for the 2003-2004 fiscal year and to use up to $2,000,000 for the 2004-2005 fiscal year to implement the act. • Effective Date – The licensing provisions become effective March 1, 2005.	Implementation • "Paperless" License – An individual must purchase a license, but is not required to have a physical license available for inspection. To verify licensure, an individual must provide the individual's name and residence. • License Purchase – Any license may be purchased or renewed at designated offices of the Division of Marine Fisheries (Division); from the Division by mail, electronic mail, the internet, or telephone; or at locations designated by the NC Saltwater Fishing Fund Board of Trustees (Board). • Implementation Plan – The Board must develop an implementation plan for the licensing system. The plan must provide that licenses are widely available, the licensing system is fully automated and may be accessed at any time, the system does not require an individual to hold a physical license, and verification of licensure is accomplished by an individual providing the individual's name and residence address. The Board must determine when the plan could be fully implemented. The Board must also study the creation of a unified license for inland and coastal fishing. The Board will report its findings to the Joint Legislative Commission on Seafood and Aquaculture no later than January 1, 2005. • Appropriation – The State Controller is directed to transfer $5,000,000 from the unreserved credit balance to the NC Saltwater Fishing Fund to be used to implement the act. The Board will repay the $5,000,000 by July 1, 2010. • Effective Date – The licensing provisions become effective July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 831 DATE _____

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

COMMITTEE SUBSTITUTE H831-CSSBf-52 [v.19]

~~Rep.~~) Sen.) Hunter

moves to amend the bill on page 2, line 3

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"commercial fishing operations, including the use of nets and trawls, subject to federal and State law and rules adopted by the Marine Fisheries Commission pursuant to G.S. 143B-289.52; and"

SIGNED Hunter

ADOPTED 6 July 2004 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — 7-6-04

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Tom Reeve	NC Environmental Defense
Jess Hawkins	NC Marine Fisheries
Mike Ward	CCA
Lawrence Davis	CCA
Dave Hawkins	CCA
Doug Roberts	CCA
Mel Bellamon	CCA
Mac Currin	NC Marine Fisheries Comm.
Holman	CWMTF
Randall Williams	NCHBA
Bill Pittman	Pittman Law Firm

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

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Bernie McCants	2325 Windy Woods Dr Raleigh NC 27607
Bo Nowell	CCA
Bill Brown	CCA Greenville, NC
Amanda Maris	intern to David Knight, NC Sierra Club
William Moss	Sierra Club
Luther Penny	CCA - Raleigh, NC
Mel Broughton	CCA
Dave Hawkins	CCA - Raleigh, NC
Johanna Reese	DENR
Joe Delk	Gov Office
John McHugh	Governor's Office

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Jimmy Johnson	Marine Fisheries Commission
Steve Woodson	NC Farm Bureau Federation
Lucius Pullen	Attorney
Rodney Simpkins	Public
Jerry Schill	NC Fisheries Assoc., New Bern
Jerry Hardesty	NCDC
Gordon McElvin	NC Coastal Natural.
Will Williamson	NC CCA
Ken McPherson	Rec. Fisherman, Atlantic Beach
N. A. Rosefield	Rec. Fisherman Raleigh
Anita Watkins	NCLM
Paul Meyer	NCACC
Kim Hibbard	NCLM

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Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

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Mary Penny Thompson	NC DENR
DAN WHITTLE	ENVIRONMENTAL DEFENSE
David Knight	NC Sierra, NC Wildlife Fed
Aamon M. Tatem	ASMFC Gov Appt.
Charles Fullwood	Wildlife
Jason Herndon	Parker Poe Adams & Bernstein
Jenna Plappert	Parker Poe Adams & Bernstein
Jack Cozort	Parker Poe
[illegible]	JD, AL, PA.
Robin Smith	DENR

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Troy	NC WRC
Andy Romanet	NCLM
Rob Sawitt	NCCCC
[illegible]	NCRA

AGENDA

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, July 8, 2004 at 11:00 a.m.
Room 544, Legislative Office Building

I. Welcome and Opening Remarks

II. Bills to be Considered

HB 1083	Environmental Technical Corrections.	Representative Gibson, III
HB 1112	Amend Environmental Laws-2.	Representative Gibson, III
SB 1221	Water Conservation/Submeters.	Senator Clodfelter
SB 1301	Phosphorous Nutrient Mgt./Animal Feedlots.	Senator Albertson

III. Other Business

IV. Adjournment

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 08, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, July 08, 2004 at 11:00 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were sixteen members present.

Sen. Albertson called the meeting to order and recognized the Pages.

HB-1083 – ENVIRONMENTAL TECHNICAL CORRECTIONS – Sen. Clodfelter moved for the adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Clodfelter explained the PCS. Sen. Hunt requested clarification of water sources. Mr. George Givens, staff counsel explained. Sen. Lucas had a series of questions which Sen. Clodfelter and Mr. Givens clarified. Sen. Bingham asked about submeters and installation technology. Mr. Givens advised members he didn't know about the cost for these meters but did know they are much smaller in size. Mr. Eddie Caldwell, Apartment Association Lobbyist addressed member and explained the size and installation of the new submeters. He explained how these are electronic and there is no physical need to go out to read these meters. Sen. Clodfelter told members that this expense is to the apartment owners. Sen. Kinnaird spoke in favor of the PCS. She moved for the adoption of the PCS, unfavorable to the original bill. The vote was taken and passed.

Sen. Horton was asked to chair for Sen. Albertson as he explained the next item on the agenda.

HB-1112 AMEND ENVIRONMENTAL LAWS-2 - Sen. Albertson moved for the adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Albertson explained the PCS. Sen. Kinnaird inquired as to the register for all poultry farms. Sen. Albertson responded. Ms. Robin Smith, Asst. Sec. of DENR, explained that they do not have a full registry of all farms but they are working with the Poultry Federation to obtain this information. Mr. Henry Jones, Counsel for Poultry Federation told members they are in the process of gathering this information now and they are working with DENR on this. Sen. Bingham questioned the use of nutrients and Sen. Albertson and Mr. Givens responded. Sen. Albertson reminded members that this is to bring NC to federal regulations. Sen. Clodfelter questioned the language on Page 3 of "may" and "shall". Mr. Givens explained that this is one of the issues that has been addressed in working on this legislation. Ms. Mary Penny-Thompson, DENR explained that this is a compromise. Mr. Givens and Mr. Jones told members of past discussions in working sessions to work this out. Sen. Kinnaird is concerned about acting upon evaluations and feels requirements are necessary. Sen. Webster offered clarification and explained how he worked out this issue on his own farm. Sen. Holloman moved for a favorable report for the PCS, unfavorable to the original bill, and be referred to Finance. Ms. Molly Dickens, Sierra Club addressed members.

They support this requirement as it is a good first step but it is important for all the language to be fully understood. This current form of legislation is still somewhat confusing. Also, the implementation of the program is difficult if DENR is to regulate and the poultry operators are not known to DENR. She urged some modification. Sen. Kinnaird asked if anyone knew of a way to clarify this. Chairman Horton told members they could amend this bill when it gets to the floor for discussion in the Senate Chamber. Mr. Givens again reminded members this would be referred to the Finance Committee and could be amended there as well. No further discussion. The vote was taken and passed as recommended, favorable to the PCS, unfavorable to the original bill, but referred to Finance.

The meeting adjourned at 11:40 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Davis, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Thursday, July 08, 2004

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

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1083** Environmental Technical Corrections.

Draft Number:	PCS-30574
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1112** Amend Environmental Laws-2.

Draft Number:	PCS-80479
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 1083*
PROPOSED SENATE COMMITTEE SUBSTITUTE H1083-PCS30574-SY-22

Short Title: Water Conservation/Submeters. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION IN MULTIFAMILY RESIDENTIAL PROPERTIES BY AMENDING VARIOUS STATE LAWS REGARDING THE USE OF SUBMETERS IN LIGHT OF CHANGES IN POLICY RELATED TO WATER TESTING REQUIREMENTS AND WATER CONSERVATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-3 reads as rewritten:

"**§ 42-3. Term forfeited for nonpayment of rent.**

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. ~~Where a written lease establishes a monthly rent that includes water and sewer services under G.S. 62-110(g), the terms "rent" and "rental payment", as used in this Chapter, mean base rent only.~~"

SECTION 2. G.S. 42-26(b) reads as rewritten:

"(b) An arrearage in ~~additional rent~~ costs owed by a tenant for water ~~and~~ or sewer services pursuant to G.S. 62-110(g) shall not be used as a basis for termination of a ~~lease.~~lease under this Chapter. Any ~~partial~~ payment to the landlord ~~of monthly rent~~ shall be applied first to the ~~base rent.~~ rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant."

SECTION 3. G.S. 42-42(a) is amended by adding a new subsection to read:

"(6) If the landlord is charging for the cost of providing water or sewer service pursuant to G.S. 42-42.1 and has actual knowledge from either

the supplying water system or other reliable source that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level established pursuant to Article 10 of Chapter 130A of the General Statutes, provide notice that water being supplied exceeds a maximum contaminant level."

SECTION 4. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"**§ 42-42.1. Water Conservation.**

(a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to G.S. 62-110(g).

(b) The landlord may not disconnect or terminate the tenant's water or sewer services due to the tenant's nonpayment of the amount due for water or sewer services."

SECTION 5. G.S. 42-46(d) reads as rewritten:

"(d) A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay ~~additional rent~~ for water ~~and~~ or sewer services provided pursuant to G.S. 62-110(g)."

SECTION 6. G.S. 42-51 reads as rewritten:

"**§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of ~~base~~ rent and ~~additional rent~~costs for water ~~and~~ or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, nonfulfillment of rental period, any unpaid bills ~~which~~ that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 7. G.S. 62-110(g) reads as rewritten:

"(g) ~~For~~ In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a ~~lessor, pursuant to a written rental agreement, to allocate~~ lessor to charge for the costs ~~for~~ of providing water ~~and~~ or sewer service ~~on a metered use basis~~ to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(2) ~~A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus~~The lessor may charge a reasonable administrative ~~fee.~~ fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission.

(3) The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented.

(4) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service. The form shall include all of the following:

a. A description of the applicant and the property to be served.

b. A description of the proposed billing method and billing statements.

c. The schedule of rates charged to the applicant by the supplier.

d. The schedule of rates the applicant proposes to charge the applicant's customers.

e. The administrative fee proposed to be charged by the applicant.

f. The name of and contact information for the applicant and its agents.

g. The name of and contact information for the supplying water or sewer system.

h. Any additional information that the Commission may require.

(5) The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.

(6) A provider of water or sewer service under this subsection may increase the rate for service so long as the rate does not exceed the unit consumption rate charged by the supplier of the service. A provider of water or sewer service under this subsection may change the administrative fee so long as the administrative fee does not exceed the maximum administrative fee authorized by the Commission. In order to change the rate or administrative fee, the provider shall file a notice of revised schedule of rates and fees with the Commission. The Commission may prescribe the form by which the provider files a notice of a revised schedule of rates and fees under this subsection. The form shall include all of the following:

a. The current schedule of the unit consumption rates charged by the provider.

b. The schedule of rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers.

c. The schedule of the unit consumption rates proposed to be charged by the provider.

d. The current administrative fee charged by the provider, if applicable.

e. The administrative fee proposed to be charged by the provider.

(7) A notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by order issued within 14 days after filing.

(8) Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be ~~allocated~~ charged for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water ~~and~~ or sewer services and their customers under any other provision of law.

(9) A provider of water or sewer service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36 or to furnish a bond pursuant to G.S. 62-110.3."

SECTION 8. G.S. 130A-315(d) reads as rewritten:

"(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to ~~install sub-meters and allocate~~ charge for the costs ~~for~~ of providing water ~~service to persons who occupy the same contiguous premises,~~ or sewer service, that person shall ~~be regulated as a consecutive water system.~~not be subject to regulation under this Article solely as a result of submetering and billing for water service. ~~The monitoring, analysis, and record-keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section.~~ The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the ~~person that receives the water~~providing water system had not been authorized to ~~allocate the~~charge for the costs ~~for~~ of providing water or sewer service ~~under G.S. 62-110(g), but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system.~~ pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality,

treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants."

SECTION 9. On 1 August 2004 all certificates of authority for allocation of rental costs and all temporary operating authority as traditional water or sewer utilities issued by the Utilities Commission to entities that provide water or sewer services pursuant to G.S. 62-110(g), as that subsection read prior to the amendments made by Section 7 of this act, shall terminate. All entities operating under these certificates or temporary operating authority shall be deemed to have certificates of authority to charge for water or sewer service at their then existing rates.

SECTION 10. Effective 1 August 2004, Utilities Commission Rules R18-11 through R18-17 shall be rescinded and former Commission Rules R18-1 through R18-7 as they existed on 18 December 2001 shall be reinstated, subject to the authority of the Commission to modify or rescind them or adopt additional rules.

SECTION 11. This act becomes effective 1 August 2004.

HOUSE BILL 1083:
Water Conservation/Submeters.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Gibson
Date:	8 July 2004	**Summary by:**	Tim Dodge, Research Assistant for Environmental Issues
Version:	Proposed Committee Substitute (H1083-PCS30574-SY-22)		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1083 (PCS) would modify the requirements for landlords who submeter and charge tenants for providing water or sewer service in apartment complexes and other multi-family housing units. The PCS would become effective 1 August 2004.***

BACKGROUND:

The U.S. Environmental Protection Agency (USEPA) has previously issued memoranda stating that any building or property owner who meets the definition of a public water system and receives water from a regulated public water system, but bills tenants separately for this water, is ``selling" the water and therefore is subject to the requirements of the Safe Drinking Water Act (SDWA).

The North Carolina Drinking Water Act contains exemptions for public water systems that consist only of storage and distribution facilities and that obtain all of its water from a regulated public water system. This exemption is voided, however, if the public water system sells water to any person. G.S. 130A-315(d) currently allows apartment complexes and other consecutive water systems to install water submeters and allocate the costs of water and sewer services to its tenants. To be regulated as a consecutive water system, the Utilities Commission (Commission) must authorize the allocation of water and sewer service through the issuance of a certificate of public convenience and necessity to the provider. This process has been viewed by some providers as overly complex and slow to respond to changes in water rates and other variable conditions.

As a way to promote full cost and conservation pricing to achieve water conservation, USEPA issued a memorandum on December 16, 2003, that revised its policy regarding regulatory requirements under the SDWA for submetered properties. (The revised policy is attached to this summary). Under the revised policy, a property owner who installs submeters to track usage of water by tenants will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms of this policy revision for submetered properties.

BILL ANALYSIS:

Section 1 deletes terminology utilized in previous legislation to allow landlords to charge for water and sewer service. These provisions are no longer required under USEPA's revised submetering policy.

Section 2 restates that landlords may not use nonpayment of the costs for water or sewer services owed by a tenant as a basis for termination of a lease or eviction. In addition, if a tenant makes a payment to the

landlord, the landlord must first apply the payment to the rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant.

Section 3 requires a landlord to notify tenants of any violations of water quality standards under the North Carolina Drinking Water Act if the landlord is charging for the cost of providing water or sewer service and has knowledge of the contamination.

Section 4 adds a new section to the Landlord-Tenant Act (Chapter 42 of the General Statutes) that authorizes landlords to charge for the cost of providing water or sewer service. The section also prohibits landlords from disconnecting or terminating a tenant's water or sewer service due to the tenant's nonpayment of the costs for water and sewer services.

Section 5 prohibits landlords from charging tenants a late fee because of the tenant's failure to pay for water or sewer services.

Section 6 removes obsolete language in the provision that permits landlords to require a security deposit to cover the possible nonpayment of costs for water or sewer services.

Section 7 authorizes the Commission to adopt procedures to allow landlords to submeter and charge for providing water or sewer service. Section 7 provides that:

- All charges for water or sewer service must be based on the tenant's metered consumption of water and not by any partial measurement of water consumption, unless specifically authorized by the Commission. The rate charged by the landlord may not exceed the unit consumption rate charged by the supplier of water or sewer service.
- The landlord may charge a reasonable administrative fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission. (G.S. 62-110(g) currently allows landlords to charge an administrative fee).
- The Commission will issue rules to define contiguous premises, which will include contiguous premises where manufactured homes or spaces for manufactured homes are rented. (Currently in statute).
- The Commission will develop an application that landlords must submit for authority to charge for water or sewer service. The form will include specific information about the applicant and the supplying water system, the property to be served, the proposed billing method, the rates for water or sewer service, administrative fees proposed to be charged by the applicant, and any additional information the Commission may require.
- The Commission must approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.
- In order to change the rate or administrative fee, a provider must file a notice of revised schedule of rates and fees with the Commission. A notification of revised schedule of rates and fees becomes effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by an order issued within 14 days after filing.
- A provider of submetered water or sewer service will not be required to file annual reports to the Commission or to furnish a bond to the Commission.

Section 8 provides that a person who is authorized to charge for the costs of providing water or sewer service under G.S. 62-110(g) shall not be subject to the SDWA solely as a result of submetering and billing for water service. Section 8 also clarifies the responsibility for monitoring, analysis, and record keeping, as well as for the operation, maintenance, or repair of the providing water system. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department of Environment and Natural Resources (DENR) shall have access to the providing water system to investigate water quality problems. If water in the providing water system exceeds the maximum contaminant levels under the North Carolina Drinking Water Act and DENR determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants.

Section 9 provides that all previous authority for landlords to submeter and charge for water or sewer services under earlier provisions terminates 1 August 2004. At that time, entities operating under previous authority shall be deemed to have certificates of authority to charge for water or sewer service at their current rates.

Section 10 provides that Utilities Commission Rules R18-11 through R18-17 (adopted in response to USEPA's previous position on submetering) shall be rescinded and former Commission Rules R18-1 through R18-7 as they existed on 18 December 2001 shall be reinstated on 1 August 2004, subject to the authority of the Commission to modify or rescind them or adopt additional rules.

EFFECTIVE DATE: The PCS would become effective 1 August 2004.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 2003

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Applicability of the Safe Drinking Water Act to Submetered Properties

FROM: G. Tracy Mehan III,
Assistant Administrator

TO: Regional Administrators, Regions I-X

The purpose of this memorandum is to announce EPA's revised policy concerning the applicability of the Safe Drinking Water Act (SDWA) to submetered properties. Submetering, as applied in this policy, means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system. Under the revised policy, a property owner who installs submeters to track usage of water by tenants on his or her property will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms of this policy revision for submetered properties.

EPA proposed the revised policy in the *Federal Register* on August 28, 2003 (68 FR 51777) and requested public comment. In response, the Agency received strong support for the revised policy on submetering from a variety of stakeholders. In light of this response, and because a key objective of the Agency is to promote water efficiency and conservation, EPA has decided to change the policy for submetering.

Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation. Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In addition to helping reduce the risk of water shortages, water conservation also provides other important benefits. Water conservation helps ensure in-stream flows, thereby providing protection for ecosystems, which can become out of balance when demands stress water resources. Water conservation also helps reduce stress on water supply and wastewater infrastructure

making them less prone to failure. Further, the use of submeters to measure water consumption is a necessary pre-requisite to achieving full-cost and conservation pricing.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA Section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers had issued several memoranda stating that any building or property owner who met the definition of a PWS and received water from a regulated public water system without adding further treatment, but billed tenants separately for this water, would be considered to be "selling" the water and, therefore, would be independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of Section 1411 as it applies in the specific context of submetering.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting Section 1411. In that legislative history, the Committee report stated that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."[1] Under EPA's previous interpretation, an owner of an apartment building or similar property who is exempt under Section 1411 but merely installed a submeter and billed the tenants for the water, or simply began billing tenants (even without a submeter), would then be considered to be operating a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress originally intended the statute to be applied in this manner, or that it should continue to be the Agency's interpretation for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings or similar properties for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in Section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger

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[1] H. Rep. 93-1185 (93rd Cong., 2nd Session), reprinted in A Legislative History of the Safe Drinking Water Act, Committee Print Serial 97-9 (1982) at 549.

full SDWA regulation.

- Some owners of apartment buildings and other multifamily housing expressed concern that, under EPA's previous policy, the installation of submeters subjected them to the full regulatory requirements of the Safe Drinking Water Act (SDWA), comparable to the requirements imposed on water utilities.
- In 1996, a Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.[2] In response, EPA agreed to reconsider the matter and issue further guidance.[3]
- EPA's approach in previous memoranda may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Simply applying the concept of "sell" to every billing transaction is not appropriate.

Revised Policy

Consistent with Congressional requests to reconsider this matter, the Agency now believes that certain property owners, who had not previously been (or would not be) subject to SDWA's national primary drinking water regulations, and who install submeters to accurately track usage of water by tenants on his or her property, should not be subject to regulations solely as a result of taking the action to submeter and bill.

The addition of a submeter should not in any way change the quality of water provided to customers on the property. A PWS that provides water to a property maintains responsibility for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers. In addition, the PWS must make "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA Section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (Section 1431) if public health risks arise.

Scope of Revised Policy

EPA received numerous comments asking that the revised policy be expanded beyond apartment buildings. EPA agrees that submetering to achieve water conservation may be appropriate for other property types, which share similar characteristics to an apartment building, and likewise should not be considered as "selling"under SDWA Section 1411, simply because a

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[2] H . Rep. 104-632 at 55 (1996)

[3] H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

submeter is installed and the property owner begins direct billing for the water. This description is the basis for the definition of submetering. Determinations of whether billing for water is a "sale" for purposes of Section 1411, and whether systems are " submetering" as that term is used in this policy, should be made by the Primacy Agency.

In making a determination, the Primacy Agency should consider if the property has certain characteristics, such as a limited distribution system with no known backflow or cross connection issues; the majority of its plumbing is within a structure instead of underground; and property ownership is a single/individual (or association of property owners, in the case of co-ops or condominiums). Of course, for any system to be excluded under Section 1411, it must receive all of its water from a regulated public water system.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (e.g., many military installations/facilities or large mobile home parks).

Although EPA is not requiring that submetered systems be regulated, each State has the flexibility to determine whether, and how, to best track properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system that provides it with water, register with the Texas Commission on Environmental Quality, and follow regulations for submetering.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that property owners and others convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

Ratio Utility Billing Systems (RUBS) and Hybrid Billing Systems (HWH)

Several commenters raised the issue of ratio utility billing systems (RUBS) [4] and other allocation billing systems. Some commenters suggested that EPA should include this type of

[4] A ratio utility billing system (RUBS) or an allocation formula, divides a property's water bill among its residents based on a ratio of floor space, number of occupants, or some other quantitative measure. With RUBS, a price signal based on actual use is not sent to the tenant as with submetering, and the amount of water saved by these systems is unclear. A hot water hybrid (HWH) billing system is a combination of submetering and allocation where hot water is submetered and a formula is applied to estimate the resident's total water use based on the volume of hot water metered. HWH systems provide more of a price signal than RUBS but less than that for submetering.

billing in the revised policy because it would have no negative effect on water quality. Other commenters encouraged EPA to exclude RUBS, stating that RUBS may not result in water conservation, and may, in fact, reduce incentives to install submeters and charge on the basis of actual water usage. Water savings, if any, from RUBS and hot water hybrid billing systems (HWH) are uncertain. At this time, EPA believes that RUBS or other allocation billing systems do not meet the definition of submetering, as used in this policy, and do not encourage water conservation. Therefore, a property using these billing systems is not addressed by this policy. Primacy Agencies will need to determine whether such properties are "selling" water within the meaning of SDWA Section 1411.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum. I appreciate your efforts in working with States to foster water conservation while ensuring protection of public health. If you have further questions about this issue, please contact Cynthia C. Dougherty, Director of the Office of Ground Water and Drinking Water, at (202) 564-3750.

cc: EPA Regional Water Division Directors
State Drinking Water Administrators

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H **D**

HOUSE BILL 1083*
PROPOSED SENATE COMMITTEE SUBSTITUTE H1083-PCS30574-SY-22

Short Title: Water Conservation/Submeters. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION IN MULTIFAMILY RESIDENTIAL PROPERTIES BY AMENDING VARIOUS STATE LAWS REGARDING THE USE OF SUBMETERS IN LIGHT OF CHANGES IN POLICY RELATED TO WATER TESTING REQUIREMENTS AND WATER CONSERVATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-3 reads as rewritten:

"**§ 42-3. Term forfeited for nonpayment of rent.**

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. ~~Where a written lease establishes a monthly rent that includes water and sewer services under G.S. 62-110(g), the terms "rent" and "rental payment", as used in this Chapter, mean base rent only.~~"

SECTION 2. G.S. 42-26(b) reads as rewritten:

"(b) An arrearage in ~~additional rent~~ costs owed by a tenant for water ~~and~~ or sewer services pursuant to G.S. 62-110(g) shall not be used as a basis for termination of a ~~lease.~~lease under this Chapter. Any ~~partial~~ payment to the landlord ~~of monthly rent~~ shall be applied first to the ~~base rent.~~ rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant."

SECTION 3. G.S. 42-42(a) is amended by adding a new subsection to read:

"(6) If the landlord is charging for the cost of providing water or sewer service pursuant to G.S. 42-42.1 and has actual knowledge from either

the supplying water system or other reliable source that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level established pursuant to Article 10 of Chapter 130A of the General Statutes, provide notice that water being supplied exceeds a maximum contaminant level."

SECTION 4. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"**§ 42-42.1. Water Conservation.**

(a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to G.S. 62-110(g).

(b) The landlord may not disconnect or terminate the tenant's water or sewer services due to the tenant's nonpayment of the amount due for water or sewer services."

SECTION 5. G.S. 42-46(d) reads as rewritten:

"(d) A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay ~~additional rent~~ for water ~~and~~ or sewer services provided pursuant to G.S. 62-110(g)."

SECTION 6. G.S. 42-51 reads as rewritten:

"**§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of ~~base~~ rent and ~~additional rent~~costs for water ~~and~~ or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, nonfulfillment of rental period, any unpaid bills ~~which~~ that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 7. G.S. 62-110(g) reads as rewritten:

"(g) ~~For~~ In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a ~~lessor, pursuant to a written rental agreement, to allocate~~ lessor to charge for the costs ~~for~~ of providing water ~~and~~ or sewer service ~~on a metered use basis~~ to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(2) ~~A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus~~The lessor may charge a reasonable administrative ~~fee.~~ fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission.

(3) The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented.

(4) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service. The form shall include all of the following:

a. A description of the applicant and the property to be served.

b. A description of the proposed billing method and billing statements.

c. The schedule of rates charged to the applicant by the supplier.

d. The schedule of rates the applicant proposes to charge the applicant's customers.

e. The administrative fee proposed to be charged by the applicant.

f. The name of and contact information for the applicant and its agents.

g. The name of and contact information for the supplying water or sewer system.

h. Any additional information that the Commission may require.

(5) The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.

(6) A provider of water or sewer service under this subsection may increase the rate for service so long as the rate does not exceed the unit consumption rate charged by the supplier of the service. A provider of water or sewer service under this subsection may change the administrative fee so long as the administrative fee does not exceed the maximum administrative fee authorized by the Commission. In order to change the rate or administrative fee, the provider shall file a notice of revised schedule of rates and fees with the Commission. The Commission may prescribe the form by which the provider files a notice of a revised schedule of rates and fees under this subsection. The form shall include all of the following:

a. The current schedule of the unit consumption rates charged by the provider.

b. The schedule of rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers.

c. The schedule of the unit consumption rates proposed to be charged by the provider.

d. The current administrative fee charged by the provider, if applicable.

e. The administrative fee proposed to be charged by the provider.

(7) A notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by order issued within 14 days after filing.

(8) Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be ~~allocated~~ charged for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water ~~and~~ or sewer services and their customers under any other provision of law.

(9) A provider of water or sewer service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36 or to furnish a bond pursuant to G.S. 62-110.3."

SECTION 8. G.S. 130A-315(d) reads as rewritten:

"(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to ~~install sub-meters and allocate~~ charge for the costs ~~for~~ of providing water ~~service to persons who occupy the same contiguous premises,~~ or sewer service, that person shall ~~be regulated as a consecutive water system.~~not be subject to regulation under this Article solely as a result of submetering and billing for water service. ~~The monitoring, analysis, and record keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section.~~ The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the ~~person that receives the water~~providing water system had not been authorized to ~~allocate the~~charge for the costs ~~for~~ of providing water or sewer service ~~under G.S. 62-110(g), but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system.~~ pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality,

treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants."

SECTION 9. On 1 August 2004 all certificates of authority for allocation of rental costs and all temporary operating authority as traditional water or sewer utilities issued by the Utilities Commission to entities that provide water or sewer services pursuant to G.S. 62-110(g), as that subsection read prior to the amendments made by Section 7 of this act, shall terminate. All entities operating under these certificates or temporary operating authority shall be deemed to have certificates of authority to charge for water or sewer service at their then existing rates.

SECTION 10. Effective 1 August 2004, Utilities Commission Rules R18-11 through R18-17 shall be rescinded and former Commission Rules R18-1 through R18-7 as they existed on 18 December 2001 shall be reinstated, subject to the authority of the Commission to modify or rescind them or adopt additional rules.

SECTION 11. This act becomes effective 1 August 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1221*

Short Title:	Water Conservation/Submeters.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION IN MULTIFAMILY RESIDENTIAL PROPERTIES BY AMENDING VARIOUS STATE LAWS REGARDING THE USE OF SUBMETERS IN CONSECUTIVE WATER SYSTEMS IN LIGHT OF CHANGES IN POLICY RELATED TO WATER TESTING REQUIREMENTS AND WATER CONSERVATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-3 reads as rewritten:

"**§ 42-3. Term forfeited for nonpayment of rent.**

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. Where a written lease ~~establishes a monthly rent that includes~~authorizes allocation to the tenant of the cost of water and sewer services ~~under G.S. 62-110(g), the terms "rent" and "rental payment", as used in this Chapter, mean base rent only.~~ pursuant to G.S. 42-42.1, there shall be implied a forfeiture of the term upon failure by the tenant to pay for water and sewer services within 25 days after a bill is sent by the lessor or the lessor's agent to the lessee for the cost of water and sewer service."

SECTION 2. G.S. 42-26(b) is repealed.

SECTION 3. G.S. 43-33 reads as rewritten:

"**§ 42-33. Rent and costs tendered by tenant.**

If, in any action brought to recover the possession of demised premises upon a forfeiture for the nonpayment of ~~rent,~~rent or nonpayment of the cost of water and sewer services, the tenant, before judgment given in such action, pays or tenders the ~~rent~~

~~due~~rent, the costs due for water and sewer services, and the costs of the action, all further proceedings in such action shall cease. If the plaintiff further prosecutes his action, and the defendant pays into court for the use of the plaintiff a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into court for his use, and the proceedings shall be stayed."

SECTION 4. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"**§ 42-42.1. Water Conservation.**

(a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may allocate the cost of providing water and sewer service to a tenant. The cost allocated to the tenant cannot exceed the actual price of the water and sewer service paid by the landlord, plus a reasonable administrative fee. The administrative fee cannot exceed three dollars and seventy-five cents ($3.75) per month per tenant. Allocation of the cost for water and sewer service by the landlord to the tenant may be computed by using equipment that measures the tenant's actual use of hot water, cold water, or both, and calculates the tenant's usage as a percentage of the total water used on the premises.

(b) All equipment used to measure water usage must comply with guidelines promulgated by the American Water Works Association.

(c) The landlord shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the landlord, a tenant may inspect these records during reasonable business hours and may obtain a copy of the records at a reasonable cost, not to exceed twenty-five cents (25¢) per page.

(d) Bills for water and sewer service sent by the landlord to the tenant shall contain all the following information:

(1) The amount of water and sewer services allocated to the tenant during the billing period.

(2) Beginning and ending dates for the billing period.

(3) The due date for payment of the bill.

(4) The past due date which is the first date that a late fee can be imposed.

(5) Any late fee that will be applied if the bill is not paid by the past due date.

(6) A telephone number and address that the tenant can use to obtain more information about the bill.

(e) The landlord may not disconnect or terminate the tenant's water and sewer services due to the tenant's nonpayment of the amount due for water and sewer services."

SECTION 5. G.S. 42-46(d) reads as rewritten:

"(d) ~~A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay additional rent for water and sewer services provided pursuant to G.S. 62-110(g).~~ If agreed to in a written rental agreement, a landlord may charge a tenant a fee not to

exceed five dollars ($5.00) per month if payment has not been received by the landlord within 25 days of billing for costs allocated to the tenant for water and sewer service."

SECTION 6. G.S. 42-51 reads as rewritten:

"**§ 42-51. Permitted uses of the deposit.**

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of ~~base~~-rent and ~~additional rent~~costs for water and sewer ~~services provided pursuant to G.S. 62-110(g),~~services, damage to the premises, nonfulfillment of rental period, any unpaid bills ~~which~~ that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 7. G.S. 62-110(g) reads as rewritten:

"(g) ~~For the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor, pursuant to a written rental agreement, to allocate the costs for providing water and sewer service on a metered use basis to persons who occupy the same contiguous premises. A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus a reasonable administrative fee. The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented. Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be allocated for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water and sewer services and their customers under any other provision of law.~~ The Commission shall not have jurisdiction over the allocation of the costs of providing water and sewer service by landlords to tenants pursuant to G.S. 42-42.1."

SECTION 8. G.S. 130A-315(d) reads as rewritten:

"(d) When a person that receives water from a public water system is authorized ~~by the Utilities Commission, pursuant to G.S. 62-110(g), to install sub-meters and~~ to allocate the costs for providing water ~~service to persons who occupy the same contiguous premises,~~and sewer service pursuant to G.S. 42-42.1, that person shall be regulated as a consecutive water system. The monitoring, analysis, and record-keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section. The supplying water system shall perform the same level of monitoring, analysis, and record

keeping that the supplying system would perform if the person that receives the water had not been authorized to allocate the costs for providing water service under G.S. ~~62-110(g),~~42-42.1, but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system."

SECTION 9. This act becomes effective 1 July 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1301

Short Title:	Phosphorous Nutrient Mgt./Animal Feedlots.	(Public)
Sponsors:	Senators Albertson; Carpenter, Dorsett, Kinnaird, and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 24, 2004

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT REQUIREMENTS APPLICABLE TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND ANIMAL WASTE MANAGEMENT PLANS GOVERNING ANIMAL FEEDING OPERATIONS TO MAKE THE STATE PERMIT REQUIREMENTS CONSISTENT WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10B reads as rewritten:

"**§ 143-215.10B. Definitions.**

As used in this Part:

(1) "Animal operation" means any agricultural ~~farming~~ feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management ~~system.~~system, or any smaller agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water Quality of the Department.

(4a) "Dry litter poultry facility" means any agricultural feedlot activity involving poultry that does not utilize a liquid animal waste management system.

(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

SECTION 2. G.S. 143-215.10C reads as rewritten:

"**§ 143-215.10C. Applications and permits.**

(a) No person shall construct or operate an animal waste management system for an animal operation or a dry litter poultry facility subject to federal discharge permit regulations without first obtaining an individual permit or a general permit under this ~~Article.~~section. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment.

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour ~~storm.~~storm of the 100-year, 24-hour storm if required by federal discharge permit regulations.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) Animal waste management plans for animal operations shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be the rate-determining ~~element.~~element, except that phosphorous provisions of the most current nutrient management standard approved by the Soil and Water Conservation Commission or the Natural Resources Conservation Service of the United States Department of Agriculture may also be a rate-determining factor for facilities subject to federal discharge permit regulations. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) ~~Any operator of an animal operation with a dry litter animal waste management system~~Animal waste management plans for dry litter poultry facilities not subject to federal discharge permit requirements, but involving 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) Animal waste management plans for dry litter poultry facilities subject to federal discharge permit regulations shall include the components listed in subsection (e) of this section.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

(1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be

required to obtain a permit under this Part and is not subject to the requirements of this Part.

(j) New and expanding animal operations or dry litter poultry facilities subject to federal discharge permit regulations must apply for and receive coverage under a discharge permit and comply with the phosphorous provisions of the most current nutrient management standard before receiving a permit or stocking animals.

(k) Existing animal operations subject to federal discharge permit regulation shall comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

(l) Existing dry litter poultry facilities subject to federal discharge permit regulations or that have been notified by the Department that they are subject to federal discharge permit regulation because of an unpermitted discharge must apply for and receive coverage under a discharge permit by 13 April 2008."

SECTION 3. G.S. 143-215.10G(a) reads as rewritten:

"(a) The Department shall charge an annual permit fee of all animal operations and dry litter poultry facilities 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)."

SECTION 4. The Department of Environment and Natural Resources shall evaluate the application of phosphorous provisions of the most current nutrient management standard approved by the Soil and Water Conservation Commission or the Natural Resources Conservation Service of the United States Department of Agriculture to permitted animal operations and dry litter poultry facilities as provided in subsections (j), (k), and (l) of G.S. 143-215.10C. In the course of the study required by this section, the Department shall also consider the application of the phosphorous provisions of the nutrient management standard to existing animal operations and dry litter poultry facilities not subject to the permit requirements of subsections (j), (k), and (l) of G.S. 143-215.10C. The Department shall give emphasis to the proper role for nonregulatory programs and the development of innovative partnerships with producers and business interests in the livestock and poultry industry in its recommendations for these small- and medium-sized animal facilities. If the Department recommends that a regulatory process be implemented, the Department shall propose an implementation schedule for compliance with the phosphorous provisions of the nutrient management standard. The Department shall report its findings and recommendations to the Environmental Review Commission on or before 1 April 2008.

SECTION 5. This act becomes effective 1 January 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1112

Senate Agricultural/Environment/Natural Resources Committee Substitute
Adopted 6/18/03
Third Edition Engrossed 6/19/03

Short Title: Amend Environmental Laws-2. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS RELATED TO THE ENVIRONMENT AND ENVIRONMENTAL HEALTH TO (1) REMOVE OUTDATED LANGUAGE RELATED TO SANITATION OF FOOD AND LODGING FACILITIES, (2) TO CLARIFY WHAT CONSTITUTES A BASE OF OPERATIONS FOR MOBILE FOOD UNITS AND PUSHCARTS, AND (3) TO CLARIFY THE FREEBOARD REQUIREMENTS APPLICABLE TO LAGOONS THAT ARE COMPONENTS OF ANIMAL WASTE MANAGEMENT SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-248(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, ~~or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events,~~ or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

SECTION 2. G.S. 130A-248(c1) reads as rewritten:

"(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart or mobile food ~~unit shall be operated in conjunction with a permitted restaurant.~~unit."

SECTION 3. G.S. 143-215.10C(b) reads as rewritten:

"(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. In order to protect the structural integrity of a lagoon that is a component of an animal waste management system, the owner or operator of a lagoon shall maintain a minimum of 12 inches of freeboard. The owner or operator of a lagoon shall maintain sufficient additional freeboard to contain the runoff and direct precipitation that results from the 25-year, 24-hour storm, or from chronic rainfall. The Commission shall specify in the permit the minimum additional freeboard that the owner or operator is required to maintain. An owner or operator shall not be deemed to have violated the permit requirement to maintain additional freeboard if all of the following apply: (i) the owner or operator reports any failure to maintain the required minimum additional freeboard to the Division in a timely manner, (ii) the failure to maintain the required additional freeboard is solely the result of chronic rainfall and is not a result of the failure of the owner or operator to properly manage the animal waste management system, (iii) the owner or operator promptly takes appropriate action to reduce the level of the lagoon so as to restore the required additional freeboard, (iv) the owner or operator at all times maintains a minimum of 12 inches of structural freeboard, and (v) the failure to maintain the required additional freeboard does not cause pollution in the waters of the State. An owner or operator shall be deemed to have violated the permit if any of the following apply: (i) the owner or operator fails to report any failure to maintain the required structural freeboard or the required minimum additional freeboard to the Division in a timely manner, (ii) the failure to maintain the required additional freeboard is the result of the failure of the owner or operator to properly manage the animal waste management system, (iii) the owner or operator fails to promptly take appropriate action to reduce the level of the lagoon so as to restore the required structural or minimum additional freeboard, (iv) the owner or operator at any time fails to maintain a minimum of 12 inches of structural freeboard, or (v) if any failure to maintain the required structural or minimum additional freeboard causes pollution in the waters of the State. As used in this subsection:

(1) '25-year, 24-hour storm' means a precipitation event that has a probable recurrence interval of once in 25 years as determined by the National Weather Service of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

(2) 'Chronic rainfall' means a series of wet weather conditions that preclude dewatering of a lagoon that is a component of a properly managed animal waste management system.

(3) 'Freeboard' means the distance between the surface of water contained in a lagoon and the top of the lagoon.

(4) 'Lagoon' has the same meaning as in G.S. 106-802."

SECTION 4. Sections 1, 2, and 4 of this act are effective when this act becomes law. Section 3 of this act is effective retroactively to 1 January 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1112

Senate Agricultural/Environment/Natural Resources Committee Substitute
Adopted 6/18/03
Third Edition Engrossed 6/19/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1112-PCS80479-RIf-11

Short Title: Phosphorus Nutrient Mgt./Animal Feedlots. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT REQUIREMENTS APPLICABLE TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND ANIMAL WASTE MANAGEMENT PLANS GOVERNING ANIMAL FEEDING OPERATIONS TO MAKE THE STATE PERMIT REQUIREMENTS CONSISTENT WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10B reads as rewritten:

"**§ 143-215.10B. Definitions.**

As used in this Part:

(1) "Animal operation" means any agricultural ~~farming~~ feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management ~~system.~~system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water Quality of the Department.
(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.
(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

SECTION 2. G.S. 143-215.10C reads as rewritten:

"**§ 143-215.10C. Applications and permits.**

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003) shall apply for an individual permit or a general permit under this Article within 90 days of notification by the Department that the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003).

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour ~~storm.~~storm or if

required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal ~~Animal~~ waste management ~~plans~~ plan for an animal operation shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be ~~the~~ a rate-determining element. Phosphorus may be a rate-determining element for facilities that are subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003). Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions

to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator ~~of an animal operation with a dry litter animal waste management system involving~~ of a dry litter poultry facility that is not subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July 2003) for land application discharges, subdivision (4) of subsection (e) of this section.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

(1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part."

SECTION 3. G.S. 143-215.10G reads as rewritten:

"(a) The Department shall charge an annual permit fee ~~of all~~ to an animal ~~operations~~ operation that ~~are~~ is subject to a permit under G.S. 143-215.10C for an animal waste management ~~systems~~ system 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 to a dry litter poultry facility that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a permitted capacity of less than 25,000 laying chickens, less than 37,500 nonlaying chickens, or less than 16,500 turkeys, fifty dollars ($50.00).

(2) For a system with a permitted capacity of 25,000 or more but less than 200,000 laying chickens, 37,500 or more but less than 290,000 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one hundred fifty dollars ($150.00).

(3) For a system with a permitted capacity of more than 200,000 laying chickens, more than 290,000 nonlaying chickens, or more than 133,000 turkeys, three hundred dollars ($300.00).

(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 4. An owner or operator of an animal operation or a dry litter poultry facility shall apply for a permit as follows:

(1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

(2) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.

(3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later.

SECTION 5. The Commission shall consider the factors set out in G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry litter poultry facility that becomes subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) between 12 April 2003, and 1 January 2005. In determining whether the violation was willful or intentional, the Commission shall consider whether the facility developed an animal waste management plan pursuant to G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the facility complied with its animal waste management plan.

SECTION 6.

(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

(2) This act shall not be construed to affect the provisions 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, Section 1 of S.L. 2001-254, and S.L. 2003-266.

(3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective.

SECTION 7. This act becomes effective 1 January 2005.

HOUSE BILL 1112:
Phosphorus Nutrient Mgt./Animal Feedlots

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	July 8, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	Proposed Committee Substitute (H1112-PCS80479-RIf-11)		

SUMMARY: ***The Senate Proposed Committee Substitute (PCS) for House Bill 1112 would require that dry litter poultry facilities of a certain size apply for a National Pollutant Discharge Elimination System permit (NPDES permit) 180 days prior to operation of a new animal waste management system (System). An animal operation would be required to apply for a NPDES permit 180 days prior to construction of a new System or expansion of an existing System and would be required to obtain the NPDES permit prior to commencement of construction or expansion. In addition, certain dry litter poultry facilities would be required to develop animal waste management plans. The PCS provides dates by which certain dry litter poultry facilities must obtain NPDES permits for existing facilities. The PCS provides that phosphorus may be a rate-determining element for the land application of waste products. The PCS would become effective 1 January 2005.***

CURRENT LAW: G.S. 143-215.10C requires that an animal operation obtain an NPDES permit prior to construction or operation of a System and develop an animal waste management plan. The statute also provides that nitrogen is the rate-determining element for the land application of waste products.

BACKGROUND: Since the 1970's federal regulations governing confined concentrated animal feeding operations (CAFOs) have required that an animal operation be covered by an 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; and cattle facilities with 1,000 or more confined beef or 700 or more mature dairy cattle. A poultry facility with 30,000 or more laying hens or broilers, however, was required to obtain an NPDES permit only if the facility had a liquid manure system. Effective 14 April 2003 the federal CAFO regulations were amended to make dry litter poultry facilities, which had previously been exempt from the CAFO regulations, subject to federal NPDES permit requirements. In addition, the amended regulations require that CAFOs that apply manure to land that is owned, rented, or leased by the CAFO must minimize nitrogen and phosphorus transport to surface waters and groundwater. Application rates are to be based on state technical standards. The amended CAFO regulations also require that certain animal operations must construct and operate their Systems so that the animal operation it serves does not result in a discharge except as may result because of a rainfall from a storm event more severe than the 100-year, 24-hour storm. The amended CAFO regulations are the subject of litigation pending in the Second Circuit of the United States Court of Appeals. In addition, there is controversy over whether turkey facilities of a certain size were required to obtain a permit under the CAFO regulations prior to the amendments effective 14 April 2003.

The United States Environmental Protection Agency has delegated to the State the authority to issue federal NPDES permits.

BILL ANALYSIS:

Section 1 of the PCS would revise the definition of "animal operation" to include any agricultural feedlot activity with a liquid animal waste management system that discharges to waters of the State.

Section 2 of the PCS would:

- Provide that the owner or operator of a dry litter poultry facility subject to federal CAFO regulations apply for an NPDES permit 180 days prior to operation of a new System. Dry litter poultry facilities not subject to federal CAFO regulations that have a discharge of waste to waters of the State would also be required to obtain an NPDES permit within 90 days of notification by the Department of Environment and Natural Resources.
- Provide that an owner or operator of an animal operation must apply for an NPDES permit 180 days prior to construction of a new System or expansion of an existing System and obtain the NPDES permit prior to commencement of construction or expansion.
- Require the development of animal waste management plans for both dry litter poultry facilities subject to federal CAFO regulations and dry litter poultry facilities that are not subject to federal CAFO regulations but that involve 30,000 or more birds. An animal waste management plan for a dry litter poultry facility shall include the following components:
    - Provisions regarding periodic testing of waste products used as nutrient sources. Nitrogen shall be a rate-determining element and phosphorus may be a rate-determining element for the land application of waste. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
    - Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, and that include corrective action that will be taken if the balance is not achieved as determined by testing.
    - Provisions regarding the completion and maintenance of records.

  In addition, an animal waste management plan for a dry litter poultry facility subject to federal CAFO regulations shall also include the following components:
    - Provisions that set forth acceptable methods of disposing of mortalities.
    - To the extent required by the federal CAFO regulations, provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

- Provide that, if required by federal CAFO regulations, a System be constructed so that the animal operation it serves does not cause water pollution as may result because of a rainfall from a storm event more severe than the 100-year, 24-hour storm.
- Provide that, for facilities subject to federal CAFO regulations, phosphorus may be a rate-determining element for the land application of waste products.

Section 3 provides an NPDES permit fee schedule for dry litter poultry facilities subject to an NPDES permit under G.S. 143-215.10C for animal waste management systems as follows:

	$50.00	$150.00	$300.00
Laying Chickens	<25,000	25,000-200,000	>200,000
Non-Laying Chickens	<37,500	37,500-290,000	>290,000
Turkeys	<16,500	16,500-133,000	>133,000

Section 4 designates dates by which certain dry litter poultry facilities must apply for NPDES permits and provides the date by which certain animal operations must comply with the phosphorous provisions of the most current nutrient management standard as follows:

- An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall comply with the phosphorous provisions on or before 1 July 2007.
- An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to federal CAFO regulations only after 14 April 2003, shall apply for a permit no later than 13 April 2006.
- An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under federal CAFO regulations after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later.

Section 5 directs the Environmental Management Commission to consider the factors set out in G.S. 143B-282.1 when deciding whether to assess a penalty for failure to obtain an NPDES permit against an owner or operator of a dry litter poultry facility that becomes subject to federal CAFO regulations between 12 April 2003 and 1 January 2005. The standard factors to be considered include:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on ground or surface water quantity or quality or on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money saved by noncompliance.
(6) Whether the violation was committed willfully or intentionally.
(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority.
(8) The cost to the State of the enforcement procedures.

Section 6 provides that:

- In the event a court determines that all or part of the federal regulations governing dry litter poultry facilities are invalid, the act will not be construed to apply the invalid regulations to facilities that would otherwise be subject to them.
- The act will not be construed to affect the provisions of Section 1.1. of S.L. 1997-458, as amended (the swine farm moratorium).
- The act will not be construed to affect federal NPDES permit requirements in effect on or before the act's effective date.

Section 7 provides that the PCS would become effective 1 January 2005.

HB1112-SMRI-002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1112

Senate Agricultural/Environment/Natural Resources Committee Substitute
Adopted 6/18/03
Third Edition Engrossed 6/19/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H1112-PCS80479-RIf-11

Short Title: Phosphorus Nutrient Mgt./Animal Feedlots. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT REQUIREMENTS APPLICABLE TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND ANIMAL WASTE MANAGEMENT PLANS GOVERNING ANIMAL FEEDING OPERATIONS TO MAKE THE STATE PERMIT REQUIREMENTS CONSISTENT WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10B reads as rewritten:

"**§ 143-215.10B. Definitions.**

As used in this Part:

(1) "Animal operation" means any agricultural ~~farming~~ feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management ~~system.~~system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water Quality of the Department.
(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.
(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

SECTION 2. G.S. 143-215.10C reads as rewritten:

"**§ 143-215.10C. Applications and permits.**

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003) shall apply for an individual permit or a general permit under this Article within 90 days of notification by the Department that the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(c)(3) (1 July 2003).

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour ~~storm.~~storm or if

required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal ~~Animal~~ waste management ~~plans~~ plan for an animal operation shall include all of the following components:

(1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.

(2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.

(3) Provisions that set forth acceptable methods of disposing of mortalities.

(4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

(5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be ~~the~~ a rate-determining element. Phosphorus may be a rate-determining element for facilities that are subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003). Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.

(7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions

to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.

(8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator ~~of an animal operation with a dry litter animal waste management system involving~~ of a dry litter poultry facility that is not subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by 40 Code of Federal Regulations § 122.23 (1 July 2003) for land application discharges, subdivision (4) of subsection (e) of this section.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

(1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part."

SECTION 3. G.S. 143-215.10G reads as rewritten:

"(a) The Department shall charge an annual permit fee ~~of all~~ to an animal ~~operations~~ operation that ~~are~~ is subject to a permit under G.S. 143-215.10C for an animal waste management ~~systems~~ system 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 to a dry litter poultry facility that is subject to a permit under G.S. 143-215.10C for an animal waste management system according to the following schedule:

(1) For a system with a permitted capacity of less than 25,000 laying chickens, less than 37,500 nonlaying chickens, or less than 16,500 turkeys, fifty dollars ($50.00).

(2) For a system with a permitted capacity of 25,000 or more but less than 200,000 laying chickens, 37,500 or more but less than 290,000 nonlaying chickens, 16,500 or more but less than 133,000 turkeys, one hundred fifty dollars ($150.00).

(3) For a system with a permitted capacity of more than 200,000 laying chickens, more than 290,000 nonlaying chickens, or more than 133,000 turkeys, three hundred dollars ($300.00).

(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 4. An owner or operator of an animal operation or a dry litter poultry facility shall apply for a permit as follows:

(1) An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall maintain continuous permit coverage and comply with the phosphorous provisions of the most current nutrient management standard on or before 1 July 2007.

(2) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) only after 14 April 2003, shall apply for a permit no later than 13 April 2006.

(3) An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later.

SECTION 5. The Commission shall consider the factors set out in G.S. 143B-282.1 in any decision as to whether to assess a civil penalty for failure to obtain a permit pursuant to G.S. 143-215.6A(2) against the owner or operator of a dry litter poultry facility that becomes subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) between 12 April 2003, and 1 January 2005. In determining whether the violation was willful or intentional, the Commission shall consider whether the facility developed an animal waste management plan pursuant to G.S. 143-215.10C(f) based on available guidance on phosphorus and whether the facility complied with its animal waste management plan.

SECTION 6.

(1) In the event there is a final determination by a court of competent jurisdiction that part or all of the federal regulations governing dry litter poultry facilities are invalid, this act shall not be construed to implement the invalid parts of the regulations or to apply the invalid parts of the regulations to facilities otherwise made subject to those federal regulations.

(2) This act shall not be construed to affect the provisions 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, Section 1 of S.L. 2001-254, and S.L. 2003-266.

(3) This act shall not be construed to affect any federal permit requirement that was in effect on or before the date this act becomes effective.

SECTION 7. This act becomes effective 1 January 2005.

HOUSE BILL 1112:
Phosphorus Nutrient Mgt./Animal Feedlots

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
Date:	July 8, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	Proposed Committee Substitute (H1112-PCS80479-RIf-11)		

SUMMARY: ***The Senate Proposed Committee Substitute (PCS) for House Bill 1112 would require that dry litter poultry facilities of a certain size apply for a National Pollutant Discharge Elimination System permit (NPDES permit) 180 days prior to operation of a new animal waste management system (System). An animal operation would be required to apply for a NPDES permit 180 days prior to construction of a new System or expansion of an existing System and would be required to obtain the NPDES permit prior to commencement of construction or expansion. In addition, certain dry litter poultry facilities would be required to develop animal waste management plans. The PCS provides dates by which certain dry litter poultry facilities must obtain NPDES permits for existing facilities. The PCS provides that phosphorus may be a rate-determining element for the land application of waste products. The PCS would become effective 1 January 2005.***

CURRENT LAW: G.S. 143-215.10C requires that an animal operation obtain an NPDES permit prior to construction or operation of a System and develop an animal waste management plan. The statute also provides that nitrogen is the rate-determining element for the land application of waste products.

BACKGROUND: Since the 1970's federal regulations governing confined concentrated animal feeding operations (CAFOs) have required that an animal operation be covered by an 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; and cattle facilities with 1,000 or more confined beef or 700 or more mature dairy cattle. A poultry facility with 30,000 or more laying hens or broilers, however, was required to obtain an NPDES permit only if the facility had a liquid manure system. Effective 14 April 2003 the federal CAFO regulations were amended to make dry litter poultry facilities, which had previously been exempt from the CAFO regulations, subject to federal NPDES permit requirements. In addition, the amended regulations require that CAFOs that apply manure to land that is owned, rented, or leased by the CAFO must minimize nitrogen and phosphorus transport to surface waters and groundwater. Application rates are to be based on state technical standards. The amended CAFO regulations also require that certain animal operations must construct and operate their Systems so that the animal operation it serves does not result in a discharge except as may result because of a rainfall from a storm event more severe than the 100-year, 24-hour storm. The amended CAFO regulations are the subject of litigation pending in the Second Circuit of the United States Court of Appeals. In addition, there is controversy over whether turkey facilities of a certain size were required to obtain a permit under the CAFO regulations prior to the amendments effective 14 April 2003.

The United States Environmental Protection Agency has delegated to the State the authority to issue federal NPDES permits.

BILL ANALYSIS:

Section 1 of the PCS would revise the definition of "animal operation" to include any agricultural feedlot activity with a liquid animal waste management system that discharges to waters of the State.

Section 2 of the PCS would:

- Provide that the owner or operator of a dry litter poultry facility subject to federal CAFO regulations apply for an NPDES permit 180 days prior to operation of a new System. Dry litter poultry facilities not subject to federal CAFO regulations that have a discharge of waste to waters of the State would also be required to obtain an NPDES permit within 90 days of notification by the Department of Environment and Natural Resources.
- Provide that an owner or operator of an animal operation must apply for an NPDES permit 180 days prior to construction of a new System or expansion of an existing System and obtain the NPDES permit prior to commencement of construction or expansion.
- Require the development of animal waste management plans for both dry litter poultry facilities subject to federal CAFO regulations and dry litter poultry facilities that are not subject to federal CAFO regulations but that involve 30,000 or more birds. An animal waste management plan for a dry litter poultry facility shall include the following components:
    - Provisions regarding periodic testing of waste products used as nutrient sources. Nitrogen shall be a rate-determining element and phosphorus may be a rate-determining element for the land application of waste. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
    - Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, and that include corrective action that will be taken if the balance is not achieved as determined by testing.
    - Provisions regarding the completion and maintenance of records.

  In addition, an animal waste management plan for a dry litter poultry facility subject to federal CAFO regulations shall also include the following components:
    - Provisions that set forth acceptable methods of disposing of mortalities.
    - To the extent required by the federal CAFO regulations, provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.

- Provide that, if required by federal CAFO regulations, a System be constructed so that the animal operation it serves does not cause water pollution as may result because of a rainfall from a storm event more severe than the 100-year, 24-hour storm.
- Provide that, for facilities subject to federal CAFO regulations, phosphorus may be a rate-determining element for the land application of waste products.

Section 3 provides an NPDES permit fee schedule for dry litter poultry facilities subject to an NPDES permit under G.S. 143-215.10C for animal waste management systems as follows:

	$50.00	$150.00	$300.00
Laying Chickens	<25,000	25,000-200,000	>200,000
Non-Laying Chickens	<37,500	37,500-290,000	>290,000
Turkeys	<16,500	16,500-133,000	>133,000

Section 4 designates dates by which certain dry litter poultry facilities must apply for NPDES permits and provides the date by which certain animal operations must comply with the phosphorous provisions of the most current nutrient management standard as follows:

- An owner or operator of an animal operation in existence on or before 14 April 2003, and subject to regulation under federal regulations on or before 14 April 2003, shall comply with the phosphorous provisions on or before 1 July 2007.
- An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, and with a poultry population that made it subject to federal CAFO regulations only after 14 April 2003, shall apply for a permit no later than 13 April 2006.
- An owner or operator of a dry litter poultry facility in existence on or before 14 April 2003, who increases the poultry population of the facility to a number that subjects the facility to regulation under federal CAFO regulations after, but not on or before, 14 April 2003, shall apply for a permit by 13 April 2006, or 90 days after the increase in population, whichever is later.

Section 5 directs the Environmental Management Commission to consider the factors set out in G.S. 143B-282.1 when deciding whether to assess a penalty for failure to obtain an NPDES permit against an owner or operator of a dry litter poultry facility that becomes subject to federal CAFO regulations between 12 April 2003 and 1 January 2005. The standard factors to be considered include:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on ground or surface water quantity or quality or on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money saved by noncompliance.
(6) Whether the violation was committed willfully or intentionally.
(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority.
(8) The cost to the State of the enforcement procedures.

Section 6 provides that:

- In the event a court determines that all or part of the federal regulations governing dry litter poultry facilities are invalid, the act will not be construed to apply the invalid regulations to facilities that would otherwise be subject to them.
- The act will not be construed to affect the provisions of Section 1.1. of S.L. 1997-458, as amended (the swine farm moratorium).
- The act will not be construed to affect federal NPDES permit requirements in effect on or before the act's effective date.

Section 7 provides that the PCS would become effective 1 January 2005.

HB1112-SMRI-002.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources — 7-8-04

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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R. Paul Wilms	NCHBA
Eddie Caldwell	NC Apartment Assn
Tony Wike	NCUC-Public Staff
Robert Dunbar	" "
Steve Hall	DENR
Courtney Washburn	NC Sierra Club
Erin Kimrey	NC Con Net
DENNIS RAMSEY	DENR
[illegible]	NCSSA
Robin Smith	DENR
John M. Hodges	DENR/PWS

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

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Andy Lee	Public Staff - NCUC
Ron Brown	Comm Staff - NCUC
Henry Jones	Attorney - Raleigh
Jimmy Randolph	NC Poultry Fed - Raleigh
Tommy Stevens	NC Pork Council
Andy Romanet	NCLM
Mary Penny Thompson	NC DENR
[illegible]	Bonn & Assoc
David Crawford	AIA North Carolina
Ken Green	Attorney General's Office

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

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Tracy Hackney	NCPC
Bill Rowe	NC Justice Center
Al Ripley	" " "
Corrie Foster	Utilities Commission
Kim Hibbard	NCLM
Nancy Thompson	UTICIC
Amy Fullbright	Hunton & Wms.
Steve Woodson	Farm Bureau
Paul Meyer	NCACC
Lisa Martin	NC Home Builders Assoc.
William Moss	Sierra Club

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee **Date**

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Inco Bethea	Sierra Club
Melissa Hoter	Sierra club/David Knight intern
David Knight	NC Sierra Club
Pricy Harrison	
Pat Yancey	LPP
Michael Nelson	CCNC

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Friday	July 16, 2004	10:00 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1427	Amend Shellfish Laws.	Representative Wainwright
HB 1429	Amend Fishery Management Plan Requirements.	Representative Wainwright

Senator Charles W. Albertson, Chair

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 16, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Friday, July 16, 2004 at 9:30 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were eight members present.

Sen. Albertson called the meeting to order and recognized Pages. He thanked all the members and staff for their support during this short session. Sen. Albertson then sang a song he wrote about George Givens, staff counsel. Everyone enjoyed!

HB-1429 – AMEND FISHERY MANAGEMENT PLAN REQUIREMENTS–Mr. Jeff Hudson, staff counsel explained the summary. Sen. Kinnaird asked what coordination do we do with our neighbor states for a regional plan. Mr. Hudson responded and Chairman Albertson made additional comments and explained that state and federal levels work together. Mr. Tom Beam, NC Environmental Defense, spoke in favor of this. Sen. Weinstein moved for a favorable report. Vote was taken and passed.

HB-1427 – AMEND SHELLFISH LAWS – Sen. Albertson advised this would have to go to the Finance Committee if we approve this. Mr. Hudson explained that this is a recommendation from the State Auditor's office. Sen. Albertson asked about training requirements. Mr. Hudson told members that the Marine Fisheries will maintain training so that the land can be used productively. Mr. Joe McClees, lobbyist, spoke about the 10-year lease. Mr. McClees advised they support this. Mr. Jerry Schill, NC Fisheries Assoc. advised they opposed this since it had been amended on the House Floor. He explained how this went through a stockholders group and they supported the original provision. Sen. Weinstein moved for a favorable report. The vote was taken and passed, and will be referred to the Finance Committee.

Sen. Weinstein thanked Chairman Albertson for his hard work and dedication to this committee.

The meeting adjourned at 10:25 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Davis, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Charles W. Albertson, Chair

CORRECTED REPORT

Friday, July 16, 2004

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

FAVORABLE

H.B.(CS #2) **1427** Amend Shellfish Laws.
Sequential Referral: None
Recommended Referral: Finance

H.B.(CS #1) **1429** Amend Fishery Management Plan Requirements.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1429*
Committee Substitute Favorable 7/13/04

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.

HOUSE BILL 1429:
Amend Fishery Management Plan Requirements

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Wainwright
		Summary by:	Jeff Hudson Committee Counsel
Date:	July 16, 2004		
Version:	Second Edition		

SUMMARY: ***House Bill 1429 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.***

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 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.

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: House Bill 1429 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 bill 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 bill 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: House Bill 1429 would become effective when it becomes law.

1429-SMSB-003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 5

HOUSE BILL 1427*

Committee Substitute Favorable 6/29/04
Third Edition Engrossed 7/1/04
Committee Substitute #2 Favorable 7/7/04
Fifth Edition Engrossed 7/9/04

Short Title: Amend Shellfish Laws. (Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT 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. 113-201 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 2. 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 3. 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 anniversary of the granting of the lease. Renewal leases are issued for a period of 10 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 4. 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 5. 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 6. 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 7. 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 8. Sections 1, 4, 6, 7, and 8 of this act are effective when this act becomes law. Sections 2, 3, and 5 of this act become effective July 1, 2005.

HOUSE BILL 1427:
Amend Shellfish Laws.

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Representative Wainwright
Date:	July 16, 2004	**Summary by:**	Jeff Hudson Committee Counsel
Version:	Fifth Edition		

SUMMARY: ***House Bill 1427 would direct the Marine Fisheries Commission (MFC) to establish training requirements for shellfish cultivation lease holders, amend the fees for shellfish cultivation leases, and authorize the MFC to study issues related to the cultivation of shellfish. The Joint Legislative Commission on Seafood and Aquaculture recommended House Bill 1427.***

BACKGROUND:

The MFC included a number of recommendations related to the State's shellfish cultivation lease program in its Oyster Fishery Management Plan and in its Hard Clam Fishery Management Plan. These Shellfish Plans included recommendations related to the terms of and fees for shellfish cultivation leases, training requirements for holders of shellfish cultivation leases, and issues related to the termination and corporate ownership of shellfish cultivation leases. The fee increases are based on a 1998 Performance Audit of the Division of Marine Fisheries conducted by the State Auditor that found the fees for bottom shellfish cultivation leases inadequate to cover the processing costs. The fee increases related to bottom leases recommended by the MFC are the same as those recommended by the 1998 Performance Audit. The MFC requested that the Joint Legislative Commission on Seafood and Aquaculture recommend legislation to implement the Shellfish Plan recommendations.

CURRENT LAW AND BILL ANALYSIS:

Shellfish Cultivation Lease Terms and Fees

The following table sets out the current law on the terms of and fees for shellfish cultivation leases and the changes that H1427 would make to the law.

Current Law (G.S. 113-202 and G.S. 113-202.1)	H1427 Change
Length of term of bottom shellfish cultivation lease: 10 years	**Section 3** would decrease the length of the term to 5 years
Initial application filing fee for a bottom shellfish cultivation lease: One hundred dollars ($100.00)	**Section 2** would increase the fee to two hundred dollars ($200.00)
Renewal application filing fee for a bottom shellfish cultivation lease: Fifty dollars ($50.00)	**Section 3** would increase the fee to one hundred dollars ($100.00)
Annual rental fee for a bottom shellfish cultivation lease: Five dollars ($5.00) per acre	**Section 3** would increase the annual fee to ten dollars ($10.00) per acre
Annual rental fee for a water column shellfish cultivation lease: One hundred dollars ($100.00) for the first four years and five hundred dollars ($500.00) per year thereafter	**Section 5** would alter the annual fee structure so that the fee would be one hundred dollars ($100.00) per year for all years

Training Requirements

Under current law, there are no training requirements for persons who hold shellfish cultivation leases.

Section 1 of H1427 would direct the MFC to adopt rules to establish training requirements for persons who apply for shellfish cultivation leases. The training requirements would be designed to encourage the productive use of shellfish cultivation leases. The training requirements would not apply to a person who already holds a shellfish cultivation lease that is meeting shellfish production requirements.

Section 4 would add failure to comply with the training requirements to the list of conditions for which a shellfish cultivation lease may be terminated.

Marine Fisheries Commission Studies

Section 6 authorizes the MFC to study whether and how to establish a process by which shellfish cultivation leases that have been terminated may be leased without reverting to public bottom.

Section 7 authorizes the MFC to study issues related to corporate ownership of shellfish cultivation leases.

EFFECTIVE DATE:

The provisions amending the terms of and fees for shellfish cultivation leases become effective July 1, 2005. All other provisions of this act become effective when the act becomes law.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Friday July 16, 2004
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Tom Benn	NC Envir. Defense
Johanna Reese	DENR
Robin Smith	DENR
R. Rogers	DENR
Joe McClees	McClees Consulting Inc
Joe Delk	Gov. Office
Erik Kinney	NCCGN et
MIKE WARD	CCA
Dan McCampbell	City of Raleigh
Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NC Farm Bureau
John Bowdish	Duke Energy
Nancy Thompson	MCIC
[illegible]	[illegible]
Jerry Schill	NC Fisheries Assoc.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Saturday	July 17, 2004	9:30 AM	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 868	Improve Environmental Enforcement.	Representative Culpepper, III

Senator Charles W. Albertson, Chair

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 17, 2004

The Senate Agriculture/Environment/Natural Resources Committee met on Saturday, July 17, 2004 at 9:30 a.m. in Room 544, Legislative Office Building. Senator Albertson, chairman presided and there were nine members present.

Sen. Albertson called the meeting to order.

HB-868 – IMPROVE ENVIRONMENTAL ENFORCEMENT –. Sen. Weinstein moved for adoption of the PCS for discussion. So moved. Rep. Culpepper explained that this is a request of the DEHNR. (Summary attached). Ms. Robin Smith, Asst. Sec., DEHNR addressed members and explained the importance of this is to increase violations for serious violators. This will bring us up to federal regulations and assist to bring NC up-to-date with other programs within DEHNR. Mr. George Givens, staff counsel made additional remarks and explained the differences of this PCS and the original bill. Sen. Bingham expressed his feelings that the penalties seem harsh. He then gave an example of a situation in his district and the hardship for small areas. He added that most folks don't intentionally break the law but they get caught up in bad situations. Rep. Culpepper explained that this is for maximum penalties and DEHNR will use good judgment for assessing penalties. This is mainly for people that "willingly" violate the laws. Ms. Smith spoke again and reinforced Rep. Culpepper's comments. Sen. Horton spoke and agreed with Sen. Bingham on the harshness. He feels this is administrative charges and also gave an example of a problem in his district. He feels the Department should be less arbitrary and punitive for the average citizen with Notices of Violation notices. Ms. Smith advised they could look at the language for their NOV (Notice of Violation) letters. The purpose of stating the maximum penalty is to make people aware of the extent of the violation. This is to put them on alert. Sen. Horton asked DEHNR to be more "friendly user". Sen. Kinnaird spoke and Sen. Tillman expressed concerns about the penalties.

Time expired due to a Rules meeting and the meeting adjourned at 11:40 a.m.

Sen. Charlie Albertson, Chairman

Cindy J. Davis, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 868*

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H868-PCS30584-RT-94

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)~~ 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.~~the following factors:

a. The degree and extent of harm, including, but not limited to harm to the natural resources of the State, to the public health, or to private property resulting from the violation;

b. The duration and gravity of the violation;

c. The effect on water quality, coastal resources, or public trust uses;

d. The cost of rectifying the damage;

e. The amount of money saved by noncompliance;

f. Whether the violation was committed willfully or intentionally;

g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and

h. The cost to the State of the enforcement procedures.

(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. This act becomes effective 1 December 2004 and applies to violations and offenses committed on or after that date.

HOUSE BILL 868:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Representatives Culpepper; Luebke, and Weiss
Date:	July 17, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	Proposed Committee Substitute (H868-PCS30584-RT-94)		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 868 (PCS) 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 PCS 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 PCS also adds a penalty for false reporting under the North Carolina Drinking Water Act. The PCS would become effective 1 December 2004 and apply to violations and offenses committed on or after that date.***

BILL ANALYSIS OF THE PCS:

Section 1 would increase the maximum civil penalty for a first day of violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act from five thousand dollars ($5,000) to ten thousand dollars ($10,000). The maximum civil penalty for violations on subsequent days would remain at five thousand dollars ($5,000) per day.

Section 2 would increase the civil penalty that may be assessed for a minor development violation under the Coastal Area Management Act of 1974 (CAMA) 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 CAMA from two thousand five hundred dollars ($2,500) to ten thousand dollars ($10,000). The section provides that in determining the amount of a civil penalty assessed for development violations under CAMA, the Coastal Resources Commission (CRC) must consider the following factors:

- The degree and extent of harm, including, but not limited to harm to the natural resources of the State, public health, or private property resulting from the violation.
- The duration and gravity of the violation.
- The effect on water quality, coastal resources, or public trust uses.
- The cost of rectifying the damage.
- The amount of money saved by noncompliance.
- Whether the violation was committed willfully or intentionally.
- The prior record of the violator in complying or failing to comply with programs over which the CRC has regulatory authority.
- The cost to the State of the enforcement procedures.

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 CAMA. The amount of investigative costs assessed for a minor development violation must 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 must 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 would increase 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 would be increased from five thousand dollars ($5,000) to ten thousand dollars ($10,000) per day. The maximum penalty for a violation involving hazardous waste would be increased from twenty-five thousand dollars ($25,000) to twenty-seven thousand five hundred dollars ($27,500) per day. The penalty would also be made applicable to failure to make a determination whether a solid waste is a hazardous waste. The adjustments for violations involving hazardous waste are necessary to conform with federal law.

Section 5 would increase the 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 would be increased from fifty dollars ($50.00) to one hundred dollars ($100.00) per day per violation. The maximum penalty for a system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling would be increased from three hundred dollars ($300) to five thousand dollars ($5,000.00) per day per violation.

Section 6 would add 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 provides that the PCS would become effective 1 December 2004 and apply to violations and offenses committed on or after that date.

CHANGES MADE BY THE PCS:

- The second edition of the bill would increase the civil penalty that may be assessed for a major development violation under CAMA from two thousand five thousand dollars ($2,500) to twenty five thousand dollars ($25,000). The PCS changes the amount of the increase from twenty five thousand dollars ($25,000) to ten thousand dollars ($10,000).
- The PCS adds factors that the CRC must consider in determining the amount of a civil penalty assessed for development violations under CAMA.
- The PCS eliminates a provision set out in Section 7 of the second edition of the bill that would have repealed a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties, civil forfeitures, and civil fines that are collected and payable to the County School Fund.

H868-SMRI-003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 868*

Committee Substitute Favorable 4/29/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H868-PCS30584-RT-94

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)~~ 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.

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. This act becomes effective 1 December 2004 and applies to violations and offenses committed on or after that date.

HOUSE BILL 868:
Improve Environmental Enforcement

BILL ANALYSIS

Committee:	Senate Agriculture, Environment and Natural Resources	**Introduced by:**	Representatives Culpepper; Luebke, and Weiss
Date:	July 17, 2004	**Summary by:**	Jennifer McGinnis, Committee Counsel
Version:	Proposed Committee Substitute (H868-PCS30584-RT-94)		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 868 (PCS) 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 PCS 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 PCS also adds a penalty for false reporting under the North Carolina Drinking Water Act. The PCS would become effective 1 December 2004 and apply to violations and offenses committed on or after that date.***

BILL ANALYSIS OF THE PCS:

Section 1 would increase the maximum civil penalty for a first day of violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act from five thousand dollars ($5,000) to ten thousand dollars ($10,000). The maximum civil penalty for violations on subsequent days would remain at five thousand dollars ($5,000) per day.

Section 2 would increase the civil penalty that may be assessed for a minor development violation under the Coastal Area Management Act of 1974 (CAMA) 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 CAMA from two thousand five hundred dollars ($2,500) to ten thousand dollars ($10,000). The section provides that in determining the amount of a civil penalty assessed for development violations under CAMA, the Coastal Resources Commission (CRC) must consider the following factors:

- The degree and extent of harm, including, but not limited to harm to the natural resources of the State, public health, or private property resulting from the violation.
- The duration and gravity of the violation.
- The effect on water quality, coastal resources, or public trust uses.
- The cost of rectifying the damage.
- The amount of money saved by noncompliance.
- Whether the violation was committed willfully or intentionally.
- The prior record of the violator in complying or failing to comply with programs over which the CRC has regulatory authority.
- The cost to the State of the enforcement procedures.

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 CAMA. The amount of investigative costs assessed for a minor development violation must 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 must 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 would increase 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 would be increased from five thousand dollars ($5,000) to ten thousand dollars ($10,000) per day. The maximum penalty for a violation involving hazardous waste would be increased from twenty-five thousand dollars ($25,000) to twenty-seven thousand five hundred dollars ($27,500) per day. The penalty would also be made applicable to failure to make a determination whether a solid waste is a hazardous waste. The adjustments for violations involving hazardous waste are necessary to conform with federal law.

Section 5 would increase the 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 would be increased from fifty dollars ($50.00) to one hundred dollars ($100.00) per day per violation. The maximum penalty for a system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling would be increased from three hundred dollars ($300) to five thousand dollars ($5,000.00) per day per violation.

Section 6 would add 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.

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- The PCS adds factors that the CRC must consider in determining the amount of a civil penalty assessed for development violations under CAMA.
- The PCS eliminates a provision set out in Section 7 of the second edition of the bill that would have repealed a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties, civil forfeitures, and civil fines that are collected and payable to the County School Fund.

H868-SMRI-003

Making Polluters Pay Their Fair Share: Tax Payer Relief

The average penalty assessed by the Department of Environment & Natural Resources (DENR) in 2000-2002 was $7,077. The actual cost to DENR for collection of that penalty, if a case goes through the entire appeals process, could exceed $27,000. This excessive deficit is costing the tax payers money and is crippling DENR's ability to do its job effectively.

DENR's existing fee structure needs to be updated. The fines DENR can collect under current law do not reflect the department's costs, nor do they act as an effective deterrent to illegal behavior. Several bills were introduced last session that would address this concern. Legislation passed the House (Culpepper, **H868**) and was referred to the Senate Agriculture, Environment, and Natural Resources Committee for consideration.

This legislation does two things: 1) it increases the enforcement penalties that can be assessed by DENR and 2) it removes the current 10% cap so DENR can recover the full cost of assessing penalties.

Industry typically pays from zero to thirty percent of the costs of environmental regulatory programs, including permitting, monitoring, inspections and compliance. In FY 2002-03 the percentage of DENR's budget generated by fees was only 13%, while appropriations from the state's general fund accounted for 58% of the department's budget and the remainder came from federal sources. Regulated industries should bear their fair share of supporting environmental programs.

And raising fees will NOT put North Carolina at a competitive disadvantage with our neighbors. It is important to note that North Carolina's current penalty structure lags many of our neighbors. For example, both South Carolina and Tennessee have significantly stronger maximum fines for violations of sedimentation and erosion regulations. Below are some figures comparing maximum civil penalties assessed by DENR programs to those in nearby states.

Sedimentation and Erosion Control

Maximum civil penalties per day per violation:		
	South Carolina	$10,000
	Virginia	$ 1,000
	Tennessee	$10,000
	North Carolina	$ 5,000

Solid Waste

Solid Waste:		
	South Carolina	$10,000
	Virginia	$25,000
	Kentucky	$22,000
	North Carolina	$ 5,000

Clearly, there is room for improvement without placing North Carolina at a competitive disadvantage with our neighbors.

Conclusion: Under current law, the fines DENR can assess do not adequately reflect the department's costs, nor do they act as an effective deterrent to illegal behavior. We believe the existing fee structure should be updated.

For more information, please contact:
Mike Nelson, Conservation Council of NC, 919-839-0020, mike@conservationcouncilnc.org.

VISITOR REGISTRATION SHEET

Sen. Ag/Env/Nat. Resources
Name of Committee

7-11-04 (Saturday)
Date 9:30 Am

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Kathy Hawkins	Progress Energy
R. Rogers	R. Rogers
Tom Beason	NC Envir Defense
Kim Hibbard	NCLM
Cam Cross	BPD NC
Henry Jones	Attorney Raleigh
Steve Woodson	NC Farm Bureau
Johanna Reese	DENR
Bill Eaves	"
Robin Smith	"

VISITOR REGISTRATION SHEET

7-17-04
9:30 Am

Sen. Ag/Env/Nat. Resources
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stephenson	NC Coastal Federation
Carrie Clark	Conservation Council of NC
Molly Diggins	Sierra Club