2005-2006

HOUSE ENVIRONMENT & NATURAL RESOURCES

COMMITTEE MINUTES

MINUTES
HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES
Tuesday, August 11, 2005

The House Committee on Environment and Natural Resources met on Tuesday, August 11, 2005, in Room 643 of the Legislative Office Building at 2:00 P.M. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Vice Chairs: Representatives Lucy Allen, Harrison, and McComas; Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Goodwin, Gulley, Hackney, Haire, Luebke, Martin, McGee, Owens, Stiller, Weiss, and Womble.
The Visitor Registration is attached and made part of these minutes. (Please see exhibit #1.)

Representative Jim Harrell, presiding Chair, called the meeting to order. The Pages, Sergeant-at-Arms, and Senior Counsel Givens and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 1413, A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS, AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

By motion from Representative Justice, Chair, the Proposed Committee Substitute H1413-PCS10386-RTf-37 was adopted for consideration and moved forth for discussion. (Please see exhibit #2). The Bill Analysis is attached. (Please see exhibit #3). Representative Allen, primary sponsor, was recognized for introductory remarks. She explained that by delegating to local governments, cities and counties the authority to adopt limited erosion and sedimentation control programs, including inspection responsibilities, the state would be addressing its problems with water quality. It also addresses the problems the NC Division of Land Resources has with inspecting and monitoring over 7,000 active construction sites with 32 full time inspectors. Representative Allen emphasized the cost effectiveness of strengthening environmental programs and the importance in addressing self-inspections, given the lack of inspectors, as being a step in right direction. Counsel Givens was recognized to explain the Committee Substitute and commented that all concerns of interested parties had been addressed. He noted that because of the fees the bill would also require consideration from the Finance Committee.

Representative Harrell, Chair, recognized committee members for questions and comments. Representative Owens spoke in support of the bill, but would like to see the state supplement local efforts given its cost effectiveness for the state. Discussion from committee members ensued.

Secretary Bill Ross, NC DENR, was recognized to speak in support of the bill emphasizing the state's difficult problem with erosion control despite best efforts. He pointed out the cost in terms of loss of soil quality, loss of opportunity and quality of life, muddy streams, and dirty water. Mr. Ross explained the importance of inspections and maintenance of erosion control measures in order to have clean water and soil that stays in place and remains productive. He further emphasized that local tracking and partnership with the state are steps in the right direction.

Representative Daughtridge expressed concern that this is could be a revenue producing bill instead of environmental protection because the Committee Substitute did not address a limitation of fees that the county and city could charge for violations. Counsel Givens clarified that the storm water program and riparian buffer protection program violations carry a civil penalty and do not have a fee authority. A technical amendment was sent forth to amend language on Page 4, line 11-15 of the Committee Substitute. (Please see Exhibit #4). Upon motion from Representative Allen the amendment passed by unanimous vote.

Upon motion by Representative Weiss, the Committee Substitute H1413-PCS10386-RTf-37 received a favorable report as amended, unfavorable to original bill with recommendation it be re-referred to the House Finance Committee. Committee Report 2005 is attached (Please see Exhibit #5).

There being no further business, Representative Harrell adjourned the meeting at 1:00 P.M.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Thursday, August 11, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

HOUSE BILL 1413. ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.
SPONSORS - REPRESENTATIVES L. ALLEN, HACKNEY, JUSTICE, and WEISS.

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **4:45 p.m.** on **August 9, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday August 11, 2005
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding
   Representative Carolyn H. Justice

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

HOUSE BILL 1413. ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS.

SPONSORS - REPRESENTATIVES L. ALLEN, HACKNEY, JUSTICE, WEISS.

5. Adjourn

Exhibit #1

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 8/11/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mac Bordey	NC Aggregates
Jim Simon	DENR
Johanna Reese	DENR
Bill Ross	DENR
Mary Penny Thompson	DENR
Steve Wall	DENR
Gary Harris	NCPMA
Fred Aiken	NC Aggregates Assn.
Steven Levitas	Kilpatrick Stockton
BERRY Jenkins	CAROLINAS AGC
Elizabeth Scott	Sierra Club

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Cyrus	NCS Grange
Michelle C. Vaught	Weyerhaeuser
Elizabeth Curtis	NCPIRG
Ed TURLINGTON	BPMHL
Paula A Wolf	El Pueblo; PPHS
Barbara Cantalupo	BASF
Mark Paul	HMW
Dick Colton	
Alastair Macaulay	NCHBA
Paul Wilms	NC HBA
Lisa Martin	

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Wrenn	Hoppen Hicks, LLP for Granville Co
Chip Killian	Nelson Mullins
[signature]	NMRS
Doug Howey	NCDMA
Edgar Miller	CTNC
Eben Polk	CWMTF
Rebecca Troutman	NCACC
Nancy Thompson	NCIC
Anita Watkins	NCLM
Rick Zechini	NC Assoc. of Realtors
Stephanie Lampe	NC Assn. of Realtors

House Pages

Environment & Natural Resources

Name Of Committee: _____ Date: 8/11/05

1. Name: Caroline Haselman
   County: Guilford
   Sponsor: Jeffus
2. Name: Eli Oakley
   County: Person
   Sponsor: Wilkins
3. Name: Jordan Little
   County: Mecklenburg
   Sponsor: Rep. Gulley
4. Name: Rebecca Ellis
   County: Beaufort
   Sponsor: Rep. Williams
5. Name: Jordan Spangenberg
   County: Wake
   Sponsor: Rep. Fraser Black

Sgt-At-Arms

1. Name: WALTER SPELL
2. Name: FRANK PREVO
3. Name: TOUSSAINT AVENT
4. Name: BILL SULLIVAN
5. Name: JAMES WORTH
6. MARTHA PARRISH
7. TOM WILDER

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HOUSE BILL 1413*

Short Title:	Enhance Local Govt. Adm. of Env. Prgms.	(Public)
Sponsors:	Representatives L. Allen, Hackney, Justice, Weiss (Primary Sponsors); Alexander, Carney, Fisher, Harrison, Insko, and Womble.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS, AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection 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."

SECTION 2. 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:

(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~~a local government.

(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 administer an approved local erosion and sedimentation control program pursuant to G.S. 113A-60 over all other land-disturbing activities."

SECTION 3. 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 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.

(a1) The Commission may review any approval of an erosion and sedimentation control plan by a local government and, if the Commission determines that the plan does not comply with the requirements of this Article and rules adopted pursuant to this Article, the Commission may require that the erosion and sedimentation control plan be revised to correct any deficiencies. The Commission may review any enforcement action or failure to take an enforcement action by a local government and, if the Commission determines that the enforcement action is inappropriate or insufficient, the Commission may modify the enforcement action taken by the local government, or the Commission may take appropriate enforcement action.

(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 assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control 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. The local government shall establish a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be the amount that would be due to the Commission pursuant to G.S. 113A-54.2(a) and any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. A local government that administers a limited erosion and sedimentation control program shall collect and pay to the Commission an amount equal to eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited 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 the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration 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 4. G.S. 143-215.3D is amended by adding a new subsection to read:

"(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit the authority of a local government to assess or collect a fee for the review of an application for a permit or a mitigation plan under any local program that is approved by the Commission under this Article."

SECTION 5. G.S. 143-215.6A(j) reads as rewritten:

"(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section."

SECTION 6. This act becomes effective 1 September 2005.

Exhibit #2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1413*
PROPOSED COMMITTEE SUBSTITUTE H1413-PCS10386-RTf-37

Short Title: Enhance Local Govt. Adm. of Env. Prgms. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection 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 landowner, the financially responsible party, or their agent shall perform each inspection. The person who performs each inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall indicate whether the erosion control measures required by the plan have been installed in the correct sequence and whether the measures are being maintained in substantial accordance with the plan. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. 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:

(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~~a local government.
(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 administer a delegated 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 a delegated erosion and sedimentation control program:

(1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
(2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action."

SECTION 3. 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 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 assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to 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. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars ($100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration 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.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan or that the measures required in the plan are not effective to control erosion and sedimentation, the local government shall inform the person of the actions that need to be taken to comply with this Article. If the person responsible for the land-disturbing activity fails to take the actions needed to comply with this Article, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1."

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

"(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article."

SECTION 5. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer ~~Extension.~~ Extension and Reclaimed Water Utilization. – Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program ~~that:~~does all of the following:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this ~~Part;~~Part.

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the ~~Commission;~~Commission.

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State;~~State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process;~~process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program;~~program.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system;~~system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer ~~system; and~~system or a reclaimed water utilization system.

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of ~~this subsection,~~ subsections (f) and (f1) of this section, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article."

SECTION 6. G.S. 143-215.6A(j) reads as rewritten:

"(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section."

SECTION 7. This act becomes effective 1 September 2005.

Exhibit # 3

HOUSE BILL 1413:
Enhance Local Govt. Adm. of Env. Prgms

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	August 9, 2005
Introduced by:	Reps. L. Allen, Hackney, Justice, Weiss	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1413-PCS10386-RTf-37		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1413 would: require the self-inspection of an area covered by an approved erosion and sedimentation control plan; clarify the jurisdiction of the North Carolina Sedimentation Control Commission over local erosion and sedimentation control programs; authorize a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; clarify that the statute which provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities; authorize local permit programs for reclaimed water utilization systems; and provide that local governments certified and approved by the Environmental Management Commission (EMC) to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.***

As introduced, this bill was identical to S1114, as introduced by Sen. Albertson, which is currently in Senate Finance.

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 North Carolina Sedimentation Control Commission (Commission), which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, 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 provides for permanent ground cover after completion of construction. A local government may establish its own erosion and sedimentation control program (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 may also set its own fees.

BILL ANALYSIS:

Self-Inspection: The PCS would require that a plan 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 landowner, financially responsible party, or their agent would be required to perform each inspection and maintain and make available a record of the inspection at the site. The record must indicate whether the erosion control measures required by the plan were installed in the correct sequence and whether the measures are being maintained in accordance with the plan. The report must also indicate if there was any deviation from the approved plan, measures required to correct the deviation, and document the completion of those measures.

Jurisdiction of Commission: The PCS would clarify that the Commission has concurrent jurisdiction with local governments that administer a delegated program. In addition, the Commission would be given the authority to: (i) review plan approvals made by a delegated program and to require a revised plan if the Commission determines that the plan does not comply with the Act and the associated rules; and (ii) review the compliance activities of a delegated program and take appropriate action upon determination that the delegated program has failed to take appropriate compliance action.

Authorization of Limited Local Programs: The PCS would authorize a local government to request that the Commission approve and delegate a limited program that allows the local government to only inspect land-disturbing activities, and assess and collect appropriate fees. Local governments would be authorized to adopt ordinances and regulations necessary to establish a limited 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 would retain responsibility for administering all components of the program, other than the inspection of land-disturbing activities. The local government would be required to establish a fee for the review of a plan and related compliance activities, not to exceed $100.00, and submit a portion of the fee to the Commission to compensate the Commission for the costs associated with the administration and enforcement of other parts of the program.

Local Government Fee Authority Not Impaired: The PCS would clarify that G.S. 143-215.3D, which provides the fee schedule for water quality permits, would not be construed to limit the authority of a local government to collect a fee for the review of a permit application or mitigation plan, or inspection of a site.

Local Permit Programs for Reclaimed Water Utilization Systems: The PCS would authorize local governments to establish and administer their own permit program, in lieu of required State permits, for construction, operation, alteration extension, or change of a reclaimed water utilization system. The statute already authorizes local government permit programs for these activities with regard to sewer systems.

Civil Penalties for Violations: The PCS would provide that local governments certified and approved by the EMC to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.

EFFECTIVE DATE: The PCS would become effective September 1, 2005.

H1413e1-SMRI-CSRT

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Exhibit #4

EDITION No. _____

H. B. No. 1413 DATE 8-11-05

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

COMMITTEE SUBSTITUTE H1413-PCS10386-RTF-37

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 4, line 5 11 through 15

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4

5 "failed to comply with an approved erosion

6

7 and sedimentation control plan, the local

8

9 government shall refer the"

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED 11 Aug 2005 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

April 21, 2005

H 1413. ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS. (=S 1114). *TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS, AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.* Identical to S 1114, introduced 3/24/05.

Intro. by L. Allen, Hackney, Justice, Weiss.

Ref. to Environment GS 113A, 143

August 11, 2005

H 1413. ENHANCE LOCAL GOVT. ADM. OF ENV. PRGMS. Intro. 4/21/05. House committee substitute makes the following changes to 1st edition. Revises GS 113A-54.1(e) to provide that landowner, financially responsible party, or agent must perform inspection under approved erosion and sedimentation plan; also includes additional detail that must be included in record of inspection. Amends GS 113A-60(d) to provide that fee to be paid by person who submits erosion and sedimentation control plan to local government is 80% of amount established under GS 113A-54.2(a), plus amount to cover local government inspection and administration costs; also requires local government that administers erosion and sedimentation control program to transmit plan to NC Sedimentation Control Commission for review. Adds GS 113A-60(e) to establish procedure for referring matter to Commission when local government learns that person has engaged in unlawful land-disturbing activity. Revises GS 143-215(f) to apply to areas served by reclaimed water utilization systems as well as sewer systems.

Exhibit #5

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 1413 A BILL TO BE ENTITLED AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS, AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill # be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

HOUSE COMMITTEE

ENVIRONMENT AND NATURAL RESOURCES

2006 SHORT SESSION

REPRESENTATIVE JAMES A. HARRELL, III, CHAIR

REPRESENTATIVE CAROLYN H. JUSTICE, CHAIR

Beth LeGrande, Committee Assistant
Vivian Sherrell, Committee Assistant

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES 2005

MEMBER-CHAIRS	ASSISTANT	PHONE	OFFICE	SEAT
REP. JIM HARRELL, III	Beth LeGrande	715-1883	403 LOB	46
REP. CAROLYN JUSTICE	Vivian Sherrell	715-9664	418B LOB	16

MEMBER-VICE CHAIRS	ASSISTANT	PHONE	OFFICE	SEAT
REP. LUCY T. ALLEN	Melissa Riddle	733-5860	1307 LB	41
REP. PRICEY HARRISON	Anne Wilson	733-5771	2119 LB	82
REP. DANIEL McCOMAS	Judy Lowe	733-5786	506 LOB	13

MEMBERS	ASSISTANT	PHONE	OFFICE	SEAT
REP. CURTIS BLACKWOOD	Mizie Finke	733-2406	1317 LOB	97
REP. RUSSELL CAPPS	Nancy Fox	733-5903	501 LOB	118
REP. BECKY CARNEY	Joyce Langdon	733-5827	1221 LB	54
REP. ARLIE F. CULP	Waneta Lord	733-5865	1010 LB	99
REP. BILL DAUGHTRIDGE	Rachel Dupree	733-5802	604 LOB	87
REP. PRYOR GIBSON	Shirlyn MacPherson	715-3007	419A LOB	96
REP. MITCH GILLESPIE	Cindy Hobbs	733-5862	1008 LB	74
REP. MELANIE GOODWIN	Jane McMillan	733-5823	1305 LB	91
REP. JIM GULLEY	Suzanne Gulley	733-5800	1319 LB	114
REP. JOE HACKNEY	Emily Reynolds	733-5752	2207 LB	69
REP. R. PHILLIP HAIRE	Sara Jane Morris	715-3005	419B LOB	47
REP. VERLA INSKO	Pamela Evans	733-7208	2121 LB	70
REP. STEPHEN LaROQUE	Patricia Freije	715-3017	417B LOB	25
REP. PAUL LUEBKE	Joyce Harris	733-7663	529 LOB	44
REP. GRIER MARTIN	Charlotte Graham	733-5758	2123 LB	95
REP. BILL McGEE	Jayne Nelson	733-5747	531 LOB	103
REP. EDWIN McMAHAN	Jennifer Loftis	733-5602	1426 LB	111
REP. BILL OWENS	Linda Johnson	733-0010	635 LOB	9
REP. JEAN PRESTON	Suzanne Castleberry	733-5706	603 LOB	90
REP. BONNER STILLER	Carla Farmer	733-5974	508 LOB	52
REP. ALICE UNDERHILL	Judy Veorse	733-5853	1206 LB	17
REP. JENNIFER WEISS	Susan Doty	733-5781	2221 LB	31
REP. LARRY WOMBLE	Dorothy McLean	733-5777	537 LOB	56

MEMBERS EX-OFFICIO	ASSISTANT	PHONE	OFFICE	SEAT
REP. BILL CULPEPPER	Dot Crocker	715-3028	404 LOB	36
REP. PETE CUNNINGHAM	Valerie Rustin	733-5778	541 LOB	7
REP. RICK EDDINS	Susan Phillips	733-5828	1002 LB	26
REP. JOE HACKNEY	Emily Reynolds	733-5752	2207 LB	69

NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES
2005 – 2006 SESSION



Rep. Jim Harrell, III
Chair



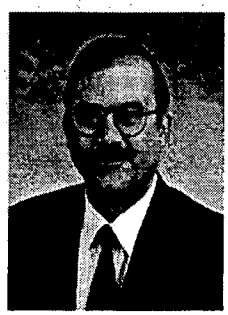
Rep. Carolyn H. Justice
Chair



Rep. Lucy T. Allen
Vice chair



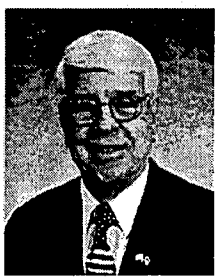
Rep. Pricey Harrison
Vice chair



Rep. Daniel F. McComas
Vice chair



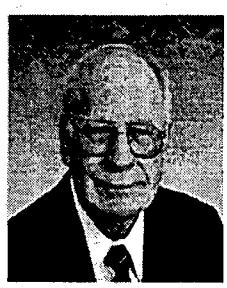
Rep. Curtis Blackwood



Rep. J. Russell Capps



Rep. Becky Carney



Rep. Arlie F. Culp



Rep. Bill Daughtridge



Rep. Pryor Gibson



Rep. Mitch Gillespie



Rep. Melanie Wade Goodwin



Rep. Jim Gulley



Rep. Joe Hackney



Rep. R. Phillip Haire



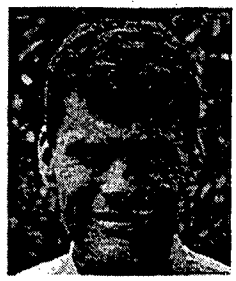
Rep. Verla Insko



Rep. Stephen A. LaRoque



Rep. Paul Luebke



Rep. Grier Martin

NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES
2005 – 2006 SESSION


Rep. Bill McGee


Rep. W. Edwin McMahan


Rep. Bill Owens


Rep. Jean R. Preston


Rep. Bonner L. Stiller


Rep. Alice G. Underhill


Rep. Jennifer Weiss


Rep. Larry Womble


Rep. Culpepper
Ex-officio


Rep. Cunningham
Ex-officio


Rep. Eddins
Ex-officio


Rep. Hackney
Ex-officio

ATTENDANCE

HOUSE ENVIRONMENT & NATURAL RESOURCES 2005-06

DATES	06-06-2006	06-20-2006	06-27-2006	06-29-2006-	07-06-2006	07-06-06pm	07-11-2006	07-13-2006	07-13-06pm	07-18-2006	06-19-2006	06-24-2006	06-25-2006	06-26-2006	
REP. JIM HARRELL, III, CHAIR	P	P	P	P	P	P	P	P	P	P		P		P	
REP. CAROLYN JUSTICE, CHAIR	P	P	P	P	P	P	P		P	P	P		P		
REP. LUCY ALLEN, VICE CHAIR	P	P	P	P	P	P	P	P	P	P		P	P	P	
REP. PRICEY HARRISON, VICE	P	P	P	P	P	P	P	P	P	P		P		P	
REP. DANIEL McCOMAS, VICE	P	P	P	P	P	P	P	P	P			P	P		
REP. CURTIS BLACKWOOD	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
REP. RUSSELL CAPPS				P		P	P	P	P			P		P	
REP. BECKY CARNEY	P		P	P	P	P	P	P	P	P	P	P			
REP. ARLIE CULP	P	P	P	P	P	P	P	P	P	ex	P	P	P	P	
REP. BILL DAUGHTRIDGE	P	P	P				P	P	P		P	P	P	P	
REP. PRYOR GIBSON	P	P	P	P	P	P	P	P	P	P	P	P	P		
REP. MITCH GILLESPIE	P						P	P	P	P	P	P			
REP. MELANIE GOODWIN	P	P	P	P	P	P	P	P			P	P	P		
REP. JIM GULLEY	P	P	P	P			P	P	P	P		P	P	P	
REP. JOE HACKNEY	P	P				P	P	P	P	P	P	P			
REP. PHILLIP HAIRE		P	P	P	P	P		P		P	P	P	P	P	
REP. VERLA INSKO			P	P	P	P		P	P	P	P	P			
REP. STEPHEN LaROQUE	P			P		P	P	P	P	P			P		
REP. PAUL LUEBKE	P	P		P	P	P	P	P	P	P		P	P	P	
REP. GRIER MARTIN	P	P	P	P		P	P	P	P	P	P	P	P	P	
REP. BILL McGEE	P	P	P	P	P	P	P	P	P	P	P	P	P		
REP. ED McMAHAN	P	P	P		P	P	P	P	P	P	P	P	P	P	
REP. BILL OWENS					P	P	P	P		P		P		P	
REP. JEAN PRESTON	P	P	P		P	P	P	P	P	P	P		P	P	
REP. BONNER STILLER	P	P		P	P	P	P	P	P	P		P	P	P	
REP. ALICE UNDERHILL	P	P	P	P	P	P	P	P	P	P	P	P	P		
REP. JENNIFER WEISS	P	P	P		P	P	P	P	P	P	P	P	P		
REP. LARRY WOMBLE		P	P		P	P	P	P	P	P	P	ex			

Minutes

House Committee on Environment and Natural Resources
Tuesday, June 6, 2006

The House Committee on Environment and Natural Resources met on Tuesday, June 6, 2006 in Room 643 of the Legislative Office Building at 12:00 noon. The following were present: Presiding Chair, Carolyn Justice, Co- Chair Jim Harrell; Vice Chairs L. Allen, McComas, and Harrison; and Representatives Blackwood, Carney, Culp, Daughtridge, Gibson, Gillespie, Goodwin, Gulley, Hackney, LaRoque, Luebke, Martin, McGee, McMahan, Preston, Stiller, Underhill, and Weiss. Assisting with the meeting were George Givens, Committee Counsel; Jeffrey Hudson, Assistant Committee Counsel; Jennifer McGinnis, Assistant Committee Counsel, Tim Dodge, Committee Analyst; Sergeant-At-Arms, and Pages. A visitor registration is attached and made part of these minutes. (See attached exhibit #1) Meeting agenda is attached. (See attached exhibit #2)

Chairman Justice called the meeting to order and made introductions of staff and pages. Vice Chairman Lucy Allen presided over the first part of the meeting in order for Chairman Justice to present HB 2129. **A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE COMMUNITY CONSERVATION ASSISTANCE PROGRAM IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.** A motion was made to adopt the PCS. Chairman Justice presented and spoke on the PCS. Tim Dodge explained the new PCS. Questions were asked by the committee, and Manly Wilder from the Soil and Water Division at DENR provided the answers. (See attached exhibit #3) Representative Blackwood moved to give the House PCS a favorable report, unfavorable to the original Bill. The PCS was voted on and passed, and Rep. Justice resumed as Chairman of the meeting. The committee report is attached (See exhibit #4)

House Bill 2173, **AN ACT TO PROVIDE THAT FUNDS IN THE WELL CONSTRUCTION FUND MAY BE USED TO PROVIDE GRANTS TO LOCAL GOVERNMENTS TO ESTABLISH LOCAL WELL CONSTRUCTION PROGRAMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.**
Representative Harrell presented the Bill and an amendment. (See attached exhibit #5) A motion was made to adopt the amendment, and was passed. After some discussion, Representative Justice announced the Bill would be displaced.

There being no further business, Representative Justice adjourned the meeting.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Exhibit #1

VISITOR REGISTRATION SHEET

Environment & Natural Resources — June 1, 2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pate	NCDENR
Robin Smith	DENR
L. Rogers	DENR
Lynn Sprague	DENR Div of Soil & Water Conservation
David Williams	DENR Div. of Soil & Water Cons.
Coleen H. Sullins	DENR - DWQ
Steve Wall	DENR
Henry M Lancaster III	LCA
Mona Mendenhall	Poyner + Spruill
Rebecca L Bowie	NCALHD/NCPHA
Paul Meyer	NCACC
Richard Power	Wake Co.

Exhibit #2

HOUSE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Meeting Agenda

June 6, 2006
12:00 noon
Room 643

1. **Call to Order**

2. **Introductions**

3. **Bills:**

HB 2129 Community Conservation Assistance Program.
Representative Justice

HB 2173 Well Construction Fund/Grants for Local Prgms.
Representatives Harrell and Underhill

HB 2162 Land-Disturbing Activities Near Trout Waters.
Representative Gibson

4. **Adjourn**

Exhibit #3

Questions on Community Conservation Bill

1. Provide a few general comments about the bill?

The bill would provide a voluntary, non-regulartory community assistance program in DENR supervised by the Soil and Water Conservation Commission. It would authorize conservation districts to provide natural resource management through technical, educational, outreach, and financial assistance on urban, suburban, and rural lands for all the people of N.C. Community conservation has become a priority of many conservation districts as they broaded their mission and objectives beyond traditional agriculture. This program would be patterened after the extremely sucessful Agriculture Cost Share Program, in that it would focus on reducing non-point source pollution from developed areas and communities.

2. Are appropriations being requested to fund the bill?

No. The bill is authorizing legislation. Funds will be requested at a later date to fund the bill provisions. They would be requested from general appropriations, not fee based. In the current expansion budget, the Division of Soil and Water requested $118,000 to establish the program and $750,000 to deliver community conservation assistance activities to conservation districts. In the establishment of budget priorities, this request was not submitted along with DENR'S priorities for the Governor's budget.

3. What is currently happening without appropriations?

Community conservation is a priority of the N.C. Association of Soil and Water Conservation Districts. They have hired a community conservation specialist to work with districts. Some districts in urban and non-agricultural areas have already expanded their missions and have employed community and urban conservationists. Several conservation districts are currently providing technical, outreach, education, and information to thier citizens. These activities need to be expanded and a financial assistance segment incorporated to enable the program to begin to address the variety of conservation opportunities and needs that exist in communities across the state.

Exhibit # 4

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2129 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE COMMUNITY CONSERVATION ASSISTANCE PROGRAM IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

Exhibit #5

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First

H. B. No. 2173 DATE June 6, 2006

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

COMMITTEE SUBSTITUTE No

(Rep.) Sen.) Havrell

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by inserting between the words "DepartMent" and "shall" the words: "in conjunction with the well Contractors certification Commission".

ADOPTED ✓ FAILED TABLED

SIGNED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
Tuesday, June 20, 2006

The House Committee on Environment and Natural Resources met on Tuesday, June 20, 2006, 12:00 Noon, Room 643 Legislative Office Building. The following members were present: Representatives James A. Harrell, III, Presiding Chair and Carolyn H. Justice, Chair; Representatives Allen and Harrison and McComas, Vice Chairs; Representatives Blackwood, Culp, Daughtridge, Gibson, Goodwin, Gulley, Hackney, Haire, Luebke, Martin, McGee, McMahan, Preston, Stiller, and Underhill, Weiss and Womble.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms, Pages and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 2125: Extend Climate Change Commission. (Please see exhibit #3.)
Representative Harrison, a primary sponsor along with Representative Hackney, was recognized to explain the bill. Representative Harrison explained in response to Representative Blackwood's question that the Climate Change Commission was being presented a balanced perspective. Upon motion by Representative Luebke, House Bill 2125 received a favorable report. The Committee Report is attached (Please see exhibit #4).

HOUSE BILL 2127: State Parks System Additions. (Please see exhibit #5.)
Representative Justice, a primary sponsor along with Representatives Grady and Harrison, was recognized to explain the bill. The Bill Analysis is attached (Please see exhibit #6.) Upon being recognized, Representative Frye explained that Avery County was in full support of the bill. David Knight, Nature Conservatory, noted that there were no objections to the bill. Mr. Rudder, Assistant Director, State Parks, explained the bills importance citing the ecological value and responded to concerns expressed by members regarding the state's purchasing of land. Representative Hackney cited the stringent rules that were applied to the State's Land Acquisition procedure. With all questions having been answered and upon motion by Representative Hackney, House Bill 2127 received a favorable report. The Committee Report is attached (Please See Exhibit #7).

HOUSE BILL 2165: Environmental Technical Corrections 2006. (Please See Exhibit #8).
Chairman Justice moved to adopt the Proposed Committee Substitute H2165-CSSY-44 [v.1] (Please See Exhibit #8). Representative Gibson, a primary sponsor along with Representatives Harrell and Justice, upon being recognized spoke on the bill. George Givens, Committee Chief Counsel, confirmed that the bill's purpose was for technical changes only. Upon motion by Representative Gibson, Proposed Committee Substitute H2165-CSSY-44 [v.1] received a favorable report, which changed the title, unfavorable as to the original bill. The Committee Report is attached (Please See Exhibit #9).

HOUSE BILL 2208: Delay CWMTF Amendments. (Please See Exhibit #10).
Representative Gibson moved to adopt the Proposed Committee Substitute H2208-CSRT-74 [74 [v.2] (Please See Exhibit #11). Representative Gibson, a primary sponsor along with Representatives Harrison, Underhill and Rapp, upon being recognized spoke on the bill. The Bill Analysis is attached (Please See Exhibit #12). George Givens, Committee Chief Counsel, explained the changes included in the bill were in response to Representative Womble's request. Discussion ensued and all questions were answered to the satisfaction of the members. Upon motion by Representative Womble, Proposed Committee Substitute H2208-CSRT-74 [74 [v.2] received a favorable report, which changes the title, and unfavorable as to the original bill. The Committee Report is attached. (Please See Exhibit #13).

SENATE BILL 1121: Brownfields Property Reuse Act Amendments. (Please See Exhibit #13). Representative Gibson moved to adopt the Proposed Committee Substitute S1121-CSSB-49 [v.1] (Please See Exhibit #14). Representative Gibson upon being recognized spoke on the bill. The Bill Analysis is attached (Please See Exhibit #15). Representative Gibson explained the bill was non-controversial and was brought forth by the Environmental Research Commission Working Group. In response to Representative Womble's request, George Givens, Committee Chief Counsel, explained the changes included in the bill. Jeffrey Hudson, Committee Counsel, upon being recognized explained the "marginal" improvements of the bill. Dexter Mathews, Director of the Division of Waste Management, DENR, upon being recognized addressed Representative Womble's further concerns. Representative Womble cited the devastation involved with environmental contamination in an area within his district and the problem they had experienced in getting assistance. With all questions having been responded to and upon motion by Representative Gibson, Proposed Committee Substitute S1121-CSSB-49 received a favorable report and unfavorable as to the original bill. The Committee Report is attached (Please See Exhibit #16).

HOUSE BILL 2161: Amend Environmental Laws 2006. (Please See Exhibit #17). Representative Gibson moved to adopt the Proposed Committee Substitute H2161–CSSB-51 [v.1] (Please See Exhibit #18). The motion carried and Representative Gibson upon being recognized noted that the bill was without negative comments. The Bill Analysis is attached (Please See Exhibit #19). Doug Lassiter, NC Septic Tank Association,.addressed a concern with Section 4 which changes who supplies the filters. Representative Gibson offered a perfecting amendment (Please See Exhibit #20) that corrected the error in the language in response to Mr. Lassiter's concern. Chairman Justice expressed interest in commercial licensed fishermen being opted out of having to get recreational licenses also. Ed Norman, Division of Environmental Health, DENR, responded to Representative Blackwood's request for clarification of the Lead Paint Section.

Representative Harrell announced because of additional questions and the time constraint, discussion on the bill would be continued at a later time. With no further business the meeting was adjourned.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

Beth LeGrande (Rep. Harrell)

From: Beth LeGrande (Rep. Harrell) on behalf of Rep. Jim A. Harrell
Sent: Monday, June 19, 2006 7:31 PM
To: Rep. Jim A. Harrell; Rep. Carolyn H. Justice
Subject: CORRECTIONS ENVIRONMENT MTG. JUNE 20 @ 12N 643 LOB

NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING
NOTICE CORRECTIONS
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Tuesday, June 20**

TIME: **12 NOON**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

HOUSE BILL 2125: Extend Climate Change Commission.
Primary Sponsors - Representatives Hackney and Harrison

HOUSE BILL 2127: State Parks System Additions.
Primary Sponsors – Representatives Justice, Grady, and Harrison

HOUSE BILL 2161: Amend Environmental Laws 2006.
Primary Sponsors – Representatives Gibson, Harrell, and Justice

HOUSE BILL 2165: Environmental Technical Corrections 2006.
Primary Sponsors – Representatives Gibson, Harrell, and Justice

HOUSE BILL 2208: Delay CWMTF Amendments.
Primary Sponsor – Representative Gibson

SENATE BILL 1121: Brownfields Property Reuse Act Amendments.
Primary Sponsor – Senator Daniel G. Clodfelter

Respectfully,
Representative James A. Harrell, III
Representative Carolyn H. Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **7:00 P.M.** on **June 19, 2006.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday June 20, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

HOUSE BILL 2125: Extend Climate Change Commission.
Primary Sponsors - Representatives Hackney and Harrison

HOUSE BILL 2127: State Parks System Additions.
Primary Sponsors – Representatives Justice, Grady, and Harrison

HOUSE BILL 2161: Amend Environmental Laws 2006.
Primary Sponsors – Representatives Gibson, Harrell, and Justice

HOUSE BILL 2165: Environmental Technical Corrections 2006.
Primary Sponsors – Representatives Gibson, Harrell, and Justice

HOUSE BILL 2208: Delay CWMTF Amendments.
Primary Sponsor – Representative Gibson

SENATE BILL 1121: Brownfields Property Reuse Act Amendments.
Primary Sponsor – Senator Daniel G. Clodfelter

5. Adjourn

Pages

#2

House Pages

Name Of Committee: _____ Date: 6/20/06

1. Name: Dylan Richard
   County: Wake
   Sponsor: Butterfield
2. Name: Chad Walker
   County: Harnett
   Sponsor: Black
3. Name: Parker Ray Brown
   County: Northampton
   Sponsor: Rep Wray
4. Name: Wes Johnson
   County: Wayne
   Sponsor: Black
5. Name: Jordan Blackwell
   County: Cumberland
   Sponsor: Glazier

Sgt-At-Arms

1. Name: Thomas WILDER
2. Name: MARVIN LEE
3. Name: EARL COKER
4. Name: MARK CONE
5. Name: =

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 20, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Norman	DENR - Ed.Norman@ncmail.net
Bert Gulick	DOJ Att. on behalf of DENR
Steve Wall	DENR
Terry L. Pierce	DENR
John Barkley	DOJ for DENR
[illegible]	[illegible]
Doug Lassiter	NC STA
Mark Trawick	Don Beason Intern

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 20, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd Landis	Dhmak
Alex Ashton	NC Citizen Chapel Hill
Patrick Butler	NCDENR - DAQ
Paul Gorsey	NC DENR - DAQ
Cam Ward	
Charles Case	Hunton & Williams
Dave Matthews	NCDENR DWM
Francis M. Nutt	NCDENR - DWR
Robin Smith	DENR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Patrick McCrary	Intera
[illegible]	Pagnell Scott
[illegible]	United Rocks
[illegible]	AEP
[illegible]	ALLEY-[illegible] INC.
Katy Hawkins	Progress Energy
[illegible]	Duke Energy
[illegible]	Sierra Club
[illegible]	NCWA
[illegible]	Rep. Gibson's Office

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 20, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Max Rose	Interin - Rep. Luebke
Heather Crosshaw	TNC
Erica Reid	WMTF
Elizabeth Chats	Environment North Carolina
Christine Wunsche	Environment North Carolina
Hayes Neely	Environment North Carolina
DAVID WRIGHT	ENVIRONMENT NORTH CAROLINA
Emily kirby	NC Conservation Network
Erin Kinney	NCCN
Josh Mc[illegible]	Gov Office
Amy Fullbright	Hunton & Williams

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 20, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GORDON MYERS	NC WILDLIFE RESOURCES
RICHARD HAMILTON	N.C. WILDLIFE RESOURCES
Don Rawley	NC D.V. Parks & Rec
Richard Rogers	NC DENR
Anita Watkins	NCLM
Jeff Wolfe	Daily Bulletin
Aaron Chang	Intern - Rep. Glazier
John McMillan	MFIS
Ben Holman	CWMTF
ANONYMOUS ALLEN	NCACC
Daniel Cordaro	NCACC
Pam Mercer	NC.ACC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2125*

Short Title:	Extend Climate Change Commission.	(Public)
Sponsors:	Representatives Hackney, Harrison (Primary Sponsors); Coleman, Faison, Luebke, Martin, and Weiss.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2005-442 reads as rewritten:

"**SECTION 11.** ~~Report.~~Reports. – The Commission shall submit an interim report to the General Assembly and the Environmental Review Commission no later than 15 January 2007 and may submit interim reports at other times at its discretion. The Commission shall submit a final report, including any findings and recommendations, ~~report its findings and recommendations~~ to the General Assembly and the Environmental Review Commission on or before ~~1 November 2006,~~15 April 2008, at which time the Commission shall terminate."

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

#4

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2125 A BILL TO BE ENTITLED AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

#5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2127*

Short Title:	State Parks System Additions.	(Public)
Sponsors:	Representatives Justice, Grady, Harrison (Primary Sponsors); and Glazier.	
Referred to:	Environment and Natural Resources.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF MOUNTAIN BOG STATE NATURAL AREA AND SANDY RUN SAVANNAS STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats; and

Whereas, Mountain Bog State Natural Area would be comprised of two mountain bogs, Sugar Mountain Bog and Pineola Bog.

Whereas, rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot; and

Whereas, the Mountain Bog site has been found to possess biological resources of statewide significance; and

Whereas, savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are an important component of the State's natural landscape, but are poorly represented in the existing State Parks System; and

Whereas, the Sandy Run Savannas State Natural Area would be comprised of a cluster of nationally significant savannas along the border of Pender and Onslow counties; and

Whereas, the Sandy Run Savannas site is important as a military buffer and is strategically located as a hub surrounded by Camp LeJeune, Holly Shelter Game Land, and Angola Bay Game Land; and

Whereas, the Sandy Run Savannas site contains rare species that include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife; and

Whereas, the Sandy Run Savannas site has been found to possess biological 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 Mountain Bog State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 2. The General Assembly authorizes the Department of Environment and Natural Resources to add Sandy Run Savannas State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

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

#6

HOUSE BILL 2127:
State Parks System Additions

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 20, 2006
Introduced by:	Reps. Justice, Grady, Harrison	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 2127 would authorize the Department of Environment and Natural Resources to add Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area 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.

Proposed New Unit - Mountain Bog State Natural Area

- Mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats.
- This proposal is for the addition of two nationally significant mountain bogs in Avery County, Sugar Mountain Bog and Pineola Bog, to the State Parks System. Both sites are currently for sale. They will be managed as a cluster together with the existing Beech Creek Bog State Natural Area.
- **SUGAR MOUNTAIN BOG** includes the bog and other important natural communities surrounding the bog. The initial acquisition is a tract of 102 acres for $1.2 million. A grant application for this tract has been submitted to the Natural Heritage Trust Fund. The Trust for Public Land is assisting the State with the proposed acquisition.
- **PINEOLA BOG:** The Division estimates the total project to be approximately 180 acres with an estimated value of $2.1 million. The Nature Conservancy (TNC) is assisting the State with the acquisition.
- Rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot (a butterfly).

Proposed New Unit – Sandy Run Savannas State Natural Area

- This proposed unit is comprised of a cluster of nationally significant savannas along the border of Pender and Onslow counties. Savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are a very important component of North Carolina's natural landscape, but are very poorly represented in the existing State Parks System.
- The site is also important as a military buffer, and is strategically located as a hub surrounded by Camp LeJeune, Holly Shelter Game Land, and Angola Bay Game Land.
- A grant application for $1 million was submitted to the Natural Heritage Trust Fund for the spring funding cycle. The grant would fund acquisition of approximately 2,206 acres at Sandy Run currently owned by TNC.

- Rare species known to occur in the project area include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife.

BILL ANALYSIS: House bill 2127 would authorize DENR to add Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area to the State Parks System.

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

H2127e1-SMRI

#7

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2127 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ADDITION OF MOUNTAIN BOG STATE NATURAL AREA AND SANDY RUN SAVANNAS STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2165*

Short Title:	Environmental Technical Corrections 2006.	(Public)
Sponsors:	Representatives Gibson, Harrell, and Justice (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

May 18, 2006

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, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174.2(c)(6)i. reads as rewritten:

"i. Resident ~~Elderly~~ Age 65 Lifetime CRFL. – $15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 2. G.S. 113-351(c)(3)e. reads as rewritten:

"e. Resident ~~Elderly~~ Age 65 Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 3. G.S. 143B-291(a)(1) reads as rewritten:

"(1) One member who is the ~~chairman~~ chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio."

SECTION 4. G.S. 143B-291(g) reads as rewritten:

"(g) Staff. – All clerical and other services required by the Commission shall be supplied by the Secretary of ~~the Department.~~Environment and Natural Resources."

SECTION 5. G.S. 143B-292 reads as rewritten:

"**§ 143B-292. North Carolina Mining Commission – officers.**

The North Carolina Mining Commission shall have a ~~chairman~~ chair and a ~~vice-chairman~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman at his pleasure.~~chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the

members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 6. G.S. 143B-293 reads as rewritten:

"**§ 143B-293. North Carolina Mining Commission – meetings.**

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least five members."

SECTION 7. G.S. 143B-296 reads as rewritten:

"**§ 143B-296. Soil and Water Conservation Commission – officers.**

The Soil and Water Conservation Commission shall have a ~~chairman~~ chair and a ~~vice-chairman.~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman~~ chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 8. G.S. 143B-297 reads as rewritten:

"**§ 143B-297. Soil and Water Conservation Commission – meetings.**

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least four members."

SECTION 9. G.S. 143B-299 reads as rewritten:

"**§ 143B-299. Sedimentation Control Commission – members; selection; compensation; meetings.**

(a) Creation; Membership. – There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);

(7) A member of the State Soil and Water Conservation Commission;

(8) A member of the Environmental Management Commission;

(9) A soil scientist from the faculty of North Carolina State University;
(10) Two persons who shall be representatives of nongovernmental conservation interests; and
(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. – The Commission members shall be appointed by the Governor. All Commission members, except the person ~~filling position number five, as specified above,~~ appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms ~~of office~~ of three years and until their successors are appointed and duly qualified. The person ~~filling position number five~~ appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as ~~he~~ the person continues as Director of the Water Resources Research Institute. The terms ~~of office~~ of members ~~filling positions two, four, seven, and eight~~ appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms ~~of office~~ of members ~~filling positions one, three, and ten~~ appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms ~~of office~~ of members ~~filling positions six, nine, and eleven,~~ appointed under subdivisions (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person ~~filling position number five,~~ appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, ~~nonfeasance or, in the case of members filling positions five, six, seven, eight, nine, and eleven as specified above,~~ nonfeasance, or because they no longer possess the required qualifications for membership. ~~In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced.~~ The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) ~~Chairman.~~Chair. – The Governor shall designate a member of the Commission to serve as ~~chairman.~~chair.

(c) Compensation. – The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which

said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. – The Commission shall meet at the call of the ~~chairman~~ chair and shall hold special meetings at the call of a majority of the members."

SECTION 10. G.S. 143B-300(c) reads as rewritten:

"(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or ~~his~~ the Secretary's designee."

SECTION 11. This act is effective when it becomes law.

9

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2165*
PROPOSED COMMITTEE SUBSTITUTE H2165-CSSY-44 [v.1]

6/20/2006 9:28:45 AM

Short Title: Env. Tech Corrects/Reporting Reqs. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT AND NATURAL RESOURCES, AND TO AMEND OR REPEAL VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS.

SECTION 1. G.S. 113-174.2(c)(6)i. reads as rewritten:

"i. Resident ~~Elderly~~ Age 65 Lifetime CRFL. – $15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 2. G.S. 113-351(c)(3)e. reads as rewritten:

"e. Resident ~~Elderly~~ Age 65 Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 3. G.S. 143B-291(a)(1) reads as rewritten:

"(1) One member who is the ~~chairman~~ chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio."

SECTION 4. G.S. 143B-291(g) reads as rewritten:

"(g) Staff. – All clerical and other services required by the Commission shall be supplied by the Secretary of ~~the Department.~~Environment and Natural Resources."

SECTION 5. G.S. 143B-292 reads as rewritten:

"**§ 143B-292. North Carolina Mining Commission – officers.**

The North Carolina Mining Commission shall have a ~~chairman~~ chair and a ~~vice-chairman~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman at his pleasure.~~chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 6. G.S. 143B-293 reads as rewritten:

"**§ 143B-293. North Carolina Mining Commission – meetings.**

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least five members."

SECTION 7. G.S. 143B-296 reads as rewritten:

"**§ 143B-296. Soil and Water Conservation Commission – officers.**

The Soil and Water Conservation Commission shall have a ~~chairman~~ chair and a ~~vice-chairman.~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman~~ chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 8. G.S. 143B-297 reads as rewritten:

"**§ 143B-297. Soil and Water Conservation Commission – meetings.**

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least four members."

SECTION 9. G.S. 143B-299 reads as rewritten:

"**§ 143B-299. Sedimentation Control Commission – members; selection; compensation; meetings.**

(a) Creation; Membership. – There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
(7) A member of the State Soil and Water Conservation Commission;
(8) A member of the Environmental Management Commission;
(9) A soil scientist from the faculty of North Carolina State University;
(10) Two persons who shall be representatives of nongovernmental conservation interests; and
(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. – The Commission members shall be appointed by the Governor. All Commission members, except the person ~~filling position number five, as specified above,~~ appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms ~~of office~~ of three years and until their successors are appointed and duly qualified. The person ~~filling position number five~~ appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as ~~he~~ the person continues as Director of the Water Resources Research Institute. The terms ~~of office~~ of members ~~filling positions two, four, seven, and eight~~ appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms ~~of office~~ of members ~~filling positions one, three, and ten~~ appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms ~~of office~~ of members ~~filling positions six, nine, and eleven,~~ appointed under subdivisions (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person ~~filling position number five,~~ appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, ~~nonfeasance or, in the case of members filling positions five, six, seven, eight, nine, and eleven as specified above,~~ nonfeasance, or because they no longer possess the required qualifications for membership. ~~In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced.~~ The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) ~~Chairman.~~Chair. – The Governor shall designate a member of the Commission to serve as ~~chairman.~~chair.

(c) Compensation. – The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. – The Commission shall meet at the call of the ~~chairman~~ chair and shall hold special meetings at the call of a majority of the members."

SECTION 10. G.S. 143B-300(c) reads as rewritten:

"(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or ~~his~~ the Secretary's designee."

PART II. REPORTS CONSOLIDATION.

SECTION 11. G.S. 113-206(f) reads as rewritten:

"(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

~~To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:~~

~~(1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;~~

~~(2) The cost of resolving these claims;~~

~~(3) The number of unresolved claims; and~~

~~(4) Payments made to acquire claims by condemnation.~~"

SECTION 12. Section 11 of S.L. 2002-4 reads as rewritten:

"**Section 11.** The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality

in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September ~~2005.~~2007."

SECTION 13. G.S. 143-215.107C(c) is repealed.

SECTION 14. G.S. 143B-279.12(e) reads as rewritten:

"(e) No later than ~~October 1, 2004, and annually thereafter,~~1 March of each year, the Department of Environment and Natural Resources shall report to the ~~House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the~~ Fiscal Research ~~Division,~~Division and the Environmental Review Commission the number of environmental permits subject to this section that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as required by this section. Based on the data gathered under this subsection, the Department shall include in its annual report recommendations regarding permit time frames for all major permits issued by the Department."

SECTION 15. G.S. 147-12(b) reads as rewritten:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the enforcement of the littering laws of the State, including the number of charges and convictions under the littering laws of the State. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated ~~semiannual~~ annual report on or before March 1 ~~and September 1~~ of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 16. G.S. 130A-295.02(m) reads as rewritten:

"(m) The Department shall report annually on or before 1 ~~September~~ October to the Environmental Review Commission on the implementation of the resident inspectors program."

SECTION 17. This act becomes effective when it becomes law.

#9

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 2165*
PROPOSED COMMITTEE SUBSTITUTE H2165-PCS50741-SY-44

Short Title: Env. Tech Corrects/Reporting Reqs. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT AND NATURAL RESOURCES, AND TO AMEND OR REPEAL VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS.

SECTION 1. G.S. 113-174.2(c)(6)i. reads as rewritten:

"i. Resident ~~Elderly~~ Age 65 Lifetime CRFL. – $15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 2. G.S. 113-351(c)(3)e. reads as rewritten:

"e. Resident ~~Elderly~~ Age 65 Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 3. G.S. 143B-291(a)(1) reads as rewritten:

"(1) One member who is the ~~chairman~~ chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio."

SECTION 4. G.S. 143B-291(g) reads as rewritten:

"(g) Staff. – All clerical and other services required by the Commission shall be supplied by the Secretary of ~~the Department.~~Environment and Natural Resources."

SECTION 5. G.S. 143B-292 reads as rewritten:

"**§ 143B-292. North Carolina Mining Commission – officers.**

The North Carolina Mining Commission shall have a ~~chairman~~ chair and a ~~vice-chairman~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman at his pleasure.~~chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 6. G.S. 143B-293 reads as rewritten:

"**§ 143B-293. North Carolina Mining Commission – meetings.**

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least five members."

SECTION 7. G.S. 143B-296 reads as rewritten:

"**§ 143B-296. Soil and Water Conservation Commission – officers.**

The Soil and Water Conservation Commission shall have a ~~chairman~~ chair and a ~~vice-chairman.~~vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman~~ chair at the pleasure of the Governor. The ~~vice-chairman~~vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 8. G.S. 143B-297 reads as rewritten:

"**§ 143B-297. Soil and Water Conservation Commission – meetings.**

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least four members."

SECTION 9. G.S. 143B-299 reads as rewritten:

"**§ 143B-299. Sedimentation Control Commission – members; selection; compensation; meetings.**

(a) Creation; Membership. – There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
(7) A member of the State Soil and Water Conservation Commission;
(8) A member of the Environmental Management Commission;
(9) A soil scientist from the faculty of North Carolina State University;
(10) Two persons who shall be representatives of nongovernmental conservation interests; and
(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. – The Commission members shall be appointed by the Governor. All Commission members, except the person ~~filling position number five, as specified above,~~ appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms ~~of office~~ of three years and until their successors are appointed and duly qualified. The person ~~filling position number five~~ appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as ~~he~~ the person continues as Director of the Water Resources Research Institute. The terms ~~of office~~ of members ~~filling positions two, four, seven, and eight~~ appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms ~~of office~~ of members ~~filling positions one, three, and ten~~ appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms ~~of office~~ of members ~~filling positions six, nine, and eleven,~~ appointed under subdivisions (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person ~~filling position number five,~~ appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, ~~nonfeasance or, in the case of members filling positions five, six, seven, eight, nine, and eleven as specified above,~~ nonfeasance, or because they no longer possess the required qualifications for membership. ~~In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced.~~ The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) ~~Chairman.~~Chair. – The Governor shall designate a member of the Commission to serve as ~~chairman.~~chair.

(c) Compensation. – The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. – The Commission shall meet at the call of the ~~chairman~~ chair and shall hold special meetings at the call of a majority of the members."

SECTION 10. G.S. 143B-300(c) reads as rewritten:

"(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or ~~his~~ the Secretary's designee."

PART II. REPORTS CONSOLIDATION.

SECTION 11. G.S. 113-206(f) reads as rewritten:

"(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

~~To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:~~

~~(1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;~~

~~(2) The cost of resolving these claims;~~

~~(3) The number of unresolved claims; and~~

~~(4) Payments made to acquire claims by condemnation.~~"

SECTION 12. Section 11 of S.L. 2002-4 reads as rewritten:

"**Section 11.** The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality

in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September ~~2005.~~2007."

SECTION 13. G.S. 143-215.107C(c) is repealed.

SECTION 14. G.S. 143B-279.12(e) reads as rewritten:

"(e) No later than ~~October 1, 2004, and annually thereafter,~~1 March of each year, the Department of Environment and Natural Resources shall report to the ~~House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the~~ Fiscal Research ~~Division.~~Division and the Environmental Review Commission the number of environmental permits subject to this section that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as required by this section. Based on the data gathered under this subsection, the Department shall include in its annual report recommendations regarding permit time frames for all major permits issued by the Department."

SECTION 15. G.S. 147-12(b) reads as rewritten:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the enforcement of the littering laws of the State, including the number of charges and convictions under the littering laws of the State. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated ~~semiannual~~ annual report on or before March 1 ~~and September 1~~ of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 16. G.S. 130A-295.02(m) reads as rewritten:

"(m) The Department shall report annually on or before 1 ~~September~~ October to the Environmental Review Commission on the implementation of the resident inspectors program."

SECTION 17. This act is effective when it becomes law.

#10

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2165 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, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report as to the committee substitute bill ☐ which changes the title, unfavorable as to the original bill.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 2208*

Short Title:	Delay CWMTF Amendments.	(Public)
Sponsors:	Representatives Gibson; Harrison, Underhill, and Rapp.	
Referred to:	Environment and Natural Resources.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO DELAY THE EFFECTIVE DATE OF CHANGES APPLICABLE TO THE CLEAN WATER MANAGEMENT TRUST FUND CONCERNING THE ESTABLISHMENT OF UNIFORM CRITERIA FOR WASTEWATER, DRINKING WATER, AND STORMWATER GRANTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 12 of S.L. 2005-454 reads as rewritten:

"**SECTION 12.** Part II of this act becomes effective 1 January 2007.~~This~~ The remainder of this act becomes effective 1 January 2006."

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

#12

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2208*
PROPOSED COMMITTEE SUBSTITUTE H2208-CSRT-74 [v.2]

6/19/2006 6:58:07 PM

Short Title: CWMTF Amendments. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT CERTAIN STATUTORY CRITERIA RELATED TO GRANTS FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR WASTEWATER AND STORMWATER COLLECTION AND TREATMENT PROJECTS HAVE PRIORITY OVER CRITERIA ESTABLISHED BY THE BOARD OF TRUSTEES OF THE CLEAN WATER MANAGEMENT TRUST FUND AND TO CLARIFY THE AUTHORITY OF THE BOARD OF TRUSTEES WITH RESPECT TO MATCH REQUIREMENTS IN CONNECTION WITH GRANT AWARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-254 reads as rewritten:

"**§ 113A-254. Grant requirements.**

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

(1) A State agency.

(2) A local government unit.

(3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(a1) Criteria. – The criteria developed by the Trustees under G.S. 113A-256 apply to grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and the criteria set out in this section also apply to wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. ~~The common criteria set in G.S. 159G-23 have priority over the criteria set under this Article for wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects.~~ An application for a wastewater collection system project or a wastewater treatment works project that serves an economically distressed local government unit has priority.

(b) Matching Requirement. – The Board of Trustees shall establish matching requirements for grants awarded under this Article. ~~The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded.~~ This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) Restriction. – No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(d) Wastewater Limits. – A wastewater collection system project or a wastewater treatment works project is eligible for a grant under this Article only if it is a high-unit-cost project, as defined in G.S. 159G-20. A grant made under this Article for a wastewater collection system project or a wastewater treatment works project is subject to the cost limits and recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.

(e) Stormwater Limits. – The amount of a grant awarded under this Article for a stormwater quality project may not exceed the construction costs of the project. The total amount of grants awarded under this Article to the same recipient for stormwater quality projects for a fiscal year may not exceed the limit set in G.S. 159G-36(c)(1) for grants to the same recipient from the Wastewater Reserve.

(f) Withdrawal. – An award of a grant under this Article is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant."

SECTION 2. This act applies retroactively to 1 January 2006.

#13

HOUSE BILL 2208: CWMTF Amendments

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 20, 2006
Introduced by:	Rep. Gibson	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H2208-CSRI-74 [v.2]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 2208 would: (i) eliminate a requirement that certain criteria receive priority as applied to grants and loans made for wastewater collection system projects, wastewater treatment works projects, and stormwater collection projects; and (ii) eliminate an authorization to the Board of Trustees of the Clean Water Management Trust Fund (CWMTF) to require up to a 20% match of the amount awarded to grant recipients. The PCS would become effective retroactively to 1 January 2006.***

BACKGROUND: S.L. 2005-454 rewrote the Clean Water Revolving Loan and Grant Act to:

- Clarify the various revenue sources and funds used by the State to provide money for drinking water and wastewater loans and grants by establishing the Water Infrastructure Fund and consolidating the existing funds and accounts within this primary fund.
- **Establish common criteria that apply to loans and grants made for wastewater, drinking water, and stormwater by the Department of Environment and Natural Resources (DENR) and the CWMTF.**
- Direct DENR to establish criteria to be applied to the use of federal funds by negotiation with the federal government.
- Include stormwater quality projects and nonpoint source pollution projects in the types of projects that are eligible for loans and grants.
- Allow grants for technical assistance to determine how to correct problem wastewater or drinking water systems.

The act became effective 1 January 2006.

BILL ANALYSIS: The PCS would delete:

- Language that directed that common criteria established for loans or grants from the Wastewater Reserve or Drinking Water Reserve receive priority over criteria established for loans or grants from the CWMTF for wastewater collection system projects, wastewater treatment works projects, and stormwater collection projects.
- Language that authorized the Board of Trustees for the CWMTF to require a match of up to twenty percent (20%) of the amount awarded.

EFFECTIVE DATE: The PCS would become effective retroactively to 1 January 2006.

H2208e1-SMRI-CSRI

#14

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2208 A BILL TO BE ENTITLED AN ACT TO DELAY THE EFFECTIVE DATE OF CHANGES APPLICABLE TO THE CLEAN WATER MANAGEMENT TRUST FUND CONCERNING THE ESTABLISHMENT OF UNIFORM CRITERIA FOR WASTEWATER, DRINKING WATER, AND STORMWATER GRANTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

15

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1121*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

Short Title: Brownfields Property Reuse Act Amendments. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BROWNFIELDS PROPERTY REUSE ACT 0F 1997.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ~~(42 U.S.C. § 9601 et seq.).~~ (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 2. 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~~contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the ~~risk based standards established by the Commission pursuant to this Part.~~site-specific contaminant levels established pursuant to this Part."

SECTION 3. G.S. 130A-310.31(b)(10) reads as rewritten:

"(10) "Prospective developer" means any person ~~who desires~~with a bona fide, demonstrable desire to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property."

SECTION 4. 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 5. 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 6. 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 site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition).~~site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 7. This act becomes effective 1 January 2006.

16

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **D**

SENATE BILL 1121*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

PROPOSED COMMITTEE SUBSTITUTE S1121-CSSB-49 [v.1]

6/19/2006 2:44:39 PM

Short Title: Brownfields Property Reuse Act Amendments. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BROWNFIELDS PROPERTY REUSE ACT 0F 1997.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ~~(42 U.S.C. § 9601 et seq.).~~ (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 2. 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~~contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the ~~risk based standards established by the Commission pursuant to this Part.~~site-specific contaminant levels established pursuant to this Part."

SECTION 3. G.S. 130A-310.31(b)(10) reads as rewritten:

"(10) "Prospective developer" means any person ~~who desires~~with a bona fide, demonstrable desire to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property."

SECTION 4. 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 5. 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 6. 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 site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition).~~site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 7. This act becomes effective 1 January 2007.

#17

SENATE BILL 1121:
Brownfields Property Reuse Act Amendments.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 20, 2006
Introduced by:	Senator Clodfelter	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Second Edition		

SUMMARY: Senate Bill 1121 would amend provisions of the Brownfields Property Reuse Act of 1997.

BILL ANALYSIS:

Senate Bill 1121 (PCS) would make the following changes to the Brownfields Property Reuse Act of 1997.

- Exclude properties that are on the National Priorities List from the definition of "brownfields properties" and specifically prohibit the Department of Environment and Natural Resources from entering into a brownfields agreement for a property that is on the National Priorities List. Properties that are listed on the National Priorities List are generally those that are the most serious uncontrolled or abandoned hazardous waste sites that have been identified for possible long-term remediation under the federal Superfund program.
- Clarify that "unrestricted use standards" are contaminant concentrations that are acceptable for all uses of a property.
- Clarify that "prospective developer" is a person with a "bona fide, demonstrable desire" to buy or sell a brownfields property for the purpose of redevelopment.
- Reduce the period for public comment on a proposed brownfields agreement from 60 days to 30 days.
- Reduce the time periods involved in requesting and noticing a public meeting on a proposed brownfields agreement from 30 to 15 days.

The House Committee on Environment and Natural and the House of Representatives as a whole passed an identical bill, House Bill 1099 (Brownfields Property Reuse Act Amendments), during the 2005 Regular Session.

EFFECTIVE DATE:

The act would become effective January 1, 2006.

#16

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

SB 1121 A BILL TO BE ENTITLED AN ACT TO AMEND THE BROWNFIELDS PROPERTY REUSE ACT 0F 1997.

☒ With a favorable report as to the House committee substitute bill 1, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

#19

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2161*

Short Title:	Amend Environmental Laws 2006.	(Public)
Sponsors:	Representatives Gibson, Harrell, and Justice (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS; (4) PROVIDE THAT A PERSON WHO INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; AND (5) PROVIDE THAT STORMWATER CONTROL ORDINANCES THAT ARE ADOPTED BY CITIES MUST AT LEAST MEET ALL OF THE MINIMUM STATUTORY REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection.

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19,

and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 5. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 6. Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-459. Stormwater control.

A city may adopt and enforce a stormwater control ordinance as authorized by Part 1 of Article 21 of Chapter 143 of the General Statutes. A stormwater control ordinance adopted pursuant to this section must at least meet all of the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General Statutes."

SECTION 7. This act is effective when the act becomes law.

#20

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2161*
PROPOSED COMMITTEE SUBSTITUTE H2161-CSSB-51 [v.1]

6/20/2006 9:53:23 AM

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (6) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (7) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NON-PAYING; (8) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (9) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (10) PROHIBIT THE DISCLOSURE OF PERSONAL IDENTIFYING INFORMATION COLLECTED BY THE WILDLIFE RESOURCES COMMISSION FOR LICENSING PURPOSES EXCEPT UNDER CERTAIN CIRCUMSTANCES; (11) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (12) TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE

SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I: AMEND ENVIRONMENTAL LAWS

SECTION 1 G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection.

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

PART II. AMEND NATURAL RESOURCES LAWS.

SECTION 5. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 6. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 7. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public~~

~~mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 8. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 9. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 10. G.S. 143B-289.52(h) is repealed.

SECTION 11. G.S. 143B-289.52 is amended by adding two new subsections to read:

"(i) Personal identifying information obtained by the Commission or Division from the Wildlife Resources Commission pursuant to G.S. 143-254.5(b), from an applicant for a license issued under G.S. 113-174.3 or G.S. 113-174.4, or from a person complying with a biological data sampling or survey program under G.S. 113-174.1, is confidential under G.S. 132-1.2 and shall only be disclosed as provided in this section. The Commission or Division may disclose personal identifying information to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission,

Division, or other agency. As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, drivers license number, and social security number.

(j) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III: CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 12.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 12.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 12.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 12.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 12.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to

enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 12.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE.

SECTION 13. This act is effective when it becomes law.

#21

HOUSE BILL 2161:
Amend Env. & Nat. Resources Laws.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 20, 2006
Introduced by:	Representatives Gibson, Harrell, and Justice	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	PCS to First Edition H2161-CSSB-51 [v.1]		

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 2161 makes numerous changes to environmental, natural resources, and environmental health laws.***

BILL ANALYSIS: The PCS for House Bill 2161 would make the following changes:

Part I: Amend Environmental Laws:

Section 1: Clarifies the requirement that motor vehicles operated on a federal installation in an emissions county are subject to emissions inspection requirements.

Section 2: Clarifies the requirement that land disturbing activity be conducted in accordance with an approved erosion and sedimentation control plan.

Sections 3.1 and 3.2: Authorize the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture to contract for consultants upon the prior approval of the Legislative Services Commission.

Section 4: Authorizes a person who installs, repairs, or pumps septic systems to also purchase and install approved effluent filters.

Part II: Amend Natural Resources Laws:

Section 5: Removes deer and elk from consideration as livestock in the definition of agriculture that is used for agricultural development and farmland preservation purposes.

Section 6: Clarifies that the For Hire Blanket Coastal Recreational Fishing License is issued for the for hire boat rather than the boat captain.

Section 7: Clarifies that the Special Landholder and Guest Fishing License only applies when the guests are invited to fish at no charge.

Section 8: Increases the types of licenses that the Wildlife Resources Commission may establish as personalized licenses.

Section 9: Clarifies that the Lifetime Unified Inland/Coastal Recreational Fishing License is a resident only license.

Sections 10 and 11: Provide that information obtained from commercial fishing license holders is not confidential, while information obtained from recreational fishing license holders remains confidential and authorize the Marine Fisheries Commission to exempt certain organized fishing events from license requirements.

Part III: Clarify Authority of the Department of Environment and Natural Resources to Implement the Childhood Lead Poisoning Prevention Program:

Section 12.1 through 12.6: Clarify the authority of the Department of Environment and Natural Resources and the Secretary of Environment and Natural Resources to carry out certain responsibilities related to the prevention and control of lead poisoning in children.

Part IV: Effective Date:

Section 13: The PCS would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#22

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2161 DATE 20 June 2006

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

COMMITTEE SUBSTITUTE H2161-CSSB-51 [v.1]

Rep.) Gibson
)
Sen.)

1 moves to amend the bill on page 3, line 5

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 "section, and rules adopted by the Commission. Any

5 person who manufactures, installs, repairs, or"

6

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SIGNED _____

ADOPTED 20 June 2006 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Tuesday, June 27, 2006

The House Committee on Environment and Natural Resources met on Tuesday, June 27, 2006, 12 Noon, in Room 643 in the Legislative Office Building. The following members were present: Representatives James A. Harrell, III, Chair and Carolyn H. Justice, Presiding Chair; Representatives Allen and Harrison and McComas, Vice Chairs; Representatives Blackwood, Carney, Culp, Daughtridge, Gibson, Goodwin, Gulley, Haire, Insko, Martin, McGee, McMahan, Preston, Underhill, Weiss and Womble.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Justice, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms, Pages and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

George Givens, Committee Chief Counsel, directed the members attention to the Memorandum to HB 2127, State Parks Systems Addition (Please see exhibit #3) from Lewis Ledford, Director of State Parks and Recreation, DENR, for clarification purposes. It was noted that the bill passed out of the Environment Committee June 20, 2006 and passed third reading in session last night, June 26, 2006.

SENATE BILL 1591. EXTEND CLIMATE CHANGE COMMISSION. (Please see Exhibit #4.) Representative Gibson spoke on Senator Albertson's behalf and explained Senate Bill 1591 to be non-controversial and agreed upon by all parties. The Bill Analysis is attached (Please See Exhibit #5). It was confirmed for Representative Daughtridge that the State's Climatologist was a member of the study group involved with the bill. Upon motion by Representative Womble, Senate Bill 1591 passed with a favorable report. The Committee Report is attached (Please see Exhibit #6).

SENATE BILL 1598, CLARIFY ANIMAL WASTE TECH SPEIALIST CERT RQS. (Please see Exhibit #7.) Representative Gibson was recognized to explain the bill on Senator Albertson's behalf. The Bill Analysis is attached (Please see Exhibit #8). George Givens, Committee Chief Counsel, summarized that bill gives a year to work out an unresolved issue regarding animal waste management systems technical specialist requirements. Upon motion by Representative Haire, Senate Bill 1598 passed with a favorable report. The Committee Report is attached (Please see Exhibit #9).

HOUSE BILL 2161. AMEND ENVIRONMENTAL LAWS 2006. (Please see Exhibit #10.) George Givens, Committee Chief Counsel, being recognized explained the Proposed Committee Substitute H2161-PCS30609-SB-58 (Please see Exhibit #11). The Bill Analysis is attached (Please see Exhibit #12). Mr. Givens explained the following changes added to the bill which was before the committee last week: Part I Amend Environmental Laws, Sections 1-5. Jeffrey Hudson, Committee Counsel, was recognized to explain changes in Part II: Amend Natural Resources Laws, Sections 6 -10. and Sections 11.1 and 11.2. George Givens noted the third section of the bill, Environmental Health Laws, applied to the Lead Poisoning Prevention Program and was a technical change and not a policy change.

Representative Gibson noted Section 7 would be an improvement for fishing licensing issues in that it tracked the boat and not the captain. Dick Hamilton, Director, Wildlife Resource Commission, responded to Representative Haire's question regarding Part II, Section 6., explaining it corrects a technical error made last year in House Bill 607, Farmland Preservation. David McCloud, General Counsel, Agriculture and Consumer Services, and Tom Bean, NC Wildlife Federation, were recognized to speak in support of Section 6.

With all questions being addressed and upon motion from Representative Womble, Proposed Committee Substitute H2161-PCS30609-SB-58 received a favorable report, which changed the title, unfavorable to original bill. The Committee Report is attached (Please See Exhibit #13).

There being no further business, Representative Justice adjourned the meeting.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES COMMITTEE
MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Tuesday, June 27, 2006**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

HOUSE BILL 2161. AMEND ENVIRONMENTAL LAWS 2006
Representatives Gibson, Harrell, and Justice (Primary Sponsors)

SENATE BILL 1591. EXTEND CLIMATE CHANGE COMMISSION.
Senators Albertson and Weinstein (Primary Sponsors)

SENATE BILL 1598. CLARIFY ANIMAL WASTE TECH SPECIALIST CERT. RQS.
Senator Albertson (Primary Sponsor)

Respectfully,
Representative Jim Harrell, III, Chair
Representative Carolyn Justice, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **7:30 P.M.** on **Monday June 26, 2006.**

Y Principal Clerk
Y Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday June 27, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Chair
   Representative Carolyn H. Justice, Presiding Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

SENATE BILL 1591. EXTEND CLIMATE CHANGE COMMISSION.
Senators Albertson and Weinstein (Primary Sponsors)

SENATE BILL 1598. CLARIFY ANIMAL WASTE TECH SPECIALIST CERT. RQS.
Senator Albertson (Primary Sponsor)

HOUSE BILL 2161. AMEND ENVIRONMENTAL LAWS 2006
Representatives Gibson, Harrell, and Justice (Primary Sponsors)

5. Adjourn

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 27, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE BROILSFORD	DENR - DWM
Liz Cannon	DENR- DWM
AMY SIMES	DENR
Hayes Neely	Environment North Carolina
Christine Wunsche	Environment North Carolina
Emily Kirby	NC Conservation Network
Erica Rieder	CWMTF
Heather Croshaw	TNC
Preston Pate	NC Marine Fisheries
Robin Smith	DENR
Jeff Wolfe	Daily Bulletin
Tom FOLEAN	NCWF / NCSEA / NC ED

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 27, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Bonn Assoc.
	NCFA
Kim Hibbard	NCLM
Steve Wall	DENR
Mandy Wilder	DSWC-DENR
L Locklear	NCDAGNL
	Farmers Journal
	NCDA
David McLeod	NCDACS
Joan Troy	NC WRC

#3

NCDENR

North Carolina Department of Environment and Natural Resources
State Parks and Recreation

Michael F. Easley, Governor | William G. Ross Jr., Secretary | Lewis R. Ledford, Director

June 26, 2006

MEMORANDUM

TO: George Givens, Attorney, Research Division,
N.C. General Assembly

FROM: Lewis R. Ledford, Director

SUBECT: Clarification Of Costs For Initial Acquisition
Sandy Run Savannas – Proposed State Natural Area – H2127

Thank you for the opportunity to provide you with additional information on the proposed Sandy Run Savannas Natural Area, which would be authorized along with Mountain Bog State Natural Area in House Bill 2127. I concur with you and Jennifer McGinnis regarding the appropriateness of this being clarified. I regret that I was not at the House Natural and Economic Resources Committee Tuesday, but I was working to prepare information for another response to legislative fiscal staff.

The information provided by The Nature Conservancy (TNC) to the committee that *all* of the land at Sandy Run would be donated is not accurate. The summary below is provided to clarify the initial acquisition for Sandy Run Savannas proposed state natural area. Over the past seven years, TNC has acquired 2,206 acres, which encompass the initial acquisition for the state natural area. TNC's funding for the tracts was a combination of private funds, a Clean Water Management Trust Fund grant and a loan.

The 2,206 acres have an estimated value of $2,206,000. TNC will donate the parcels that were acquired by grants, land donations and through private fundraising, a value of $1,253,049. In keeping with a long-standing TNC policy, properties acquired through direct purchase using TNC funds will be sold to the state at cost, estimated at $952,951. All acquisitions are subject to appraisal and are negotiated by the State Property Office in accordance to the normal procedures for land acquisition.

Earlier this year, the Division of Parks and Recreation secured a $1 million Natural Heritage Trust Fund (NHTF) grant to support the acquisition. The NHTF grant will not be used to reimburse TNC for the private donations or the CWMTF grant on the property. The current costs for the property included the land cost, interest on the loan and associated expenses for the project, such as title work, surveys and phase one environmental assessment.

Please feel free to share this information. I would be glad to answer any questions or provide additional information on this matter. I would also welcome your advice on ways to continue to improve the process as we pursue similar authorization legislation in the future.

cc: Jennifer McGinnis

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#4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1591*

Short Title:	Extend Climate Change Commission.	(Public)
Sponsors:	Senators Albertson; and Weinstein.	
Referred to:	Rules and Operations of the Senate.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2005-442 reads as rewritten:

"**SECTION 11.** ~~Report.~~Reports. – The Commission shall submit an interim report to the General Assembly and the Environmental Review Commission no later than 15 January 2007 and may submit interim reports at other times at its discretion. The Commission shall submit a final report, including any findings and recommendations, ~~report its findings and recommendations~~ to the General Assembly and the Environmental Review Commission on or before ~~1 November 2006,~~15 April 2008, at which time the Commission shall terminate."

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

#5

SENATE BILL 1591:
Extend Climate Change Commission

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 27, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: Senate Bill 1591 would extend the Legislative Commission on Global Climate Change (Commission) from 1 November 2006 to 15 April 2008, direct the Commission to submit an interim report to the 2007 General Assembly, and authorize the Commission to submit additional reports at its discretion.

CURRENT LAW: S.L. 2005-442, which established the Commission, directed it to report its findings and recommendations to the Environmental Review Commission on or before 1 November 2006, at which time the Commission would terminate.

BILL ANALYSIS: Senate Bill 1591 would extend the period of time during which the Commission may meet by 18 months, add a reporting requirement prior to the start of the Regular Session of the 2007 General Assembly, and authorize the Commission to submit additional reports at its discretion.

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

BACKGROUND: The Commission met four times during the 2005-2006 interim, and will resume meeting following adjournment of the 2006 Regular Session of the 2005 General Assembly. The Commission consists of 34 members, nine appointed by the President Pro Tempore of the Senate, nine appointed by the Speaker of the House of Representatives, and 16 named members or their designees that represent a variety of industries, organizations, and academic institutions.

S1591e1-SMSY

#6

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

SB 1591 A BILL TO BE ENTITLED AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1598

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/19/06

Short Title: Clarify Animal Waste Tech Specialist Cert Rqs. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO EVALUATE THE TRAINING AND QUALIFICATION REQUIREMENTS FOR ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS AND TO EXTEND THE PERIOD OF TIME THAT ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS MAY PROVIDE SERVICES RELATED TO THE DEVELOPMENT, IMPLEMENTATION, OR OPERATION OF AN ANIMAL WASTE MANAGEMENT PLAN OR ANIMAL WASTE MANAGEMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Section 12.7C of S.L. 2004-124 reads as rewritten:

"**REQUIREMENTS FOR ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS**

SECTION 12.7C. Before ~~July 1, 2006,~~1 September 2007, the requirements and qualifications for animal waste management systems technical specialists shall not be changed and the scope of the work that animal waste management systems technical specialists are authorized to perform shall not be decreased. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B."

SECTION 2. The Department of Environment and Natural Resources shall evaluate the training and qualification requirements for approval as an animal waste management systems technical specialist pursuant to G.S. 139-4(d)(11) to determine whether the current approval process ensures an appropriate level of knowledge and expertise to provide services related to the development, implementation, or operation of an animal waste management plan or animal waste management system. In conducting the study, the Department shall obtain input from representatives of interested parties, including the North Carolina Soil and Water Conservation Commission, the Department of Agriculture and Consumer Services, the Professional

Engineers of North Carolina, Inc., the Natural Resources Conservation Service of the United States Department of Agriculture, the North Carolina Farm Bureau Federation, and other organizations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 November 2006.

SECTION 3. This act becomes effective 1 July 2006.

SENATE BILL 1598:
Clarify Animal Waste Tech Specialist Cert Rqs

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 27, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Tim Dodge
Version:	Second Edition		Legislative Analyst

SUMMARY: Senate Bill 1598 would extend the period of time during which an animal waste management systems technical specialist may provide the current level of services related to an animal waste management system and hold constant the requirements for approval as an animal waste management systems technical specialist. The bill would direct the Department of Environment and Natural Resources (DENR) to evaluate the training and qualification requirements for animal waste management systems technical specialists to determine whether the current approval process ensures an appropriate level of knowledge and expertise and to report its findings and recommendations, including any legislative recommendations, to the Environmental Review Commission.

CURRENT LAW: Section 12.7C of S.L. 2004-124 (2004 Appropriations Act) prohibited any changes to the requirements and qualifications for animal waste management systems technical specialists (technical specialists) and any changes to the scope off work that technical specialists are authorized to perform. This prohibition is set to end 1 July 2006.

BILL ANALYSIS: Senate Bill 1598 would extend from 1 July 2006 to 1 September 2007 the period of time that a technical specialist may provide the current level of services related to an animal waste management system and would hold constant the requirements for approval as a technical specialist. The bill would direct DENR to evaluate the training and qualification requirements for technical specialists to determine whether the current approval process ensures an appropriate level of knowledge and expertise. In conducting the evaluation, DENR must consult with representatives from interested parties and organizations. DENR would submit a report of its findings, including any legislative recommendations, to the Environmental Review Commission on or before 15 November 2006.

EFFECTIVE DATE: The bill would become effective 1 July 2006.

BACKGROUND: The Soil and Water Conservation Commission administers a program for the approval of animal waste management systems technical specialists. Technical specialists provide a variety of services related to animal waste management systems, including the certification of animal waste management plans, development of waste utilization plans, closure of waste impoundments, lagoon closures, changing of cropping systems, and other activities. The primary practice standards for animal waste management were established by the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture. In 2003, NRCS requested that the North Carolina Board of Examiners for Engineers and Land Surveyors to review the NRCS standards and determine which practices fell under the Board's jurisdiction. Since that time, there has been some confusion surrounding the specific services and activities a technical specialist is authorized to provide and the specific services that must be conducted by a licensed professional engineer.

S1598e2-SMSY

#9

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Committee Substitute for

SB 1598 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO EVALUATE THE TRAINING AND QUALIFICATION REQUIREMENTS FOR ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS AND TO EXTEND THE PERIOD OF TIME THAT ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS MAY PROVIDE SERVICES RELATED TO THE DEVELOPMENT, IMPLEMENTATION, OR OPERATION OF AN ANIMAL WASTE MANAGEMENT PLAN OR ANIMAL WASTE MANAGEMENT SYSTEM.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 2161*

Short Title:	Amend Environmental Laws 2006.	(Public)
Sponsors:	Representatives Gibson, Harrell, and Justice (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS; (4) PROVIDE THAT A PERSON WHO INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; AND (5) PROVIDE THAT STORMWATER CONTROL ORDINANCES THAT ARE ADOPTED BY CITIES MUST AT LEAST MEET ALL OF THE MINIMUM STATUTORY REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection.

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19,

and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 5. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 6. Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-459. Stormwater control.**

A city may adopt and enforce a stormwater control ordinance as authorized by Part 1 of Article 21 of Chapter 143 of the General Statutes. A stormwater control ordinance adopted pursuant to this section must at least meet all of the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General Statutes."

SECTION 7. This act is effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2161*
PROPOSED COMMITTEE SUBSTITUTE H2161-PCS30609-SB-58

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE

FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"**SECTION 4.** Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006.~~2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006.~~2007. This act expires on 1 July 2026."

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or

inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"**§ 143-254.5. Disclosure of personal identifying information.**

~~(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.~~ Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

"(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.~~Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. All other sections of this act are effective when the act becomes law.

HOUSE BILL 2161:
Amend Env. & Nat. Resources Laws.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 27, 2006
Introduced by:	Representatives Gibson, Harrell, and Justice	**Summary by:**	Jeff Hudson, Committee Counsel Tim Dodge, Legislative Analyst
Version:	PCS to First Edition H2161-PCS30609-SB-58		

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 2161 makes numerous changes to environmental, natural resources, and environmental health laws.***

BILL ANALYSIS: The PCS for House Bill 2161 would make the following changes:

Part I: Amend Environmental Laws:

Section 1: Clarifies the requirement that motor vehicles operated on a federal installation in an emissions county are subject to emissions inspection requirements.

Section 2: Clarifies the requirement that land disturbing activity be conducted in accordance with an approved erosion and sedimentation control plan.

Sections 3.1 and 3.2: Authorize the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture to contract for consultants upon the prior approval of the Legislative Services Commission. At least a dozen other legislative study commission already have this authority, including the Joint Legislative Education Oversight Committee, the Joint Legislative Transportation Oversight Committee, the Joint Legislative Administrative Procedure Oversight Committee, the Joint Legislative Health Care Oversight Committee, and the Revenue Laws Study Committee.

Section 4: Authorizes a person who manufactures, installs, repairs, or pumps septic systems to also purchase and install approved effluent filters.

Section 5: Delays by one year the effective date of certain provisions of S.L. 2005-384, an act to require the removal, collection, and recovery of mercury switches from certain motor vehicles.

Part II: Amend Natural Resources Laws:

Section 6: Removes deer and elk from consideration as livestock in the definition of agriculture that is used for agricultural development and farmland preservation purposes.

Section 7: Clarifies that the For Hire Blanket Coastal Recreational Fishing License is issued for the for hire boat rather than the boat captain.

Section 8: Clarifies that the Special Landholder and Guest Fishing License only applies when the guests are invited to fish at no charge.

Section 9: Increases the types of licenses that the Wildlife Resources Commission may establish as personalized licenses.

Section 10: Clarifies that the Lifetime Unified Inland/Coastal Recreational Fishing License is a resident only license.

Sections 11.1 and 11.2: Provide that personal identifying information obtained by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries shall be treated as provided in the statute that governs the treatment of such information by State agencies generally. The provision in the PCS contains a broader definition of protected identifying information.

Section 12: Authorizes the Marine Fisheries Commission to exempt certain organized fishing events from license requirements.

Part III: Clarify Authority of the Department of Environment and Natural Resources to Implement the Childhood Lead Poisoning Prevention Program:

Section 13.1 through 13.6: Clarify the authority of the Department of Environment and Natural Resources and the Secretary of Environment and Natural Resources to carry out certain responsibilities related to the prevention and control of lead poisoning in children.

Part IV: Effective Date:

Section 14: Section 5 of the PCS would become effective retroactively to July 1, 2006. All other sections of the PCS would become effective when it becomes law.

#13

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2161 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS; (4) PROVIDE THAT A PERSON WHO INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; AND (5) PROVIDE THAT STORMWATER CONTROL ORDINANCES THAT ARE ADOPTED BY CITIES MUST AT LEAST MEET ALL OF THE MINIMUM STATUTORY REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2161*
PROPOSED COMMITTEE SUBSTITUTE H2161-PCS30609-SB-58

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE

FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"**SECTION 4.** Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006.~~2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006.~~2007. This act expires on 1 July 2026."

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or

inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"**§ 143-254.5. Disclosure of personal identifying information.**

~~(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.~~ Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

"(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.~~Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. All other sections of this act are effective when the act becomes law.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Thursday, June 29, 2006

The House Committee on Environment and Natural Resources met on Thursday, June 29, 2006, 12 Noon, in Room 643 in the Legislative Office Building. The following members were present: Representatives James A. Harrell, III, Presiding Chair and Carolyn H. Justice, Chair; Representatives Allen and Harrison and McComas, Vice Chairs; Representatives Blackwood, Capps, Carney, Culp, Gibson, Goodwin, Gulley, Haire, Insko, LaRoque, Luebke, Martin, McGee, Stiller, and Underhill.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms, Pages and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 2873. SAFE DRINKING WATER/PRIVATE WELLS. (Please see Exhibit #3.) Upon motion from Representative Allen, the Proposed Committee Substitute H2873-PCS60843-RTf-81 was adopted and properly before the committee for discussion (Please See Exhibit #4). The Bill Analysis is attached for explanation (Exhibit #5). Franklin Freeman, Chief Counsel to the Governor for Legislative Affairs, spoke in support of the bill and stressed its importance to the Governor. Consensus bill among interested parties was cited. Dr. Leah Devlin, State Health Director, speaking in support of the bill, praised it for closing the regulatory gap in protecting drinking water in North Carolina. In response to Representative LaRoque's question, it was stressed that there would not be a delay to drinking water after the Certificate of Completion. Robin Smith, Assistant Secretary, DENR, responded to Representative Stiller's question regarding "capacity use areas"; cited the 15 counties that were designated "capacity use areas" in the Central Coastal Plain and explained it was specifically related to the availability of ground water. George Givens, Chief Committee Counsel, being recognized for point of clarification cited Page 5, Line 9, explained the inspection process applied to construction of new wells or repair of existing wells; whereas, testing applied only to newly constructed wells.

With all questions being addressed and upon motion from Representative Haire, Proposed Committee Substitute H2873-PCS60843-RTf-81 received a favorable report, unfavorable to original bill to be re-referred to Finance. The Committee Report is attached (Please See Exhibit #6).

There being no further business, Representative Harrell adjourned the meeting.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Thursday, June 29, 2006**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bill will be considered:

HOUSE BILL 2873. SAFE DRINKING WATER/PRIVATE WELLS.
Representatives Insko and L. Allen (Primary Sponsors)

Other bills may be added.

Respectfully,
Representative James A. Harrell, III, Chair
Representative Carolyn H. Justice, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1:00 P.M.** on **July 28, 2006.**

Y Principal Clerk
Y Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Thursday June 29, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

   HOUSE BILL 2873. SAFE DRINKING WATER/PRIVATE WELLS.
   Representatives Insko and L. Allen (Primary Sponsors)

5. Adjourn

#2

House Pages

Name Of Committee: Env. Date: 6 - 06

1. Name: Suzanne Jordan
   County: Wake
   Sponsor: Jim Crawford
2. Name: Amanda Fox
   County: Buncomb
   Sponsor: Sherrill
3. Name: Katie Womble
   County: Wake County
   Sponsor: Speaker Black
4. Name: Trent Ball
   County: Craven
   Sponsor: Underhill
5. Name:
   County:
   Sponsor:

Sgt-At-Arms:

1. Name: Martha Gardner
2. Name: [redacted] Fred Hinson
3. Name: Martha Parrish
4. Name: Mark Conner
5. Name:

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 29, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Deborah Bone	NCALHD / NCPNA
Elizabeth Self	NC Sierra Club
Heather Randell	NC Sierra Club
Amanda (illegible)	(illegible)
Heather Crashaw	TNC
Erica Rieder	CWMTF
Jennifer Haugwout	NCDOL
(illegible) Hoomani	NCDOL
Art Britt	NCDOL
Jennifer Bumgarner	Governor's Office

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: June 29, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathryn Pomeroy	Gov's Office
Mary Willoughby	DHHS
Anthony Allen	NCACC
Colleen Kochanek	Smith Moore
Pat Smith	NTO
Emily Kirby	NC Conservation Network
Erin Kinney	NC conservation Network
Grady McMahon	NC Conservation Network
Jim Stephenson	NC Coastal Fed
Amy Simes	DENR

#3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 2873*

Short Title:	Safe Drinking Water/Private Wells.	(Public)
Sponsors:	Representatives Insko, L. Allen (Primary Sponsors); Hackney and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES CONCERNING PERMITTING INSPECTION AND TESTING OF PRIVATE WATER SUPPLY WELLS AND WELLS SERVING TRANSIENT WATER SYSTEMS AND TO APPROPRIATE FUNDS FOR LOCAL WELL INSPECTION AND TESTING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 130A is amended by adding the following Part:

"Part 13. Permitting Inspection of Drinking Water Wells.

"**§ 130A-285. Short title.**

This Article shall be known and may be cited as the North Carolina Safe Drinking Water from Wells Act.

"**§ 130A-285.1. Purpose.**

The General Assembly of North Carolina finds that water supply wells serving individual residences and transient water systems play an important part in meeting the State's drinking water needs. The General Assembly further finds that public health and safety may be threatened by the improper location, construction, operation, repair, maintenance, and abandonment of drinking water wells. Improper siting or construction of water supply wells may result in contamination of the drinking water by bacteria and other substances that have adverse health effects. It is the intent of the General Assembly to protect public health and safety and to safeguard the State's groundwater resources by providing consistent statewide enforcement of regulations governing location, construction, operation, repair, maintenance, and abandonment of private wells.

"**§ 130A-285.2. Authority.**

The Department of Environment and Natural Resources shall enforce this Part and the rules adopted pursuant to this Part. The North Carolina Commission for Health Services shall adopt rules setting minimum standards for local well programs

established pursuant to this Part and shall regulate private and transient wells. The rules shall address all of the following:

(1) Issuance, denial, suspension, and revocation of private and transient well construction permits and private and transient well repair permits.
(2) Well inspections.
(3) Testing of water quality in private wells and transient wells.
(4) Coordination of the permitting of private wells and transient wells with permitting of on-site wastewater treatment and disposal systems on the same site.

"**§ 130A-285.3. Definitions.**

The following definitions apply to this Part unless the context requires otherwise:

(1) Abandoned well. – As defined in G.S. 87-85(1).
(2) Commission. – The North Carolina Commission for Health Services or its successor, unless otherwise indicated.
(3) Construction of a well. – As defined in G.S. 87-85(5).
(4) Department. – The Department of Environment and Natural Resources, unless otherwise indicated.
(5) Human consumption. – The term includes the use of water for household purposes, drinking, bathing, cooking, and gardening.
(6) Maintenance. – Normal or routine activities to maintain a well in working condition so long as the work does not break the well seal.
(7) Operation. – The process, frequency, and duration of withdrawing water or other fluids from a well by any means.
(8) Person. – As defined in G.S. 87-85(9).
(9) Private well. – Any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that regularly serves or is proposed to serve 24 or fewer individuals.
(10) Repair. – As defined in G.S. 87-85(12).
(11) Secretary. – The Secretary of the Department of Environment and Natural Resources.
(12) Transient well. – Any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per year.

"**§ 130A-285.4. Scope.**

No person shall construct, operate, repair, or abandon, or cause to be constructed, operated, repaired, or abandoned, any private well or transient water system well contrary to the provisions of this Part and applicable rules.

"**§ 130A-285.5. Permits required for construction or repair.**

No person shall commence or assist in the construction or repair of a private well or transient water system well unless a well construction permit or repair permit has been

obtained from the local health department. No well construction permit or repair permit shall be required for maintenance.

"**§ 130A-285.6. General requirements for well construction permits.**

(a) The minimum standards for well construction shall be the well construction standards adopted by the Environmental Management Commission pursuant to the North Carolina Well Construction Act, G.S. 87-87.

(b) Application for a well construction permit shall be made in accordance with this Part.

(c) The local health department shall do a field investigation to evaluate a proposed site for a private well in accordance with this Part and shall issue a well construction permit upon determining that a well can be constructed and operated in compliance with this Part. The local health department may impose conditions on the issuance of a well construction permit. The field investigation shall determine whether there are any abandoned wells on the site, and if so, the well construction permit shall be conditioned upon any abandoned well being brought into compliance with this Part.

(d) For sites that will have both a well and an on-site wastewater treatment and disposal system pursuant to Article 11 of this Chapter, an application for a well construction permit shall be accompanied by a site plan showing the location of the proposed facility the well is to serve, the location of the well, the location of the on-site wastewater treatment and disposal system, and other information that may be required by rule.

(e) Prior to denial of a well construction permit, the local health department shall advise the applicant of any possible alternatives to the proposal set out in the application. When a well construction permit is denied, the local health department shall issue the site evaluation in writing, setting out the reasons for the denial. The evaluation also shall inform the applicant of the right to an informal review by the Department, the right to appeal pursuant to G.S. 130A-24 and Chapter 150B of the General Statutes, and the right to have the appeal held in the county where the site for the proposed well is located.

(f) The Department, upon request by an applicant for a private well construction permit, shall provide a technical review of any construction design submitted by the applicant. The construction design shall be evaluated by professional peers of those who prepared the system design. The results of the technical review shall be available prior to a decision by the local health department and shall not affect an applicant's right to a contested hearing under G.S. 130A-24 and Chapter 150B of the General Statutes.

"**§ 130A-285.7. Well repair permit.**

(a) The local health department shall evaluate a proposed repair of a private well or transient water system well in accordance with this Part and shall issue a well repair permit upon determining compliance with this Part. The local health department may issue a well repair permit upon recommendations from a certified well contractor. The local health department may impose conditions on the issuance of a well repair permit.

(b) Prior to denial of an application for a well repair permit, the local health department shall advise the applicant of any possible alternatives to the proposal set out in the application. When an application is denied, the local health department shall

issue the site evaluation in writing, setting out the reasons for the denial. The evaluation also shall inform the applicant of the right to an informal review by the Department, the right to appeal pursuant to G.S. 130A-24 and Chapter 150B of the General Statutes, and the right to have the appeal held in the county where the site for the proposed well is located.

"**§ 130A-285.8. Expiration and revocation of well construction and repair permits.**

Any well construction permit or well repair permit shall prominently state all of the following:

(1) The permit will be valid for a period of five years.

(2) The permit is subject to revocation if there are changes in the facts or circumstances upon which the permit was issued.

(3) Well construction and repair permits shall not be affected solely by a change in ownership of the proposed well site, provided both the site for the well and the usage are unchanged and the site and the well remain under the ownership or control of the person owning the facility.

"**§ 130A-285.9. Inspection; certification of completion required.**

(a) Prior to issuing a certification of completion for a private well or transient water system well, the local health department shall inspect the well to determine whether it was installed or repaired in compliance with the construction or repair permit as applicable.

(b) The local health department shall issue a certificate of completion authorizing a well to be put into use or reuse upon determining that the well is properly constructed or repaired and that the well can be operated in accordance with this Part and any conditions of the construction or repair permit.

(c) No person shall use or reuse a private well or transient water system well until a certificate of completion has been issued.

(d) A certificate of completion shall not be affected solely by a change in ownership of the site for the well, provided both the well site and the usage are unchanged and the site and the well remain under the ownership or control of the person owning the facility.

"**§ 130A-285.10. Testing.**

(a) Following the installation of a private well or transient water system well, the quality of the water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators. The sampling and testing shall be performed in a manner prescribed by the Commission for Health Services. Copies of the results shall be provided to the local health department, the property owner, and the user of the well.

(b) The test results provided pursuant to subsection (a) of this section shall compare the results to the applicable groundwater standard adopted by the Environmental Management Commission pursuant to G.S. 143-215.

(c) For wells installed after July 1, 2008, the owner shall disclose the most recent results of well testing of any kind to the prospective purchaser at the time of sale of the property where the well is located.

(d) Nothing in this Part shall prevent a local board of health from adopting more stringent testing than set out in this statute.

"**§ 130A-285.11. Limitation on electrical service.**

Where a private well is to be a source of water for human consumption, no person shall allow permanent electrical service to a facility upon construction, location, or relocation of the facility until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required certificate of completion has been issued pursuant to this Part.

"**§ 130A-285.12. Protection of groundwater.**

Protection of groundwater. – No well shall be located, operated, or repaired in any manner that may adversely affect the quality of groundwater.

"**§ 130A-285.13. Abandonment of private wells and wells serving transient water systems.**

Any private well or transient water system well now abandoned or hereafter deemed to have been abandoned as defined in this Part shall be brought into compliance with the abandonment standards adopted by the Environmental Management Commission pursuant to G.S. 87-87, the North Carolina Well Construction Act.

"**§ 130A-285.14. Notice of violation, remedial action order.**

(a) Whenever the local health department has reasonable grounds to believe that there has been a violation of this Part or any rule adopted pursuant to this Part, the local health department shall give written notice to the person or persons alleged to be in violation. The notice shall set out the provision of this Part and applicable rules alleged to be violated and the facts alleged to constitute the violation. The local health department also may issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action shall be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) The notice may be served by any means authorized under G.S. 1A-1, Rule 4.

(c) A notice of violation and order requiring remedial action do not constitute agency action that may be appealed pursuant to G.S. 130A-24 or Chapter 150B of the General Statutes."

SECTION 2. G.S. 87-85(13) reads as rewritten:

"(13) "Water supply well" means ~~any well intended or usable as a source of water supply, but not to include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~any well intended or used as a source of water supply."

SECTION 3. G.S. 130A-22 is amended by adding a new subsection to read:

"(c2) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Part 13, Article 8 of this

Chapter, rules adopted by the Commission for Health Services pursuant to Part 13, Article 8, or any condition imposed upon a permit issued pursuant to Part 13, Article 8. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars ($ 100.00) per day."

SECTION 4. G.S. 130A-22(d) reads as rewritten:

"(d) In determining the amount of the penalty in subsections (a), ~~(b) and (c),~~ (b), (c), and (c2), the Secretary and the Secretary of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage."

SECTION 5. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant to Part 13 of Article 8 of this Chapter, "Permitting an Inspection of Drinking Water Wells." Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 6. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one million seventy-one thousand seventy-nine dollars ($1,071,079) in recurring funds and twenty-seven thousand five hundred fifty dollars ($27,550) in nonrecurring funds for the 2006-2007 fiscal year to be used to provide start-up funding for local well permitting, inspection, and testing programs and to fund five positions in the Department of Environment and Natural Resources to provide technical support and oversight for local well programs.

SECTION 7. This act becomes effective July 1, 2006.

#4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2873*
PROPOSED COMMITTEE SUBSTITUTE H2873-PCS60843-RTf-81

Short Title: Safe Drinking Water/Private Wells. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"**§ 87-87. Authority to adopt rules, regulations, and procedures.**

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping ~~equipment, and~~ equipment. The Environmental Management Commission shall be responsible for the administration of this ~~Article. With respect thereto it~~ Article and shall:

(1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation

throughout the State, in connection with proposed rules and regulations and amendments ~~thereto;~~thereto.

(2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant ~~thereto;~~thereto.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this ~~Article;~~Article.

(4) Issue such additional regulations as may be necessary to carry out the provisions of this ~~Article; and~~Article.

(5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.

(6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.

(7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97."

SECTION 3. G.S. 87-88 reads as rewritten:

"**§ 87-88. General standards and requirements.**

(a) Prior Permission. – Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) Reports. – Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or

abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination. – Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. – Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. – In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. – Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for ~~domestic~~ human consumption and all private drinking water wells shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. – No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. –

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to

prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.

(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

SECTION 4. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department.

(c) Permit Not Required for Maintenance. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(g) Certificate of Completion. – Upon completion of construction or repair of a private drinking water well, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Health Services to Adopt Drinking Water Testing Rules. – The Commission for Health Services shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Health Services may by rule require testing for additional parameters if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health.

(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) Authority Not Limited. – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Health Services to protect public health."

SECTION 5. G.S. 130A-4 reads as rewritten:

"**§ 130A-4. Administration.**

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

SECTION 6. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 7. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions

of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health ~~Services.~~Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 8. G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

#5

HOUSE BILL 2873:
Safe Drinking Water/Private Wells

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 29, 2006
Introduced by:	Reps. Insko, L. Allen	**Summary by:**	Jennifer Mundt
Version:	PCS to First Edition H2873-PCS60843-RTf-81		Research Assistant for Environmental Issues

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 2873 would establish permitting, inspection, and water quality testing requirements for new private drinking water wells.***

[As introduced, this bill was identical to S2056, as introduced by Sen. Atwater, which is currently in the Senate Committee on Agriculture, Environment, and Natural Resources.

BACKGROUND: Private drinking water wells play an important role in meeting the State's drinking water needs. Greater than 50 percent of North Carolina's population receives its drinking water supplies from groundwater. Currently, there are local well programs in 35 out of the 100 counties. This PCS provides for consistent statewide enforcement of regulations governing, the location, construction, operation, repair, maintenance, and abandonment of private drinking water wells.

BILL ANALYSIS: The PCS for House Bill 2873 would make the following changes:

Section 1 adds a definition of "Private drinking water well" to G.S. 87-85.

Section 2 clarifies the existing authority of the Environmental Management Commission (EMC) to adopt rules governing the permitting and inspection of private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary.

This section also authorizes the EMC to adopt rules governing the permitting and inspection of private drinking water wells by local health departments.

Section 3 authorizes the EMC to permit and inspect private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary. The PCS authorizes local health departments to permit and inspect all other private drinking water wells.

This section also requires all private drinking water wells installed for the purpose of obtaining groundwater for human consumption to be sterilized in accordance with standards established by the United States Public Health Service.

Section 4 requires:

- Each county, through its local health department to implement and administer a private drinking water well permitting, inspection, and testing program.
- A permit for the construction or repair of a private drinking water well. A repair permit is not required for private drinking water well maintenance that does not involve breaking or opening the well seal.

- The local health department to conduct a field investigation to evaluate the proposed site of the private drinking water well and issue a construction permit if it determines that the proposed well can be constructed and operated in compliance with this section. Construction or repair permits are valid for five years and may be revoked by the local health department if it determines that material changes in fact or circumstance upon which the permit is issued have been made.
- A local health department to issue a "certificate of completion" when a new or repaired private drinking water well is inspected and determined to have been constructed or repaired in compliance with the applicable permit. Without a certificate of completion issued by a local health department, no person may place a private drinking water well into service.
- A local health department to test the drinking water obtained from a newly constructed drinking water well within 30 days after it issues a certificate of completion for the presence of 19 pollutants. The Commission will adopt rules governing sampling, testing, and reporting and will allow a local health department to designate third parties to collect and test samples and report test results. The Commission may require the testing of additional pollutants if it is determined that testing for additional pollutants is necessary to protect public health. The local health department must provide the test results to the owner of a newly constructed private drinking water well, and to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.
- Each local health department to maintain a registry identifying the location of each private drinking water well and a record of the results of all tests conducted until the well is properly closed.

Section 5 requires a local health department to enforce the private drinking water well rules of the EMC (in addition to those of the Commission for Health Services) when requested by the Secretary of Environment and Natural Resources.

Section 6 authorizes a local health department to impose fees for services rendered under this Article.

Section 7 provides that local health department sanitarians who enforce the rules of the EMC shall be defended by the Attorney General and be protected from civil and criminal liability for acts done or omissions made in the scope of enforcing the EMC's rules (existing law provides this same protection for sanitarians enforcing the Commission for Health Services rules).

EFFECTIVE DATE: The provisions of the PCS concerning permitting, inspections, and testing of private drinking water wells by local health departments (Section 4) would become effective 1 July 2008, except the rulemaking authority of the Commission for Health Services, which would become effective when the PCS becomes law. The remainder of the act would become effective when it becomes law.

H2873e1-SMTA-CSTA

#6

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2873 A BILL TO BE ENTITLED AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT RULES CONCERNING PERMITTING INSPECTION AND TESTING OF PRIVATE WATER SUPPLY WELLS AND WELLS SERVING TRANSIENT WATER SYSTEMS AND TO APPROPRIATE FUNDS FOR LOCAL WELL INSPECTION AND TESTING PROGRAMS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
Thursday, July 6, 2006

The House Committee on Environment and Natural Resources met on Thursday, July 6, 2006 at 12:00 Noon, in Room 643 in the Legislative Office Building. The following members were present: Representatives James A. Harrell, III, Presiding Chair and Carolyn H. Justice, Chair; Representatives Allen and Harrison and McComas, Vice Chairs; Representatives Blackwood, Carney, Culp, Gibson, Goodwin, Haire, Insko, Luebke, McGee, McMahan, Owens, Preston, Stiller, Underhill and Weiss and Womble.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms, Pages and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 2127. STATE PARKS SYSTEM ADDITIONS. (Please see Exhibit #3.) Representative Harrell noted the bill was properly before the committee for discussion. Please see the Bill Analysis for explanation (Exhibit #4). Representatives Gibson and Justice, Chair; were recognized to explain the bill on behalf of Representatives Grady and Harrison. Donald Reuter, NC Department of Park and Recreation spoke in support of the bill on behalf of the Department. Upon motion from Representative Harrison and favorable vote from the committee it was recommended that the House do concur on Senate Committee Substitute for House Bill 2127. The Committee Report is attached (Please See Exhibit #5).

HOUSE BILL 2164, AMEND SANITARY DISTRICT AUTHORITY. (Please see Exhibit #6.) Representative Gibson and Representative Goodwin were recognized to speak in support of the bill. Please see the Bill Analysis for explanation (Exhibit #7). George Givens, Committee Chief Counsel, in response to Representative Culp's question, cited Page 1, Line 22 for explanation of the availability fee. Upon motion by Representative Underhill, HOUSE BILL 2164, AMEND SANITARY DISTRICT AUTHORITY, received a favorable report. The Committee Report is attached (Please See Exhibit #8).

HOUSE BILL 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND. (Please See Exhibit #9). Representative Gibson moved Proposed Committee Substitute H1778-PCS30619-RTf-70 (Please See Exhibit #10) be adopted and properly in front of the committee for discussion. The Bill Analysis is attached for explanation (Please See Exhibit #11).

Representative Gibson upon being recognized explained the bill and sent forth amendment H1778-ART-39 [v.1]. (Please See Exhibit #12). Upon motion it was adopted and properly before the committee for discussion. Anita Watkins, League of Municipalities, being recognized spoke in support of the amendment and noted that the language was the same as in the Brownfield Statutes. Representative Hackney recognized spoke in opposition to the amendment. Representative Luebke proposed a perfecting amendment that would strike lines 5-11 of H1778-ART-39 [v.1], and noted it addressed Page 9, Line 32 of the bill. Upon motions the perfecting amendment was adopted and Representative Gibson's amendment as perfected was adopted. Representative Gibson noted the ERC Working Group had resolved all outstanding issues of the bill except for the fee piece which had divided the regulatory and environmental communities.

Representative Harrison recognized sent forth Amendment H1778-ASBf-35 [v.5]. and upon motion for adoption explained the amendment (Please See Exhibit #13). Representative Gibson recognized spoke in opposition of the amendment and emphasized the dollar amount put on the clean-up would render the bill useless. Robin Smith, Assistant Secretary of DENR, recognized spoke in support of the amendment and stated it reflected the department's position for responsible a risk-based clean-up that protected public health, protected the environment, and had incentives against new contaminations; in addition, to compensating the state for value of the lost resource. Preston Howard, Manufactures and Chemical Industry Council of North Carolina, recognized spoke in opposition to the amendment. Representative Harrison moved for adoption of the amendment. The amendment failed. Discussion by committee members ensued.

Representative Harrell announced that in an effort to recognize and hear from all interested parties, the discussion on Proposed Committee Substitute H1778-PCS30619-RTf-70 would be continued at a later meeting. There being no further business the meeting was adjourned.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Thursday, July 6, 2006**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

HB 2127. STATE PARKS SYSTEM ADDITIONS.
Representatives Justice, Grady and Harrison, Primary Bill Sponsors

HB 2164. AMEND SANITARY DISTRICT AUTHORITY.
Representative Gibson, Primary Bill Sponsor

HB 1094. WASTEWATER SYSTEM APPROVALS/SMALL COUNTIES.
Representatives Gibson, Harrell, Justice and McComas, Primary Bill Sponsors

HB 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND.
Representatives Gibson and LaRoque, Primary Bill Sponsors

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **6:00 P.M. on Wednesday, July 5, 2005.**

Yes- Principal Clerk
Yes - Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

Thursday July 6, 2006
12:00 Noon
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

HB 2127. STATE PARKS SYSTEM ADDITIONS.
Representatives Justice, Grady and Harrison, Primary Bill Sponsors

HB 2164. AMEND SANITARY DISTRICT AUTHORITY.
Representative Gibson, Primary Bill Sponsor

HB 1094. WASTEWATER SYSTEM APPROVALS/SMALL COUNTIES.
Representatives Gibson, Harrell, Justice and McComas, Primary Sponsors

HB 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND.
Representatives Gibson and LaRoque, Primary Bill Sponsors

5. Adjourn

#2

House Pages

Name Of Committee: _____ Date: JULY 6, 2006

1. Name: Torie Dominguez
   County: Mecklenburg
   Sponsor: Jim Black
2. Name: Chelsea Phillips
   County: Mecklenburg
   Sponsor: Saunders
3. Name: Deanna Stolp
   County: Wake
   Sponsor: Black
4. Name: Chima Igboko
   County: Wake
   Sponsor: Black
5. Name: Ben Coug
   County: New Hanover
   Sponsor: Wright
6. Richard Stolp
   Wake
   Black

Sgt-At-Arms

1. Name: TOM WILDER
2. Name: EARL COKER
3. Name: FRED HINES
4. Name: WILL HEATH
5. Name: —

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
S Henri McClees	McClees Consulting, Inc.
John P Williams	NC Coalition for Privatization of Wastewater Permitting
Joe McClees	McClees Consulting Inc
Tim Boonen	QuikStop
Jack Grant	Womble
Gene Ainsworth	RJR
Gregg Thompson	NPCB
Nancy Thompson	MCIC
Sandra Long	Martin Marietta Materials
Amy Fullbright	Hunton & Wms.
Woodson	NC Farm Bureau

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlotte Jesneck	NC DENR
Erin Kinney	NC Conservation Network
Ed Fulford	BP
R. Rogers	NC DENR
BRUCE THOMPSON	PARKER POE
Nicky Dixon	Sierra Club
Elizabeth Self	NC Sierra Club
Joan Troy	NC WRC
Richard Hamilton	" "
Tom Fenn	NCWF, NCEO,
George Everett	Duke Energy Carolinas

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Crosshaw	TNC
[illegible]	Progress Energy
Jon Rewter	NC Div. of Parks & Rec
Paul Meyer	NC ACC
Anonymous Author	NCACC
Alan Hirsch	Gov's office
[illegible]	MCIC
Robin Smith	DENR
Brian Wright	Conservation Council
Emily Kirby	NC Conservation Network
Heather Randell	NC Sierra Club

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06.

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry L. Pierce	DEH, DENR
Steve Wall	DENR
Elizabeth Ouzts	Environment North Carolina
Gradey McCallie	N.C. Conservation Network.
Hope Taylor-Guevara	Clean Water for NC
Mike Nelson	Conservation Council of NC
Eric Sauls	Edmisten & Webb
Kathryn Pomeroy	Gov's Office
Meghan Morris	Gov's Office
Jennifer Bumgarner	Gov's office
Linda Culpepper	DENR

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Hibbard	NCLM
Stan Bratton	NCSSS
Kent Daeke	Wake County ~~Environmental~~ Services
Anita Watkins	NCLM
Deborah Romero	NCPNA/NCALHD
LISA RIGGEL	NHTF
Jennifer Haigwood	NCDOL
John Heaman	NCDOL
Art Britt	NCDOL
Butch Gunnells	NCBA
Erica Rider	CWMTF

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources 7/6/06

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCASA
Jeanie Woodson	NC Pork Council
Gary Salamido	GSK, Inc.
Lisa Martin	NC HBA
Rick Zechini	NC Assoc. of Realtors
[signature]	NCFA
Gary Harris	NCPMA

#2

Sign-up to Speak

Name	Firm	Bill
Donald Reuter	NC Div. Parks + Rec	#2127
Molly Diggins	Siena Club	Risk Based Assessment
Hope Taylor-Guevara	Clean Water for NC	#1778 "
Elizabeth Ouzts	Environment North Carolina	1778
Anita Watkins	NCLM	1778
Preston Howard	MCIC	1778
Robin Smith		

move the adoption of the amend

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2127*

Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 6/29/06

Short Title: State Parks System Additions. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF MOUNTAIN BOG STATE NATURAL AREA AND SANDY RUN SAVANNAS STATE NATURAL AREA TO THE STATE PARKS SYSTEM, 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 PARK AT CABIN LAKE.

Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats; and

Whereas, Mountain Bog State Natural Area would be comprised of two mountain bogs, Sugar Mountain Bog and Pineola Bog; and

Whereas, rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot; and

Whereas, the Mountain Bog site has been found to possess biological resources of statewide significance; and

Whereas, savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are an important component of the State's natural landscape, but are poorly represented in the existing State Parks System; and

Whereas, the Sandy Run Savannas State Natural Area would be comprised of a cluster of nationally significant savannas along the border of Pender and Onslow Counties; and

Whereas, the Sandy Run Savannas site is important as a military buffer and is strategically located as a hub surrounded by Camp Lejeune, Holly Shelter Game Land, and Angola Bay Game Land; and

Whereas, the Sandy Run Savannas site contains rare species that include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife; and

Whereas, the Sandy Run Savannas site has been found to possess biological resources of statewide significance; and

Whereas, Cabin Lake possesses significant scenic and recreational resources; Now, therefore,

The General Assembly of North Carolina enacts:

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

SECTION 2. The General Assembly authorizes the Department of Environment and Natural Resources to add Sandy Run Savannas State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 3. 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 Park at Cabin Lake. The study shall include estimates of the cost of developing the proposed park. The Division shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 January 2007.

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

#4

HOUSE BILL 2127:
State Parks System Additions

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 6, 2006
Introduced by:	Reps. Justice, Grady, Harrison	**Summary by:**	Jennifer McGinnis
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 2127 would authorize the Department of Environment and Natural Resources to add Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area to the State Parks System and direct the Division of Parks and Recreation of the Department of Environment and Natural Resources to study the establishment of a new State Park at Cabin 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.

Proposed New Unit - Mountain Bog State Natural Area

- Mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats.
- This proposal is for the addition of two nationally significant mountain bogs in Avery County, Sugar Mountain Bog and Pineola Bog, to the State Parks System. Both sites are currently for sale. They will be managed as a cluster together with the existing Beech Creek Bog State Natural Area.
- **SUGAR MOUNTAIN BOG** includes the bog and other important natural communities surrounding the bog. The initial acquisition is a tract of 102 acres for $1.2 million, a grant application for this tract has been submitted to the Natural Heritage Trust Fund. The Trust for Public Land is assisting the State with the proposed acquisition.
- **PINEOLA BOG:** The Division estimates the total project to be approximately 180 acres with an estimated value of $2.1 million. The Nature Conservancy (TNC) is assisting the State with the acquisition.
- Rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot (a butterfly).

Proposed New Unit – Sandy Run Savannas State Natural Area

- This proposed unit is comprised of a cluster of nationally significant savannas along the border of Pender and Onslow counties. Savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are a very important component of North Carolina's natural landscape, but are very poorly represented in the existing State Parks System.
- The site is also important as a military buffer, and is strategically located as a hub surrounded by Camp LeJeune, Holly Shelter Game Land, and Angola Bay Game Land.

- A grant application for $1 million was submitted to the Natural Heritage Trust Fund for the spring funding cycle. The grant would support acquisition of approximately 2,206 acres at Sandy Run currently owned by TNC.
- Rare species known to occur in the project area include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife.

Study of new State Park at Cabin Lake

Cabin Lake (sometimes referred to as Cottage Lake) is a county park located in Duplin County consisting of approximately 167 acres, 69 acres of which is a lake.

BILL ANALYSIS: House Bill 2127 would authorize DENR to add Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area to the State Parks System and 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 Cabin Lake.

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

H2127e2-SMRI

#5

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Senate Committee Substitute for

HB 2127 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ADDITION OF MOUNTAIN BOG STATE NATURAL AREA AND SANDY RUN SAVANNAS STATE NATURAL AREA TO THE STATE PARKS SYSTEM, 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 PARK AT CABIN LAKE.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

#6

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2164*

Short Title:	Amend Sanitary District Authority.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE AUTHORITY OF SANITARY DISTRICTS TO REQUIRE CONNECTIONS TO WATER AND SEWER SYSTEMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-55 reads as rewritten:

"**§ 130A-55. Corporate Powers.**

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

...

(16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:

a. ~~To require any person owning, occupying or controlling improved real property within the district to connect with either or both the water or sewage systems of the district when the local health director, having jurisdiction over the property, determines that the health of the people residing within the district will be endangered by a failure to connect.~~ To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a

district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

..."

SECTION 2. This act becomes effective September 1, 2006.

#7

HOUSE BILL 2164:
Amend Sanitary District Authority

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 6, 2006
Introduced by:	Rep. Gibson	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: House Bill 2164 would amend the circumstances under which a sanitary district may require property owners to connect to water and sewer lines owned, leased, or operated by the sanitary district and clarify the types of charges a sanitary district may collect for providing water and sewer service.

CURRENT LAW: Sanitary districts may require owners of improved real property located within the district to connect to water and sewer lines if the health director having jurisdiction over the property determines that the health of the people residing in the district would be endangered by a failure to connect. (G.S. 130A-55(16)a.). Sanitary districts may apply service charges based on the benefits derived by the service, and the charges must be sufficient to provide funds for the maintenance, adequate depreciation, and operation of the work of the district. (G.S. 130A-64).

BILL ANALYSIS: House Bill 2164 would amend the authority of sanitary district to perform the following functions:

Authority to require connection: The bill would authorize sanitary districts to require owners of improved real property located within the district with existing residential units or commercial establishments to connect to water or sewer service if the property is located within a reasonable distance of a waterline or sewer collection line that is owned, operated, or leased as a lessee by the sanitary district. A determination by the health director would no longer be required.

Authority to collect service charges: The bill would authorize sanitary districts to fix charges for connection to water and sewer service. The bill also provides that in the case of improved property that would qualify for the issuance of a building permit for the construction of residential units or commercial establishments, and where the district has installed water or sewer lines that are directly available to the property, a sanitary district may require payment of a periodic availability charge, provided that the availability charge does not exceed the minimum service charge for properties that are connected.

These provisions are similar to the authority currently available for counties (G.S. 153A-284), cities (G.S. 160A-317), water and sewer authorities (G.S. 162A-6(14d)), and metropolitan sewerage districts (162A-69). The power granted by the bill may be exercised by a sanitary district only to the extent that the service to be provided by the district is not currently being provided to the property by any other political subdivision or by a regulated public utility.

EFFECTIVE DATE: The bill would become effective September 1, 2006.

H2164e1-SMSY

#8

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 2164 A BILL TO BE ENTITLED AN ACT TO AMEND THE AUTHORITY OF SANITARY DISTRICTS TO REQUIRE CONNECTIONS TO WATER AND SEWER SYSTEMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

#9

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1778

Short Title:	Risk-Based Environmental Remediation/Fund.	(Public)
Sponsors:	Representatives Gibson, LaRoque (Primary Sponsors); Cole, Hill, McMahan, and Wright.	
Referred to:	Environment and Natural Resources, if favorable, Finance.	

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, and welfare and the environment using procedures that are based in sound science and that can be voluntarily and independently implemented in a timely and practical fashion without overburdening State resources; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the

Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that these varying standards cause confusion and delay and create the potential for inappropriate levels of remediation, including both the possibility that inadequate remediation at some sites may result in potential or actual harm to public health, safety, or welfare or the environment, and the possibility that unnecessary remediation at other sites may result in excessive and wasteful expenditure of public and private resources; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can best be protected by implementing a uniform remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that this remediation process should be based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area and to the determination of the appropriate level of remediation to address contamination in a manner that is protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that this approach should be applied to each contaminated area on a site-specific basis using knowledge of the area, the contaminants present, the effects of those contaminants on public health, safety, and welfare, and the actions of those contaminants in, and their effect on, the environment; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or

release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.13. Adoption of rules for risk-based remediation.**

(a) As used in this section:

(1) 'Background' represents the concentration of a contaminant, determined by appropriate statistical methods, that is present at a site, but is not related to the release of a contaminant at the site.

(2) 'Contaminant' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance as defined in G.S. 143-215.77A and G.S. 130A-310; or any other substance regulated under a remediation program implemented by the Department.

(3) 'Corrective action plan' means a plan for eliminating sources of groundwater contamination or for achieving groundwater quality restoration based on rules established pursuant to this section.

(4) 'Department' means the Department of Environment and Natural Resources.

(5) 'Established standards' means the groundwater quality standards adopted pursuant to G.S. 143-214.1.

(6) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in increase in the concentration of the contaminant or contaminants in the groundwater in excess of that allowed under established standards.

(7) 'Institutional controls' means nonengineered measures, including land-use restrictions used to prevent unsafe exposure to contamination.

(8) 'Regulated substance' has the same meaning as in G.S. 130A-310.31.

(9) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(10) 'Responsible person' means a person who is or may be liable for remediation under the programs covered by this act.

(11) 'Secretary' means the Secretary of Environment and Natural Resources.

(b) The Secretary shall adopt rules to establish a consistent and uniform risk-based approach to the assessment, prioritization, and remediation of environmental contamination. The rules shall be consistent with the remediation standards and review procedures set out in subsection (c) of this section and provide for:

(1) The assessment of the contaminated area, including types and levels of contamination; the horizontal and vertical extent of contamination; the risk to public health, safety, and welfare and to the environment posed

by the contamination; and identification of the current and anticipated future uses of property comprising the contaminated area.

(2) The acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(3) Definition of the circumstances under which no further remediation is required.

(4) The process for determining an appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(5) The process for determining whether a risk-based approach to remediation under the rules is appropriate for a particular contaminated area. The process shall include, but not be limited to, consideration of proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediating to established standards.

(6) The process for establishing, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(7) The level of oversight of the remediation that will be exercised by the Department.

(8) The determination or certification that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation does not exceed the maximum allowable, that an acceptable level of risk has been achieved, and that no further remediation is required.

(9) The imposition of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health and the environment.

(10) Public participation.

(11) Any other matter that the Secretary determines to be necessary to carry out the intent of this section.

(c) Remediation Standards and Review Procedures. –

(1) Remediation standards. – Any person who proposes or is required to respond to the release of a regulated substance at a site shall select and attain compliance with one of the following environmental standards when conducting remediation activities:

a. A background standard that achieves background as further specified in subdivision (3) of this subsection.

b. A statewide health standard adopted by the Secretary that achieves a uniform statewide health-based level so that any substantial present or probable future risk to human health and the environment is eliminated as specified in subdivision (4) of this subsection.

c. A site-specific standard that achieves remediation levels based on a site-specific risk assessment so that any substantial present or probable future risk to human health and the environment is eliminated or reduced to protective levels based upon the present or currently planned future use of the property comprising the site as specified in subdivision (5) of this subsection.

(2) Combination of standards. – A person may use attainment of any one or a combination of remediation standards described in subdivision (1) of this subsection to implement a site remediation plan and may propose to use the site-specific standard whether or not efforts have been made to attain the background or statewide health standard.

(3) Background standard. –

a. Standard. – Persons selecting the background standard shall meet background standard for each regulated substance in each environmental medium.

b. Certification of attainment. – Final certification that a site or portion of a site meets the background standard shall be documented in the following manner:

1. Attainment of the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern, including soils and groundwater in aquifers in the area where the contamination occurs through the application of statistical tests set forth by rule or, if no rules have been adopted, in demonstration of a mathematically valid application of statistical tests. The Department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular type of remediation.

2. A final report that documents attainment of the background standard shall be submitted to the Department that includes, as appropriate:

I. The descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of regulated substances.

II. The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, summaries of sampling methodology, and analytical results that demonstrate that remediation has attained the background standard.

3. Where remediation measures do not involve removal or treatment of a contaminant to the background standard, the final report shall demonstrate that any remaining contaminants on the site will meet statewide health standards and show compliance with postremediation care requirements that may be needed to maintain compliance with the statewide health standards.

c. No institutional controls for attainment. – Institutional controls, such as fencing and future land-use restrictions on a site, may not be used to attain the background standard. Institutional controls may be used to maintain the background standard after remediation occurs.

d. Authority reserved. – If a person fails to demonstrate attainment of the background standard, the Department may require that additional remediation measures be taken in order to meet the background standard, or the person may select to meet the requirements of subdivision (4) or subdivision (5) of this subsection.

e. Notice and review. – Persons utilizing background standard shall comply with the following notice requirements:

1. A notice of intent to remediate a site to background standards shall be submitted to the Department that, to the extent known, provides a brief description of the location of the site, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation, or other uses, and the proposed remediation measures.

2. Upon completion of cleanup to background standards, a final report demonstrating attainment of the background standard shall be provided to the Department.

3. The Department shall review the final report demonstrating attainment of the background standard within 60 days of its receipt or notify the person submitting the report of substantive deficiencies. If the Department does not respond with deficiencies within 60 days, the final report shall be deemed approved.

(4) Statewide health standard. –

a. Standard. – The Secretary shall adopt statewide health standards for regulated substances for each environmental medium. The standards for groundwater shall be those numerical health-based standards for groundwater adopted by the Environmental Management Commission. In addition, the Secretary shall adopt rules to establish medium-specific standards for soils. The

Secretary shall also adopt, along with the standards, the methods used to calculate the standards.

b. Medium-specific concentrations. – The following requirements shall be used to establish a medium-specific concentration:

1. Any regulated discharge into surface water occurring during or attainment of the statewide health standard shall comply with applicable standards for surface waters adopted by the Environmental Management Commission.

2. Any regulated emissions to the outdoor air occurring during or after attainment of the statewide health standard shall comply with applicable standards for outdoor air quality adopted by the Environmental Management Commission.

3. The concentration of a regulated substance in groundwater in aquifers that are used or may be used in the future for drinking water shall comply with the groundwater standards adopted by the Environmental Management Commission.

4. For residential properties, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on residential exposure factors within a depth of up to 15 feet from the existing ground surface, or the soil-to-groundwater pathway numeric value throughout the soil column, the latter to be determined by any one of the following methods:

I. A value that is 100 times the medium-specific concentration for groundwater.

II. A concentration in soil at the site that does not produce a leachate in excess of the medium-specific concentrations for groundwater in the aquifer when subjected to the Synthetic Precipitation Leaching Procedures, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, promulgated by the United States Environmental Protection Agency.

III. A generic value determined not to produce a concentration in groundwater in the aquifer in excess of the medium-specific concentration for groundwater based on a valid, peer-reviewed scientific method that properly accounts for factors affecting the fate, transport, and

attenuation of the regulated substance throughout the soil column.

IV. For nonresidential properties, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on nonresidential exposure factors within a depth of up to 15 feet from the existing ground surface using valid scientific methods reflecting worker exposure or the soil to groundwater pathway numeric value determined in accordance with paragraph 4 of this sub-subdivision.

V. Exposure scenarios for medium-specific concentrations for nonresidential conditions shall be established using valid scientific methods reflecting worker exposure.

c. Additional factors. – When establishing a medium-specific concentration, other than those established under paragraph 1, 2, or 3 of sub-subdivision b. of this subdivision, the medium-specific concentration for the ingestion of groundwater, inhalation of soils, ingestion and inhalation of volatiles and particulates shall be calculated by the Department using valid scientific methods, reasonable exposure pathway assumptions, and exposure factors for residential and nonresidential land use that are no more stringent than the standard default exposure factors established by the United States Environmental Protection Agency based on the following levels of risk:

1. For a regulated substance that is a carcinogen, the medium-specific concentration is the concentration that represents an excess upper-bound lifetime cancer target risk of one in 1,000,000.
2. For a regulated substance that is a systemic toxicant, the medium-specific concentration is the concentration to that which human populations could be exposed by direct ingestion or inhalation on a daily basis without appreciable risk of deleterious effects for the exposed population.

d. Relationship to background. – The concentration of a regulated substance in an environmental media of concern on a site where the statewide health standard has been selected shall not be required to meet the statewide health standard if the statewide health standard is numerically less than the background standard. In such cases, the background standard shall apply.

e. Certification of attainment. – Final certification that a site or portion of a site meets the statewide health standard shall be documented in the following manner:

1. Attainment of cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern, including soils, and groundwater in aquifers at the point of compliance through the application of statistical tests set forth in rules or, if no rules have been adopted, in a demonstration of a mathematically valid application of statistical tests. The Department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

2. A final report that documents attainment of the statewide health standard shall be submitted to the Department that includes the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement of contaminants on the site, and cumulative effects, if any, volume, composition, and concentration of contaminants in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, summaries of sampling methodologies and analytical results that demonstrate that contaminants have been removed or treated to applicable levels, and documentation of compliance with postremediation care requirements if they are needed to maintain the statewide health standard.

f. No institutional controls for attainment. – Institutional controls, such as fencing and future land-use restrictions on a site, may not be used to attain the statewide health standard. Institutional controls may be used to maintain the statewide health standard after remediation occurs.

g. Authority reserved. – If a person fails to demonstrate attainment of the statewide health standard, the Department may require that additional remediation measures be taken in order to meet the health standard or the person may select to meet the requirements of subdivision (3) or subdivision (5) of this subsection.

h. Notice and review. – Persons utilizing the statewide health standard shall notify the Department of planned remediation

activities by providing notice of intent to initiate remediation activities, which shall be made in the following manner:

1. A notice of intent to remediate a site shall be submitted to the Department that provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation, or other uses, and the proposed remediation measures.
2. Notice of the submission of the final report demonstrating attainment of the statewide health standard shall be submitted to the Department.
3. The Department shall review the final report demonstrating attainment of the statewide health standard within 60 days of its receipt or notify the person submitting the report of substantive deficiencies. If the Department does not respond with deficiencies within 60 days, the final report shall be deemed approved.

(5) Site-specific standard. –

a. General. – Where a site-specific standard is selected as the environmental remediation standard or where the background or statewide health standard is selected but not achieved, remedial investigation, risk assessment, cleanup plans, and final reports shall be developed using the procedures and factors established by this subdivision.

b. Carcinogens. – For known or suspected carcinogens, soil and groundwater cleanup standards shall be established at exposures that represent an excess upper-bound lifetime risk of between one in 10,000 and one in 1,000,000. The cumulative excess risk to exposed populations, including sensitive subgroups, shall not be greater than one in 10,000.

c. Systemic toxicants. – For systemic toxicants, soil and groundwater cleanup standards shall represent levels to which the human population could be exposed on a daily basis without appreciable risk of deleterious effect to the exposed population. Where several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for multiple systemic toxicants acting through a single-medium exposure pathway or through multiple-media exposure pathways.

d. Groundwater. – Cleanup standards for groundwater shall be established in accordance with sub-subdivisions b. and c. of this subdivision using the following considerations:

1. For groundwater in aquifers, site-specific standards shall be established using the following procedures:

I. The current and probable future use of groundwater shall be identified and protected. Groundwater that has a background total dissolved solids content greater than 2,500 milligrams per liter or is not capable of transmitting water to a pumping well in usable, and sustainable quantities shall not be considered a current or potential source of drinking water.

II. Site-specific sources of contaminants and potential receptors shall be identified.

III. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

2. Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by ingestion or other avenues to protect human health and the environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve the equivalent level of protection.

e. Soil. – Concentrations of regulated substances in soil shall not exceed:

1. Values calculated in accordance with sub-subdivisions b. and c. of this subdivision based on human ingestion of soil where direct contact exposure to the soil reasonably occurs.

2. Values calculated to protect groundwater in aquifers at levels determined in accordance with sub-subdivisions a., b., c., and d., of this subdivision.

3. Values calculated to satisfy the requirements of sub-subdivision g. of this subdivision. with respect to discharges or releases to surface water or emissions to the outdoor air.

Such determinations under this sub-subdivision shall take into account the effects of institutional and engineering controls, if any, and shall be based on sound

scientific principles, including fate and transport analysis of the migration of regulated substance in relation to receptor exposures.

f. Factors. – In determining soil and groundwater cleanup standards under subsections (d) and (e) of this section, the following factors shall also be considered:

1. Use of appropriate standard exposure factors for the land use of the site with reference to current and currently planned future land use and the effectiveness of institutional or legal controls placed on the future use of the land.
2. Use of appropriate statistical techniques, including, but not limited to, Monte Carlo simulations, to establish statistically valid cleanup standards.
3. The potential of human ingestion of regulated substances in surface water or other site-specific surface water exposure pathways, if applicable.
4. The potential of human inhalation of regulated substances from the outdoor air and other site-specific air exposure pathways, if applicable.

g. Air and surface water. – Any discharges into surface water or any emissions to the outdoor air that occur during or after attainment of the site-specific standard shall comply with applicable surface water quality and air quality standards adopted by the Environmental Management Commission.

h. Relationship to background. – The concentration of a regulated substance in an environmental medium of concern on a site where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background standard. In such cases, the background standard shall apply.

i. Combination of measures. – The standards may be attained through combination of remediation activities that can include treatment, removal, engineering, or institutional controls and can include innovative or other demonstrated measures. The Department may disapprove a site-specific remediation plan that consists solely of fences, warning signs, or land-use restrictions unless the site-specific standard is developed on the basis of exposure factors that are no less stringent than those that would apply to the site at the time the contamination is discovered.

j. Evaluation of remediation plan. – The final remediation plan for a site submitted to the Department shall include remediation

alternatives and a final remedy that considers each of the following factors:

1. Long-term risks and effectiveness of the proposed remedy includes an evaluation of:
   I. The magnitude of risks remaining after completion of the remedial action.
   II. The type, degree, and duration of postremediation care required, including but not limited to, operation and maintenance, monitoring, inspections, and reports and their frequencies or other activities that will be necessary to protect human health and the environment.
   III. Potential for exposure of human and environmental receptors to regulated substances remaining at the site.
   IV. Long-term reliability of any engineering and voluntary institutional controls.
   V. Potential need for repair, maintenance, or replacement of components of the remedy.
   VI. Time to achieve cleanup standards.
2. Reduction of the toxicity, mobility, or volume of regulated substances, including the amount of regulated substances that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and the type, quantity, toxicity, and mobility of regulated substances remaining after implementation of the remedy.
3. Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedy, and the effectiveness and reliability of protective measures to address short-term risks.
4. The ease or difficulty of implementing the proposed remedy, including commercially available remedial measures, degree of difficulty associated with constructing the remedy, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remedial efforts, and approvals necessary to implement the remedial efforts.

k. Attainment. – Compliance with the site-specific standard is attained for a site or portion of a site when a remedy approved

by the Department has been implemented in compliance with the following criteria:

1. Soil, groundwater, surface water, and air emission standards as determined under sub-subdivisions a. through h. of this subdivision have been attained.
2. Attainment of the site-specific standard shall be demonstrated by collection and analysis of samples from affected media, as applicable, such as surface water, soil, groundwater in aquifers at the point of compliance through the application of statistical tests set forth by rule or, if no rules have been adopted, the Department shall recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

l. Site investigation and remedy selection. – Any person selecting to comply with site-specific standards established by this subdivision shall submit the following reports and evaluations, as required under this subdivision, for review and approval by the Department:

1. A remedial investigation report that includes:
   I. Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of regulated substances.
   II. The concentration of regulated substances in environmental media of concern, including summaries of sampling methodology and analytical results and information obtained from attempts to comply with the background or statewide health standards, if any.
   III. A fate and transport analysis may be included in the report to demonstrate that no present or future exposure pathways exist.
   IV. If no exposure pathways exist, a risk-assessment report and cleanup plan are not required, and no remedy is required to be proposed or completed.
2. If required, a risk-assessment report that describes the potential adverse effects under both current and planned future conditions caused by the presence of a regulated substance in the absence of any further control, remediation, or mitigation measures. A baseline risk-assessment report is not required where it is

determined that a specific remediation measure can be implemented to attain the site-specific standard.

3. A cleanup plan that evaluates the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in subsection (j) of this section when considering the evaluation factors described in subsection (i) of this section. The plan shall select a remedy that achieves the requirements for remedies described in subsection (j) of this section. The Department may require a further evaluation of the selected remedy or an evaluation of one or more additional remedies in response to comments received from the community surrounding the site as a result of the community involvement plan established in subsection (o) of this section that are based on the factors described in subsection (i) of this section or as a result of its own analysis that are based on the evaluation factors described in subsection (j) of this section.

4. A final report demonstrating that the approved remedy has been completed in accordance with the cleanup plan.

5. Nothing in this section shall preclude a person from submitting a remedial investigation report, risk-assessment report, and cleanup plan at one time to the Department for review.

m. Notice and review provisions. – Persons utilizing the site-specific standard shall comply with the following requirements for notifying the public and the Department of planned remediation activities:

1. A notice of intent to remediate a site to one or more site-specific standards shall be submitted to the Department that provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved, and the proposed remediation measures. At the same time a notice of intent to remediate a site is submitted to the Department, a copy of the notice shall be published in a newspaper of general circulation serving the area in which the site is located. The Department shall establish specific criteria for the form and content of such notices.

2. The notices required by this sub-subdivision shall include a 30-day public comment period during which the public may submit comments to the persons undertaking remediation and to the Department. Persons undertaking remediation are encouraged to develop a

proactive approach to working with appropriate local governments and with their site neighbors in developing and implementing remediation and implementing remediation and reuse plans.

3. The following notice and review provisions shall apply to each cleanup plan and final report demonstrating compliance with the site-specific standard:

I. When a cleanup plan is submitted to the Department, the plan shall include the comments received during the public notice period, as well as responses from the persons preparing the reports and plans. The Department shall review the plan within 60 days of its receipt or notify the person submitting the plan of any deficiencies. If the Department does not respond with deficiencies within 60 days, the plan shall be deemed approved.

II. A final report demonstrating compliance with the site-specific standard shall be submitted to the Department upon completion of the cleanup plan's implementation. At the same time that the final report is submitted to the Department, a summary of the report shall be published in a newspaper of general circulation serving the area in which the site is located. The Department shall review the report within 90 days of its receipt and either notify the person submitting the report of any deficiencies or notify the person submitting the report that no further remediation action is necessary on the site. If the Department does not respond with deficiencies within 90 days, the final report is deemed approved and no further remediation action is necessary on the site.

(d) This section and rules adopted pursuant to this section shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of law when necessary to address an imminent threat to public health or pending a determination by the Department, under rules adopted pursuant to this section, that a risk-based approach to remediation of a contaminated area is appropriate, or if the Department determines that a risk-based approach to remediation of the contaminated area is not appropriate. This section and rules adopted pursuant to this section shall not be construed or implemented in any manner that reduces the requirements of programs that are intended to avoid or mitigate the release or discharge of contaminants to the environment that would result in additional environmental contamination. Rules adopted pursuant to this

section shall not be deemed to modify the bases upon which the health-based groundwater standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(e) Except as provided in subsection (j) of this section, rules adopted pursuant to this section shall apply uniformly to the remediation of environmental contamination under:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid Waste Management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil and Pollution and Hazardous Substances Control Act, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

(f) A person who undertakes remediation of environmental contamination may elect to proceed under either the applicable provisions of law set out in subsection (e) of this section and rules adopted pursuant to those provisions or under the rules adopted pursuant to this section. If a person elects to proceed under rules adopted pursuant to this section, the rules adopted pursuant to this section shall supersede rules adopted pursuant to the provisions of law set out in subsection (e) of this section. If a person elects to proceed under rules adopted pursuant to this section, any maximum allowable quantity, concentration, limit, or other measure of contamination that is allowed to remain at the contaminated area at the conclusion of active remediation that is established under the rules will supersede rules adopted under other provisions of law.

(g) A person who undertakes remediation of environmental contamination under site-specific cleanup standards as set forth in subdivision (5) of subsection (c) of this section shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking cleanup submits the cleanup plan to the Department.

(h) Once the Department determines that a person has successfully completed a cleanup of contamination to one of the three accepted cleanup standards set forth in subsection (c) of this section, the Secretary shall relieve that person of any further liability for cleanup at the site.

(i) Rules adopted pursuant to this section shall be based on an evaluation of all reasonably foreseeable risks presented to public health, safety, and welfare and to the environment by environmental contamination and shall be based on all relevant and reasonably available scientific information pertaining to those risks. The rules shall be written so that they can be interpreted and implemented with a reasonable degree of effort and expense. The rules may provide for reasonable distinctions among contaminated areas based on any relevant factor, including the nature and extent of the environmental contamination, the risk of harm posed by the contamination to public health, safety, and welfare and to the environment; the size and complexity of the contaminated area; proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; and the current and anticipated future uses of the contaminated area and adjacent lands.

(j) Rules adopted pursuant to this section shall require that any assumption about the future use of the contaminated area on which a level or range of levels of risk is based be reflected in appropriate restrictions on the future use of the property provided in G.S. 143B-279.9 and that the restrictions be recorded in accordance with G.S. 143B-279.10.

(k) Rules adopted pursuant to this section shall provide for the use of licensed professionals, including Professional Engineers, Professional Geologists, and Registered Environmental Consultants, in the assessment, prioritization, and remediation of environmental contamination. The rules shall specify the circumstances under which work performed by a licensed professional is presumed to comply with the rules.

(l) The Secretary shall not allow risk-based remediation under rules adopted pursuant to this section for environmental contamination that occurs after the effective date of this act unless all of the following occur:

(1) The person undertaking the remediation petitions the Secretary for authority to undertake a risk-based remediation.

(2) The Secretary determines, based on information submitted by the petitioner, that the contamination did not result from any willful violation of any substantive law, rule, or regulation applicable to the source and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(3) The Secretary determines, based on information submitted by the petitioner, that the contamination did not result from willful or wanton misconduct by the person responsible for the source of the contamination.

(4) The person undertaking the remediation of the contamination agrees to forgo any litigation with the Department over responsibility for such contamination.

(5) The Secretary determines that timely action on cleanup is in the best interest of public health or the environment.

(6) The petitioner pays a fee of five thousand dollars ($5,000) to the Groundwater Remediation Fund."

SECTION 2. Temporary rules shall be adopted to implement G.S. 143B-279.13, as enacted by Section 1 of this act, pursuant to G.S. 150B-21.1(a)(2), and the publication of this temporary rule in the North Carolina Register shall serve as a notice of rule-making proceedings for a permanent rule pursuant to G.S. 150B-21.1(e).

SECTION 3. The Secretary of Environment and Natural Resources shall adopt temporary rules to implement G.S. 143B-279.13, as enacted by Section 1 of this act, on or before 1 October 2006.

SECTION 4. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that G.S. 143B-279.13, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.13 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 5. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.14. Groundwater Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Groundwater Remediation Fund. The Groundwater Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.13, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Groundwater Remediation Fund.

(b) The Groundwater Remediation Fund may be used to pay the costs of:

(1) Remediating environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of cleanup, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination described in subdivision (1) of this subsection.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement G.S. 143B-279.13."

SECTION 6. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement G.S. 143B-279.13, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination, and information regarding licensed professionals who are involved in the implementation of remediation under the rules. On or before 1 October 2009, the Department shall undertake an examination of the risk-based cleanup procedures currently in place for cleanup programs administered by the Department that are not included in G.S. 143B-279.13(e), as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make cleanup under those programs consistent with the rules established pursuant to G.S. 143B-279.13, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215, et seq.

SECTION 7. This act is effective when it becomes law.

#10

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1778
PROPOSED COMMITTEE SUBSTITUTE H1778-PCS30619-RTf-70

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program

administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs

consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

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

#11

HOUSE BILL 1778:
Risk-Based Environmental Remediation/Fund

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 6, 2006
Introduced by:	Representatives Gibson and LaRoque	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	PCS to First Edition H1778-PCS30619-RTf-70		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1778 (PCS) would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards.***

BILL ANALYSIS:

SECTION 1 of the PCS establishes a new Part in Article 7 of Chapter 143B of the General Statutes, Part 1A (Risk-Based Environmental Remediation). The individual statutes in this Part would provide the following:

G.S. 143B-279. 15. Definitions.

G.S. 143B-279.16. Purpose.

G.S. 143B-279.17. Applicability.

Under the Risk-Based Environmental Remediation Program (Program), site-specific, risk-based cleanups would be available for contaminated property covered by any of the following existing State environmental programs: the Inactive Hazardous Sites Program; the hazardous waste management program; the solid waste management program; the State administered part of the Superfund program; the Environmental Management Commission's groundwater protection program; and the Oil Pollution and Hazardous Substances Control Program.

G.S. 143B-279.18. Remediation standards.

A contaminated property may be cleaned up to site-specific standards that eliminate or reduce to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based on the present or currently planned future use of the property.

G.S. 143B-279.19. Remedial action plans.

A person who proposes to conduct a cleanup under the Program must develop and submit a proposed remedial action plan to the Department of Environment and Natural Resources (Department). A remedial action plan must provide for the protection of public health, safety, and welfare and the environment and must include a legal description of the location of the property, a map showing the location, a description of the contaminants involved and their concentrations, a description of the intended future use of the property, and any proposed investigation and remediation.

G.S. 143B-279.20. Notice of intent to remediate.

When a person submits a proposed remedial action plan to the Department, the person must also send a notice of intent to cleanup the property to all local governments having taxing or land use jurisdiction over the property. The notice must provide for a public comment period of at least 30 days during which the local governments and citizens may submit comments to the person and the Department. The person must also publish a summary of the notice in a newspaper of general circulation in the county or

counties where the property is located. The person must consider and respond to any information or comments received on the remediation standards or the proposed remedial action plan.

G.S. 143B-279.21. Review and approval of proposed remedial action plans by the Department.

The Department must disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment. The person proposing the remedial action plan has the burden of demonstrating that the plan is protective. The Department must consider information provided by the person proposing the plan as well as information provided by local governments. The Department has 90 days within which to approve or disapprove a proposed plan.

G.S. 143B-279.22. Attainment of the remediation standard.

When a remedial action plan has been fully implemented, the responsible person will submit a final report to the Department that demonstrates that the plan has been fully implemented and that the remediation standards have been attained. The Department will review the final report and if the Department determines that the responsible person has cleaned the property up to the approved remediation standards the Department will issue a release from further cleanup of the property. The Department may require additional cleanup after issuing a release under certain circumstances.

G.S. 143B-279.23. Compliance with other laws.

This Part will not limit the authority of the Department to require investigation, initial response, or cleanup of contamination under any other provision of state or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment.

G.S. 143B-279.24. Adoption of rules.

The Secretary of Environment and Natural Resources may adopt rules to implement this Part.

G.S. 143B-279.25. Risk-based remediation fees.

A person who undertakes a site-specific, risk-based cleanup shall pay a fee of $3,000 for each acre up to a maximum of $75,000. The Department will not allow a site-specific, risk-based cleanup for environmental contamination that occurs after July 1, 2006 unless the person pays a $5,000 fee in addition to the fees above.

G.S. 143B-279.26. Risk-Based Remediation Fund.

Risk-based remediation fees will be paid into the Risk-Based Remediation Fund, which will be under the control and direction of the Department. Funds from the Risk-Based Remediation Fund may be used for cleanup of failed site-specific, risk-based cleanups; to provide drinking water for third parties affected by environmental contamination from a property cleaned up under this Part, to map land and water resources cleaned up under this Part, and to implement this Part.

SECTION 2 of the PCS directs the Secretary of Environment and Natural Resources to use all reasonable efforts to obtain an agreement from the United States Environmental Protection Agency that the Program is consistent with federal environmental law.

SECTION 3 of the PCS directs the Department to report to the Environmental Review Commission on the implementation and possible expansion of the program.

EFFECTIVE DATE:

This act would become effective when it becomes law.

H1778e1-SMSB-PCS30619-RTf-70

#12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ART-39 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1778-PCS30619-RTf-70

Representative Gibson

moves to amend the bill ~~on page 9, line 32,~~
~~by rewriting that line to read:~~

deleted per Rep Luebke's perfecting amendment

"~~G.S. 143B-279.20. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from local governments that have taxing or land-use jurisdiction over the site. The Department shall disapprove a proposed remedial action plan~~";

on page 12, line 18,
by deleting the quotation mark at the end of that line; and

on page 12, between lines 18 and 19,
by inserting between those lines:

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ART-39 [v.1]

Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 6 July 2006 FAILED _____ TABLED _____

#13

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ASBf-35 [v.5]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1778-PCS30619-RTf-70

Representative HARRISON

moves to amend the bill on page 1, line 22 through page 2, line 43, by rewriting those lines to read:

"Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area and to the determination of the appropriate level of remediation to address contamination can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any

way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; 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 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, mitigate the damage, or compensate for the lost resources; Now, therefore,";

on page 4, line 3,
by adding at the end of that line:

"It is also the purpose of this Part to require responsible parties to pay groundwater mitigation fees to compensate the State for the contamination of groundwater and to require that the fees be used to offset the impacts of groundwater contamination and to make contaminated sites economically productive."; and

on page 11, line 23 through page 12, line 18,
by rewriting those lines to read:

"'**§ 143B-279.25. Groundwater mitigation fees.**

Any person who implements a remedial action plan for groundwater contamination based on a site-specific remediation standard shall pay a groundwater mitigation fee to the Risk-Based Remediation Fund in an amount to be determined by the Department. The fee shall be set at a level sufficient to compensate the State for the value of the groundwater resource that will be unavailable for use because of contamination in excess of unrestricted use standards. For purposes of calculating the groundwater mitigation fee, the Department shall assume that unremediated groundwater contamination will exceed unrestricted use standards for a period of 50 years. The groundwater mitigation fee shall be calculated by multiplying the groundwater recharge rate for the contaminated site by the area of the groundwater contamination plume that exceeds unrestricted use standards. For purposes of this section, "groundwater recharge rate" means the rate at which water recharges the groundwater system by percolating downward to the top of the saturated zone expressed as gallons per day per square mile. The groundwater recharge rate shall be determined using a methodology approved by the United States Geological Survey. The total, in gallons per year of lost groundwater production, shall be multiplied by 50 to determine the amount of groundwater that will be unavailable for use due to selection of a remedial action plan that does not remediate

the groundwater to unrestricted use standards. The Department shall determine the groundwater mitigation fee by applying the statewide median per gallon water rate of three dollars and 20 cents ($3.20) per 1,000 gallons based on residential water use to the 50-year lost groundwater production total. The statewide median water rate for residential use shall be adjusted annually for inflation based on the Consumer Price Index.

'**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Risk-Based Remediation Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of any of the following:

(1) Providing alternative drinking water supplies for third parties affected by environmental contamination on a temporary basis until a responsible person has been identified or on a permanent basis with respect to sites undergoing assessment or remediation by the Department because no financially viable responsible person has been identified.

(2) 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 and land-use restrictions are imposed at contaminated sites.

(3) Audits of land-use restrictions and institutional controls.

(4) Administrative costs of risk assessment and review of site-specific remediation.

(c) In addition to the uses set out in subsection (b) of this section, the Secretary may reallocate monies from the Risk-Based Remediation Fund to any of the following:

(1) The Inactive Hazardous Sites Cleanup Fund established under G.S. 130A-310.11 for emergency response or remediation of sites

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ASBf-35 [v.5]

contaminated with hazardous substances that do not have financially viable responsible parties.

(2) The Oil or Other Hazardous Substances Pollution Protection Fund established under G.S. 143-215.87 for emergency response and remediation of sites contaminated by oil releases not from underground storage tanks that do not have financially viable responsible parties.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 6 J-4 2006 TABLED _____
11-71

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Thursday, July 6, 2006

The House Committee on Environment and Natural Resources met on Thursday, July 6, 2006 At 5:45 P.M., in Room 643 in the Legislative Office Building. The following members were present: Representatives James A. Harrell, III, Presiding Chair, and Carolyn H. Justice, Chair; Representatives Allen and Harrison and McComas, Vice Chairs; Representatives Blackwood, Capps, Carney, Culp, Gibson, Goodwin, Hackney, Haire, Insko, LaRoque, Luebke, Martin, McGee, McMahan, Owens, Preston, Stiller, Underhill and Weiss and Womble.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 1094, WASTEWATER SYSTEM APPROVALS/SMALL COUNTIES. (Please see Exhibit #3) Representative Harrell noted the bill was properly before the committee for discussion and concurrence. Please see the Bill Analysis for explanation (Exhibit #4). Senator Snow was recognized to explain the bill on behalf of Representative West. He noted the importance and critical need for the bill in Cherokee Country and its widespread support. Upon request from Representative Allen, Terry Pierce, Director of Environmental Health, Department of Environment and Natural Resource, stated the department had no opposition to the bill. George Givens, Committee Chief Counsel, explained that because the bill involved an area of the law that affected health sanitation and the abatement of nuances, although it only applied to Cherokee County, a local bill could not be applied. Therefore, statewide legislation had to be enacted in "a reasonable classification scheme that is able to pass constitutional" review. Upon request from Representative Preston, S. Henri McClees, McClees Consulting Inc., was recognized to speak on behalf of the Coalition for the Privatization of Waste Water Evaluations (the soil scientists), in opposition to the bill. Citing Section 2. (c)., Ms. McClees respectfully requested members not vote to concur.

With all questions being answered, upon motion by Representative Haire, the Senate Committee Substitute for House Bill 1094 received a favorable vote for concurrence. Please see the attached Committee Report (Exhibit #5).

There being no further business, Representative Harrell adjourned the meeting.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

H-1

Beth LeGrande (Rep. Harrell)

From: Beth LeGrande (Rep. Harrell)

Sent: Friday, June 30, 2006 4:33 PM

To: Rep. Jim A. Harrell; Rep. Carolyn H. Justice

Cc: George Givens (Research); Tim Dodge (Research); Jeffrey Hudson (Research); Jennifer McGinnis (Research); Jennifer Mundt (Research)

Subject: Environment & Natural Resources Mtg. Thurs. July 6 @ 12N

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Thursday, July 6, 2006**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

BILLS TO BE ANNOUNCED

Respectfully,
Representative James A. Harrell, III, Chair
Representative Carolyn H. Justice, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4:30 P.M.** on **June 30, 2006.**

Yes - Principal Clerk
Yes- Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

5:20 P. M. or ten minutes after Session
Thursday July 6, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

HOUSE BILL 1094, WASTEWATER SYSTEM APPROVALS/SMALL COUNTIES.
Representative West, Primary Sponsor

5. Adjourn

#2

House Pages

Name Of Committee: Environment Date: 7-6-08

1. Name: _____

   County: _____

   Sponsor: _____

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

Sgt-At-Arms

1. Name: Tom Wilder
2. Name: Earl Coker
3. Name: Fred Hines
4. Name: Marvin Lee
5. Name: Neil Casper
   Will Heath

Senator Snow addressed

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 7-6-08

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Courtney McLellan	NC Conservation Network
Erin Kinsey	NCCN
FRANK W. FOLGER	HELMS MULLISS & WICKER
John P Williams	NCCPWE
Joe McClees	McClees Consulting Inc.
S Henri McClees	McClees Consulting, Inc.
Terry L. Pierce	DEH, DENR
[illegible]	[illegible]
Doug Miskin	Capstrat
Jim Johnson	ACS
[illegible]	Payne + Spruill
Angie Hann	Maupin Taylor
John McAlister	Duke Energy

AR 2

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy Carolinas

#2

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 7-6-08

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NCAR
Tommy Stevens	NCPC
Nancy Thompson	NMCIC
Deborah Ramsey	NCDNA / NCALHD
Mike Carpenter	NCDOA
Paul Wilms	NCDOA
Rich Zechini	NCAR
Jonathan Pruett	Staff
Colleen Kochanek	Smith Moore
Anita Watkins	NCLM
Robin Smith	DENR
Steve Wall	DENR
Elizabeth Ouzts	Environment North Carolina

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1094*

Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 6/20/06

Short Title: Wastewater System Approvals/Small Counties. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO STREAMLINE THE PROCESS FOR THE ISSUANCE OF AN IMPROVEMENT PERMIT OR AN AUTHORIZATION TO CONSTRUCT FOR AN ON-SITE SUBSURFACE WASTEWATER SYSTEM IN CERTAIN COUNTIES BY AUTHORIZING LOCAL HEALTH DEPARTMENTS, AUTHORIZED AGENTS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND LICENSED SOIL SCIENTISTS TO COMPLETE SOIL AND SITE EVALUATIONS IN THE PARTICIPATING COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, "Commission" means the Commission for Health Services. "Licensed soil scientist" has the same meaning as in G.S. 89F-3(3).

SECTION 2.(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General Statutes. A county that meets all of the following criteria may participate in the pilot program:

(1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.

(2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.

(3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

SECTION 2.(b) Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

(1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.

(2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system.

SECTION 2.(c) A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section.

SECTION 2.(d) An improvement permit issued pursuant to this section shall include:

(1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.

(2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.

(3) The type and layout of the proposed wastewater system and its location.

(4) The design wastewater flow and characteristics.

(5) Any proposed landscape, site, drainage, or soil modifications.

(6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.

(7) Any other information required by the rules of the Commission.

SECTION 2.(e) An improvement permit issued pursuant to this section shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place

of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

SECTION 2.(f) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

SECTION 2.(g) When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: "The soil, site, and system evaluation and documentation necessary to issue this _____ (improvement permit or authorization to construct) was performed by _____ (name of licensed soil scientist), a licensed soil scientist, license number _____ (license number).".

SECTION 2.(h) When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based.

SECTION 2.(i) A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars ($1,000,000) per claim.

SECTION 2.(j) The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party.

SECTION 2.(k) In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars ($200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section.

SECTION 2.(l) Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program.

SECTION 3. In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

SECTION 4. Sections 1 and 2 of this act become effective when it becomes law and expire 1 July 2011. Sections 3 and 4 of this act become effective when it becomes law and expire 1 October 2011.

#4

HOUSE BILL 1094:
Wastewater System Approvals/Small Counties

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	6 July 2006
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge
Version:	Second Edition		Legislative Analyst

SUMMARY: House Bill 1094 would establish a pilot program to modify the approval process for an on-site wastewater system in certain counties. The pilot program would:

- *Expand the authority to conduct soil and site evaluations as part of the process for issuance of an improvement permit to include licensed soil scientists, as well as agents of the local health department or the Department of Environment and Natural Resources (DENR).*
- *Require a licensed soil scientist who submits an application for an improvement permit or an authorization to construct to carry errors and omissions insurance or other appropriate liability insurance with a policy limit of not less than $1,000,000.*
- *Require the inclusion of certain identifying information on an improvement permit or an authorization to construct that is prepared by based on work provided by a licensed soil scientist.*
- *Provide that a local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct, provided that the licensed soil scientist carries errors and omissions coverage or other appropriate liability insurance.*
- *Authorize a local board of health to impose an additional fee not to exceed $200 for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist.*
- *Direct DENR to evaluate the effectiveness of the program and report its findings annually to the Environmental Review Commission.*

The pilot program would begin no later than 1 August 2006 and would expire 1 July 2011.

[As introduced, this bill was identical to S1122, as introduced by Sen. Albertson, which is currently in House Environment and Natural Resources.]

CURRENT LAW: A three-step process exists for the siting, installation, and operation of an on-site wastewater system. First, an application for an improvement permit must be submitted to the local health department that includes a plat or site plan, a description of the facility the proposed site is to serve, and characteristics of the proposed wastewater system. Once an improvement permit is issued, the local health department must conduct a field investigation to ensure that the system can be installed and operated in compliance with State laws and rules. If the local health department determines that the system can be installed in adequately, the local health department issues an authorization for wastewater system construction. This authorization must be obtained before a building permit will be granted and before construction of the system or the structure can begin. After the system has been installed, the local health department conducts an in-place inspection to ensure the system was installed in compliance

with the improvement permit, the construction authorization, and applicable rules. If the local health department determines that the installed system is in compliance, an operation permit will be issued that allows the system to be placed into operation. The operation permit will be valid as long as the system is operating properly and must be obtained prior to receiving permanent electrical power hookup and an occupancy permit.

BILL ANALYSIS: The bill would establish a pilot program in counties that meet the following requirements:

- The population of the county must not exceed 25,000 according to the most recent federal decennial census.
- The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department at the time the bill is enacted.
- The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

Under the pilot program the approval process for an on-site wastewater system would be modified as follows:

Expand role of licensed soil scientists: The bill authorizes (i) an agent of DENR; or (ii) a licensed soil scientist to conduct soil and site evaluations as part of the process for issuance of an improvement permit. Current law provides that these inspections and evaluations may only be completed by the local health department.

Permit review: If a permit is issued based on work conducted by a licensed soil scientist, the permit must also include information identifying the licensed soil scientist that completed or evaluated the application. If a local health department denies an application, the bill requires the local health department to include a written report that specifies the statute or rule on which denial is based.

Insurance requirements: The bill requires a licensed soil scientist who submits an application for an improvement permit or an authorization to construct to carry errors and omissions insurance or other appropriate liability insurance with a policy limit of not less than $1,000,000 that must remain in force for at least six years after the date on which the improvement permit or authorization to construct is approved.

Contracting for services: The bill provides that a local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct, provided that the licensed soil scientist carries errors and omissions coverage or other appropriate liability insurance.

Fees: The bill authorizes a local board of health to impose an additional fee not to exceed $200 for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist.

Evaluation of program: The bill directs DENR to evaluate the effectiveness of the program to determine whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department would annually report its findings and recommendations to the

Environmental Review Commission beginning 1 October 2007, and would report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

EFFECTIVE DATE: The provisions establishing the pilot program would become effective when the bill becomes law and expire 1 July 2011. The pilot program would begin no later than 1 August 2006. The final report from DENR to the Environmental Review Commission is due 1 October 2011, at which time the remaining provisions of the bill would expire.

BACKGROUND: On-site wastewater systems treat collected wastewater, typically with one or more septic tanks, and dispose of the treated effluent within a subsurface distribution system in which additional, final treatment is provided by the soils. Local health departments issue the permits for all subsurface wastewater systems. Certain wastewater systems (systems with a projected wastewater flow of 3,000 gallons per day or more, or systems will treat an industrial waste stream) require an engineering review be conducted and state approval of the system plans and specifications prior to issuance of a permit by the local health department. The application review time varies based on the complexity of the permit application and the workload of each local health department.

H1094e2-SMSY

#5

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representatives Harrell and Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Senate Committee Substitute for

HB 1094 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PILOT PROGRAM TO STREAMLINE THE PROCESS FOR THE ISSUANCE OF AN IMPROVEMENT PERMIT OR AN AUTHORIZATION TO CONSTRUCT FOR AN ON-SITE SUBSURFACE WASTEWATER SYSTEM IN CERTAIN COUNTIES BY AUTHORIZING LOCAL HEALTH DEPARTMENTS, AUTHORIZED AGENTS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND LICENSED SOIL SCIENTISTS TO COMPLETE SOIL AND SITE EVALUATIONS IN THE PARTICIPATING COUNTIES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____. Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

MINUTES

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Tuesday, July 11, 2006

The House Committee on Environment and Natural Resources met on Tuesday, July 11, 2006, 12 Noon, in Room 643 in the Legislative Office Building. The following members were present: Representative James A. Harrell, III, Chair and Representative Carolyn H. Justice, Presiding Chair; Representatives Allen, Harrison and McComas, Vice Chairs; Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Gillespie, Goodwin, Gulley, Hackney, LaRoque, Luebke, McGee, McMahan, Preston, Owens, Stiller, Underhill and Weiss and Womble.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Justice, Presiding Chair, called the meeting to order declaring a quorum. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

SENATE BILL 1587, Amend Env. & Nat. Resources Laws. (Please see Exhibit #3). Upon motion by Representative Harrell, the **Proposed House Committee Substitute, S1587-CSRT-89 [v.5], Amend Env. & Nat. Resources Laws.** (Please see Exhibit #4) was adopted and properly before the committee for discussion. Please see the Bill Analysis for explanation (Exhibit #5). George Givens, Chief Committee Counsel, upon being recognized clarified that the Senate Bill 1587 had been considered previously with the exception of the following provisions which had been added for consideration: Subsections 5.1 requested by DENR and 5.2, Emergency Drinking Water Fund; Subsection 5.3, Riparian Buffer Protection Program; Subsection 5.4, Exemption of Air Quality Permits; and Subsection 6, Deer and Elk.

- **Subsection 5.4.** Representative Gibson was recognized to explain Subsection 5.4. The chair opened discussion to committee members. Dr. George Everette, Director of Environmental Affairs, Duke Energy Carolinas, spoke in support of the provision citing the recent rule adopted by the Environmental Management Commission (EMC) that had broken the agreement made under smokestacks which had granted the utility companies flexibility while complying with the 70% emission reduction and cap. Molly Diggins, Director of the Sierra Club, spoke on behalf of Environmental Defense and NC Wildlife Federation in opposition to Subsection 5.4.; however, in support of the 2005 EMC Rule. Alan Hirsch, Policy Director for Governor Easley, was recognized to explain the Governor's position. Representative Harrison's proposed amendment to remove Subsection 5.4 from SB1587 failed by division vote. Representative Weiss, in an effort to clarify language, offered a handwritten amendment to Page 5, line 17, "install *and use at all times*". Representative Gibson offered a perfecting amendment to Page 5, line 17, "to be used at all times during normal operations". Representative Carney proposed a clarifying perfecting amendment to Page 5, line 17, "*used at all times while the plant is generating electricity*". Representative Weiss' amendment with the clarifying amendment to the perfecting amendment passed by favorable vote.

- Subsection Part III, Section 6. Representative Underhill was recognized to offer an amendment to Section 6 (Please See Exhibit #6). Dick Hamilton, NC Department of Wildlife, was recognized to speak in opposition to the amendment. Tom Bean, Environmental Defense, spoke in support of Representative Underhill's amendment. The amendment failed by an unfavorable vote.

Upon motion from Representative Harrell, **Proposed House Committee Substitute, S1587-CSRT-89 [v.5],** incorporating the clarifying perfecting amendment into a new Proposed Committee Substitute, received a favorable report, which changed the title, and unfavorable as to the Senate Committee Substitute Bill #2. The favorable vote was by division and requested by Representative Harrison. The Committee Report is attached (Please See Exhibit #7).

There being no further business, Representative Justice, presiding chair, adjourned the meeting.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Beth Wood LeGrande
Committee Assistant

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12 Noon
Tuesday July 11, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Chair
   Representative Carolyn H. Justice, Presiding Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

HOUSE BILL 1778. Risk-Based Environmental Remediation/Fund.
Representatives Gibson and LaRoque (Primary Sponsors)

SENATE BILL 1587. Amend Env. & Nat. Resources Laws.
Senator Charles W. Albertson (Primary Sponsor)

HOUSE BILL 2886. Disapprove Non-Ionizing Radiation Rule.
Representative Gibson (Primary Sponsor)

5. Adjourn

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 11 Aug 2006
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Gary Salamido	GSK
Lu Ann Pennyman	DLC Assoc
John Pechmann	Chair NCWRC
Dick Hamilton	NCWRC
[illegible]	" "
Preston Howard	MCIC
Brian Piercy	Capital Group
[illegible]	citizen
[illegible]	GSK
Nancy Thompson	MCIC
Michelle P. Vaught	Weyerhaeuser
Kathy Hawkins	Progress Energy
Carol Coveny	BP MH
R. Reid Wilson	NCMBA
[illegible]	NCMBA
Rick Zechini	NLAA
[illegible]	CSGNC
Thomas A. Suter	Wyeth
Tracy Kimbrell	Parker Poe
Aaron Chang	Intern - Rep. Glazier
Elizabeth Bultz	Environment North Carolina
Christine Wunsche	Environment North Carolina
Brian Wright	Conservation Campaign
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Waste Management DENR
Matt Kudis	NCCN

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 11-July-2006

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Grady McAllister	NC Conservation Network
Cameron Contrivano	Daily Bulletin
Heather Crosshaw	TNC
Erica Rieder	CNMTF
John Hunt	NCFPC
Ken Rusch	Gov's Office
Kathryn Pomeroy	Gov's office
Colin Higgins	GOV'S OFFICE
Rebecca Learning	gov's office
Adam Whitehurst	NCSA
Shelby MacPherson	NCCA
Amanda Wood	NC Sierra Club
Jessica Hollingsworth	NCDOL
John Hamann	NCDOL
Art Reid	NCDOL
Dustin Taylor	Constituent
George Everett	Duke Energy
John McAlister	Duke Energy
Corey Fullbright	Armtone Wms
Dan Frey	NCCA
Sandra Long	Martin Marietta Materials
Andrew Meehan	NCAEC
Jim Blackburn	N.C. Association of County Commissioners
Lucius Fuller	ATTORNEY - NCMA
Mark Rumbaugh	Poyner Spruill

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RESOURCES — 11-SEP-2006

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Erin Kinney	NC Conservation Network
RICHARD WHISNANT	UNC School of Government
David Cobb	NCWRC
Charles W. Bennett	N.C. WRC - Commissioner
GORDON MYERS	NCWRC
T REEDER	DWQ
Charlotte Jesneck	NC DENR - DWM
S. Henri McClees	McClees Consulting
Anthony Queen	NCAC
Henry Jones	Attorney - Raleigh
FRED WEBER	AAM (Washington, DC)
Charles Territo	AAM
Steve Hall	DENR
Jennifer Bumgarner	Governor's office
Helen Livingston	Scotland County
Belinda Ward	Duplin Co. // Mt. Olive, NC
Frances Parks	Duplin Co. Calypso N.C.
Keith Overcash	NC DAQ
Brock Nicholson	"
Lisa Riegel	NWTF
Amy SIMMS	NC DENR
Kristin Gusky	Environment North Carolina
DAVID WRIGHT	ENVIRONMENT NORTH CAROLINA
Hayes Neely	Environment North Carolina
Heather Ramsey	NC Sierra Club
Emily Kirby	NC Conservation Network

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Thursday, July 11, 2006
Room 643 Legislative Office Building
12 Noon

SIGN UP SHEET TO SPEAK

✓ Amend Env Laws SB # 1587	Molly Diggins Sierra Club
Risk Assessment #1778	Molly Diggins
AMEND ENV LAWS S1587	TOM BEAN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1587*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/20/06

Agriculture/Environment/Natural Resources Committee Substitute #2 Adopted 6/27/06

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES

COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General

Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"**SECTION 4.** Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006.~~2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006.~~2007. This act expires on 1 July 2026."

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does

not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"**§ 143-254.5. Disclosure of personal identifying information.**

~~(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.~~ Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

"(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.~~Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. All other sections of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1587*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/20/06

Agriculture/Environment/Natural Resources Committee Substitute #2 Adopted 6/27/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1587-CSRT-89 [v.5]

7/11/2006 10:44:50 AM

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (5.1) PROVIDE THAT SEPTAGE GENERATED BY THE OPERATION OF A WASTEWATER FACILITY PERMITTED UNDER ARTICLE 11 OF CHAPTER 130A OF THE GENERAL STATUTES MAY BE MANAGED AS PROVIDED BY G.S. 130A-291.1; (5.2) ESTABLISH THE EMERGENCY DRINKING WATER FUND; (5.3) PROVIDE, ON A TEMPORARY BASIS, THAT DONATIONS OF REAL PROPERTY TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES THAT SERVE AS ALTERNATIVES TO MAINTAINENCE OF RIPARIAN BUFFERS ARE LIMITED TO A PROPERTY THAT IS LOCATED IN THE

SAME RIVER BASIN AS THE RIPARIAN BUFFER THAT IS LOST BUT ARE NOT LIMITED TO A PROPERTY THAT IS LOCATED ON THE SAME STREAM AS THE RIPARIAN BUFFER THAT IS LOST; (5.4) MODIFY THE METHOD BY WHICH BASELINE EMISSIONS ARE DETERMINED FOR CERTAIN COAL-FIRED ELECTRIC GENERATING UNITS; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the

Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"**SECTION 4.** Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006.~~2007. Section 2 of this act becomes effective 1 October 2005.

Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006.~~2007. This act expires on 1 July 2026."

SECTION 5.1.(a) G.S. 130A-291.1 is amended by adding a new subsection to read:

"(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section."

SECTION 5.1.(b) Management, including land application, of septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A of the General Statutes shall be governed by 40 Code of Federal Regulations Part 503 (1 July 2003 Edition) and rules adopted by the Commission for Health Services pursuant to G.S. 130A-291.1, as amended by subsection (a) of this section.

SECTION 5.2. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-98. Emergency Drinking Water Fund.**

(a) The Emergency Drinking Water Fund is established within the Department. The Fund shall be a nonreverting, interest-bearing fund consisting of monies appropriated to the Fund by the General Assembly and investment interest credited to the Fund.

(b) The fund may be used to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well that is located within 1,500 feet of known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. The funds may also be used to cover the costs of testing private drinking water wells for contamination and for the provision of alternative drinking water supplies to persons whose drinking water well is contaminated.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative source of funds is not available. The funds shall not be used for remediation of groundwater contamination. Nothing in this section expands, contracts, or modifies the obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or soil contamination.

(d) The Department shall establish criteria by which the Department is to evaluate applications and disburse funds from this Fund and may adopt any rules necessary to implement this section."

SECTION 5.3. If Senate Bill 1862, 2005 Regular Session, becomes law, then Senate Bill 1862, 2005 Regular Session is amended by adding a new section to read:

"**SECTION 2.1.** A donation of real property or of an interest in real property to the Department of Environment and Natural Resources, another State agency, a unit of local government, or a private nonprofit conservation organization under G.S. 143-214.20 shall be limited to property that is located in the same river basin as the riparian buffer that is lost but shall not be limited to a donation of property located on the same stream as the riparian buffer that is lost."

SECTION 5.4. The provisions of 15A NCAC 2D. 0530(a)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

(1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of sulfur dioxide (SO2) at each electric generating unit to which 15A NCAC 2D.0530(a)(1)(A)(iv) would otherwise apply.

(2) State that the actual emissions of sulfur dioxide (SO2) shall be no greater than 0.15 pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average.

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"**§ 143-254.5. Disclosure of personal identifying information.**

~~(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a~~

~~consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.~~ Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

"(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.~~Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter

that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. Section 5.3 of this act becomes effective 1 August 2006 and expires 1 September 2007. All other sections of this act are effective when the act becomes law.

SENATE BILL 1587:
Amend Env. & Nat. Resources Laws

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 11, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	PCS to Third Edition S1587-CSSY		Tim Dodge Legislative Analyst

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 1587 makes numerous changes to environmental, natural resources, and environmental health laws.***

BILL ANALYSIS: The PCS for Senate Bill 1587 would make the following changes:

Part I: Amend Environmental Laws:

Section 1: Clarifies the requirement that motor vehicles operated on a federal installation in an emissions county are subject to emissions inspection requirements.

Section 2: Clarifies the requirement that land disturbing activity be conducted in accordance with an approved erosion and sedimentation control plan.

Sections 3.1 and 3.2: Authorize the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture to contract for consultants upon the prior approval of the Legislative Services Commission. At least a dozen other legislative study commission already have this authority, including the Joint Legislative Education Oversight Committee, the Joint Legislative Transportation Oversight Committee, the Joint Legislative Administrative Procedure Oversight Committee, the Joint Legislative Health Care Oversight Committee, and the Revenue Laws Study Committee.

Section 4: Authorizes a person who manufactures, installs, repairs, or pumps septic systems to also purchase and install approved effluent filters.

Section 5: Delays by one year the effective date of certain provisions of S.L. 2005-384, an act to require the removal, collection, and recovery of mercury switches from certain motor vehicles.

Section 5.1: Authorizes septage management firms to land apply septage generated from small wastewater systems, so long as the land application complies with existing State and federal requirements for septage management.

Section 5.2: Establishes the Emergency Drinking Water Fund in the Department of Environment and Natural Resources (DENR). The Fund may be used to pay for notification of persons supplied water from a private drinking water well that is located within 1,500 feet of known groundwater contamination. The Fun may also be used for the costs of testing private drinking water wells for contamination and for the provision of alternative water supplies to persons whose drinking water well is contaminated.

Section 5.3: Provides that donations of real property under the Riparian Buffer Protection Program shall be required to be located within the same *basin* as the riparian buffer that is lost, but shall not be required to be located on the same *stream* as the riparian buffer that is lost. This section becomes effective only if Senate Bill 1862 (Limit Nutrient Offset Payments) becomes law.

Section 5.4: Exempts certain air quality permits that are submitted and determined to be administratively complete by 1 August 2006 from recent changes in air quality rules that were adopted by the Environmental Management Commission. In order to be eligible for this exemption, the permit must meet specific criteria listed in the bill.

Part II: Amend Natural Resources Laws:

Section 6: Removes deer and elk from consideration as livestock in the definition of agriculture that is used for agricultural development and farmland preservation purposes.

Section 7: Clarifies that the For Hire Blanket Coastal Recreational Fishing License is issued for the for hire boat rather than the boat captain.

Section 8: Clarifies that the Special Landholder and Guest Fishing License only applies when the guests are invited to fish at no charge.

Section 9: Increases the types of licenses that the Wildlife Resources Commission may establish as personalized licenses.

Section 10: Clarifies that the Lifetime Unified Inland/Coastal Recreational Fishing License is a resident only license.

Sections 11.1 and 11.2: Provide that personal identifying information obtained by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries of DENR shall be treated as provided in the statute that governs the treatment of such information by State agencies generally. The provision in the PCS contains a broader definition of protected identifying information.

Section 12: Authorizes the Marine Fisheries Commission to exempt certain organized fishing events from license requirements.

Part III: Clarify Authority of the DENR to Implement the Childhood Lead Poisoning Prevention Program:

Section 13.1 through 13.6: Clarify the authority of the DENR and the Secretary of Environment and Natural Resources to carry out certain responsibilities related to the prevention and control of lead poisoning in children.

Part IV: Effective Date:

Section 14: Section 5 of the PCS would become effective retroactively to July 1, 2006. Section 5.3 would become effective 1 August 2006 and expire 1 September 2007. All other sections of the PCS would become effective when it becomes law.

S1587e2-SMSB-PCS35435-SB-57

S1587e3-SMSY-CSSY

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1587*

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

S1587-ASB-41 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [YES]
S1587-CSRT-89 [v.5]

Representative Harrison

moves to amend the bill on page 2, lines 3 through 5,
by rewriting those lines to read:

"STREAM AS THE RIPARIAN BUFFER THAT IS LOST; (6) REMOVE" and

on page 5, lines 10 through 23,
by deleting those lines.

SIGNED M P T Harrison
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 11 July 2006 7-many TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1587*

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

S1587-ASB-40 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
S1587-CSRT-89 [v.5]

Representative Underhill

moves to amend the bill on page 5, between lines 30 and 31,
by inserting between those lines:

"**SECTION 6.1** G.S. 106-581.1 is amended by adding a new subdivision to read:

'(7) The production, marketing, and sale of farmed cervids as defined in G.S. 106-549.97.'".

SIGNED Alice B. Underhill
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 11 July 2006 TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Committee Substitute # 2 for

SB 1587 A BILL TO BE ENTITLED AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate Committee Substitute Bill 2.

(FOR JOURNAL USE ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1587*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/20/06

Agriculture/Environment/Natural Resources Committee Substitute #2 Adopted 6/27/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1587-PCS15432-RT-89

Short Title: Amend Env. & Nat. Resources Laws. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (5.1) PROVIDE THAT SEPTAGE GENERATED BY THE OPERATION OF A WASTEWATER FACILITY PERMITTED UNDER ARTICLE 11 OF CHAPTER 130A OF THE GENERAL STATUTES MAY BE MANAGED AS PROVIDED BY G.S. 130A-291.1; (5.2) ESTABLISH THE EMERGENCY DRINKING WATER FUND; (5.3) PROVIDE, ON A TEMPORARY BASIS, THAT DONATIONS OF REAL PROPERTY TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES THAT SERVE AS ALTERNATIVES TO MAINTAINENCE OF RIPARIAN BUFFERS ARE LIMITED TO A PROPERTY THAT IS LOCATED IN THE

SAME RIVER BASIN AS THE RIPARIAN BUFFER THAT IS LOST BUT ARE NOT LIMITED TO A PROPERTY THAT IS LOCATED ON THE SAME STREAM AS THE RIPARIAN BUFFER THAT IS LOST; (5.4) MODIFY THE METHOD BY WHICH BASELINE EMISSIONS ARE DETERMINED FOR CERTAIN COAL-FIRED ELECTRIC GENERATING UNITS; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"**§ 120-70.44. Additional powers.**

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the

Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) The ~~manufacturer of each~~ person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"**SECTION 4.** Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006.~~2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle

manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006.~~2007. This act expires on 1 July 2026."

SECTION 5.1.(a) G.S. 130A-291.1 is amended by adding a new subsection to read:

"(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section."

SECTION 5.1.(b) Management, including land application, of septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A of the General Statutes shall be governed by 40 Code of Federal Regulations Part 503 (1 July 2003 Edition) and rules adopted by the Commission for Health Services pursuant to G.S. 130A-291.1, as amended by subsection (a) of this section.

SECTION 5.2. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-98. Emergency Drinking Water Fund.**

(a) The Emergency Drinking Water Fund is established within the Department. The Fund shall be a nonreverting, interest-bearing fund consisting of monies appropriated to the Fund by the General Assembly and investment interest credited to the Fund.

(b) The Fund may be used to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well that is located within 1,500 feet of known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. The funds may also be used to cover the costs of testing private drinking water wells for contamination and for the provision of alternative drinking water supplies to persons whose drinking water well is contaminated.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative source of funds is not available. The funds shall not be used for remediation of groundwater contamination. Nothing in this section expands, contracts, or modifies the obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or soil contamination.

(d) The Department shall establish criteria by which the Department is to evaluate applications and disburse funds from this Fund and may adopt any rules necessary to implement this section."

SECTION 5.3. If Senate Bill 1862, 2005 Regular Session, becomes law, then Senate Bill 1862, 2005 Regular Session is amended by adding a new section to read:

"**SECTION 2.1.** A donation of real property or of an interest in real property to the Department of Environment and Natural Resources, another State agency, a unit of local government, or a private nonprofit conservation organization under G.S. 143-214.20 shall be limited to property that is located in the same river basin as the riparian buffer that is lost but shall not be limited to a donation of property located on the same stream as the riparian buffer that is lost."

SECTION 5.4. The provisions of 15A NCAC 2D .0530(a)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

(1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of sulfur dioxide (SO2) at each electric generating unit to which 15A NCAC 2D.0530(a)(1)(A)(iv) would otherwise apply and that the permittee will operate the advanced control technology at any time that electricity is being produced by the electric generating unit.

(2) State that the actual emissions of sulfur dioxide (SO2) shall be no greater than 0.15 pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average.

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division.~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Two hundred fifty dollars ($250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Three hundred fifty dollars ($350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

"(9) Special Landholder and Guest Fishing License – $50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing ~~waters, including public mountain trout waters, and entitles persons~~ waters. This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. ~~The guest fishing~~This license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. ~~The guest fishing~~This license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar ($5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"**§ 143-254.5. Disclosure of personal identifying information.**

~~(a) Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a~~

~~consumer who purchases or subscribes to a good or service offered by the Commission, or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number.~~ Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

"(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.~~Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"**§ 130A-12. Confidentiality of records.**

All records containing privileged patient medical ~~information or~~information, information protected under 45 ~~C.F.R.~~ Code of Federal Regulations Parts 160 and ~~164~~ 164, and information collected under the authority of Part 4 of Article 5 of this Chapter

that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment, payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 ~~C.F.R.~~Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. Section 5.3 of this act becomes effective 1 August 2006 and expires 1 September 2007. All other sections of this act are effective when the act becomes law.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
Thursday, July 13, 2006

The House Committee on Environment and Natural Resources met on Thursday, July 13, 2006, in Room 1228 in the Legislative Building at 10:00 A.M. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representatives Allen, Harrison, and McComas, Vice Chairs; Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Gillespie, Goodwin, Gulley, Hackney, Haire, Insko, LaRoque, Luebke, McGee, McMahan, Martin, Owens, Preston, Stiller, Underhill, Weiss and Womble.
The Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 1778 - RISK-BASED ENVIRONMENTAL REMEDIATION/FUND (Please see exhibit #3). **PROPOSED COMMITTEE SUBSTITUTE H1778-PCS30619-RTf-70. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND.** (Please see exhibit #4). Representative Gibson being recognized noted no changes had been made to Proposed Committee Substitute H1778-PCS30619-RTf-70 previously adopted for discussion at the July 6, 2006 Environment Meeting and moved it be properly before the committee for further discussion. The Bill Analysis is attached (Please see exhibit #5). Opposition to the fee, but the support of the process and the language of the bill was noted. Representative Gibson cited Line 32, Page 9, protection of public health included in the bill and moved for adoption. Representative Daughtridge being recognized spoke in support of the bill. In response to questions ensuing from members regarding the clean-up fee, George Givens, Committee Chief Counsel, cited Page 12, Lines 1-18, *Purposes of Funding.* Dexter Mathews, Director of Waste Site Clean Up, DENR; Richard Rogers, DENR; and Molly Diggins, representing N.C. Sierra Club, Environmental Defense, Clean Water N.C. and N.C. Wildlife; were recognized to speak in opposition of the bill. Preston Howard, President of MCIC, spoke in support of the bill. Representative Owens being recognized spoke in support of the bill and moved that Proposed Committee Substitute H1778-PCS30619-RTf-70 be incorporated into a new proposed committee substitute that included the previously adopted Amendment H1778-ART-39 [v.1] (Please see Exhibit #6) and receive a favorable report, with a re-referral to finance, unfavorable to original bill. In addition, staff was instructed to prepare a Proposed Committee Substitute for *Senate Bill 927, Underground Storage Tank Amendments*, that would be used as a vehicle, for purposes other than its original intent and with its language replaced with the language from the new Proposed Committee Substitute for House Bill 1778, also to have a re-referral to Finance. Several members along with Representative Hackney and Representative Luebke expressed opposition to process. A division vote was requested. The process received a favorable vote by hand count.

HOUSE BILL 2886: DISAPPROVE NON-IONIZING RADIATION RULE. (Please see exhibit #7). Please refer to the Bill Analysis for explanation (Exhibit #8). Representative Gibson, bill sponsor, being recognized to speak on the bill noted the controversy surrounding it. Robert W. Kaylor, Verizon Wireless, Alltel Communications, Inc., being recognized to speak in support of the bill explained that HB2886 disapproves 13 NCAC07F.0606 (Non-Ionizing Radiation) as adopted by the Commissioner of Labor on 2 October 2004 and approved by the Rules Review Commission on 17 February 2005. John Hoomani, General Counsel, NC Department of Labor, argued that this is not a preemptive issue, but a health and safety issue and assured the committee that it was properly being administered by the Department of Labor. Because of questions and concerns no action was taken on the bill.

Representative Harrell announced the meeting was adjourned and would be continued today after session.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **Environment and Natural Resources** will meet as follows:

DAY & DATE: **Thursday, July 13, 2006**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

HOUSE BILL 1778. RISK-BASED REMEDIATION/FUND.
Representatives Gibson and LaRoque (Primary Sponsors)

SENATE BILL 1122. RENAME WRP/CODIFY ECOSYSTEM ENHANCEMENT PRGM.
Senator Albertson (Primary Sponsor)

HOUSE BILL 2166. STORM WATER MANAGEMENT 2006.
Representatives Gibson, Allen, Harrison and Weiss (Primary Sponsors)

HOUSE BILL 2886. DISAPPROVE NON-IONIZING RADIATION RULE.
Representative Gibson (Primary Sponsor)

SENATE BILL 1123. ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **5:30 P.M.** on **July 12, 2006.**

Yes - Principal Clerk
Yes - Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

Beth LeGrande (Rep. Harrell)

From: Beth LeGrande (Rep. Harrell)
Sent: Wednesday, July 12, 2006 7:05 PM
Cc: Rep. Jim A. Harrell; Rep. Carolyn H. Justice
Subject: Environment Mtg. Correction - 10 a.m. Thursday
Importance: High

CORRECTED NOTICE
Thursday 10:00 A.M. Room 1228
NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION

You are hereby notified that the Committee on **Environment and Natural Resources** will meet as follows:

DAY & DATE: **Thursday, July 13, 2006**

TIME: **10:00 A.M.**

LOCATION: **1228 Legislative Office Building**

The following bills will be considered:

HOUSE BILL 1778. RISK-BASED REMEDIATION/FUND.
Representatives Gibson and LaRoque (Primary Sponsors)

HOUSE BILL 2886. DISAPPROVE NON-IONIZING RADIATION RULE.
Representative Gibson (Primary Sponsor)

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **7:00 P.M.** on **July 12, 2006.**

Yes - Principal Clerk
Yes - Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

10:00 A.M.
Thursday July 13, 2006
Room 1228 Legislative Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

HOUSE BILL 1778. RISK-BASED REMEDIATION/FUND.
Representatives Gibson and LaRoque (Primary Sponsors)

HOUSE BILL 2886. DISAPPROVE NON-IONIZING RADIATION RULE.
Representative Gibson (Primary Sponsor)

5. Adjourn

House Pages

Name Of Committee: Environment Date: 07-13-2006

1. Name: Johnsie Baugues
   County: Alamance
   Sponsor: Allred
2. Name: Laura Reinhard
   County: Wake
   Sponsor: Speaker Black
3. Name: Scott Possiel
   County: Wake
   Sponsor: Yongue
4. Name: George Davies
   County: Charlotte
   Sponsor: Speaker Black
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: July 13, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Hoomani	NCDOL
Art Britt	"
Jennifer Haigwood	"
Lu-Ann C Rheinman	DTC
Judy McConnell	Wachi Publications
Steve Wall	DENR
Mike Welsh	Conservation Council
Charlotte Jessuck	NC DENR
Anita Watkins	NCLM
Elizabeth Oates	Environ Nat Coalition
DAVID WRIGHT	ENVIRONMENT NORTH CAROLINA

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: July 13, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fuller	AFW
Kathy Hawkins	Progress Energy
Rebekah Howard	MCIC
	SAA
	Progress Energy
Nancy Thompson	MCIC
Mary P Thompson	DENR
Charles Case	Hunton & Williams
John McNulla	MFOS
M. Amer	Office Reg Cntr Pchairman

#12

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

Date: July 13, 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hayes Neely	Environment North Carolina
Brian Wrightr	Conservation Council
Erin Kenney	NCconservation Network
KRISTIN IGUSKY	environment NC
TOMMY SUTER	WYETH
Jeb McKaig	Gov office
Gary Harris	NC Petroleum Mktrs.
John Poltrack	NCADA
Stan Overby	CSC
Cam Cox	BPMHL
Ed TURLINGTON	VEP

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

July 13
Date: [redacted] 2006

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Bore & Assoc
[signature]	IFNC
Tracy Kimbrell	Parker Poe
[signature]	NC WRC
Richard Hamilton	" "
[signature]	DSC

#2

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

10:00 a.m.
Thursday 13, 2006
Room 1228 Legislative Building

SIGN UP SHEET TO SPEAK

BILL
HOUSE BILL 2886. DISAPPROVE NON-IONIZING RADIATION RULE.

NAME	ADDRESS
John Hoomani - NCDOL	
~~Charles Case + Hunter + Williams~~	CCASE@HUNTFORD.COM
Dexter Mathens DENR Waste Management	

#K 2

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

10:00 a.m.
Thursday 13, 2006
Room 1228 Legislative Building

SIGN UP SHEET TO SPEAK

BILL

HOUSE BILL 1778. RISK-BASED REMEDIATION/FUND.

NAME	ADDRESS
ELIZABETH OUZTS	ENVIRONMENT NORTH CAROLINA
MOLLY DIGGINS	NC SIERRA CLUB

#3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1778

Short Title:	Risk-Based Environmental Remediation/Fund.	(Public)
Sponsors:	Representatives Gibson, LaRoque (Primary Sponsors); Cole, Hill, McMahan, and Wright.	
Referred to:	Environment and Natural Resources, if favorable, Finance.	

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, and welfare and the environment using procedures that are based in sound science and that can be voluntarily and independently implemented in a timely and practical fashion without overburdening State resources; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the

Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that these varying standards cause confusion and delay and create the potential for inappropriate levels of remediation, including both the possibility that inadequate remediation at some sites may result in potential or actual harm to public health, safety, or welfare or the environment, and the possibility that unnecessary remediation at other sites may result in excessive and wasteful expenditure of public and private resources; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can best be protected by implementing a uniform remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that this remediation process should be based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area and to the determination of the appropriate level of remediation to address contamination in a manner that is protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that this approach should be applied to each contaminated area on a site-specific basis using knowledge of the area, the contaminants present, the effects of those contaminants on public health, safety, and welfare, and the actions of those contaminants in, and their effect on, the environment; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or

release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.13. Adoption of rules for risk-based remediation.**

(a) As used in this section:

(1) 'Background' represents the concentration of a contaminant, determined by appropriate statistical methods, that is present at a site, but is not related to the release of a contaminant at the site.

(2) 'Contaminant' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance as defined in G.S. 143-215.77A and G.S. 130A-310; or any other substance regulated under a remediation program implemented by the Department.

(3) 'Corrective action plan' means a plan for eliminating sources of groundwater contamination or for achieving groundwater quality restoration based on rules established pursuant to this section.

(4) 'Department' means the Department of Environment and Natural Resources.

(5) 'Established standards' means the groundwater quality standards adopted pursuant to G.S. 143-214.1.

(6) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in increase in the concentration of the contaminant or contaminants in the groundwater in excess of that allowed under established standards.

(7) 'Institutional controls' means nonengineered measures, including land-use restrictions used to prevent unsafe exposure to contamination.

(8) 'Regulated substance' has the same meaning as in G.S. 130A-310.31.

(9) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(10) 'Responsible person' means a person who is or may be liable for remediation under the programs covered by this act.

(11) 'Secretary' means the Secretary of Environment and Natural Resources.

(b) The Secretary shall adopt rules to establish a consistent and uniform risk-based approach to the assessment, prioritization, and remediation of environmental contamination. The rules shall be consistent with the remediation standards and review procedures set out in subsection (c) of this section and provide for:

(1) The assessment of the contaminated area, including types and levels of contamination; the horizontal and vertical extent of contamination; the risk to public health, safety, and welfare and to the environment posed

by the contamination; and identification of the current and anticipated future uses of property comprising the contaminated area.

(2) The acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(3) Definition of the circumstances under which no further remediation is required.

(4) The process for determining an appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(5) The process for determining whether a risk-based approach to remediation under the rules is appropriate for a particular contaminated area. The process shall include, but not be limited to, consideration of proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediating to established standards.

(6) The process for establishing, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(7) The level of oversight of the remediation that will be exercised by the Department.

(8) The determination or certification that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation does not exceed the maximum allowable, that an acceptable level of risk has been achieved, and that no further remediation is required.

(9) The imposition of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health and the environment.

(10) Public participation.

(11) Any other matter that the Secretary determines to be necessary to carry out the intent of this section.

(c) Remediation Standards and Review Procedures. –

(1) Remediation standards. – Any person who proposes or is required to respond to the release of a regulated substance at a site shall select and attain compliance with one of the following environmental standards when conducting remediation activities:

a. A background standard that achieves background as further specified in subdivision (3) of this subsection.

b. A statewide health standard adopted by the Secretary that achieves a uniform statewide health-based level so that any substantial present or probable future risk to human health and the environment is eliminated as specified in subdivision (4) of this subsection.

c. A site-specific standard that achieves remediation levels based on a site-specific risk assessment so that any substantial present or probable future risk to human health and the environment is eliminated or reduced to protective levels based upon the present or currently planned future use of the property comprising the site as specified in subdivision (5) of this subsection.

(2) Combination of standards. – A person may use attainment of any one or a combination of remediation standards described in subdivision (1) of this subsection to implement a site remediation plan and may propose to use the site-specific standard whether or not efforts have been made to attain the background or statewide health standard.

(3) Background standard. –

a. Standard. – Persons selecting the background standard shall meet background standard for each regulated substance in each environmental medium.

b. Certification of attainment. – Final certification that a site or portion of a site meets the background standard shall be documented in the following manner:

1. Attainment of the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern, including soils and groundwater in aquifers in the area where the contamination occurs through the application of statistical tests set forth by rule or, if no rules have been adopted, in demonstration of a mathematically valid application of statistical tests. The Department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular type of remediation.

2. A final report that documents attainment of the background standard shall be submitted to the Department that includes, as appropriate:

I. The descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of regulated substances.

II. The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, summaries of sampling methodology, and analytical results that demonstrate that remediation has attained the background standard.

3. Where remediation measures do not involve removal or treatment of a contaminant to the background standard, the final report shall demonstrate that any remaining contaminants on the site will meet statewide health standards and show compliance with postremediation care requirements that may be needed to maintain compliance with the statewide health standards.

c. No institutional controls for attainment. – Institutional controls, such as fencing and future land-use restrictions on a site, may not be used to attain the background standard. Institutional controls may be used to maintain the background standard after remediation occurs.

d. Authority reserved. – If a person fails to demonstrate attainment of the background standard, the Department may require that additional remediation measures be taken in order to meet the background standard, or the person may select to meet the requirements of subdivision (4) or subdivision (5) of this subsection.

e. Notice and review. – Persons utilizing background standard shall comply with the following notice requirements:

1. A notice of intent to remediate a site to background standards shall be submitted to the Department that, to the extent known, provides a brief description of the location of the site, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation, or other uses, and the proposed remediation measures.

2. Upon completion of cleanup to background standards, a final report demonstrating attainment of the background standard shall be provided to the Department.

3. The Department shall review the final report demonstrating attainment of the background standard within 60 days of its receipt or notify the person submitting the report of substantive deficiencies. If the Department does not respond with deficiencies within 60 days, the final report shall be deemed approved.

(4) Statewide health standard. –

a. Standard. – The Secretary shall adopt statewide health standards for regulated substances for each environmental medium. The standards for groundwater shall be those numerical health-based standards for groundwater adopted by the Environmental Management Commission. In addition, the Secretary shall adopt rules to establish medium-specific standards for soils. The

Secretary shall also adopt, along with the standards, the methods used to calculate the standards.

b. Medium-specific concentrations. – The following requirements shall be used to establish a medium-specific concentration:

1. Any regulated discharge into surface water occurring during or attainment of the statewide health standard shall comply with applicable standards for surface waters adopted by the Environmental Management Commission.

2. Any regulated emissions to the outdoor air occurring during or after attainment of the statewide health standard shall comply with applicable standards for outdoor air quality adopted by the Environmental Management Commission.

3. The concentration of a regulated substance in groundwater in aquifers that are used or may be used in the future for drinking water shall comply with the groundwater standards adopted by the Environmental Management Commission.

4. For residential properties, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on residential exposure factors within a depth of up to 15 feet from the existing ground surface, or the soil-to-groundwater pathway numeric value throughout the soil column, the latter to be determined by any one of the following methods:

I. A value that is 100 times the medium-specific concentration for groundwater.

II. A concentration in soil at the site that does not produce a leachate in excess of the medium-specific concentrations for groundwater in the aquifer when subjected to the Synthetic Precipitation Leaching Procedures, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, promulgated by the United States Environmental Protection Agency.

III. A generic value determined not to produce a concentration in groundwater in the aquifer in excess of the medium-specific concentration for groundwater based on a valid, peer-reviewed scientific method that properly accounts for factors affecting the fate, transport, and

attenuation of the regulated substance throughout the soil column.

IV. For nonresidential properties, the concentration of a regulated substance in soil shall not exceed either the direct contact soil medium-specific concentration based on nonresidential exposure factors within a depth of up to 15 feet from the existing ground surface using valid scientific methods reflecting worker exposure or the soil to groundwater pathway numeric value determined in accordance with paragraph 4 of this sub-subdivision.

V. Exposure scenarios for medium-specific concentrations for nonresidential conditions shall be established using valid scientific methods reflecting worker exposure.

c. Additional factors. – When establishing a medium-specific concentration, other than those established under paragraph 1, 2, or 3 of sub-subdivision b. of this subdivision, the medium-specific concentration for the ingestion of groundwater, inhalation of soils, ingestion and inhalation of volatiles and particulates shall be calculated by the Department using valid scientific methods, reasonable exposure pathway assumptions, and exposure factors for residential and nonresidential land use that are no more stringent than the standard default exposure factors established by the United States Environmental Protection Agency based on the following levels of risk:

1. For a regulated substance that is a carcinogen, the medium-specific concentration is the concentration that represents an excess upper-bound lifetime cancer target risk of one in 1,000,000.
2. For a regulated substance that is a systemic toxicant, the medium-specific concentration is the concentration to that which human populations could be exposed by direct ingestion or inhalation on a daily basis without appreciable risk of deleterious effects for the exposed population.

d. Relationship to background. – The concentration of a regulated substance in an environmental media of concern on a site where the statewide health standard has been selected shall not be required to meet the statewide health standard if the statewide health standard is numerically less than the background standard. In such cases, the background standard shall apply.

e. Certification of attainment. – Final certification that a site or portion of a site meets the statewide health standard shall be documented in the following manner:

1. Attainment of cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern, including soils, and groundwater in aquifers at the point of compliance through the application of statistical tests set forth in rules or, if no rules have been adopted, in a demonstration of a mathematically valid application of statistical tests. The Department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

2. A final report that documents attainment of the statewide health standard shall be submitted to the Department that includes the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement of contaminants on the site, and cumulative effects, if any, volume, composition, and concentration of contaminants in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, summaries of sampling methodologies and analytical results that demonstrate that contaminants have been removed or treated to applicable levels, and documentation of compliance with postremediation care requirements if they are needed to maintain the statewide health standard.

f. No institutional controls for attainment. – Institutional controls, such as fencing and future land-use restrictions on a site, may not be used to attain the statewide health standard. Institutional controls may be used to maintain the statewide health standard after remediation occurs.

g. Authority reserved. – If a person fails to demonstrate attainment of the statewide health standard, the Department may require that additional remediation measures be taken in order to meet the health standard or the person may select to meet the requirements of subdivision (3) or subdivision (5) of this subsection.

h. Notice and review. – Persons utilizing the statewide health standard shall notify the Department of planned remediation

activities by providing notice of intent to initiate remediation activities, which shall be made in the following manner:

1. A notice of intent to remediate a site shall be submitted to the Department that provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation, or other uses, and the proposed remediation measures.
2. Notice of the submission of the final report demonstrating attainment of the statewide health standard shall be submitted to the Department.
3. The Department shall review the final report demonstrating attainment of the statewide health standard within 60 days of its receipt or notify the person submitting the report of substantive deficiencies. If the Department does not respond with deficiencies within 60 days, the final report shall be deemed approved.

(5) Site-specific standard. –

a. General. – Where a site-specific standard is selected as the environmental remediation standard or where the background or statewide health standard is selected but not achieved, remedial investigation, risk assessment, cleanup plans, and final reports shall be developed using the procedures and factors established by this subdivision.

b. Carcinogens. – For known or suspected carcinogens, soil and groundwater cleanup standards shall be established at exposures that represent an excess upper-bound lifetime risk of between one in 10,000 and one in 1,000,000. The cumulative excess risk to exposed populations, including sensitive subgroups, shall not be greater than one in 10,000.

c. Systemic toxicants. – For systemic toxicants, soil and groundwater cleanup standards shall represent levels to which the human population could be exposed on a daily basis without appreciable risk of deleterious effect to the exposed population. Where several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for multiple systemic toxicants acting through a single-medium exposure pathway or through multiple-media exposure pathways.

d. Groundwater. – Cleanup standards for groundwater shall be established in accordance with sub-subdivisions b. and c. of this subdivision using the following considerations:

1. For groundwater in aquifers, site-specific standards shall be established using the following procedures:

I. The current and probable future use of groundwater shall be identified and protected. Groundwater that has a background total dissolved solids content greater than 2,500 milligrams per liter or is not capable of transmitting water to a pumping well in usable, and sustainable quantities shall not be considered a current or potential source of drinking water.

II. Site-specific sources of contaminants and potential receptors shall be identified.

III. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

2. Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by ingestion or other avenues to protect human health and the environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve the equivalent level of protection.

e. Soil. – Concentrations of regulated substances in soil shall not exceed:

1. Values calculated in accordance with sub-subdivisions b. and c. of this subdivision based on human ingestion of soil where direct contact exposure to the soil reasonably occurs.

2. Values calculated to protect groundwater in aquifers at levels determined in accordance with sub-subdivisions a., b., c., and d., of this subdivision.

3. Values calculated to satisfy the requirements of sub-subdivision g. of this subdivision. with respect to discharges or releases to surface water or emissions to the outdoor air.

Such determinations under this sub-subdivision shall take into account the effects of institutional and engineering controls, if any, and shall be based on sound

scientific principles, including fate and transport analysis of the migration of regulated substance in relation to receptor exposures.

f. Factors. – In determining soil and groundwater cleanup standards under subsections (d) and (e) of this section, the following factors shall also be considered:

1. Use of appropriate standard exposure factors for the land use of the site with reference to current and currently planned future land use and the effectiveness of institutional or legal controls placed on the future use of the land.

2. Use of appropriate statistical techniques, including, but not limited to, Monte Carlo simulations, to establish statistically valid cleanup standards.

3. The potential of human ingestion of regulated substances in surface water or other site-specific surface water exposure pathways, if applicable.

4. The potential of human inhalation of regulated substances from the outdoor air and other site-specific air exposure pathways, if applicable.

g. Air and surface water. – Any discharges into surface water or any emissions to the outdoor air that occur during or after attainment of the site-specific standard shall comply with applicable surface water quality and air quality standards adopted by the Environmental Management Commission.

h. Relationship to background. – The concentration of a regulated substance in an environmental medium of concern on a site where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background standard. In such cases, the background standard shall apply.

i. Combination of measures. – The standards may be attained through combination of remediation activities that can include treatment, removal, engineering, or institutional controls and can include innovative or other demonstrated measures. The Department may disapprove a site-specific remediation plan that consists solely of fences, warning signs, or land-use restrictions unless the site-specific standard is developed on the basis of exposure factors that are no less stringent than those that would apply to the site at the time the contamination is discovered.

j. Evaluation of remediation plan. – The final remediation plan for a site submitted to the Department shall include remediation

alternatives and a final remedy that considers each of the following factors:

1. Long-term risks and effectiveness of the proposed remedy includes an evaluation of:
   I. The magnitude of risks remaining after completion of the remedial action.
   II. The type, degree, and duration of postremediation care required, including but not limited to, operation and maintenance, monitoring, inspections, and reports and their frequencies or other activities that will be necessary to protect human health and the environment.
   III. Potential for exposure of human and environmental receptors to regulated substances remaining at the site.
   IV. Long-term reliability of any engineering and voluntary institutional controls.
   V. Potential need for repair, maintenance, or replacement of components of the remedy.
   VI. Time to achieve cleanup standards.
2. Reduction of the toxicity, mobility, or volume of regulated substances, including the amount of regulated substances that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and the type, quantity, toxicity, and mobility of regulated substances remaining after implementation of the remedy.
3. Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedy, and the effectiveness and reliability of protective measures to address short-term risks.
4. The ease or difficulty of implementing the proposed remedy, including commercially available remedial measures, degree of difficulty associated with constructing the remedy, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remedial efforts, and approvals necessary to implement the remedial efforts.

k. Attainment. – Compliance with the site-specific standard is attained for a site or portion of a site when a remedy approved

by the Department has been implemented in compliance with the following criteria:

1. Soil, groundwater, surface water, and air emission standards as determined under sub-subdivisions a. through h. of this subdivision have been attained.
2. Attainment of the site-specific standard shall be demonstrated by collection and analysis of samples from affected media, as applicable, such as surface water, soil, groundwater in aquifers at the point of compliance through the application of statistical tests set forth by rule or, if no rules have been adopted, the Department shall recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

l. Site investigation and remedy selection. – Any person selecting to comply with site-specific standards established by this subdivision shall submit the following reports and evaluations, as required under this subdivision, for review and approval by the Department:

1. A remedial investigation report that includes:
   I. Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of regulated substances.
   II. The concentration of regulated substances in environmental media of concern, including summaries of sampling methodology and analytical results and information obtained from attempts to comply with the background or statewide health standards, if any.
   III. A fate and transport analysis may be included in the report to demonstrate that no present or future exposure pathways exist.
   IV. If no exposure pathways exist, a risk-assessment report and cleanup plan are not required, and no remedy is required to be proposed or completed.
2. If required, a risk-assessment report that describes the potential adverse effects under both current and planned future conditions caused by the presence of a regulated substance in the absence of any further control, remediation, or mitigation measures. A baseline risk-assessment report is not required where it is

determined that a specific remediation measure can be implemented to attain the site-specific standard.

3. A cleanup plan that evaluates the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in subsection (j) of this section when considering the evaluation factors described in subsection (i) of this section. The plan shall select a remedy that achieves the requirements for remedies described in subsection (j) of this section. The Department may require a further evaluation of the selected remedy or an evaluation of one or more additional remedies in response to comments received from the community surrounding the site as a result of the community involvement plan established in subsection (o) of this section that are based on the factors described in subsection (i) of this section or as a result of its own analysis that are based on the evaluation factors described in subsection (j) of this section.

4. A final report demonstrating that the approved remedy has been completed in accordance with the cleanup plan.

5. Nothing in this section shall preclude a person from submitting a remedial investigation report, risk-assessment report, and cleanup plan at one time to the Department for review.

m. Notice and review provisions. – Persons utilizing the site-specific standard shall comply with the following requirements for notifying the public and the Department of planned remediation activities:

1. A notice of intent to remediate a site to one or more site-specific standards shall be submitted to the Department that provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved, and the proposed remediation measures. At the same time a notice of intent to remediate a site is submitted to the Department, a copy of the notice shall be published in a newspaper of general circulation serving the area in which the site is located. The Department shall establish specific criteria for the form and content of such notices.

2. The notices required by this sub-subdivision shall include a 30-day public comment period during which the public may submit comments to the persons undertaking remediation and to the Department. Persons undertaking remediation are encouraged to develop a

proactive approach to working with appropriate local governments and with their site neighbors in developing and implementing remediation and implementing remediation and reuse plans.

3. The following notice and review provisions shall apply to each cleanup plan and final report demonstrating compliance with the site-specific standard:

I. When a cleanup plan is submitted to the Department, the plan shall include the comments received during the public notice period, as well as responses from the persons preparing the reports and plans. The Department shall review the plan within 60 days of its receipt or notify the person submitting the plan of any deficiencies. If the Department does not respond with deficiencies within 60 days, the plan shall be deemed approved.

II. A final report demonstrating compliance with the site-specific standard shall be submitted to the Department upon completion of the cleanup plan's implementation. At the same time that the final report is submitted to the Department, a summary of the report shall be published in a newspaper of general circulation serving the area in which the site is located. The Department shall review the report within 90 days of its receipt and either notify the person submitting the report of any deficiencies or notify the person submitting the report that no further remediation action is necessary on the site. If the Department does not respond with deficiencies within 90 days, the final report is deemed approved and no further remediation action is necessary on the site.

(d) This section and rules adopted pursuant to this section shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of law when necessary to address an imminent threat to public health or pending a determination by the Department, under rules adopted pursuant to this section, that a risk-based approach to remediation of a contaminated area is appropriate, or if the Department determines that a risk-based approach to remediation of the contaminated area is not appropriate. This section and rules adopted pursuant to this section shall not be construed or implemented in any manner that reduces the requirements of programs that are intended to avoid or mitigate the release or discharge of contaminants to the environment that would result in additional environmental contamination. Rules adopted pursuant to this

section shall not be deemed to modify the bases upon which the health-based groundwater standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(e) Except as provided in subsection (j) of this section, rules adopted pursuant to this section shall apply uniformly to the remediation of environmental contamination under:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid Waste Management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil and Pollution and Hazardous Substances Control Act, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

(f) A person who undertakes remediation of environmental contamination may elect to proceed under either the applicable provisions of law set out in subsection (e) of this section and rules adopted pursuant to those provisions or under the rules adopted pursuant to this section. If a person elects to proceed under rules adopted pursuant to this section, the rules adopted pursuant to this section shall supersede rules adopted pursuant to the provisions of law set out in subsection (e) of this section. If a person elects to proceed under rules adopted pursuant to this section, any maximum allowable quantity, concentration, limit, or other measure of contamination that is allowed to remain at the contaminated area at the conclusion of active remediation that is established under the rules will supersede rules adopted under other provisions of law.

(g) A person who undertakes remediation of environmental contamination under site-specific cleanup standards as set forth in subdivision (5) of subsection (c) of this section shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking cleanup submits the cleanup plan to the Department.

(h) Once the Department determines that a person has successfully completed a cleanup of contamination to one of the three accepted cleanup standards set forth in subsection (c) of this section, the Secretary shall relieve that person of any further liability for cleanup at the site.

(i) Rules adopted pursuant to this section shall be based on an evaluation of all reasonably foreseeable risks presented to public health, safety, and welfare and to the environment by environmental contamination and shall be based on all relevant and reasonably available scientific information pertaining to those risks. The rules shall be written so that they can be interpreted and implemented with a reasonable degree of effort and expense. The rules may provide for reasonable distinctions among contaminated areas based on any relevant factor, including the nature and extent of the environmental contamination, the risk of harm posed by the contamination to public health, safety, and welfare and to the environment; the size and complexity of the contaminated area; proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; and the current and anticipated future uses of the contaminated area and adjacent lands.

(j) Rules adopted pursuant to this section shall require that any assumption about the future use of the contaminated area on which a level or range of levels of risk is based be reflected in appropriate restrictions on the future use of the property provided in G.S. 143B-279.9 and that the restrictions be recorded in accordance with G.S. 143B-279.10.

(k) Rules adopted pursuant to this section shall provide for the use of licensed professionals, including Professional Engineers, Professional Geologists, and Registered Environmental Consultants, in the assessment, prioritization, and remediation of environmental contamination. The rules shall specify the circumstances under which work performed by a licensed professional is presumed to comply with the rules.

(l) The Secretary shall not allow risk-based remediation under rules adopted pursuant to this section for environmental contamination that occurs after the effective date of this act unless all of the following occur:

(1) The person undertaking the remediation petitions the Secretary for authority to undertake a risk-based remediation.

(2) The Secretary determines, based on information submitted by the petitioner, that the contamination did not result from any willful violation of any substantive law, rule, or regulation applicable to the source and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(3) The Secretary determines, based on information submitted by the petitioner, that the contamination did not result from willful or wanton misconduct by the person responsible for the source of the contamination.

(4) The person undertaking the remediation of the contamination agrees to forgo any litigation with the Department over responsibility for such contamination.

(5) The Secretary determines that timely action on cleanup is in the best interest of public health or the environment.

(6) The petitioner pays a fee of five thousand dollars ($5,000) to the Groundwater Remediation Fund."

SECTION 2. Temporary rules shall be adopted to implement G.S. 143B-279.13, as enacted by Section 1 of this act, pursuant to G.S. 150B-21.1(a)(2), and the publication of this temporary rule in the North Carolina Register shall serve as a notice of rule-making proceedings for a permanent rule pursuant to G.S. 150B-21.1(e).

SECTION 3. The Secretary of Environment and Natural Resources shall adopt temporary rules to implement G.S. 143B-279.13, as enacted by Section 1 of this act, on or before 1 October 2006.

SECTION 4. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that G.S. 143B-279.13, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.13 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 5. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.14. Groundwater Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Groundwater Remediation Fund. The Groundwater Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.13, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Groundwater Remediation Fund.

(b) The Groundwater Remediation Fund may be used to pay the costs of:

(1) Remediating environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of cleanup, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination described in subdivision (1) of this subsection.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement G.S. 143B-279.13."

SECTION 6. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement G.S. 143B-279.13, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination, and information regarding licensed professionals who are involved in the implementation of remediation under the rules. On or before 1 October 2009, the Department shall undertake an examination of the risk-based cleanup procedures currently in place for cleanup programs administered by the Department that are not included in G.S. 143B-279.13(e), as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make cleanup under those programs consistent with the rules established pursuant to G.S. 143B-279.13, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215, et seq.

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1778
PROPOSED COMMITTEE SUBSTITUTE H1778-PCS30619-RTf-70

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program

administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs

consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

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

#5

HOUSE BILL 1778:
Risk-Based Environmental Remediation/Fund

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 11, 2006
Introduced by:	Representatives Gibson and LaRoque	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	PCS to First Edition H1778-PCS30619-RTf-70		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1778 (PCS) would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards.***

BILL ANALYSIS:

SECTION 1 of the PCS establishes a new Part in Article 7 of Chapter 143B of the General Statutes, Part 1A (Risk-Based Environmental Remediation). The individual statutes in this Part would provide the following:

G.S. 143B-279. 15. Definitions.

G.S. 143B-279.16. Purpose.

G.S. 143B-279.17. Applicability.

Under the Risk-Based Environmental Remediation Program (Program), site-specific, risk-based cleanups would be available for contaminated property covered by any of the following existing State environmental programs: the Inactive Hazardous Sites Program; the hazardous waste management program; the solid waste management program; the State administered part of the Superfund program; the Environmental Management Commission's groundwater protection program; and the Oil Pollution and Hazardous Substances Control Program.

G.S. 143B-279.18. Remediation standards.

A contaminated property may be cleaned up to site-specific standards that eliminate or reduce to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based on the present or currently planned future use of the property.

G.S. 143B-279.19. Remedial action plans.

A person who proposes to conduct a cleanup under the Program must develop and submit a proposed remedial action plan to the Department of Environment and Natural Resources (Department). A remedial action plan must provide for the protection of public health, safety, and welfare and the environment and must include a legal description of the location of the property, a map showing the location, a description of the contaminants involved and their concentrations, a description of the intended future use of the property, and any proposed investigation and remediation.

G.S. 143B-279.20. Notice of intent to remediate.

When a person submits a proposed remedial action plan to the Department, the person must also send a notice of intent to cleanup the property to all local governments having taxing or land use jurisdiction over the property. The notice must provide for a public comment period of at least 30 days during which the local governments and citizens may submit comments to the person and the Department. The person must also publish a summary of the notice in a newspaper of general circulation in the county or

counties where the property is located. The person must consider and respond to any information or comments received on the remediation standards or the proposed remedial action plan.

G.S. 143B-279.21. Review and approval of proposed remedial action plans by the Department.

The Department must disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment. The person proposing the remedial action plan has the burden of demonstrating that the plan is protective. The Department must consider information provided by the person proposing the plan as well as information provided by local governments. The Department has 90 days within which to approve or disapprove a proposed plan.

G.S. 143B-279.22. Attainment of the remediation standard.

When a remedial action plan has been fully implemented, the responsible person will submit a final report to the Department that demonstrates that the plan has been fully implemented and that the remediation standards have been attained. The Department will review the final report and if the Department determines that the responsible person has cleaned the property up to the approved remediation standards the Department will issue a release from further cleanup of the property. The Department may require additional cleanup after issuing a release under certain circumstances.

G.S. 143B-279.23. Compliance with other laws.

This Part will not limit the authority of the Department to require investigation, initial response, or cleanup of contamination under any other provision of state or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment.

G.S. 143B-279.24. Adoption of rules.

The Secretary of Environment and Natural Resources may adopt rules to implement this Part.

G.S. 143B-279.25. Risk-based remediation fees.

A person who undertakes a site-specific, risk-based cleanup shall pay a fee of $3,000 for each acre up to a maximum of $75,000. The Department will not allow a site-specific, risk-based cleanup for environmental contamination that occurs after July 1, 2006 unless the person pays a $5,000 fee in addition to the fees above.

G.S. 143B-279.26. Risk-Based Remediation Fund.

Risk-based remediation fees will be paid into the Risk-Based Remediation Fund, which will be under the control and direction of the Department. Funds from the Risk-Based Remediation Fund may be used for cleanup of failed site-specific, risk-based cleanups; to provide drinking water for third parties affected by environmental contamination from a property cleaned up under this Part, to map land and water resources cleaned up under this Part, and to implement this Part.

SECTION 2 of the PCS directs the Secretary of Environment and Natural Resources to use all reasonable efforts to obtain an agreement from the United States Environmental Protection Agency that the Program is consistent with federal environmental law.

SECTION 3 of the PCS directs the Department to report to the Environmental Review Commission on the implementation and possible expansion of the program.

EFFECTIVE DATE:

This act would become effective when it becomes law.

H1778e1-SMSB-PCS30619-RTf-70

#6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ART-39 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
H1778-PCS30619-RTf-70

Representative Gibson

moves to amend the bill ~~on page 9, line 32,~~
~~by rewriting that line to read:~~

deleted per Rep Luebke's perfecting amendment

"~~G.S. 143B-279.20. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from local governments that have taxing or land-use jurisdiction over the site. The Department shall disapprove a proposed remedial action plan~~";

on page 12, line 18,
by deleting the quotation mark at the end of that line; and

on page 12, between lines 18 and 19,
by inserting between those lines:

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1778

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

H1778-ART-39 [v.1]

Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 6 July 2006 FAILED _____ TABLED _____

#7

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 2886

Short Title:	Disapprove Non-Ionizing Radiation Rule.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE CAPTIONED "NON-IONIZING RADIATION" ADOPTED BY THE COMMISSIONER OF LABOR.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 13 NCAC 07F.0606 (Non-Ionizing Radiation), as adopted by the Commissioner of Labor on 2 October 2004, and approved by the Rules Review Commission on 17 February 2005, is disapproved.

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

HOUSE BILL 2886:
Disapprove Non-Ionizing Radiation Rule

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	11 July 2006
Introduced by:	Rep. Gibson	**Summary by:**	Jennifer Mundt
Version:	First Edition		Research Assistant for Environmental Issues

SUMMARY: House Bill 2886 would disapprove rules adopted by the Commissioner of Labor that would protect employees from radio frequency (RF) electromagnetic fields while working on communication towers. This act would become effective when it becomes law.

BILL ANALYSIS: House Bill 2886 would disapprove rules adopted by the Commissioner of Labor that contain requirements to protect employees in the State from the hazards posed by radio frequency (RF) electromagnetic fields in excess of the maximum permissible exposure limits established by the Federal Communications Commission while working on communication towers. A communication tower is defined as any tower over six feet in height that is used primarily as an antenna or to host one or more antennas. Work on communication towers includes construction, alteration, repair, operation, inspection, and maintenance activities.

EFFECTIVE DATE: This act would become effective when it becomes law.

BACKGROUND: North Carolina adopted the nation's first workplace safety rules on communication towers in 2005 to address an industry that had a worker fatality rate 30 times the average for workers in all industries. The existing rules that protect employees while working on communication towers address employer responsibilities, hazard identification and assessment, fall protection, the use of hoists and gin poles, and include recordkeeping and training requirements.

H2886e1-SMTA

MINUTES

HOUSE COMMITTEE
ENVIRONMENT AND NATURAL RESOURCES

Thursday, July 13, 2006 P.M.

The House Committee on Environment and Natural Resources met on Thursday, July 13, 2006, after Session around Representative Harrell's desk in the House Chamber. The following members were present: Representative James A. Harrell, III, Presiding Chair and Representative Justice, Chair; Representatives Allen, Harrison, and McComas, Vice Chairs; Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Gillespie, Gulley, Hackney, Insko, LaRoque, Luebke, McGee, McMahan, Martin, Preston, Stiller.

Representative Harrell, Presiding Chair, called the meeting to order acknowledging the purpose of the meeting was to vote on **PROPOSED COMMITTEE SUBSTITUTE HOUSE BILL 1778. RISK-BASED ENVIRONMENTAL REMEDIATION/FUND. H1778-PCS60865-RT-97** (Please see exhibit #1). In addition to voting on **HOUSE PROPOSED COMMITTEE SUBSTITUTE SENATE BILL 927, UNDERGROUND STORAGE TANK AMENDMENTS. SB927-PCS65631-RT-96** (Please see exhibit #2). It was noted that SB927-PCS65631-RT-96, would be used for movement purposes and had replaced the original bill's language with the incorporated language from H1778-PCS60865-RT-97 and upon favorable motion would also be re-referred to Finance. Please reference the 10:00 A.M. meeting motion on July 13th. Opposition was expressed by several members. Representative Luebke spoke in opposition to the process and cited DENR's opposition along with the Governor's opposition to the bill; thereby, called for a division vote. Representative Harrell noted that upon favorable vote both bills would be re-referred to Finance for final consideration.

Upon motion from Representative Gibson, House Proposed Committee Substitute SB927-PCS65631-RT-96, by division vote received a favorable vote, which changed the title, unfavorable to Senate Committee Substitute and re-referred to Finance. The Committee Report is attached (Please see exhibit #3). Proposed Committee Substitute H1778-PCS60865-RT-97 by division vote received a favorable report, unfavorable as to original bill, with a re-referral to Finance. The Committee Report is attached (Please see exhibit #4).

With no further business, Representative Harrell adjourned the meeting.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1778
PROPOSED COMMITTEE SUBSTITUTE H1778-PCS60865-RT-97

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program

administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part.

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated

areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 927

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S927-PCS65631-RT-96

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage

Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or

release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive

subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1

July 2003 Edition). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future

land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the

General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part.

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of

rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

HB 1778 A BILL TO BE ENTITLED AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

4

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Committee Substitute for

SB 927 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING AND CONFORMING AMENDMENTS TO G.S. 143-215.94E, WHICH GOVERNS THE RIGHTS AND OBLIGATIONS OF OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS, AND TO REMOVE THE SUNSET APPLICABLE TO, AMEND, AND CODIFY SECTION 10 OF S.L. 2003-352, AS AMENDED BY SUBSECTION (E) OF SECTION 30.10 OF S.L. 2004-124.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the ~~original bill,~~ Senate Comm. Sub and recommendation that the House committee substitute bill be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Tuesday, July 18, 2006

The House Committee on Environment and Natural Resources met on Tuesday, July 18, 2006, in Room 643 in the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Chair; Representative Carolyn H. Justice, Presiding Chair; Representatives Allen and Harrison, Vice Chairs; Representatives Blackwood, Culp (excused absence), Carney, Gibson, Gillespie, Gulley, Hackney, Haire, Insko, LaRoque, Luebke, McGee, McMahan, Martin, Preston, Stiller, Underhill, Weiss and Womble.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Justice, Presiding Chair, called the meeting to order. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

SENATE COMMITTEE SUBSTITUTE - SENATE BILL 1564, AMEND SOLID WASTE FRANCHISE STATUES. (Please see exhibit #3). Representative Harrell moved to adopt the House Proposed Committee Substitute 1564-PCS65634-RT-100, AMEND SOLID WASTE FRANCHISE STATUES (Please See Exhibit #4).
George Givens, Chief Committee Counsel, being recognized for point of clarification noted that the only change made in the Proposed Committee Substitute from the bill was to tighten the language in the title. Representative Harrison being recognized explained the bill to be the result from extensive hearings with the Solid Waste Work Group out of the Environmental Review Commission. Please see Bill Analysis for description (Exhibit # 5). Upon motion from Representative Harrell, House Committee Substitute 1564-PCS65634-RT-100, received a favorable report, which changed the title, unfavorable as to the Senate Committee Substitute. The Committee Report is attached (Please See Exhibit # 6).

SENATE COMMITTEE SUBSTITUTE - SENATE BILL 1566, STORMWATER MANAGEMENT 2006. (Please see exhibit #7). Upon motion from Representative Gibson, **Proposed House Committee Substitute, S1566-PCS15435-RT-101 STORMWATER MANAGEMENT 2006** was properly before the committee for discussion. Senator Clodfelter and members of the Environmental Community were praised for their work. Please see Bill Analysis for explanation and background (Exhibit # 8). George Givens, Chief Committee Counsel, being recognized for point of clarification sent forth two consensus amendments. Amendment, S1566-ART-57 [v.2] was explained to be for technical purposes; and Amendment S1566-ART-58 [v.3,] was noted to have been a request by the League of Municipalities. Kim Hibbert, League of Municipalities, spoke in support of Amendment S1566-ART-58 [v.3,]. With all questions having been answered satisfactorily, both amendments passed with a favorable vote (Please see Exhibits #9 & 10). Representative Stiller being recognized asked for clarification of the "common plan of development" as it applied to the 12% build-upon area if within ½ mile of shell fish resource waters, referenced on page 14 and 15 along wth the term "vested" on Line 40, Page 13. Representative Preston requested clarification of the term, "redevelopment" in Section 8. George Givens, Chief Committee Counsel and Mary Penny Thompson, General Counsel to the Department of Environment and Natural Resources, responded to questions. Dr. Mike Mallin, a scientist from the University of North Carolina at Wilmington, on being recognized explained the extensive research that had been done on the value of retaining storm water from entering particular waters. Upon motion by Representative Lucy Allen, House Committee Substitute S1566-PCS15435-RT-101 (Please see exhibit #11) received a favorable report, with the amendments being incorporated, unfavorable to the Senate Committee Substitute #1. The Committee Report is attached (Please see exhibit #12).

SENATE BILL 1242, STRIPED BASS PERMIT. (Please see Exhibit #13) was properly before the committee for discussion. Jeffrey Hudson, Committee Counsel, was recognized to explain the bill. Please refer to the attached Bill Analysis (Please see Exhibit #14). Upon motion from Representative Harrell the bill received a favorable report and was re-referred to Finance. The Committee Report is attached (Please see exhibit #15).

HOUSE BILL 1523, INCREASE PENALTIES FOR CAMA VIOLATIONS. (Please see Exhibit #16) was properly before the committee for discussion. Please refer to the attached Bill Summary. (Please see Exhibit #17). Representative Harrison being recognized explained the bill. George Givens, Chief Committee Counsel, being recognized for point of clarification explained that House Bill 1523 was being considered for concurrence. Upon motion for concurrence from Representative Gibson, House Bill 1523 received a favorable vote. The Committee Report is attached (Please see exhibit #18).

There being no further business, Representative Justice adjourned the meeting.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Beth LeGrande
Committee Assistant

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday July 18, 2005
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Chair
   Representative Carolyn H. Justice, Presiding Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

SENATE BILL 1564 AMEND SOLID WASTE FRANCHISE STATUES.
Senator Clodfelter (Primary Sponsor)

SENATE BILL 1566 STORMWATER MANAGEMENT 2006.
Senator Clodfelter (Primary Sponsor)

SENATE BILL 1242 STRIPED BASS PERMIT.
Senator Albertson (Primary Sponsor)

HOUSE BILL 1099 P.E. SERVICES FOR PUBLIC WATER SYSTEMS.
Representative Gibson (Primary Sponsor)

HOUSE BILL 1523 INCREASE PENALTIES FOR CAMA VIOLATIONS.
Representatives McComas, Harrison and Gibson (Primary Sponsors)

SENATE BILL 1122 RENAME WRP/CODIFY-ECOSYSTEM ENHANCEMENT PROGRAM
Senator Albertson (Primary Sponsor)

SENATE BILL 1123 ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

5. Adjourn

#1

Beth LeGrande (Rep. Harrell)

From: Beth LeGrande (Rep. Harrell)
Sent: Monday, July 17, 2006 5:01 PM
Cc: Rep. Jim A. Harrell; Rep. Carolyn H. Justice
Subject: Revised Environment Mtg. Notice 7-18

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **Environment and Natural Resources** will meet as follows: ***Due to the number of bills the meeting go beyond the hour.***

DAY & DATE: **Tuesday, July 18, 2006**

TIME: **12:00 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

SENATE BILL 1564 AMEND SOLID WASTE FRANCHISE STATUES.
Senator Clodfelter (Primary Sponsor)

SENATE BILL 1566 STORMWATER MANAGEMENT 2006.
Senator Clodfelter (Primary Sponsor)

SENATE BILL 1242 STRIPED BASS PERMIT.
Senator Albertson (Primary Sponsor)

HOUSE BILL 1099 P.E. SERVICES FOR PUBLIC WATER SYSTEMS.
Representative Gibson (Primary Sponsor)

HOUSE BILL 1523 INCREASE PENALTIES FOR CAMA VIOLATIONS.
Representatives McComas, Harrison and Gibson (Primary Sponsors)

SENATE BILL 1122 RENAME WRP/CODIFY-ECOSYSTEM ENHANCEMENT PROGRAM
Senator Albertson (Primary Sponsor)

SENATE BILL 1123 ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **5:00 P.M.** on **July 17, 2006.**

#2

VISITOR REGISTRATION SHEET

ENR. 7-18-06

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Ann Coe Wampler	Sims Hyler Pew
Doug Lassiter	NCSTA
Patrick Buffkin	Hilltop Resources
[illegible]	Self
Dana Simpson	Smith Anderson
Doug Hoyle	NCPMA
[illegible]	NCCBA
Frank W. Folger	Helms Mullis Wicker
David Brown	Poyner + Spruill
Greg Fennell	Sol. dWith Mgt Succ
Amy Smith	NCDOL
John Long	Martin Marietta
Colleen Kothank	Smith Moore
Chris Anderson	
Jennifer Haigwood	NCDOL
Kevin Beauregard	NCDOL
Keith Hardison	Wake Co.
Cameron Contizano	Daily Bulletin
Brian Wrights	CCNC
Mike Nelson	Conservation Council
Christine Wunsche	Environment North Carolina
Judy McConnell	DOT
Cathy Wright	Gov's Office
Elizabeth Burgess	ENC
Sarah Young	WCSR
Dick Mast	DENR Waste Management
Amanda Ward	NC Sierra Club

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1564*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/11/06

Short Title: Amend Solid Waste Franchise Statutes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING SANITARY LANDFILL FRANCHISE ORDINANCES AND AGREEMENTS TO CLARIFY THAT LOCAL GOVERNMENTS MAY, BUT ARE NOT REQUIRED TO, AWARD SANITARY LANDFILL FRANCHISES; TO PROVIDE FOR THE AWARD OF PRELIMINARY FRANCHISES AS WELL AS FRANCHISES AND TO SPECIFY THE INFORMATION TO BE INCLUDED THEREIN; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE AWARDED ONLY AFTER ADEQUATE PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC PARTICIPATION IN THE DECISION TO AWARD THE FRANCHISE; TO PROVIDE THAT FRANCHISES ARE AWARDED ONLY AFTER PUBLIC NOTICE OF THE LOCATION OF THE PROPOSED SANITARY LANDFILL; AND TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE CONSISTENT WITH LOCAL SOLID WASTE MANAGEMENT PLANS AND ARE SUBJECT TO LOCAL GOVERNMENT OVERSIGHT AND REGULATION OF RATES AND FEES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294(b1)(3) is recodified as G.S. 130A-294(b1)(2) and reads as rewritten:

"~~(3)~~(2)~~An applicant~~ A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government ~~shall~~ may adopt a franchise ordinance under G.S. 153A-136 or ~~G.S. 160A-319 prior to the submittal by an~~

~~applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill.~~G.S. 160A-319. A franchise granted for a sanitary landfill shall ~~include:~~include all of the following:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection ~~on~~ of the useful life of the sanitary landfill.

d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.

e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the exact boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility."

SECTION 2. G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site."

SECTION 3. G.S. 130A-294(b1)(2) is recodified as G.S. 130A-294(b1)(3) and reads as rewritten:

"~~(2)~~(3)~~Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a~~

~~sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk.~~ Prior to the award of a franchise for the construction or operation of a sanitary landfill, ~~the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit,~~ the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public ~~hearing when sufficient public interest exists.~~ hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide ~~adequate notice~~ at least 30 days' notice to the public of the public ~~hearing~~ hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public."

SECTION 4. This act is effective when it becomes law and applies to any application for a preliminary franchise or franchise that is filed with a local government on or after that date. This act does not affect any franchise that has been awarded as of the date on which this act becomes effective unless the franchise provides for a final vote of the governing board of the local government on the franchise and the final vote occurs on or after 1 November 2006, in which case the provisions of G.S. 130A-294(b1), as amended by this act, apply.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1564*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/11/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1564-PCS65634-RT-100

Short Title: Amend Solid Waste Franchise Statutes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING SANITARY LANDFILL FRANCHISE ORDINANCES AND AGREEMENTS TO CLARIFY THAT LOCAL GOVERNMENTS MAY, BUT ARE NOT REQUIRED TO, AWARD SANITARY LANDFILL FRANCHISES; TO PROVIDE FOR THE AWARD OF PRELIMINARY FRANCHISES AS WELL AS FRANCHISES AND TO SPECIFY THE INFORMATION TO BE INCLUDED THEREIN; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE AWARDED ONLY AFTER ADEQUATE PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC PARTICIPATION IN THE DECISION TO AWARD THE FRANCHISE; TO PROVIDE THAT FRANCHISES ARE AWARDED ONLY AFTER PUBLIC NOTICE OF THE LOCATION OF THE PROPOSED SANITARY LANDFILL; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE CONSISTENT WITH LOCAL SOLID WASTE MANAGEMENT PLANS AND ARE SUBJECT TO LOCAL GOVERNMENT OVERSIGHT AND REGULATION OF RATES AND FEES; AND TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES TO ANY APPLICATION FOR A PRELIMINARY FRANCHISE OR FRANCHISE THAT IS FILED WITH A LOCAL GOVERNMENT ON OR AFTER THAT DATE AND THAT THIS ACT DOES NOT AFFECT ANY FRANCHISE THAT HAS BEEN AWARDED AS OF THE DATE ON WHICH THIS ACT BECOMES EFFECTIVE UNLESS THE FRANCHISE PROVIDES FOR A FINAL VOTE OF THE GOVERNING BOARD OF THE LOCAL GOVERNMENT ON THE FRANCHISE AND THE FINAL VOTE OCCURS ON OR AFTER 1 NOVEMBER 2006, IN WHICH CASE THE PROVISIONS OF G.S. 130A-294(B1), AS AMENDED BY THIS ACT, APPLY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294(b1)(3) is recodified as G.S. 130A-294(b1)(2) and reads as rewritten:

"~~(3)~~(2) ~~An applicant~~ A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government ~~shall~~ may adopt a franchise ordinance under G.S. 153A-136 or ~~G.S. 160A-319 prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill.~~G.S. 160A-319. A franchise granted for a sanitary landfill shall ~~include:~~include all of the following:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection ~~on~~ of the useful life of the sanitary landfill.

d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.

e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the exact boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility."

SECTION 2. G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the

preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site."

SECTION 3. G.S. 130A-294(b1)(2) is recodified as G.S. 130A-294(b1)(3) and reads as rewritten:

"~~(2)~~(3) ~~Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk.~~ Prior to the award of a franchise for the construction or operation of a sanitary landfill, ~~the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit,~~ the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public ~~hearing when sufficient public interest exists.~~ hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide ~~adequate notice~~ at least 30 days' notice to the public of the public ~~hearing~~ hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public."

SECTION 4. This act is effective when it becomes law and applies to any application for a preliminary franchise or franchise that is filed with a local government on or after that date. This act does not affect any franchise that has been awarded as of the date on which this act becomes effective unless the franchise provides for a final vote of the governing board of the local government on the franchise and the final vote occurs on or after 1 November 2006, in which case the provisions of G.S. 130A-294(b1), as amended by this act, apply.

SENATE BILL 1564:
Amend Solid Waste Franchise Statutes

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 18, 2006
Introduced by:	Sen. Clodfelter	**Summary by:**	Jennifer McGinnis
Version:	Second Edition		Committee Counsel

SUMMARY: ***The Second Edition of Senate Bill 1564 would: (i) clarify that local governments may, but are not required to, award a franchise for a sanitary landfill; (ii) authorize the award of preliminary franchises as well as franchises, and specify the information to be included therein; (iii) amend the statutes governing sanitary landfill franchises to require additional measures to enhance public notice and public participation prior to award of a preliminary franchise or franchise; (iv) provide that franchises are to be awarded only after public notice of the location of the proposed landfill; (v) and require that a franchise contain provisions concerning consistency with local solid waste management plans, governmental oversight, fees and rates to be charged, and a facility plan to include specific information.***

[As introduced, this bill was identical to H2192, as introduced by Reps. Harrison, Gibson, Goodwin, Faison, which is currently in House Environment and Natural Resources.]

BILL ANALYSIS:

Section 1 requires that a franchise contain the following provisions:

- An explanation of how the franchise will be consistent with local solid waste management plans.
- Procedures to be followed for governmental oversight and regulation of fees and rates to be charged by facilities subject to the franchise.
- A facility plan containing information that includes, but is not limited to, the following: the exact facility boundaries and the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, a description of environmental controls, types of waste to be disposed of, the amount of waste to be received per day in tons, and the total waste disposal capacity of the landfill in tons.

Section 2 authorizes a local government to award a preliminary franchise, and provides that if it elects to do so, the preliminary franchise must contain a general description of the proposed landfill including the approximate number of acres required for the landfill and a description of any other solid waste management activities to be conducted at the site as well as: (i) an explanation of how the franchise will be consistent with local solid waste management plans; and (ii) procedures to be followed for governmental oversight and regulation of fees and rates to be charged by facilities subject to the franchise.

Section 3

- Requires that, prior to award of a preliminary franchise or franchise, a county board of commissioners or governing board of a city provide: a hearing (current law requires a hearing when "sufficient public interest exists"); and (ii) at least 30 days' notice to the public of the

hearing (current law requires "adequate" notice) that includes a summary of all information required to be included in a preliminary franchise or franchise, whichever applies.

- Requires that an applicant for a franchise provide, at the time public notice of the hearing is given, a copy of the application for the preliminary franchise or franchise, whichever applies, to the public library closest to the proposed landfill to be made available for public inspection and copying.

CURRENT LAW and BACKGROUND: See attached handout from Richard Whisnant, School of Government, University of North Carolina at Chapel Hill.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to applications for preliminary franchises or franchises filed with local governments on or after that date. The provisions would not affect any franchise awarded as of the effective date, unless the franchise provides for a final vote of the governing board of the local government to occur on or after 1 October 2006.

S1564e2-SMRI

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒Committee Substitute for

SB 1564 A BILL TO BE ENTITLED AN ACT TO AMEND THE STATUTES GOVERNING SANITARY LANDFILL FRANCHISE ORDINANCES AND AGREEMENTS TO CLARIFY THAT LOCAL GOVERNMENTS MAY, BUT ARE NOT REQUIRED TO, AWARD SANITARY LANDFILL FRANCHISES; TO PROVIDE FOR THE AWARD OF PRELIMINARY FRANCHISES AS WELL AS FRANCHISES AND TO SPECIFY THE INFORMATION TO BE INCLUDED THEREIN; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE AWARDED ONLY AFTER ADEQUATE PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC PARTICIPATION IN THE DECISION TO AWARD THE FRANCHISE; TO PROVIDE THAT FRANCHISES ARE AWARDED ONLY AFTER PUBLIC NOTICE OF THE LOCATION OF THE PROPOSED SANITARY LANDFILL; AND TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE CONSISTENT WITH LOCAL SOLID WASTE MANAGEMENT PLANS AND ARE SUBJECT TO LOCAL GOVERNMENT OVERSIGHT AND REGULATION OF RATES AND FEES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 1566*

Corrected Copy 6/12/06

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/12/06

Fourth Edition Engrossed 7/13/06

Short Title: Stormwater Management 2006. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Disapproval of Certain Rules. – Pursuant to G.S. 150B-21.3 and S.L. 2003-229, the following rules, as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 17 November 2005, are disapproved:

15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)
15A NCAC 2H.1015 (Urbanizing Area Definitions)
15A NCAC 2H.1016 (Urbanizing County Designations)
15A NCAC 2H.1017 (Application Schedule and Required Contents)
15A NCAC 2H.1018 (Post-Construction Model Practices)
15A NCAC 2H.1019 (Exceptions)
15A NCAC 2H.0126 (Stormwater Discharges)
15A NCAC 2H.0150 (Definitions)
15A NCAC 2H.0151 (Public Entity Designations)
15A NCAC 2H.0152 (Petitions)
15A NCAC 2H.0153 (Application Schedule and Required Contents)
15A NCAC 2H.0154 (Implementation Schedule)
15A NCAC 2H.0155 (Post-Construction Model Practices)
15A NCAC 2H.0156 (Exceptions)

SECTION 1.(b) Sunset of 2004 Phase II Stormwater Management Legislation. – Section 15 of S.L. 2004-163 reads as rewritten:

"**SECTION 15.** This act is effective when it becomes law and expires ~~1 October 2011~~.1 July 2006."

SECTION 2. 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) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.

(5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(6) "BMP" means Best Management Practice.

(7) "Built-upon area" means that portion of a 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.

(8) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

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

(10) "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.

(11) "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.

(12) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control the previous development.

(13) "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).

(14) "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.

(15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.

(16) "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).

(17) "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 3. Program Implementation. – The Commission shall implement the federal Phase II stormwater management requirements set out in 40 Code of Federal Regulations §§ 122.21, 122.26, and 122.28 through 122.37 (1 July 2003 Edition).

SECTION 4.(a) Development in Unincorporated Areas of Counties. –

(a) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007 if the development is located in:

(1) An area that is designated as an urbanized area under the most recent federal decennial census.

(2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

a. One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

c. Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) An area delineated pursuant to subsection (b) of this section.

(4) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in subdivision (2) of subsection (a) of this section; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 6 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed seventy-five percent (75%) of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:

a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.

b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.

c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.

d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.

e. High Quality Waters (HQW) – 15A NCAC 2H.1006.

f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.

g. The Coastal Stormwater Program – 15A NCAC 2H.1005.

h. The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.

i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.

j. The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

k. Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.

(5) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

(b) Delineation Process. – The Commission shall delineate regulated coverage areas as provided in this subsection.

(1) 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).

(2) Potential candidate coverage areas. – A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 5 of this act that:

a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. 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.

c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) Identification of candidate coverage areas. – The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of subdivision (2) of this subsection 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.

(4) 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.

(5) 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:

a. Adversely impacts water quality.

b. 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).

(6) 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.

(c) Except as provided in this subsection and Section 10 of this act, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development 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 10 of this act.

SECTION 4.(b) Development in Non-Phase II Incorporated Areas in Certain Counties. – Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in subdivisions (4) and (5) of subsection (a) of this section, that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

SECTION 5. 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 causes or contributes to a violation of 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 either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

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) discharges stormwater that results in a significant contribution of pollutants to 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 6. 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 that may cause or contribute to a water quality standard violation.
2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to 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.

SECTION 7. Permit Standards. – To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, 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 post-construction 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 9 of this act. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

SECTION 8. Exclusions from Post-Construction Practices. – The post-construction practices required by Section 9 of this act shall not apply to any of the following:

(1) Development in an area where the requirements of Section 9 of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

a. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

b. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

c. A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Section 9 of this act if the Commission is responsible for implementation of the requirements of Section 9 of this act that shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.

2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of Section 9 of this act to that phase of development would require a material change in that phase of the plan.

d. A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Section 9 of this act.

e. A vested right to the development pursuant to common law.

(2) Redevelopment.

SECTION 9. Post-Construction Practices. –

(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

(1) Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
(2) Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
(3) Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
(4) Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
(5) Freshwater High Quality Waters (HQW) – 15A NCAC 2H.1006.
(6) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

(1) Post-construction model practices for low-density projects. - A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density

as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(2) Post-construction model practices for high-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.

d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).

e. Wet detention ponds designed in accordance with the then current edition of the Department's BMP manual and that comply with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is 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). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, 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 may be coordinated with local county health departments.

(f) Permittees, delegated programs, and regulated entities must impose or require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

(2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

(3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

(2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

(2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be no less than 12 inches of naturally occurring soil above the seasonal high-water table.

(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

SECTION 10. 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 4 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 Section 9 of this act. 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 Section 9 of this act. 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 11.(a) Exceptions. – The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

(1) An exception may be granted if the application meets all of the following criteria:
   a. Unnecessary hardships would result from strict application of the act.
   b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
   c. The hardships did not result from actions taken by the petitioner.
   d. The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

(2) Notwithstanding subdivision (1) of this section, exceptions shall be granted in any of the following instances:
   a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
   b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

SECTION 11.(b) Exemption. – A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial 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 11.(c) Waiver. – The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e) (1 July 2003 Edition).

SECTION 12. Implementation Schedule. – The requirements of this act shall be implemented as follows:

(1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Sections 4, 5, or 6 of this act.

(2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.

(3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.

(4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

SECTION 13. Federal and State Projects. – The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular 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 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 14. 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 post-construction 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 Section 9 of this act but shall not impose any requirement on the permittee that exceeds the standards set out in Section 9 of this act. 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 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 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 15. Additional Rule Making. – The Commission may adopt rules to replace the rules that are disapproved as provided in subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Sections 2 through 13 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 16.(a) G.S. 47-29.1 is amended by adding a new subsection to read:

"(h) A land-use restriction that provides for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans shall be recorded as provided in G.S. 143-214.7(c1)."

SECTION 16.(b) G.S. 143-214.7 is amended by adding a new subsection to read:

"(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management

practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction."

SECTION 17.(a) County Stormwater Control Ordinances. – Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-454. Stormwater control.**

(a) A county may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A county may adopt a stormwater management ordinance pursuant to this Chapter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a county stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A county may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the county. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a county may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A county may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A county that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish the stormwater control program necessary for the county to comply with the permit. A county may adopt an ordinance that bans illicit discharges. A county may adopt an ordinance that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project."

SECTION 17.(b) City Stormwater Control Ordinances. – Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-459. Stormwater control.**

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a city stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A city may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the city. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a city may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project."

SECTION 18. Construction of Act. –

(1) Except as specifically provided in Section 15 of this act, 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.

(2) 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.

(3) 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 19. Certain Provisions of Act Not Codified; Set Out As Note. – Except for Sections 16 and 17 of this act, 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 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.

SECTION 20. Effective Date. – This act is effective retroactively to 1 July 2006. Sections 2 through 13 of this act expire when permanent rules to replace those sections have become effective as provided by Section 15 of this act.

SENATE BILL 1566:
Stormwater Management 2006

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 18, 2006
Introduced by:	Senator Clodfelter	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Fourth Edition		

SUMMARY: Senate Bill 1566 would provide for the implementation of the federal Phase II stormwater management requirements.

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) stormwater management 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 NPDES stormwater management permit, 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 NPDES stormwater management permits. 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 stormwater management permits; 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. 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 on August 1, 2004. The EMC subsequently sued the RRC over the return of the permanent rules. In June of 2005, a Wake County Superior Court ruled in the EMC's favor, finding that the RRC erred, acted arbitrarily, and exceeded its statutory authority in unilaterally returning the rules to the EMC. The Court remanded the rules to the RRC for further review in a manner consistent with the court's decision. The RRC subsequently approved the EMC rules. The EMC rules are currently under legislative review and are subject to legislative disapproval by Senate Bill 1396 and House Bill 2018 and modified legislative disapproval under this bill.

While the case was pending and there were no Phase II stormwater management rules in effect, the General Assembly enacted S.L. 2004-163 (Phase II Stormwater Management), which provided for the temporary implementation of the federal stormwater requirements. S.L. 2004-163 adopted many of the provisions of the EMC temporary rule and also established a number of new and different requirements for stormwater management. S.L. 2004-163 became effective in August of 2004 and is set to expire on October 1, 2011. If no legislative action is taken, the EMC rules will become effective upon adjournment of the 2006 Regular Session. If this occurs, development interests, regulators, local governments, and the general public will be faced with two sets of inconsistent State stormwater management laws.

BILL ANALYSIS:

Section 1.(a) Disapproval of Certain Rules.

Section 1.(a) would disapprove the EMC's permanent Phase II stormwater management rules.

Section 1.(b) Sunset of 2004 Phase II Stormwater Management Legislation.

Section 1.(b) would sunset the 2004 Phase II Stormwater Management legislation effective July 1, 2006.

Section 2. Definitions.

Section 3. Program Implementation.

Section 3 would direct the EMC to implement the federal Phase II stormwater management requirements.

Section 4.(a) Development in Unincorporated Areas of Counties.

Section 4.(a) would provide that development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county must comply with the stormwater management standards set forth in the Section 9 of this act beginning July 1, 2007 if the new development or redevelopment is located in:

- An area that is federally designated as an urbanized area in the most recent federal census.
- Certain unincorporated areas of counties that extend one, two, or three miles outside of a municipality that has been designated as an urbanized area under the most recent federal census.
- 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) certain unincorporated areas of the county that extend outside of a municipality that has been designated as an urbanized area; (iii) the area delineated as a regulated coverage area; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of the bill; (v) the area that is regulated by a NPDES stormwater management permit required pursuant to Section 6 of the bill; and

(vi) areas of the county that are subject to any stormwater management program administered by DWQ equals or exceeds seventy-five percent (75%) of the total geographic area of the county.

- A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

Section 4.(a) would also establish a process for including additional unincorporated areas that must comply with stormwater management standards for those areas that extend one, two, or three miles outside of a municipality that has been designated as a regulated entity pursuant to Section 5 of this act.

Section 4.(b) Development in Non-Phase II Incorporated Areas in Certain Counties.

Section 4.(b) would provide that development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county that is covered by the stormwater management standards that are not designated as an urbanized are under the federal census must comply with the stormwater management standards set forth in the Section 9 of this act beginning July 1, 2007.

Section 5. Designation of Regulated Entities.

Section 5 provides a designation process by which additional local governments and other entities may be required to obtain a NPDES stormwater management permit.

Section 6. Petition Process.

Section 6 provides a petition process by which additional local governments and other entities may be required to obtain a NPDES stormwater management permit.

Section 7. Permit Standards.

Section 7 would provide that an applicant for a NPDES stormwater management permit must develop, implement, and enforce a stormwater management plan that is approved by the EMC and that satisfies the six minimum stormwater control measures required by federal law.

Section 8. Exclusions from Post-Construction Practices.

Section 8 would provide that the post-construction practices required by Section 9 of this act will not apply to:

- Development that is conducted pursuant to one of the following authorizations that was obtained prior to the effective date of the post-construction stormwater control requirements:
  - A building permit.
  - A site-specific development plan.
  - For an area where the EMC implements post-construction requirements, a phased development plan approved by a county that provides certain types of information based on the phase of the development.
  - A vested right under statutory or common law.

  Development is defined as land-disturbing activity that increases the amount of impervious or partially pervious cover or that otherwise decreases the infiltration of precipitation into the soil.

- Redevelopment. Redevelopment is defined as any land-disturbing activity that does not result in a net increase in impervious or partially pervious cover and that provides equal or greater stormwater control than the previous development.

Section 9. Post-Construction Practices.

Section 9 would provide that certain existing water quality programs will satisfy the post-construction requirements of this section. Section 9 would also provide that a number of different strategies may be used by an entity that implements a stormwater program to satisfy the post-construction requirements as long as the chosen strategy meets the federal post-construction requirements to minimize the water quality impacts of stormwater.

Section 9 would provide that stormwater controls should be based on a project's level of density and its proximity to Shellfish Resource Waters. Shellfish Resource Waters are waters classified by the EMC as Class SA waters (shellfish growing waters) that contain an average concentration of 500 parts per million of natural chloride ion (saltwater). The specific requirements are as follows:

- Low Density Projects: A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low density project if it contains no more than 12% built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low density project if it contains no more than 24% built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project.
- High Density Projects: A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a coastal county, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the pre-development and post-development conditions for the one-year, twenty-four hour storm as well as meet certain design standards.

Section 9 would also provide for a number of other requirements that must be met by an entity that implements a stormwater management program.

Section 10. Delegation.

Section 10 would authorize a public entity to submit a stormwater management program to the EMC for delegation. The EMC may only approve a program for delegation if it determines that the program's standards equal or exceed the post-construction requirements set out in Section 9 of this act.

Section 11.(a) Exceptions.

Section 11.(a) would authorize DENR or a local government to grant exceptions from certain stormwater management requirements to development that meets certain criteria.

Section 11.(b) Exemption.

Section 11.(b) would exempt a municipality with a population of less than 1,000 from NPDES stormwater management permit requirements if the municipality is not contributing to the impairment of State waters.

Section 11.(c) Waiver.

Section 11.(c) would authorize DENR to waive the NPDES stormwater management permit requirement for certain small municipalities.

Section 12. Implementation Schedule.

Section 12 would provide that a regulated entity must:

- Apply for a NPDES stormwater management permit within 18 months of being notified that it is a regulated entity subject to the requirements of this act.
- Implement its post-construction program no later than 24 months from the date the permit is issued.
- Fully implement its permitted program within five years of permit issuance.

Section 13. Federal and State Projects.

Section 13 would provide that the EMC has exclusive jurisdiction to issue a NPDES stormwater management permit to a federal or State agency. If a federal or State agency does not hold a NPDES stormwater management permit for a particular project, the project is subject to the requirements of this act as implemented by the EMC or a local government.

Section 14. General Permit.

Section 14 would direct the EMC to develop and issue a NPDES stormwater management general permit that meets but does not exceed the post-construction stormwater management measures set out in Section 9 of this act.

Section 15. Additional Rule-Making.

Section 15 would authorize the EMC to adopt rules to replace the disapproved rules. If the EMC does adopt rules, the rules must be substantively identical to the provisions of this act and will be automatically subject to review by the General Assembly and not subject to review by the RRC.

Section 16.(a) and (b). Land-use Restrictions.

Sections 16.(a) and (b) would provide for the recordation and enforcement of land-use restrictions related to stormwater management.

Section 17.(a) County Stormwater Control Ordinances.

Section 17.(a) would authorize a county to adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. Section 17.(a) would also define the relationships

among the local, State, and federal governments related to compliance with and enforcement of county stormwater control ordinances.

Section 17.(b) City Stormwater Control Ordinances.

Section 17.(b) would authorize a city to adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. Section 17.(b) would also define the relationships among the local, State, and federal governments related to compliance with and enforcement of city stormwater control ordinances.

Section 18. Construction of Act.

Section 18 provides that:

- Except as provided in Section 15 (Additional Rule-Making), nothing in this act will alter the authority of the EMC or a local government.
- Federal exemptions from NPDES stormwater management permit requirements for agriculture and silviculture would apply to this act.
- This act would not affect any delegation of power or duty to the EMC or DENR.

Section 19. Certain Provisions of Act not Codified; Set Out as Note.

Section 20. Effective Date.

This act would become effective retroactively to July 1, 2006. Sections 2 through 13 of this act would expire when permanent rules to replace them have become effective.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1566*

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

S1566-ART-57 [v.2]

Date _____,2006

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

Representative _____

moves to amend the bill on page 2, line 40,
by inserting the word "than" after the word "control";

on page 13, lines 29 and 30,
by rewriting those lines to read:

"of this act, if the Commission is responsible for implementation of the requirements of Section 9 of this act, that shows:";

on page 13, lines 35 and 36,
by rewriting those lines to read:

"G.S. 153A-330 through G.S. 153A-335.";

on page 15, lines 31 through 33,
by rewriting those lines to read:

"e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1566*

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

S1566-ART-57 [v.2]

on page 17, lines 18 through 20,
by rewriting those lines to read:

"(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1566*

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

S1566-ART-58 [v.3]

Date _____,2006

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

Representative _____

moves to amend the bill on page 22, line 23,
by rewriting that line to read:

"replacement costs of the project.

(e) Unless the city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3) (1 July 2003 Edition) in its extraterritorial jurisdiction.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 18 July 2006 FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1566*

Corrected Copy 6/12/06

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/12/06

Fourth Edition Engrossed 7/13/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1566-PCS15435-RT-101

Short Title: Stormwater Management 2006. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Disapproval of Certain Rules. – Pursuant to G.S. 150B-21.3 and S.L. 2003-229, the following rules, as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 17 November 2005, are disapproved:

15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)
15A NCAC 2H.1015 (Urbanizing Area Definitions)
15A NCAC 2H.1016 (Urbanizing County Designations)
15A NCAC 2H.1017 (Application Schedule and Required Contents)
15A NCAC 2H.1018 (Post-Construction Model Practices)
15A NCAC 2H.1019 (Exceptions)
15A NCAC 2H.0126 (Stormwater Discharges)
15A NCAC 2H.0150 (Definitions)
15A NCAC 2H.0151 (Public Entity Designations)
15A NCAC 2H.0152 (Petitions)
15A NCAC 2H.0153 (Application Schedule and Required Contents)
15A NCAC 2H.0154 (Implementation Schedule)
15A NCAC 2H.0155 (Post-Construction Model Practices)
15A NCAC 2H.0156 (Exceptions)

SECTION 1.(b) Sunset of 2004 Phase II Stormwater Management Legislation. – Section 15 of S.L. 2004-163 reads as rewritten:

"**SECTION 15.** This act is effective when it becomes law and expires ~~1 October 2011.~~1 July 2006."

SECTION 2. 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) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.

(5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(6) "BMP" means Best Management Practice.

(7) "Built-upon area" means that portion of a 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.

(8) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

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

(10) "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.

(11) "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.

(12) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

(13) "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).

(14) "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.

(15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.

(16) "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).

(17) "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 3. Program Implementation. – The Commission shall implement the federal Phase II stormwater management requirements set out in 40 Code of Federal Regulations §§ 122.21, 122.26, and 122.28 through 122.37 (1 July 2003 Edition).

SECTION 4.(a) Development in Unincorporated Areas of Counties. –

(a) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007 if the development is located in:

(1) An area that is designated as an urbanized area under the most recent federal decennial census.

(2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

a. One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

c. Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) An area delineated pursuant to subsection (b) of this section.

(4) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in subdivision (2) of subsection (a) of this section; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 6 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed seventy-five percent (75%) of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:

a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.

b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.

c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.

d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.

e. High Quality Waters (HQW) – 15A NCAC 2H.1006.

f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.

g. The Coastal Stormwater Program – 15A NCAC 2H.1005.

h. The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.

i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.

j. The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

k. Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.

(5) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

(b) Delineation Process. – The Commission shall delineate regulated coverage areas as provided in this subsection.

(1) 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).

(2) Potential candidate coverage areas. – A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 5 of this act that:

a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. 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.

c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) Identification of candidate coverage areas. – The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of subdivision (2) of this subsection 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.

(4) 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.

(5) 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:

a. Adversely impacts water quality.

b. 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).

(6) 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.

(c) Except as provided in this subsection and Section 10 of this act, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development 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 10 of this act.

SECTION 4.(b) Development in Non-Phase II Incorporated Areas in Certain Counties. – Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in subdivisions (4) and (5) of subsection (a) of this section, that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

SECTION 5. 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 causes or contributes to a violation of 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 either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

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) discharges stormwater that results in a significant contribution of pollutants to 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 6. 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 that may cause or contribute to a water quality standard violation.
2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to 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 ensure 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.

SECTION 7. Permit Standards. – To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, 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 post-construction 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 9 of this act. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

SECTION 8. Exclusions from Post-Construction Practices. – The post-construction practices required by Section 9 of this act shall not apply to any of the following:

(1) Development in an area where the requirements of Section 9 of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

a. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

b. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

c. A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Section 9 of this act, if the Commission is responsible for implementation of the requirements of Section 9 of this act, that shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.

2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of Section 9 of this act to that phase of development would require a material change in that phase of the plan.

d. A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Section 9 of this act.

e. A vested right to the development pursuant to common law.

(2) Redevelopment.

SECTION 9. Post-Construction Practices. –

(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

(1) Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
(2) Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
(3) Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
(4) Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
(5) Freshwater High Quality Waters (HQW) – 15A NCAC 2H.1006.
(6) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

(1) Post-construction model practices for low-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model

practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(2) Post-construction model practices for high-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.

d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).

e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is 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). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, 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 may be coordinated with local county health departments.

(f) Permittees, delegated programs, and regulated entities must impose or require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

(2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

(3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

(2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

(2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

SECTION 10. 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 4 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 Section 9 of this act. 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 Section 9 of this act. 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 11.(a) Exceptions. – The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

(1) An exception may be granted if the application meets all of the following criteria:

a. Unnecessary hardships would result from strict application of the act.

b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

c. The hardships did not result from actions taken by the petitioner.

d. The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

(2) Notwithstanding subdivision (1) of this section, exceptions shall be granted in any of the following instances:

a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size,

configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

SECTION 11.(b) Exemption. – A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial 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 11.(c) Waiver. – The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e) (1 July 2003 Edition).

SECTION 12. Implementation Schedule. – The requirements of this act shall be implemented as follows:

(1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Sections 4, 5, or 6 of this act.

(2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.

(3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.

(4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

SECTION 13. Federal and State Projects. – The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular 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 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 14. 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 post-construction 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 Section 9 of this act but shall not impose any requirement on the permittee that exceeds the standards set out in Section 9 of this act. 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 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 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 15. Additional Rule Making. – The Commission may adopt rules to replace the rules that are disapproved as provided in subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Sections 2 through 13 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 16.(a) G.S. 47-29.1 is amended by adding a new subsection to read:

"(h) A land-use restriction that provides for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans shall be recorded as provided in G.S. 143-214.7(c1)."

SECTION 16.(b) G.S. 143-214.7 is amended by adding a new subsection to read:

"(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall

not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction."

SECTION 17.(a) County Stormwater Control Ordinances. – Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-454. Stormwater control.**

(a) A county may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A county may adopt a stormwater management ordinance pursuant to this Chapter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a county stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A county may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the county. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a county may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A county may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A county that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish the stormwater control program necessary for the county to comply with the permit. A county may adopt an ordinance that bans illicit discharges. A county may adopt an ordinance that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project."

SECTION 17.(b) City Stormwater Control Ordinances. – Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-459. Stormwater control.**

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a city stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES)

stormwater permit that applies to the project. A city may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the city. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a city may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project.

(e) Unless the city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3) (1 July 2003 Edition) in its extraterritorial jurisdiction."

SECTION 18. Construction of Act. –

(1) Except as specifically provided in Section 15 of this act, 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.

(2) 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.

(3) 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 19. Certain Provisions of Act Not Codified: Set Out As Note. – Except for Sections 16 and 17 of this act, 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 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.

SECTION 20. Effective Date. – This act is effective retroactively to 1 July 2006. Sections 2 through 13 of this act expire when permanent rules to replace those sections have become effective as provided by Section 15 of this act.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒Committee Substitute for

SB 1566 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill -1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1242*

Short Title:	Striped Bass Permit.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ESTABLISH GEAR SPECIFIC PERMITS TO TAKE STRIPED BASS FROM THE ATLANTIC OCEAN, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-169.1 reads as rewritten:

"**§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.**

(a) The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams.

(b) The Commission may adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of these permits that may be issued to a person. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed ten dollars ($10.00) per permit."

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

SENATE BILL 1242: Striped Bass Permit

BILL ANALYSIS

Committee:	House Committee on Environment and Natural Resources	**Date:**	July 18, 2006
Introduced by:	Senator Albertson	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1242 would authorize the Marine Fisheries Commission (MFC) to establish gear specific striped bass permits and to limit the number and type of these permits that may be issued to a person. This act would be effective when it becomes law.

CURRENT LAW:

Under current law, the MFC has the general authority to adopt rules to establish gear permits, but the MFC does not have the authority to limit the number and type of permits that may be issued or to establish a fee to compensate for the administrative costs associated with the permit.

BILL ANALYSIS:

Senate Bill 1242 would authorize the MFC to:

- Adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean.
- Limit the number and type of these permits that may be issued to a person.
- Establish a fee to compensate the Division of Marine Fisheries for the administrative costs associated with the permits, not to exceed $10.00.

BACKGROUND:

For the striped bass fishery, the Atlantic States Marine Fisheries Commission sets a total annual commercial harvest quota for all Atlantic coast states based on historical commercial landings. In 2006, North Carolina's striped bass quota was set at 480,480 pounds. The MFC has chosen to divide the State's annual quota among three gear types: haul seines, gill nets, and trawls. Each gear type is used during a separate fishing season. Any person who holds a Standard Commercial Fishing License can harvest striped bass using one, two, or all three gears during the applicable season.

Since striped bass are plentiful, they sell for a good price, and they are relatively easy to catch, the number of fishermen involved in the fishery has been increasing. At the same time, our quota has remained small. In order to try to stay within our quota, the striped bass seasons are only a few days long. Due to these conditions, the quota for a particular gear type is often exceeded, which causes reductions in the quotas for the other gear types. This causes resentment and conflict between the users of the three different gear types.

The MFC hopes to better manage the striped bass fishery and the conflicts between commercial fishermen by establishing gear specific striped bass permits and requiring each participant in the fishery to be limited to one gear type. This approach would provide the MFC with more detailed harvest information for use in setting season lengths and catch limits and would prevent fishermen from harvesting striped bass from more than one segment of the overall quota.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

SB 1242 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ESTABLISH GEAR SPECIFIC PERMITS TO TAKE STRIPED BASS FROM THE ATLANTIC OCEAN, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

☒ With a favorable report and re-referred to Finance.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1523*

Committee Substitute Favorable 5/4/05

Senate/Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/12/06

Short Title: Increase Penalties for CAMA Violations. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF THE PENALTIES THAT MAY BE ASSESSED FOR VIOLATION OF THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. 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 2. Section 1 of this act becomes effective December 1, 2006, and applies to violations and offenses committed on or after that date. Section 2 of this act is effective when it becomes law.

HOUSE BILL 1523:
Increase Penalties for CAMA Violations

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 18, 2006
Introduced by:	Reps. McComas, Harrison, Gibson	**Summary by:**	Tim Dodge
Version:	Third Edition		Legislative Analyst

SUMMARY: House Bill 1523 would increase the amount of civil penalties that may be assessed for minor and major development violations under the Coastal Area Management Act of 1974 (CAMA) and authorize the assessment of 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.

BILL ANALYSIS: House Bill 1523 would increase the civil penalty that may be assessed for a minor development violation under CAMA from $250 to $1,000, and would increase the civil penalty that may be assessed for a major development violation under the Act from $2,500 to $10,000. In determining the amount of the penalty, the Coastal Resources Commission (Commission) may consider a number of factors, including the following:

- 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.
- 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 Commission has regulatory authority.
- The cost to the State of the enforcement procedures.

In addition, the bill would authorize the Commission to assess reasonable costs of any investigation, inspection, or monitoring that results in the assessment of a civil penalty for minor and major development violations under CAMA. The amount of investigative costs assessed for a minor violation may not exceed one-half of the amount of civil penalty assessed for the violation or $1,000, whichever is less. The amount of investigative costs assessed for a major violation may not exceed one-half of the amount of civil penalty assessed for the violation or $2,500, whichever is less.

EFFECTIVE DATE: The bill would become effective December 1, 2006, and apply to violations and offenses committed on or after that date.

H1523e3-SMSY

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Senate Committee Substitute for

HB 1523 A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT OF THE PENALTIES THAT MAY BE ASSESSED FOR VIOLATION OF THE COASTAL AREA MANAGEMENT ACT.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Wednesday, July 19, 2006

The House Committee on Environment and Natural Resources met on Wednesday, July 19, 2006, in Room 1228 in the Legislative Building 11:30 A.M. The following members were present: Representative Carolyn H. Justice, Presiding Chair; Representatives Blackwood, Carney, Culp, Daughtridge, Gibson, Gillespie, Goodwin, Hackney, Haire, Insko, McGee, McMahan, Martin, Preston, Underhill, Weiss and Womble.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Justice, Presiding Chair, called the meeting to order. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

George Givens, Chief Committee Counsel, being recognized for point of clarification noted that House Bill 1099 was being considered for purposes other than that of its original intent and was before the committee for concurrence.

HOUSE BILL 1099 - P.E. SERVICES FOR PUBLIC WATER SYSTEMS. AN ACT TO CLARIFY THAT A LOCAL GOVERNMENT, COMMISSION, AUTHROTIY, OR BOARD MAY CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO SATISFY THE REQUIREMENTS FOR CERTIFICATION OF LOCAL PROGRAMS FOR APPROVAL OF THE CONSTRUCTION OR ALTERATION OF THE DISTRIBTION SYSTEM OF A PROPOSED OR EXISTING PUBLIC WATER SYSTEM. (Please see exhibit #3).
Representative Moore being recognized noted the bill was non-controversial, agreed to by the Department of Environment and Natural Resources and was supported by Senator Dalton in the Senate. Upon motion by Representative Blackwood, the bill received a favorable vote. Representative Justice recommended that the committee do concur. The Committee Report is attached (Please see exhibit #4).

George Givens, Chief Committee Counsel, being recognized for point of clarification, emphasized that Senate Bill 1122 was being considered for purposes other than that of its original intent.

SENATE BILL 1122, RENAME WRP/CODIFY-ECOSYSTEM ENHANCEMENT PROGRAM. (Please see Exhibit #5). Upon motion from Representative Gibson, the **Proposed House Committee Substitute, SS1122-CSRT-99 [v.4] Land and Water Conservation Study** (Please see Exhibit #6), was properly before the committee for discussion. The Bill Summary is attached (Please see Exhibit #7). Representative Gibson being recognized explained the bill. Representative Gillespie asked for confirmation that the appointments ensured all areas equal representation. Discussion ensued with all questions answered sufficiently. Upon motion by Representative Gibson, Proposed House Committee Substitute, S1122-PCS75571-RT-99 (Please see Exhibit #8) received a favorable report, which changes the title, unfavorable as to original bill. The Committee Report is attached (Please see Exhibit #9).

There being no further business, Representative Justice adjourned the meeting.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Beth Wood LeGrande
Committee Assistant

Beth LeGrande (Rep. Harrell)

From: Beth LeGrande (Rep. Harrell)
Sent: Wednesday, July 19, 2006 10:58 AM
Cc: Rep. Jim A. Harrell; Rep. Carolyn H. Justice
Subject: Environment Mtg Today, 11:30 am

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Wednesday, July 19, 2006**

TIME: **11:30 A.M.**

LOCATION: **1228 Legislative Building**

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

HOUSE BILL 1099 P.E. SERVICES FOR PUBLIC WATER SYSTEMS.
Representative Gibson (Primary Sponsor)

SENATE BILL 1122 RENAME WRP/CODIFY-ECOSYSTEM ENHANCEMENT PROGRAM
Senator Albertson (Primary Sponsor)

SENATE BILL 1123 ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **11:00 A.M.** on **July 19, 2006.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

11:30 A.M.
Wednesday, July 19, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

HOUSE BILL 1099 P.E. SERVICES FOR PUBLIC WATER SYSTEMS.
Representative Gibson (Primary Sponsor)

SENATE BILL 1122 RENAME WRP/CODIFY-ECOSYSTEM ENHANCEMENT PROGRAM
Senator Albertson (Primary Sponsor)

SENATE BILL 1123 ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

5. Adjourn

#2

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — Name of Committee

JULY 19, 2006 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
LISA RIEGEL	NHTF
George Everett	Duke Energy Carolinas
Kathy Hawkins	Progress Energy
Kathleen Edwards	UNC-CH Duly Bullpen
Jim Stephens	NC Coastal Federation
Erica Rieder	CWMTF
Heather Cochran	TNC intern
Lisa Reiger	Capitol Group
Elizabeth Oates	Environment North Carolina
Rebecca Troxler	NCACC
Erin Kinsey	NCCN
Mike Nelson	Conservation Council
Christine Wunsche	Environment North Carolina
Jim Johnson	Land For Tomorrow
Anita Watkins	NCLM
Steve Lapidus	NCFB

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1099*

Committee Substitute Favorable 5/26/05
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 7/7/06

Short Title: P.E. Services for Public Water Systems. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A LOCAL GOVERNMENT, COMMISSION, AUTHORITY, OR BOARD MAY CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO SATISFY THE REQUIREMENTS FOR CERTIFICATION OF LOCAL PROGRAMS FOR APPROVAL OF THE CONSTRUCTION OR ALTERATION OF THE DISTRIBUTION SYSTEM OF A PROPOSED OR EXISTING PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317 reads as rewritten:

"**§ 130A-317. Department to provide advice; submission and approval of public water system plans.**

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other

information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration ~~unless:~~unless all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this ~~State;~~State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water ~~rules;~~rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional ~~system;~~system.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water ~~system; and~~system.

(5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program ~~that:~~that meets all of the following conditions:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this ~~Article;~~Article.

(2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved ~~plans;~~plans.

(3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State;~~State.

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process;~~process.

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program;~~program. A local government, commission, authority, or board may either employ an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State or contract with an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State in order to provide for adequate engineering staff under this subdivision.

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system;~~system.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water ~~system;~~system.

(8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water ~~rules; and~~rules.

(9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

(e) The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged.

(f) Notwithstanding any other provisions of ~~this subsection,~~subsection (d) of this section, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article."

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

HOUSE BILL 1099:
P.E. Services for Public Water Systems

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 18, 2006
Introduced by:	Rep. Gibson	**Summary by:**	Jennifer McGinnis
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1099 would clarify that a local government, commission, authority, or board may contract for engineering services to satisfy the requirements for certification of local programs for approval of public water system plans.

CURRENT LAW: G.S. 130A-317, governing approval of local public water system plans by the Department of Environment and Natural Resources (Department), provides that no person may construct or alter a public water system unless certain requirements are met, and the Department has approved the plans and specifications. The statute provides, however, that local governments (including local boards and commissions, water and sewer authorities, groups of municipalities and counties) may establish their own approval program for water system plans, in lieu of State approval. The local approval program must be certified by the Department if the local program meets certain criteria specified in the statute. One condition for certification is that the local program provide adequate "engineering staff" to effectively carry out its plan review program.

BACKGROUND: Based on resource constraints, a local government may want to fulfill the statutory requirement for provision of adequate "engineering staff" by contracting with a licensed engineer, rather than employing a licensed engineer on staff. The statute is silent on whether contracting for engineering services satisfies the requirement for providing adequate engineering staff.

BILL ANALYSIS: The PCS would clarify that a local government, commission, authority, or board may either employ a licensed engineer ***or contract with a licensed engineer*** in order to meet the adequate "engineering staff" requirement for certification of a local approval program for water system plans.

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

H1099e3-SMRI

#4

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ Senate Committee Substitute for

HB 1099 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT A LOCAL GOVERNMENT, COMMISSION, AUTHORITY, OR BOARD MAY CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO SATISFY THE REQUIREMENTS FOR CERTIFICATION OF LOCAL PROGRAMS FOR APPROVAL OF THE CONSTRUCTION OR ALTERATION OF THE DISTRIBUTION SYSTEM OF A PROPOSED OR EXISTING PUBLIC WATER SYSTEM.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

#5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1122

Short Title:	Rename WRP/Codify Ecosystem Enhancement Prgm.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO CHANGE THE NAME OF THE WETLANDS RESTORATION PROGRAM TO THE ECOSYSTEM ENHANCEMENT PROGRAM AND TO CHANGE THE NAME OF THE WETLANDS RESTORATION FUND TO THE ECOSYSTEM RESTORATION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.8 reads as rewritten:

"**§ 143-214.8. ~~Wetlands Restoration~~Ecosystem Enhancement Program: established.**

The ~~Wetlands Restoration~~Ecosystem Enhancement Program is established within the Department of Environment and Natural Resources. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall be developed by the Department as a nonregulatory statewide ~~wetlands restoration~~ecosystem enhancement program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The ~~Wetlands Restoration~~Ecosystem Enhancement Program shall consist of the following components:

(1) Restoration and perpetual maintenance of wetlands.
(2) Development of restoration plans.
(3) Landowner contact and land acquisition.
(4) Evaluation of site plans and engineering studies.
(5) Oversight of construction and monitoring of restoration sites.
(6) Land ownership and management.
(7) Mapping, site identification, and assessment of wetlands functions.
(8) Oversight of private wetland mitigation banks to facilitate the components of the ~~Wetlands Restoration~~Ecosystem Enhancement Program."

SECTION 2. G.S. 143-214.9 reads as rewritten:

"**§ 143-214.9. ~~Wetlands Restoration~~Ecosystem Enhancement Program: purposes.**

The purposes of the program are as follows:

(1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the ~~Wetlands Restoration~~Ecosystem Enhancement Program.

(2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.

(3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.

(4) To increase the ecological effectiveness of compensatory mitigation.

(5) To achieve a net increase in wetland acres, functions, and values in each major river basin.

(6) To foster a comprehensive approach to environmental protection."

SECTION 3. G.S. 143-214.10 reads as rewritten:

"**§ 143-214.10. ~~Wetlands Restoration~~Ecosystem Enhancement Program: development and implementation of basinwide restoration plans.**

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. ~~Beginning July 1, 1997, the~~ The Department shall develop and ~~begin implementing~~implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Quality."

SECTION 4. G.S. 143-214.11 reads as rewritten:

"**§ 143-214.11. ~~Wetlands Restoration~~Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definition. – For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the ~~Wetlands Restoration~~Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to Applicant. – An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United ~~State~~ States Army Corps of Engineers:

(1) Payment of a fee established by the Department into the ~~Wetlands~~ Ecosystem Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the ~~Wetlands Restoration~~Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a private wetlands mitigation bank.

(4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. – A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. – State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3."

SECTION 5. G.S. 143-214.12 reads as rewritten:

"**§ 143-214.12. ~~Wetlands Restoration~~ Ecosystem Enhancement Program: ~~Wetlands~~ Ecosystem Restoration Fund.**

(a) ~~Wetlands~~ Ecosystem Restoration Fund. – The ~~Wetlands~~ Ecosystem Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The ~~Wetlands~~ Ecosystem Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad

valorem taxes required under G.S. 146-22.3 when the Department is the State agency making the acquisition.

(a1) The Department may distribute funds from the ~~Wetlands~~ Ecosystem Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the ~~Wetlands Restoration~~Ecosystem Enhancement Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(b) Authorized Methods of Payment. – A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344, may contribute to the ~~Wetlands Restoration~~Ecosystem Enhancement Program, to comply with conditions to, or terms of, the permit or authorization, if participation in the ~~Wetlands Restoration~~Ecosystem Enhancement Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the ~~Wetlands~~ Ecosystem Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. – The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment."

SECTION 6. G.S. 143-214.13 reads as rewritten:

"**§ 143-214.13. ~~Wetlands Restoration~~Ecosystem Enhancement Program: reporting requirement.**

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the ~~Wetlands Restoration~~Ecosystem Enhancement Program and its use of the funds in the ~~Wetlands~~ Ecosystem Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the ~~Wetlands~~ Ecosystem Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis

between the State's ~~Wetlands Restoration~~Ecosystem Enhancement Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the ~~Wetlands Restoration~~Ecosystem Enhancement Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

SECTION 7. G.S. 143-214.14(c) reads as rewritten:

"(c) Legislative Goals and Policies. – It is the goal of the General Assembly that, to the extent practicable, the State shall adopt water quality protection plans that are developed and implemented in cooperation and coordination with local governments and that the State shall adopt water quality protection requirements that are proportional to the relative contributions of pollution from all sources in terms of both the loading and proximity of those sources. Furthermore, it is the goal of the General Assembly to encourage and support State-local partnerships for improved water quality protection through the provision of technical and financial assistance available through the Clean Water Management Trust Fund, the ~~Wetlands~~ Ecosystem Enhancement Program, the Ecosystem Restoration Fund, water quality planning and project grant programs, the State's revolving loan and grant programs for water and wastewater facilities, other funding sources, and future appropriations. The Commission shall implement these goals in accordance with the standards, procedures, and requirements set out in this section."

SECTION 8. This act is effective when it becomes law.

SENATE BILL 1122:
Land and Water Conservation Study

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 19, 2006
Introduced by:	Sen. Albertson	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition S1122-CSRT-99 [v.4]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1122 would establish the Land and Water Conservation Commission (Commission). The purpose and duties of the Commission are to: (i) identify and evaluate existing sources of funding for land and water conservation, historic preservation, and economic and community development tied to conservation and preservation; (ii) collect research and information on tools and techniques for land conservation; (iii) prepare a draft report concerning the funding needs and other issues affecting land and water conservation in the State; and (iv) hold at least three public hearings in different regions of the State. The PCS directs the Commission to report its findings and any legislative recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007. The PCS would be effective when it becomes law.***

BILL ANALYSIS: The PCS would establish the Commission to consist of 16 members. The purpose and duties of the Commission would be to:

- Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.
- Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water, and assess the applicability of such tools and techniques to land conservation in North Carolina.
- Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.
- Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State, to present the draft report and recommendations to the public and user groups.

The PCS directs the Commission to report its findings and any legislative recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007.

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

S1122e1- CSRT-99

#6

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1122
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1122-CSRT-99 [v.4]

7/18/2006 5:11:33 PM

Short Title: Land and Water Conservation Study. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE LAND AND WATER CONSERVATION STUDY COMMISSION.

Whereas, North Carolina has more than 3,000 miles of streams that fail to meet State water quality standards; and

Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year; and

Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life; and

Whereas, land costs are increasing rapidly; and

Whereas, Article XIV, Section V of the State Constitution states, "North Carolina must use every appropriate way to preserve as part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty;" and

Whereas, G.S. 113A-241(a) provides, "The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009."; and

Whereas, traditional methods for funding the State's Clean Water Management Trust Fund, Parks and Recreation Trust Fund, Natural Heritage Trust Fund, Agricultural Development and Farmland Preservation Trust Fund, and economic development efforts related to land and water conservation have failed to keep pace with conservation needs and rapidly rising land costs, and are not able to meet the State's conservation goals at current funding levels; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established. – The Land and Water Conservation Commission is hereby established.

SECTION 2. Membership. –The Commission shall consist of 16 members as follows:

(1) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) One representative from the public at large appointed by the President Pro Tempore of the Senate.

(4) One representative from the public at large appointed by the Speaker of the House of Representatives.

(5) The State Treasurer, or the State Treasurer's designee.

(6) The Director of the Governor's Policy Office, or the Director's designee.

(7) The Secretary of Environment and Natural Resources, or the Secretary's designee.

(8) Three representatives from the public at large appointed by the Governor.

SECTION 3. Cochairs. – The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 4. Quorum. – A quorum of the Commission shall consist of nine members.

SECTION 5. Vacancies. – Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 6. Purpose and Duties. – The Commission shall:

(1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.

(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water, and assess the applicability of such tools and techniques to land conservation in North Carolina.

(3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.

(4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State, to

present the draft report and recommendations to the public and user groups.

SECTION 7. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

SECTION 9. Consultants. – The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 10. Meetings. – The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 11. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

SECTION 12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 13. Effective Date. – This act is effective when it becomes law.

#8
+2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1122
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1122-PCS75571-RT-99

Short Title: Land and Water Conservation Study. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE LAND AND WATER CONSERVATION STUDY COMMISSION.

Whereas, North Carolina has more than 3,000 miles of streams that fail to meet State water quality standards; and

Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year; and

Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life; and

Whereas, land costs are increasing rapidly; and

Whereas, Article XIV, Section V of the State Constitution states, "North Carolina must use every appropriate way to preserve as part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty;" and

Whereas, G.S. 113A-241(a) provides, "The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009."; and

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SECTION 7. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

SECTION 9. Consultants. – The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 10. Meetings. – The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 11. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

SECTION 12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 13. Effective Date. – This act is effective when it becomes law.

#9

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

SB 1122 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AMENDMENTS TO CHANGE THE NAME OF THE WETLANDS RESTORATION PROGRAM TO THE ECOSYSTEM ENHANCEMENT PROGRAM AND TO CHANGE THE NAME OF THE WETLANDS RESTORATION FUND TO THE ECOSYSTEM RESTORATION FUND.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

MINUTES

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Monday, July 24, 2006

The House Committee on Environment and Natural Resources met on Monday July 24, 2006, in Room 643 of the Legislative Office Building at 5:00 P.M. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representatives Lucy Allen, Pricey Harrison, and Daniel McComas, Vice Chairs; Representatives Curtis Blackwood, Russell Capps, Becky Carney, Arlie Culp, Bill Daughtridge, Pryor Gibson, Mitch Gillespie, Melanie Goodwin, Jim Gulley, Joe Hackney, Phil Haire, Paul Luebke, Grier Martin, Bill McGee, Ed McMahan, Bill Owens, Bonner Stiller, Jennifer Weiss and Alice Underhill.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order. The Pages, Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

SENATE BILL 1132. ENVIRONMENTAL REPORTS AMENDMENTS. (Please see Exhibit #3). By motion from Representative Allen, **Proposed Committee Substitute, S1132-CRST-102[v.1], RISK-BASED ENVIRONMENTAL REMEDIATION**, was adopted for consideration and moved forth for discussion. (Please see Exhibit #4). The Bill Analysis is attached (Please see Exhibit #5). Representative Gibson upon being recognized explained that the Proposed Committee Substitute replaced the intent of the original bill with language that had been agreed upon in the Environmental Review Commission on Risk-Based Remedial Clean-up without the controversial revenue piece. He emphasized that, if passed, the clean-up process could proceed while the revenue piece was being negotiated. Representative Hackney voiced opposition to the procedure used to present the bill to the committee. Representative Harrison offered Amendment S1132ART-65 [v.2] (Please see Exhibit #6), which provided for a remediation fee to be enacted before the legislation could be implemented. Upon motion the amendment was adopted for discussion. Representative Hackney was recognized to speak in support of the amendment. The amendment failed by a show of hands vote. Discussion ensued with several members of the committee expressing opposition to the bill without the amendment.

Representative Harrell opened discussion to interested parties in the audience. Robin Smith, Assistant Secretary, Department of Environment and Natural Resources, recognized for the purpose of explaining DENR's position, summarized that the fee needed to include both implementation for administering the program; and mitigation to compensate the State for loss of a significant natural resource for the period of time the resource would remain contaminated and unusable for other purposes. Elizabeth Outz, Director of Environment North Carolina; Elizabeth Self, Director of Government Relations for the North Carolina Sierra Club; and Tom Bean, NC Wildlife Federation and NC Environmental Defense; were recognized to speak in opposition to the Proposed Committee Substitute. Preston Howard, President of the Manufacturing and Chemical Industry of North Carolina, was recognized to speak in support of the bill. Franklin Freeman, Chief Legislative Affairs Counsel to the Governor, requested more time be allowed for the fee to be decided before acting on the bill. The Governor's opposition to the bill in its present form was cited.

Representative Harrell citing time constraints called for a motion to vote. Representative Luebke was recognized for the purpose of requesting the vote be taken by roll call and entered into the public record. Upon motion by Representative Gibson, Committee Substitute S1132-PCS15440-RT-102 (Please see Exhibit #7) received a favorable report, which changed the title, unfavorable as to original bill, by a 15 to 7 roll call vote (Please see Exhibit #8). The Committee Report is attached (Please see Exhibit #9).

There being no further business, Representative Harrell, adjourned the meeting at 5:45 P.M.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

5:00 P.M.
Monday, July 24, 2006
Room 643 Legislative Office Building

1. Call to order:
   Representative James A. Harrell, III, Presiding Chair
   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

3. Recognition of Pages

4. Bills for Consideration

SENATE BILL 1123. ENVIRONMENTAL REPORTS AMENDMENTS.
Senator Albertson (Primary Sponsor)

SENATE BILL 1132. Amend Environmental Laws -1.
Senator Albertson (Primary Sponsor)

SENATE BILL 1590. Env. Tech Corrects/Reporting Reqs.
Senators Albertson (Primary Sponsor)

5. Adjourn

#2

House Pages

HOUSE Com on ENVIRONMENT & NATURAL RESOURCES

Name Of Committee: _____ Date: 7-24-06

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

Sgt-At-Arms

1. Name: Earl Coker
2. Name: James Warth
3. Name: Marvin Lee
4. Name: Gerald Perry
5. Name: Martha Eddleman

Charles Williams

Mark Cone

#2

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
Room 643 Legislative Office Building

SIGN UP SHEET TO SPEAK

R

NAME	ADDRESS
Svea Strong	172 Sweet Haven Rd Rockingham, NC 28379
Frances Parks	2516 HWY 117 Calypso, N.C 28325
Barbara Brearley	138 Two Sisters Lane, Rockingham, NC 28379
Noble Gatewood	1359 Hwy 177 N Marshall N.C. 28363
Elizabeth Self	112 S. Blount St. Raleigh NC 27601
Dennis Ward	Calypso, N.C. 28325
PRESTON HOMES	610 N. West. Raleigh NC (RISK)
ELIZABETH OWENS	1778 - (RISK)
(Grey Peverill	Solid Waste Sec. HB 1093)

#2

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
Room 643 Legislative Office Building

SIGN UP SHEET TO SPEAK

NAME	ADDRESS
FRANK WARREN	106 W. Greene St. Snow Hill, NC 28580
Steve Stone	PO Box 249, Bolivia, NC 28422

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brunette Bradshaw	Duplin
Dennis Ward	Duplin
Frances Parker	Duplin County
Kenneth Davis	Duplin County
Jerry Bass	Duplin Co.
Jeanette Satterfield	Duplin Co.
Pat Dennis	Duplin Co.
Virginia Bailey	Duplin Co.
J.D. Bailey	Duplin Co.
Dexter Matthews	DENR - Waste Management

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Ouzts	Environment North Carolina
Tom Bacon	NCED, NCWE
Steve Stone	Brunswick County Administration
Stephanie Bass	Consultant - 407 Dixie Trail, Raleigh
Svea Strong	SOAR Richmond County
Jeanette Doran	GCRG Snow Hill, Greene County
Pam Dillman	SOAR Richmond County Rockingham, NC.
Barbara Brearley	SOAR Richmond County
Mabel Gatewood	SOAR Richmond County Rockingham NC
Marie Sloan	Sloan Real

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Randell	NC Sierra Club
Amanda Ward	NC Sierra Club
Nancy Thompson	NCIC
Amy Fullbright	Hunton & Wms.
Andrew Meehan	NCAFC
DAVID BARNES	Poyner + Spruill
John Mobley	Bowman
DON HOBBS	NCDOC
Mary Maschke	Poyner + Spruill
Steve Woodson	NC Farm Bureau

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

5:00 P.M.
Monday, July 24, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Linda Culpepper	NC DENR
Cathy Akroyd	NC DENR
Amy Simes	NCDENR
Johanna Reese	DENR
Anita Watkins	NCLM
Robin Smith	DENR
Erin Kimrey	NC Conservation Network
Mike Nelson	Conservation Council
S. Gresham	1st Tue Transport
Jennifer Bumgarner	Governor's Office
Phil Reifer	" "

#2

VISITOR REGISTRATION SHEET

Environment + Natural Resources — 7-24-06 5PM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCAOA
Henry Jones	Attorney -- Raleigh
Cam Coven	BPMH
Bill Scoggin	KCCH
Patrick Bfffk	Alley Assoc, Inc.
Ken Melton	D.O.R.
Steve Wall	DENR
Paul Crissman	DENR
Henry M. Lancaster	LCA
	RHA

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1132

Short Title:	Amend Environmental Laws -1.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (2) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; AND (3) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-249 reads as rewritten:

"**§ 130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each ~~restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments.~~food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall

have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary."

SECTION 2. G.S. 143B-336.1 reads as rewritten:

"**§ 143B-336.1. Special Zoo Fund.**

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, ~~and~~ for the replacement of tram equipment as required to maintain adequate service to the ~~public.~~public, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds ~~which~~ that are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

SECTION 3. G.S. 120-70.61 reads as rewritten:

"**§ 120-70.61. Membership; ~~cochairmen;~~cochairs; vacancies; quorum.**

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman.~~cochair.

(c) Except as otherwise provided in this section, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs ~~Vacancies occurring~~ on the Commission shall be filled in the same manner as ~~initial appointments.~~the original appointment.

(d) A quorum of the Commission shall consist of eight members."

SECTION 4. G.S. 120-70.62 reads as rewritten:

"**§ 120-70.62. Powers and duties.**

The Commission shall have the following powers and duties:

...

(4) To evaluate actions of the Division of Marine Fisheries ~~Division~~ of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

...."

SECTION 5. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either ~~cochairman,~~cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission."

SECTION 6. The Commission for Health Services shall adopt rules to implement the provisions of Section 1 of this act so that the rules become effective on or before 1 January 2007.

SECTION 7. Section 1 of this act becomes effective 1 January 2007. Sections 2 through 7 of this act are effective when it becomes law.

#4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1132
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1132-CSRT-102 [v.1]

7/20/2006 5:03:19 PM

Short Title: Risk-Based Environmental Remediation. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program

administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. [Reserved]**

"**§ 143B-279.26. [Reserved]**

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. It is the intent of the General Assembly that a person who intends to conduct a remediation pursuant to Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, shall pay a remediation fee to the

State. The Environmental Review Commission shall study issues related to the remediation fee, including the bases on which the remediation fee should be assessed, the procedures to be used to determine the amount of the remediation fee, and for what purposes remediation fees could and should be used. The Environmental Review Commission shall report the results of its study, including any legislative proposals, to the 2007 General Assembly. It is the intent of the General Assembly that the procedures to set the amount of a remediation fee and the purposes for which remediation fees may be used shall become law on or before 1 September 2007.

SECTION 4. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.
(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.
(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

SECTION 5. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 6. Section 1 of this act becomes effective 1 September 2007. Sections 2 through 6 of this act are effective when the act becomes law.

#5

SENATE BILL 1132:
Risk-Based Environmental Remediation/Fund

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 24, 2006
Introduced by:	Senator Albertson	**Summary by:**	Jeff Hudson, Commission Counsel
Version:	Proposed Committee Substitute S1132-CSRT-102 [v.1]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1132 (PCS) would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards.***

BILL ANALYSIS:

SECTION 1 would establish a new Part in Article 7 of Chapter 143B of the General Statutes, Part 1A (Risk-Based Environmental Remediation). The individual statutes in this Part would provide the following:

G.S. 143B-279.17. Applicability.

Under the Risk-Based Environmental Remediation Program (Program), site-specific, risk-based cleanups would be available for contaminated property covered by any of the following existing State environmental programs: the Inactive Hazardous Sites Program; the hazardous waste management program; the solid waste management program; the State administered part of the Superfund program; the Environmental Management Commission's groundwater protection program; and the Oil Pollution and Hazardous Substances Control Program.

G.S. 143B-279.18. Remediation standards.

A contaminated property may be cleaned up to site-specific standards that eliminate or reduce to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based on the present or currently planned future use of the property.

G.S. 143B-279.19. Remedial action plans.

A person who proposes to conduct a cleanup under the Program must develop and submit a proposed remedial action plan to the Department of Environment and Natural Resources (Department). A remedial action plan must provide for the protection of public health, safety, and welfare and the environment and must include a legal description of the location of the property, a map showing the location, a description of the contaminants involved and their concentrations, a description of the intended future use of the property, and any proposed investigation and remediation.

G.S. 143B-279.20. Notice of intent to remediate.

When a person submits a proposed remedial action plan to the Department, the person must also send a notice of intent to cleanup the property to all local governments having taxing or land use jurisdiction over the property. The notice must provide for a public comment period of at least 30 days during which the local governments and citizens may submit comments to the person and the Department. The person must also publish a summary of the notice in a newspaper of general circulation in the county or counties where the property is located. The person must consider and respond to any information or comments received on the remediation standards or the proposed remedial action plan.

G.S. 143B-279.21. Review and approval of proposed remedial action plans by the Department.

The Department must disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment. The person proposing the remedial action plan has the burden of demonstrating that the plan is protective. The Department must consider information provided by the person proposing the plan as well as information provided by local governments. The Department has 90 days within which to approve or disapprove a proposed plan.

G.S. 143B-279.22. Attainment of the remediation standard.

When a remedial action plan has been fully implemented, the responsible person will submit a final report to the Department that demonstrates that the plan has been fully implemented and that the remediation standards have been attained. The Department will review the final report and if the Department determines that the responsible person has cleaned the property up to the approved remediation standards the Department will issue a release from further cleanup of the property. The Department may require additional cleanup after issuing a release under certain circumstances.

G.S. 143B-279.23. Compliance with other laws.

This Part will not limit the authority of the Department to require investigation, initial response, or cleanup of contamination under any other provision of state or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment.

G.S. 143B-279.24. Adoption of rules.

The Secretary of Environment and Natural Resources may adopt rules to implement this Part.

G.S. 143B-279.25. and G.S. 143B-279.26. [Reserved]

G.S. 143B-279.27. Construction of Part.

The Part may not be construed to affect local government land-use or development regulations or ordinance.

SECTION 2 directs the Secretary of Environment and Natural Resources to use all reasonable efforts to obtain an agreement from the United States Environmental Protection Agency that the Program is consistent with federal environmental law.

SECTION 3 provides that it is the intent of the General Assembly that a person who conducts a cleanup under the Program will pay a remediation fee to the State. The Environmental Review Commission will study issues related to the amount and uses of remediation fees and will report the results of its study to the 2007 General Assembly. It is also the intent of the General Assembly that the provisions related to the amount and uses of remediation fees become law on or before September 1, 2007.

SECTION 4 directs the Department to report to the Environmental Review Commission on the implementation and possible expansion of the program.

SECTION 5 directs the Department to implement the act with funds already appropriated or available to the Department.

SECTION 6 provides that Sections 2 through 6 of the act are effective when the act becomes law and that the new Program will become effective September 1, 2007.

#6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1132

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

S1132-ART-65 [v.2]

Date _____,2006

Comm. Sub. [YES]
Amends Title [YES]
S1132-CSRT-102 [v.1]

Representative Harrison

moves to amend the bill on page 1, line 4,
by deleting the period at the end of that line and adding:

"AND TO PROVIDE THAT RISK-BASED REMEDIAL ACTIONS SHALL NOT BE IMPLEMENTED UNDER THIS ACT UNLESS THE PROCEDURES USED TO DETERMINE THE AMOUNT OF THE REMEDIATION FEE AND THE PURPOSES FOR WHICH REMEDIATION FEES MAY BE USED ARE ENACTED INTO LAW ON OR BEFORE 1 SEPTEMBER 2007.", and

on page 12, lines 38 and 39,
by rewriting those lines to read:

"**SECTION 6.** Sections 2 through 6 of this act are effective when the act becomes law. If the procedures used to determine the amount of the remediation fee and the purposes for which remediation fees may be used are enacted into law on or before 1 September 2007 as provided in Section 3 of this act, then Section 1 of this act shall become effective on 1 September 2007. If the procedures used to determine

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1132

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

S1132-ART-65 [v.2]

the amount of the remediation fee and the purposes for which remediation fees may be used are not enacted into law on or before 1 September 2007 as provided in Section 3 of this act, then Section 1 of this act shall not become effective.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 24 July 2006 TABLED _____

#7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1132
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1132-PCS15440-RT-102

Short Title: Risk-Based Environmental Remediation. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program

administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) 'Unrestricted use standards' means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose.**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes.

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including, but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water, and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering, or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25: Reserved for future codification purposes.**

"**§ 143B-279.26: Reserved for future codification purposes.**

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. It is the intent of the General Assembly that a person who intends to conduct a remediation pursuant to Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, shall pay a remediation fee to the

State. The Environmental Review Commission shall study issues related to the remediation fee, including the bases on which the remediation fee should be assessed, the procedures to be used to determine the amount of the remediation fee, and for what purposes remediation fees could and should be used. The Environmental Review Commission shall report the results of its study, including any legislative proposals, to the 2007 General Assembly. It is the intent of the General Assembly that the procedures to set the amount of a remediation fee and the purposes for which remediation fees may be used shall become law on or before 1 September 2007.

SECTION 4. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

SECTION 5. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency.

SECTION 6. Section 1 of this act becomes effective 1 September 2007. Sections 2 through 6 of this act are effective when the act becomes law.

#8
7-24-06

ROLL CALL VOTE

____ ____ = _____(TOTAL)
YES NO

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES 2005

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	HARRELL, CHAIR	✓	___	STILLER
___	___	JUSTICE, CHAIR	✓	___	UNDERHILL
✓	___	ALLEN, VICE CHAIR	___	✓	WEISS
___	✓	HARRISON, VICE CHAIR	___	___	WOMBLE
✓	___	McCOMAS, VICE CHAIR	___	___	
✓	___	BLACKWOOD	___	___	
✓	___	CAPPS	___	___	
✓	___	CARNEY	___	___	
✓	___	CULP	___	___	
✓	___	DAUGHTRIDGE	___	___	
✓	___	GIBSON	___	___	
✓	___	GILLESPIE	___	___	
___	✓	GOODWIN	___	___	
✓	___	GULLEY	___	___	
___	✓	HACKNEY	___	___	
___	✓	HAIRE	___	___	
___	___	INSKO	___	___	
___	___	LaROQUE	___	___	
___	✓	LUEBKE	___	___	
___	✓	MARTIN	___	___	
✓	___	McGEE	Ex officio Members		
			___	___	CULPEPPER
✓	___	McMAHAN	___	___	CUNNINGHAM
✓	___	OWENS	___	___	EDDINS
___	___	PRESTON	___	___	HACKNEY

7 NO 15 YES

#9

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☐ Committee Substitute for

SB 1132 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (2) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; AND (3) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Tuesday, July 25, 2006

The House Committee on Environment and Natural Resources met on Tuesday, July 25, 2006, in Room 1228 in the Legislative Building fifteen minutes after Session. The following members were present: Representative Carolyn H. Justice, Presiding Chair; Representatives Allen and McComas, Vice Chairs; Representatives Blackwood, Culp, Daughtridge, Gibson, Goodwin, Gulley, Haire, LaRoque, Luebke, McGee, McMahan, Preston, Stiller, Underhill and Weiss.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Justice, Presiding Chair, called the meeting to order. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

George Givens, Chief Committee Counsel, was recognized for point of clarification, emphasizing that both Senate Bills in front of the Committee were being considered for purposes other than that of their original intent.

SENATE BILL 927, RISK-BASED REMEDIATION/FUND. (Please see Exhibit #3). Upon motion from Representative Haire the **Proposed House Committee Substitute, S927-PCS15442-RI-31, NUTRIENT OFFSET PAYMENTS** (Please see Exhibit #4), was properly before the committee for discussion. Representative Gibson being recognized explained that the bill was a recommendation from the Department of Environment and Natural Resource. Discussion ensued with several members expressing concern over the language as it related to the nutrient program. Representative Gibson proposed a verbal perfecting amendment that limited the language of the nutrient program to "*phosphorous only*". Upon motion by Representative Gibson, the perfecting amendment was adopted. Upon motion by Representative Underhill, Proposed Committee Substitute #2 by incorporated perfecting amendment into a new proposed committee substitute S927-PCS15442-RI-31(Please see Exhibit #5), received a favorable report as to House Committee Substitute #2, which changes the title, unfavorable as to House Committee Substitute #1. The Committee Report is attached. (Please see Exhibit #6).

SENATE BILL 1132. ENVIRONMENTAL REPORTS AMENDMENTS (Please see Exhibit #7).
By motion from Representative Stiller, **Proposed Committee Substitute, S1132-CSSY-50 [v.4], HEALTH ALLIANCE SANITARIANS/LIABILITY**, was adopted for consideration and moved forth for discussion. (Please see Exhibit #8). Representative Stiller being recognized explained that the bill was a direct request from the Health Department in Brunswick County. George Givens, Chief Committee Counsel, responding to questions explained that the Alliance of Public Health Agencies, Inc. was a private 501C-3 non-profit organization. Discussion ensued with committee members voicing concerns over the bill's governmental immunity protection against liability to private corporations.

Due to reservations expressed by members, Representative Justice proposed the discussion be delayed until Wednesday, July 26, 2006. There being no further business, the meeting was adjourned.

Respectfully submitted,

Representative Carolyn H. Justice
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

15 Minutes after Session
Tuesday, July 25, 2006
Room 1228 Legislative Building

1. Call to order:

   Representative James A. Harrell, III, Chair

   Representative Carolyn H. Justice, Presiding Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

SENATE BILL 1132. Amend Environmental Laws -1.
Senator Albertson (Primary Sponsor)

SENATE BILL 927 Risk-Based Environmental Remediation/Fund.
Senator Clodfelter (Primary Sponsor)

5. Adjourn

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

15 Minutes after session
Tuesday, July 25, 2006
1228 Legislative Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
Roy Rogers	Tuggle
Tracy Kimbrell	Parker Poe
Erica Rieder	CWMTF
Erin Kinsey	NC Conservation Network
Lu-Ann Coe	DLC & Assoc
	DENR
Lisa Pillsy	Duke Energy
R. Paul Wilms	NCHBA

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

15 Minutes after session
Tuesday, July 25, 2006
1228 Legislative Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRANK W. FOLGER	HELMS MULLISS WICKER
Kathryn Sawyer	ACEC/NC
BRUCE THOMPSON	PARKER POE
Jeff Wolfe	Daily Bulletin
Kathy Hawkins	Progress Energy
JOHN GOODMAN	NCCBI
Tommy Stevens	NVC PC
Jim Blackburn	NC Association of County Commissioners
Colleen Flood	Smith Moore
Becki Gray	Civitas Institute

#2

VISITOR REGISTRATION SHEET

Environment + Natural Res. 7-25-06

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
[illegible]	Pamlico Tomorrow
Gary Harris	NCPMA
Lee Hodges	ICCLH
John Mabry	Groundtruth
Steve Hall	DENR
DAVID BARNES	Rogers + Sprunt
[illegible]	WCSR
Gene Ainsworth	AINSWORTH & ASSOC.
Courtney Crawford	Capitol
Dudley Doughtie	RCMP
Patrick Bobbitt	Alley Associates Inc
Ken Ipock	Gov's Office
Cam Cowell	BPMHL
Rick Zechini	NC Assn. of Realtors
S. Harris	UNC

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 927

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

House Committee Substitute Favorable 7/13/06

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

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 on these areas 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 because of 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 or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the

Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances

where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part."

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are

undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

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

#4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 927

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

House Committee Substitute Favorable 7/13/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S927-PCS15442-RI-31

Short Title: Nutrient Offset Payments. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DECLINE TO ACCEPT A NUTRIENT OFFSET PAYMENT FOR PHOSPHOROUS FOR THE TAR-PAMLICO RIVER BASIN IF THE DEPARTMENT FINDS THAT THE PAYMENT IS NOT SUFFICIENT TO COVER THE FULL COSTS OF NUTRIENT REDUCTION MEASURES NEEDED TO COMPLY WITH THE NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY.

The General Assembly of North Carolina enacts:

SECTION 1. If Senate Bill 1862, 2005 Regular Session, becomes law, Senate Bill 1862 shall be amended by adding a new section to read:

"**SECTION 1.1** Notwithstanding 15A NCAC 2B.0240 and Section 1 of this act, the Department of Environment and Natural Resources shall not be required to accept a nutrient offset payment for phosphorous as a means of fulfilling any requirement of the nutrient sensitive waters management strategy for the Tar-Pamlico River Basin if the Department finds that the payment is not sufficient to cover the full costs of nutrient reduction measures needed to comply with the nutrient sensitive waters management strategy. If the Department declines to accept a nutrient offset payment for phosphorous, the Department shall provide an estimate of the full cost of the nutrient reduction measures required for compliance with the nutrient sensitive waters management strategy. The Department may negotiate and enter into contracts to provide nutrient reduction measures needed to fulfill any requirement of the nutrient sensitive waters management strategy for phosphorous for the Tar-Pamlico River Basin based on the full cost of providing the nutrient reduction measures."

SECTION 2. This act becomes effective when Senate Bill 1862 becomes law.

#5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 927

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/31/05

House Committee Substitute Favorable 7/13/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S927-PCS15442-RI-31

Short Title: Nutrient Offset Payments. (Public)

Sponsors:

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March 24, 2005

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AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DECLINE TO ACCEPT A NUTRIENT OFFSET PAYMENT FOR PHOSPHOROUS FOR THE TAR-PAMLICO RIVER BASIN IF THE DEPARTMENT FINDS THAT THE PAYMENT IS NOT SUFFICIENT TO COVER THE FULL COSTS OF NUTRIENT REDUCTION MEASURES NEEDED TO COMPLY WITH THE NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY.

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SECTION 2. This act becomes effective when Senate Bill 1862 becomes law.

#6

~~2005 COMMITTEE REPORT~~
~~HOUSE OF REPRESENTATIVES~~

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

By Representative Harrell, Justice (Chairs) for the Committee on ENVIRONMENT AND NATURAL RESOURCES.

☒ House Committee Substitute for

SB 927 A BILL TO BE ENTITLED AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

#7

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to House committee substitute bill #1.

(FOR JOURNAL USE ONLY)

#6

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1132

Short Title:	Amend Environmental Laws -1.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (2) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; AND (3) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-249 reads as rewritten:

"**§ 130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each ~~restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments.~~food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall

have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary."

SECTION 2. G.S. 143B-336.1 reads as rewritten:

"**§ 143B-336.1. Special Zoo Fund.**

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, ~~and~~ for the replacement of tram equipment as required to maintain adequate service to the ~~public.~~public, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds ~~which~~ that are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

SECTION 3. G.S. 120-70.61 reads as rewritten:

"**§ 120-70.61. Membership; ~~cochairmen;~~cochairs; vacancies; quorum.**

(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman.~~cochair.

(c) Except as otherwise provided in this section, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs ~~Vacancies occurring~~ on the Commission shall be filled in the same manner as ~~initial appointments.~~the original appointment.

(d) A quorum of the Commission shall consist of eight members."

SECTION 4. G.S. 120-70.62 reads as rewritten:

"**§ 120-70.62. Powers and duties.**

The Commission shall have the following powers and duties:

...

(4) To evaluate actions of the Division of Marine Fisheries ~~Division~~ of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

...."

SECTION 5. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either ~~cochairman,~~cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission."

SECTION 6. The Commission for Health Services shall adopt rules to implement the provisions of Section 1 of this act so that the rules become effective on or before 1 January 2007.

SECTION 7. Section 1 of this act becomes effective 1 January 2007. Sections 2 through 7 of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1132
House Committee Substitute Favorable 7/24/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1132-CSSY-50 [v.4]

7/25/2006 5:45:22 PM

Short Title: Health Alliance Sanitarians/Liability. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SANITARIAN EMPLOYED BY THE NORTH CAROLINA ALLIANCE OF PUBLIC HEALTH AGENCIES, INC., MAY BE PROTECTED FROM LIABILITY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 31A OF THE GENERAL STATUTES IN ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING BROUGHT AGAINST THE SANITARIAN IN HIS OR HER OFFICIAL OR INDIVIDUAL CAPACITY, OR BOTH, ON ACCOUNT OF AN ACT DONE OR OMISSION MADE IN THE SCOPE AND COURSE OF ENFORCING THE RULES OF THE COMMISSION FOR HEALTH SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian or sanitarian employed by the North Carolina Alliance of Public Health Agencies, Inc., who is enforcing rules of the Commission for Health Services under the supervision of the Department of Environment and Natural Resources pursuant to G.S. 130A-4(b) shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his or her official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his or her behalf, subject to the provisions of G.S. 143-300.6."

SECTION 2. This act is effective when it becomes law and applies to any civil or criminal action or proceeding brought against a sanitarian on or after that date.

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
Wednesday, July 26, 2006

The House Committee on Environment and Natural Resources met on Wednesday, July 26, 2006, Room 643 in the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representatives Lucy Allen and Pricey Harrison, Vice Chairs; Representatives Blackwood, Capps, Culp, Daughtridge, Gulley, Haire, Luebke, Martin, McMahan, Owens, Preston, and Stiller.

A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1 & 2).

Representative Harrell, Presiding Chair, called the meeting to order. The Sergeant-at-Arms and George Givens, Committee Chief Counsel, and his staff were recognized and thanked. Visitors were welcomed.

SENATE BILL 1132. ENVIRONMENTAL REPORTS AMENDMENTS. (Please see Exhibit #3). By motion from Representative Allen, the new **Proposed Committee Substitute, S1132-PCS85496-SY-50, DEFENSE OF CONTRACT LOCAL SANITARIANS,** was adopted for consideration and moved forth for discussion. (Please see Exhibit #4).

Discussion on the new **Proposed Committee Substitute, S1132-PCS85496-SY-50 - Defense of Contract Local Sanitarians,** was a continuation from the July 25 meeting discussion on **Proposed Committee Substitute CSSY-50[v.4] Health Alliance Sanitarians/Liability** (Please see Exhibit #5). George Givens, Chief Committee Counsel, being recognized for point of clarification, noted the reference to the "private" 501C3 Corporation was removed in the new Proposed Committee Substitute S1132-PCS85496-SY-50, which makes the bill generic. He explained that local health departments that used additional sanitarians who were independent contractors would not be provided the defense of the Attorney General under the Court Claims Act. Representative Stiller, upon being recognized explained that the purpose of the bill was to give coverage for liability when independent contractors are hired to work for the county as needed in an effort to reduce backlogs. Discussion ensued with committee members expressing continued concerns over the bill's governmental immunity protection against liability.

Representative Harrison upon being recognized moved for adjournment. There being no further business, Representative Harrell adjourned the meeting.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

#1

NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES COMMITTEE
MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on Environment and Natural Resources will meet as follows:

DAY & DATE: **Wednesday, July 26, 2006**

TIME: **12 Noon**

LOCATION: **643 LOB**

The following bills will be considered

SENATE BILL 1132. Amend Environmental Laws -1.
Senator Albertson (Primary Sponsor)

Respectfully,
Representative Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **7:30 P.M.** on **July 25, 2006.**

Yes Principal Clerk
Yes Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

#1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Wednesday, July 26, 2006
Room 643 Legislative Office Building

1. Call to order:

   Representative James A. Harrell, III, Chair

   Representative Carolyn H. Justice, Chair

2. Introductory Remarks by Chairs

4. Bills for Consideration

SENATE BILL 1132. Amend Environmental Laws -1.
Senator Albertson (Primary Sponsor)

5. Adjourn

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

July 26, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Judy McConnell	Daily Bulletin
Lisa Martin	NC Home Builders Assoc.
Cam Cover	BPMHL
Steve Wall	DENR
FRANK W FULGER	HELMS MULLISS WICKER
Preston Howard	MCIC
Michael Nelson	Conservation Council
Terry Pierce	DEH, DENR
Chris Valenti	NC Beer & Wine Assoc.
Bruce Thompson	PARKER POE
Kathy Hawkins	Progress Energy

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

July 26, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Thompson	Dominion
Robin Smith	DENR
DAVID BARNES	Poyner Spruill
Mary Maushall	" "
Dana Simpson	Smith Anders
Amy Hong	NCPWA
Heather Crabtree	TNC intern
David Knight	TNC
Patrick Bliffkin	Alley Associates, Inc.
Tracy Kimbrell	Parker Poe
Elizabeth Dalton	NCRWA

#2

VISITOR REGISTRATION SHEET

NORTH CAROLINA HOUSE OF REPRESENTATIVES COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES

July 26, 2006
643 Legislative Office Building

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Horne	NCMS
	RAN · ACWA

#3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1132

Short Title:	Amend Environmental Laws -1.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO MODIFY THE INSPECTION SCHEDULE FOR ESTABLISHMENTS THAT PREPARE OR SERVE FOOD OR DRINK TO THE PUBLIC; (2) AUTHORIZE THE USE OF FUNDS FROM THE SPECIAL ZOO FUND FOR MARKETING PURPOSES; AND (3) PROVIDE THAT MEMBERS OF THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE WHO ARE NOT REELECTED TO THE GENERAL ASSEMBLY MAY COMPLETE THEIR TERM OF SERVICE ON THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-249 reads as rewritten:

"**§ 130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each ~~restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments.~~food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall

have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary."

SECTION 2. G.S. 143B-336.1 reads as rewritten:

"**§ 143B-336.1. Special Zoo Fund.**

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in existing habitat clusters and visitor services facilities, construction of visitor services facilities and support facilities such as greenhouses and temporary animal holding areas, ~~and~~ for the replacement of tram equipment as required to maintain adequate service to the ~~public.~~public, and for marketing the Zoological Park. The Special Zoo Fund may also be used to match private funds ~~which~~ that are raised for these purposes. Funds may be expended for these purposes by the Department of Environment and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

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(a) The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair, and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman.~~cochair.

(c) Except as otherwise provided in this section, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs ~~Vacancies occurring~~ on the Commission shall be filled in the same manner as ~~initial appointments.~~the original appointment.

(d) A quorum of the Commission shall consist of eight members."

SECTION 4. G.S. 120-70.62 reads as rewritten:

"**§ 120-70.62. Powers and duties.**

The Commission shall have the following powers and duties:

...

(4) To evaluate actions of the Division of Marine Fisheries ~~Division~~ of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

...."

SECTION 5. G.S. 120-70.63 reads as rewritten:

"**§ 120-70.63. Additional powers.**

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either ~~cochairman,~~cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission."

SECTION 6. The Commission for Health Services shall adopt rules to implement the provisions of Section 1 of this act so that the rules become effective on or before 1 January 2007.

SECTION 7. Section 1 of this act becomes effective 1 January 2007. Sections 2 through 7 of this act are effective when it becomes law.

#4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1132

House Committee Substitute Favorable 7/24/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1132-PCS85496-SY-50

Short Title: Defense of Contract Local Sanitarians. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SANITARIAN EMPLOYED BY A LOCAL HEALTH DEPARTMENT AS AN INDEPENDENT CONTRACTOR MAY BE PROTECTED FROM LIABILITY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 31A OF THE GENERAL STATUTES IN ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING BROUGHT AGAINST THE SANITARIAN IN HIS OR HER OFFICIAL OR INDIVIDUAL CAPACITY, OR BOTH, ON ACCOUNT OF AN ACT DONE OR OMISSION MADE IN THE SCOPE AND COURSE OF ENFORCING THE RULES OF THE COMMISSION FOR HEALTH SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any ~~local health department~~ sanitarian registered in accordance with Article 4 of Chapter 90A of the General Statutes that is employed by a local health department ~~enforcing~~ to enforce rules of the Commission for Health Services under the supervision of the Department of Environment and Natural Resources pursuant to G.S. 130A-4(b) shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his or her official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. Notwithstanding the definition of 'employee' set out in G.S. 143-300.2, this section applies to any sanitarian who meets the requirements of this section who is employed by a local health department as an independent contractor. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his or her behalf, subject to the provisions of G.S. 143-300.6."

SECTION 2. This act is effective when it becomes law and applies to any civil or criminal action or proceeding brought against a sanitarian on or after that date.

#5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1132

House Committee Substitute Favorable 7/24/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1132-CSSY-50 [v.4]

7/25/2006 5:45:22 PM

Short Title: Health Alliance Sanitarians/Liability. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SANITARIAN EMPLOYED BY THE NORTH CAROLINA ALLIANCE OF PUBLIC HEALTH AGENCIES, INC., MAY BE PROTECTED FROM LIABILITY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 31A OF THE GENERAL STATUTES IN ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING BROUGHT AGAINST THE SANITARIAN IN HIS OR HER OFFICIAL OR INDIVIDUAL CAPACITY, OR BOTH, ON ACCOUNT OF AN ACT DONE OR OMISSION MADE IN THE SCOPE AND COURSE OF ENFORCING THE RULES OF THE COMMISSION FOR HEALTH SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian or sanitarian employed by the North Carolina Alliance of Public Health Agencies, Inc., who is enforcing rules of the Commission for Health Services under the supervision of the Department of Environment and Natural Resources pursuant to G.S. 130A-4(b) shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his or her official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his or her behalf, subject to the provisions of G.S. 143-300.6."

SECTION 2. This act is effective when it becomes law and applies to any civil or criminal action or proceeding brought against a sanitarian on or after that date.